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Rachael Mulheron, Asserting personal jurisdiction over non-resident class members: comparative insights for the United Kingdom

The opt-out class action involves a unique participant, *viz*, the absent class member whose claim is prosecuted by a representative claimant, who does not opt-out of the action nor do anything else in relation to it, and yet who is bound by its outcome. In a cross-border class action, the means by which a domestic court may validly assert personal jurisdiction over absent class members who are resident outside of that court's jurisdiction remains perhaps the single biggest conundrum in modern class actions jurisprudence. The United Kingdom (UK) legislature requires that non-resident class members compulsorily opt-in to the UK's competition law class action, in order to demonstrably signify their consent to the jurisdiction of the UK court. However, that legislative enactment is unusual, and becoming even rarer, in modern class actions statutes. The comparative analysis undertaken in this article demonstrates that where that type of statutory provision is *not* enacted, then the judicially-developed "anchors" by which to assert personal jurisdiction over non-resident class members are multifarious, diverse, and conflicting, across the leading class actions jurisdictions. This landscape yields important lessons for UK law-makers, and strongly suggests that the UK legislature's approach towards non-resident class members represents "best practice", in what is a complex conundrum of class actions law.

Richard Garnett, Recognition of jurisdictional determinations by foreign courts

Parties have occasionally sought to use findings on jurisdiction made by a court in one country to preclude re-litigation of the same matter elsewhere. In common law countries the traditional means by which this tactic has been employed is the doctrine of issue estoppel. The aim of this article is to assess the extent to which jurisdictional determinations by foreign courts can have binding effects in other countries.

Ardavan Arzandeh, "Gateways" within the Civil Procedure Rules and the future of

service-out jurisdiction in England

For well over 150 years, the heads of jurisdiction currently listed within paragraph 3.1 of Practice Direction B, accompanying Part 6 of Civil Procedure Rules, have played a vital role in the English courts' assertion of jurisdiction over foreign-based defendants. These jurisdictional "gateways" identify a broad range of factual situations within which courts may decide to entertain claims against defendants outside England. However, the existing general framework for deciding service-out applications is increasingly vulnerable to attack. In particular, the greater prominence of the *forum conveniens* doctrine, but also problems arising from the gateways' operation, combine to cast doubt on their continued role (and relevance) in service-out cases. Against this backdrop, the article assesses the case for abandoning the gateway precondition. It is argued that rather than jettisoning the gateways, future revision of the law in this area should aim to minimise ambiguities concerning the gateways' scope and also ensure that they include only instances which connote meaningful connection between the dispute and England.

Liang Zhao, Party autonomy in choice of court and jurisdiction over foreign-related commercial and maritime disputes in China

Chinese civil procedure law provides the choice of foreign courts through jurisdiction agreements in foreign-related commercial and maritime disputes. In Chinese judicial practice, foreign jurisdiction agreements may be held null and void because of the lack of actual connection between the agreed foreign jurisdictions and the foreign-related disputes. Chinese courts may, therefore, have jurisdiction when China has actual connection with the dispute, in particular when Chinese parties are involved in disputes. However, the actual connection requirement does not apply to Chinese maritime jurisdiction when China has no actual relation with the maritime disputes. Chinese courts also have maritime jurisdiction in other special ways although foreign courts are designated in contract. Conflict of jurisdiction over foreign-related disputes is thus caused. This article analyses how party autonomy is limited by Chinese civil procedure law and how Chinese court exercise jurisdiction when Chinese courts are not chosen by parties. This article argues that the Hague Convention on Choice of Court Agreements should be adopted to replace the actual connection requirement under the Chinese civil procedure law and Chinese courts should respect party autonomy in respect of the choice of foreign court. It is also suggested that

Chinese courts shall apply *forum non conveniens*to smooth the conflict of jurisdiction between Chinese courts and foreign courts.

Maisie Ooi, Rethinking the characterisation of issues relating to securities

This article contends that there is a pressing need to rethink the characterisation of issues relating to securities, both complex and plain vanilla. It will demonstrate that the less than coherent choice-of-law process that exists for securities today is a consequence of courts utilising characterisation categories and rules that had not been designed with securities in mind and applying them in disregard of the new dimensions that securities and their transactions bring to characterisation. These have resulted in rules that do not provide certainty and predictability to participants in the securities and financial markets.
The thesis that this article seeks to make is that a new characterisation category is required that is specific to securities which will encompass both directly held and intermediated securities (possibly also crypto-securities), and address issues of property, contract and corporations together. This will have its own choice-of-law rules which will be manifestations of the *lex creationis*, the law that created the relevant res or thing that is the subject-matter of the dispute. The convergence of issues traditionally dealt with by separate categories and rules will simplify and make for more coherent choice-of-law for securities.

Chukwuma Samuel Adesina Okoli & Emma Roberts, The operation of Article 4 of Rome II Regulation in English and Irish courts

This article makes a critical assessment of the operation of Article 4 of Rome II in English and Irish courts measuring the extent to which judges of England and Wales (hereafter England) and Ireland are interpreting Article 4 of Rome II in accordance with what the EU legislator intended.

Onyoja Momoh, The interpretation and application of Article 13(1) b) of the Hague Child Abduction Convention in cases involving domestic violence: Revisiting X v Latvia and the principle of “effective examination”

A key interpretation and application issue in the scheme of Article 13(1) b) of the Hague Child Abduction Convention is whether judges should investigate first the merits of the defence before considering whether protective measures are adequate or whether they should first consider the adequacy of protective measures. There is no generally accepted international practice nor is there clear

authority on the appropriate or preferred approach. This article argues that judges should always undertake an effective examination of the allegations of domestic violence first before considering whether, if there is merit to the allegations and they are substantiated, adequate protective measures can sufficiently ameliorate the grave risk of harm.