

# **Review of Ekaterina Aristova, *Tort Litigation Against Transnational Corporations: The Challenge of Jurisdiction in English Courts*, Oxford: Oxford University Press, 2024, 352 pp, hb £125**



The book is based on Dr. Ekaterina Aristova's PhD thesis, completed at the University of Cambridge and subsequently refined through postdoctoral research at the University of Oxford. The core content of the book spans eight chapters across 297 pages, excluding the preface, series editor's preface, table of contents, and index.

The book explores the approach of English courts to jurisdictional issues in foreign direct liability (FDL) claims brought against English-based parent companies and their foreign subsidiaries as co-defendants. While written from the perspective of English law, it incorporates comparative insights from similar FDL claims in other jurisdictions, including Australia, Canada, EU Member States, and the US.

The book is particularly notable for its observation—citing Professor Robert McCorquodale—that FDL claims intersect with various fields of law, such as domestic criminal law, tort law, contract law, human rights and constitutional law, comparative law, public international law, and private international law. Despite these intersections, the book primarily focuses on the private international law aspect of civil jurisdiction in FDL claims before English courts.

Chapter 1 introduces the book by highlighting the significant role of transnational corporations (TNCs) and the substantial impact their operations have had on human rights violations within the business context. It also briefly clarifies key terminologies used throughout the book.

The introduction is divided into three crucial sections. Section A provides the necessary context for discussing foreign direct liability (FDL) claims. Section B defines the book's scope, identifies the research questions, and outlines the general methodology employed in the study. Section C concludes with an overview of the book's structure.

Chapter 2 addresses a major challenge in the regulation of transnational corporations (TNCs): the mismatch between the global nature of TNCs' operations, carried out by legally distinct companies, and the territorial jurisdiction of sovereign states. Aristova highlights the difficulties in providing a clear legal definition of TNCs due to their complex, multi-tiered structures. While a precise definition is not offered, she notes that TNCs typically possess characteristics of corporate groups and contractual networks.

The chapter then discusses the challenges and potential solutions for holding TNCs accountable, focusing on the principles of corporate legal personality that separate parent companies from their subsidiaries and the public international law principle of territoriality. Finally, Aristova traces the origins of an emerging legislative trend toward legally binding instruments that mandate parent companies of TNCs to conduct human rights due diligence in cross-border business operations.

Chapter 3 provides a comprehensive analysis of litigation against transnational corporations (TNCs) across various jurisdictions, with a particular focus on English courts. It examines how foreign direct liability (FDL) claims have contributed to enhancing corporate accountability for human rights violations.

The chapter begins by introducing a hypothetical FDL case, involving an English-based parent company accused of negligently exercising (or failing to exercise) control over the overseas operations of its foreign subsidiary, resulting in harm to the subsidiary's employees. Next, it explores how tort law, particularly the negligence element of the duty of care, has been utilised in English courts to circumvent the principle of corporate legal personality, which separates parent companies from their subsidiaries.

Chapter 3 also offers a comparative overview of the global litigation landscape, highlighting key case law developments in Western countries where powerful multinational corporations are headquartered. Jurisdictions considered include

the United States, Canada, EU Member States (notably Germany and The Netherlands), and Australia, where claimants have sought justice by initiating FDL claims.

Finally, the chapter addresses the regulatory function of FDL claims, examining issues such as the uneven litigation landscape, fact-sensitive inquiries, the lack of precedents, the interplay between tort law and human rights, barriers to justice in home states, the balance between compensation and deterrence, and the question of whether tort law provides an effective solution.

Chapter 4 examines the capacity and challenges faced by English courts in adjudicating foreign direct liability (FDL) claims.

First, Section A presents the pre-Brexit framework of jurisdictional rules, focusing on Articles 4, 8, 33, and 34 of the Brussels I Recast Regulation. During the UK's membership in the EU, establishing the domicile of an EU defendant company in transnational and parallel litigation was crucial for determining jurisdiction. It also considers the traditional English jurisdictional rules applied to other foreign companies during the pre-Brexit period.

Second, Section B addresses the impact of Brexit on jurisdictional matters. Post-Brexit, jurisdiction between the UK and the EU is now determined primarily by English traditional jurisdiction rules, the Hague 2005 Convention, and as from 1 July 2025, the Hague 2019 Convention. Under common law, jurisdiction is fundamentally based on service, which is divided into two categories: jurisdiction as of right and jurisdiction with leave of the court. Jurisdiction as of right is determined by presence and/or submission of the defendant within England, subject to the principle of *forum non conveniens*. Jurisdiction to serve a defendant outside England with leave of the court is governed by Civil Procedure Rules 6.36 and 6.37, which require the claimant to demonstrate that (i) a jurisdictional gateway applies, (ii) the claim has a reasonable prospect of success, and (iii) England is the appropriate forum to hear the case.

Finally, Section C concludes by discussing some of the conceptual and practical flaws in the jurisdictional rules applied by English courts in FDL claims.

Chapter 5 explores the impact of transnational corporations (TNCs) and their rapid expansion across borders, which complicates the traditional view of private international law as a neutral set of rules. While Aristova does not seek to

challenge the conventional understanding of the discipline or propose a normative stance on its role in addressing globalisation, the chapter instead aims to establish a more refined and focused approach to exercising jurisdiction in FDL claims.

Chapter 6 builds on the objectives of Chapter 5 by identifying the key factors to consider when assessing the suitability of English courts as a forum for disputes involving English parent companies and their foreign subsidiaries as co-defendants. These factors are divided into two categories: the private interests of litigants involved in FDL claims and the State's interests in exercising jurisdiction over such cases.

Section A briefly examines why claimants often choose to bring FDL claims in England, setting the stage for jurisdictional disputes over the venue. Section B evaluates the claimants' choice of forum against the procedural fairness of jurisdictional rules from the corporate defendant's perspective. It considers factors such as the English-based parent company's personal connections to the home state, the economic and managerial structure of TNCs, the avoidance of parallel litigation across multiple forums, the burden on corporate defendants defending in England, and the predictability and legal certainty of jurisdictional rules.

Section C discusses the broader policy implications English courts cannot avoid when English-based TNCs are accused of overseas human rights violations. It argues that the increasing significance of international, regional, and domestic frameworks for holding TNCs accountable calls for an open acknowledgment of the public interest in trying FDL claims against English parent companies and their subsidiaries in English courts.

Finally, Section D considers English courts' assertions of jurisdiction in FDL claims from the perspective of host states, addressing foreign policy concerns such as potential infringements on state sovereignty. It examines whether home state adjudication of FDL claims can align with the host state's interests.

Chapter 7 explores whether introducing a new connecting factor that explicitly accounts for the economic reality of transnational corporations (TNCs) could better address the complexities of FDL claims and improve how English courts determine jurisdiction. Aristova discusses the economic enterprise theory, which

proposes that when a parent company and its subsidiaries are closely integrated and function as a single economic entity, their separate legal identities may be disregarded. This theory, Aristova explains, could provide a new framework for jurisdiction in FDL claims.

Aristova acknowledges that the economic enterprise theory has received limited attention in academic and judicial contexts and remains somewhat vague and uncertain. Nevertheless, she suggests that the theory might offer a viable approach for FDL jurisdiction cases in English courts.

I must confess, without claiming expertise in this area, that Chapter 7 is particularly complex—especially the discussion of the economic enterprise theory, which I found unclear. Aristova distinguishes this theory from the concept of piercing the corporate veil, but her arguments would have been more persuasive had she more convincingly demonstrated why this theory is superior to the existing tort-based approach. The current approach, endorsed by the UK Supreme Court, holds that a parent company owes a duty of care to individuals harmed by its subsidiary's activities if it exercises de facto control or oversight over the relevant harmful actions. Furthermore, Aristova does not advance the economic enterprise theory with much confidence, instead tentatively suggesting it as a potential alternative for future legislative consideration.

Chapter 8 concludes the work by reaffirming the importance of ensuring that victims of FDL claims are given the opportunity to have their day in court and access a remedy.

A minor critique is that the use of abbreviations in the substantive chapters could have been reduced to improve readability. A better approach would be to introduce the full term followed by its abbreviation in each chapter, rather than doing so only once for the entire book.

Overall, the monograph is well-written and highly engaging. It is thorough, particularly in its coverage of English cases, and Aristova demonstrates expert knowledge of the subject.

