Courtroom Attendance as a Forum Conveniens Factor in Hamilton v Barrow

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In October 2025, the High Court of England and Wales (King's Bench Division) handed down its judgment in Hamilton v Barrow [2025] EWHC 2593 (KB). The case concerned a failed unregulated investment scheme that collapsed in 2017, leaving investors without the possibility of recovering their investments, which ranged from £2,930 to £410,969. At first glance, the decision discusses important procedural questions, including abuse of process and champerty. However, on closer inspection, it also raises an interesting issue of English private international law that has gone overlooked. Can courtroom attendance be a factor in the forum conveniens test?

Facts of the Case

The defendants were all allegedly involved in a fraudulent investment scheme, under which investors from all over the world paid money to a 'currency club'. Those funds were then supposed to be traded in foreign currency by one of the defendants who was based in Malaysia. Following the collapse of the scheme, the aggrieved investors alleged that the defendants made fraudulent misrepresentations to obtain investments and that the defendants were in breach of contract in their handling of the scheme. It was alleged that the currency club operated as a 'Ponzi' scheme and defrauded the investors.

This was a follow-on action arising from a successful test case by the claimant, a former English solicitor residing in Cyprus, against three of the present defendants. The claimant has now brought proceedings against a wider group of 12 defendants, acting under 101 separate assignments from other investors. The assignments provided that the assignors are entitled to 60% of the proceeds from the litigation.

Legal Issues

At this stage, the High Court was tasked with answering multiple preliminary legal issues, summarised by the judge (at para 15) as follows:

- Are the courts of England and Wales the appropriate forum for the trial (ie, is England and Wales the *forum conveniens*)?
- Are the assignments to the claimant void for being champertous agreements ('meaning the claimant has no title to bring the claim')?
- Are the proceedings an abuse of process?
- Should the claims against some of the defendants be summarily struck out?
- Should the claimant be allowed to amend his Particulars of Claim?

The Court ruled for the claimant, allowing the claim to proceed. A substantial part of the judgment related to the champerty and abuse of process issues. Looking at the case as a whole, the judge held that the assignments were not void as being champertous, nor did the proceedings constitute an oppressive abuse of process. On the contrary, voiding the assignments would deny the assignors an opportunity to be heard by a court, which the judge refused to allow given the *prima facie* evidence of fraud (at para 123).

Importantly, from a conflict of laws perspective, the interesting issue remains the Court's application of the forum conveniens test.

Forum Conveniens

Setting out the relevant provisions of the forum conveniens test, the judge cited Lord Briggs's judgment in *Vedanta Resources Plc v Lungowe* [2019] UKSC 20, which in turn refers to Lord Goff's speech in *Spiliada Maritime Corp v Cansulex Ltd* [1987] AC 460 (HL): 'The task of the court is to identify the forum in which the case can be suitably tried for the interests of all the parties and for the ends of justice…'. This includes the crucial consideration of all factors that connect the claim with a particular jurisdiction.

The judge then moved to his consideration of the proper forum for this litigation. It was submitted by multiple defendants that Malaysia rather than England is the forum conveniens. Ultimately, the judge concluded that the appropriate forum is England, for seven listed reasons (at para 70):

- The claimant has already conducted a trial in England, is familiar with the forum, and has family in London who could provide him with accommodation during the trial; he would also lack the capacity to pursue this case in Malaysia;
- More than half of the key witnesses, the assignors, are located in the United Kingdom, whilst none in Malaysia;
- Only 2 of the 12 defendants are outside the United Kingdom and prefer Malaysia as the forum;
- The claimant's three important witnesses all appear to be located in England and Wales and most of the claimant's documentary evidence is available and in electronic form;
- Most of the participants in the trial will be English speakers, documents will be largely in English, and it does not appear that any participants speak Malay;
- Whilst there may be some difficulties in obtaining Malaysian banking material, this would not be impossible should the trial proceed in England, and the claimant has already shown that he was successful in obtaining Malaysian bank materials from HSBC Global; other banks can be approached in a similar way.

The final factor listed by the judge, however, introduces a rather unusual consideration of the forum conveniens test. At point (g), the judge noted:

'although I do not give significant weight to this factor and the claimant did not rely on it, I note that a significant number of people attended the hearing and sat in the public gallery. This suggests that there is significant active interest in these proceedings from people resident in the United Kingdom.'

Discussion

Reliance on courtroom attendance in the judge's forum conveniens analysis should strike every conflict of laws scholar or practitioner. It may appear benign; after all, the judge explicitly stated that he did not give that factor significant weight and it was not pleaded by the claimant. In hindsight, however, what the judge was essentially doing was considering a public, rather than a private, interest under the forum conveniens test. Indeed, this is an approach taken on the other side of the Atlantic, where the United States courts regularly take public interest factors into account. In this regard, the English High Court's reasoning

seems implicitly analogous to the Supreme Court of the United States's decision in *Gulf Oil Corp v Gilbert*, 330 U.S. 501 (1947), where Justice Jackson opined that the test should also take into account public considerations such as holding the trial within the view and reach of the affected persons or having localised controversies decided at home. The High Court treated the interest of the members of the English public as somewhat justifying holding the trial in England rather than in Malaysia. It is unfortunate that the judge did not elaborate further on why noting the public attendance should matter.

Crucially, considering public interest factors under the *Spiliada* test was decidedly rejected in England by the highest judicial authority in *Lubbe v Cape Plc* [2000] 1 WLR 1545 (HL). As Lord Hope held (at para 53):

'…if the interests of all parties and the ends of justice require that the action in this country should be stayed, a stay ought to be granted however desirable it may be on grounds of public interest or public policy that the action should be tried here.'

Considering the interest of the people residing in the United Kingdom in the litigation seems to be in clear contradiction with this ruling.

Not only does such an approach represent a doctrinal problem, its relevance for determining an appropriate forum seems questionable notwithstanding the well-established precedent. The investment club operated worldwide, and evidence suggested that there were thousands of investors from various countries. The proposition that the United Kingdom audience possesses any uniquely stronger active interest in the proceedings than an audience elsewhere is highly questionable. While this factor may have appeared to point clearly to England when contrasted solely against Malaysia (to which even the traditional connecting factors were missing), applying this logic to less clear-cut cases could easily lead to arbitrary results.

Conclusion

The judgment in *Hamilton v Barrow* should not be understood as an authority bringing public interest factors into the *Spiliada* test. Indeed, the judge tried to downplay its significance for the forum conveniens calculus. The other connecting factors the judge relied on, particularly the location of litigants and witnesses, are non-controversial and were sufficient on their own to justify holding the trial in

England in the absence of other factors pointing towards Malaysia. Nevertheless, the mere mention of the public interest in the trial is problematic. Forum conveniens being a discretionary doctrine, it is not necessarily clear how the overall balance of connecting factors plays out when the judge looks at the case 'holistically'. Any creeping in of public interest factors should therefore be viewed with scepticism. The law is clear on rejecting public interest factors from the *Spiliada* analysis. Such a structural change would need to come from the highest authority, an intervention which appears unlikely.