What we're covering

▶ Tort gateway developments

▶ Serving without permission

▶ Recognition and enforcement

▶ Applicable law and foreign law

▶ Motor Insurance Directives
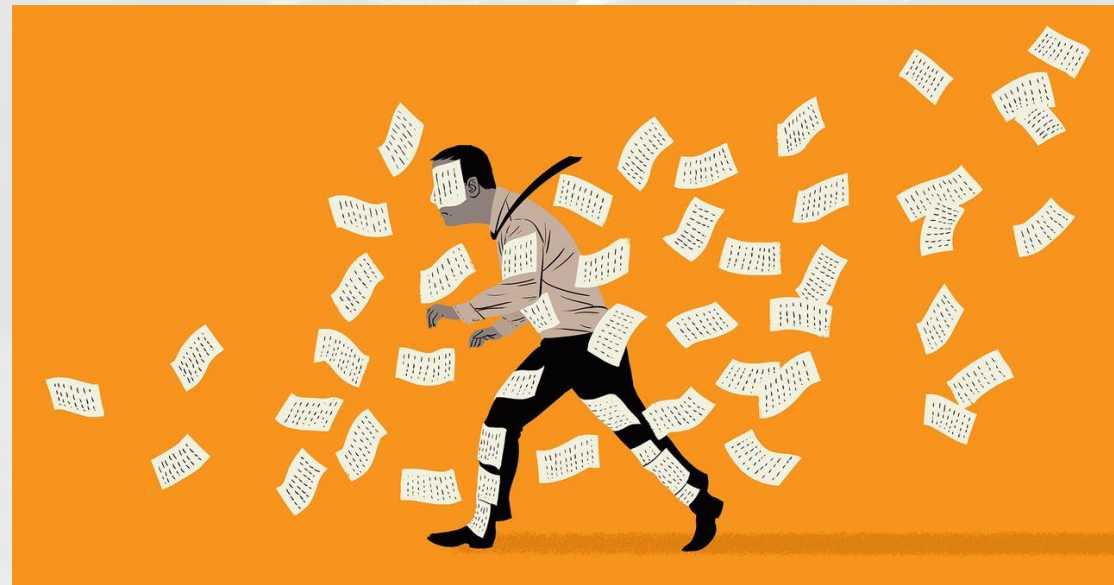
Tort gateway

CPR 6BPD 3.1(9)

► "Acts committed" within jurisdiction

► "Damage sustained" within jurisdiction

FS Cairo v Brownlie

*"Damage" ... extends ... to the actionable harm caused by the tortious act, including **all the bodily and consequential financial effects which the claimant suffers.***

3 extra points

▶ No direct versus indirect disctintion

▶ PSLA "will be with me wherever I am"

▶ Injury to estate and loss of dependency

Who will benefit?

▶ English tourists:

▶ Everyone else:

Any limits?

▶ Broken arm?

▶ Sprain with painkillers?

▶ Travel anxiety?

Possible response

▶ No threshold identified

▶ Proper forum "safety valve"

▶ (Prof Dickinson: "Let's start from scratch.")

Majority: "No problem at all"

► "Structured discretion"

► "Readily predictable"

► "Robust and effective"

► No danger of uncertainty

Minority: "Sure about that?"

Different judges ... **will inevitably attach different degrees of weight to different factors and may reach differing conclusions on similar facts** *without either conclusion being susceptible to legal challenge.*

Serving without permission

CPR r. 6.33(2)

▶ Claims relating to consumer contracts

▶ Claims relating to employment contracts

Consumer contracts

Section 15B, CJJA 1982

▶ "Matter relating to a consumer contract"

▶ C domiciled in UK

What is it?

Section 15E(1), CJJA 1982

► Commercial or professional activities within C's domicile

► Or directing those activities to C's domicile

► Contract falls within scope of the activities

► (Does not include transport contracts except packages)

Who is covered?

► "**The consumer** may bring proceedings against the other party to the consumer contract …": section 15B(2), CCJA 1982

► Consumer: "means a person **who concludes the contract** for a purpose which can be regarded as being outside the person's trade or profession": section 15E(1), CCJA 1982

Non-contracting beneficiaries?

► **Maybe**

Lackey v Mallorca Mega Resorts

Tattersall v Seguros Catalana Occidente SA

► **Maybe not**

Cole and Others v IVI Madrid SL

Králová v Primera Air Scandinavia A/S

Employment contracts

Section 15C(2)(b), CJJA 1982

► D's UK domicile

► UK place where C "habitually" works or worked

► UK place where "the business which engaged the employee" is situated

Bear in mind

► **Injuries at work**: Shannon v Global Tunnelling Experts UK Ltd

► Alternative tort claim on claim form?

Recognition

"THERE ARE TWO THINGS PEOPLE WANT MORE THAN MONEY: RECOGNITION AND PRAISE."

~MARY KAY

www.simpletruths.com

Withdrawal Agreement

Article 67(2)

Regulation 1215/2012 shall apply to the recognition

and enforcement of judgments given in legal

proceedings instituted before the end of the transition

period [31 December 2020]

Future Enforcement (Contract)

Hague Convention on Choice of Court Agreements (2005)
Exclusive choice of court agreements recognised: Article 3
Exclusive where courts of a C/S designated
Recognition and enforcement: Article 8
Limited grounds for refusal: Article 9
Not apply to claims for personal injury [Article 2(j)]

Previous Bilateral Civil Enforcement Treaties?

► Austria (1961; 1970)

► Belgium (1934)

► France (1934)

► Germany (1960)

► Italy (1964)

► Netherlands (1967)

Prospects for accession to the Lugano Convention?

▶ Depends on consent of the EU

▶ Opposition to cherry-picking free movement of judgments

2019 Hague Convention

Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters

► Substantive bases for application limited (e.g., UK accidents involving foreign vehicles and their insurers)

► Apply to proceedings instituted in the State of Origin where Convention is in force between that State and the Requested State: Article 16

Issues on enforcement

► Judgment based on foreign law?

► Enforceable against a foreign insurer?

► Where *Brownlie* jurisdiction involved?

► In the insurer's courts?

► Costs?

► Public policy?

► Feeling lucky?
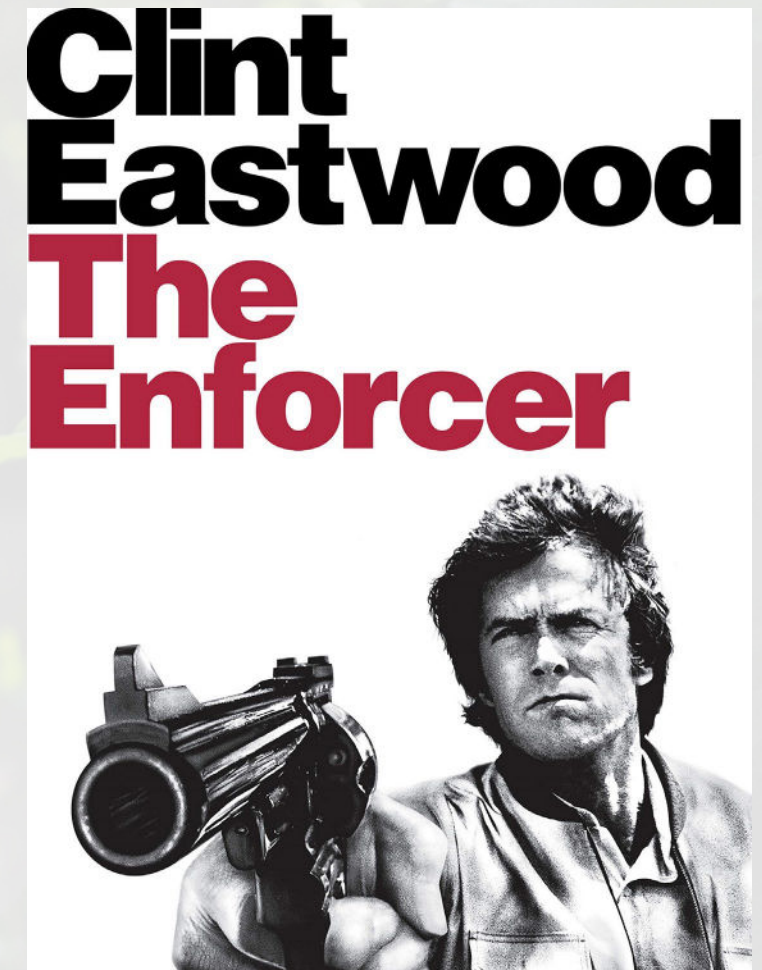
Applicable law

► Rome I and Rome II Regulations

► Article 66 Withdrawal Agreement

► Applies to contracts concluded before 31 December

2020 and events giving rise to damage before 31

December 2020

Implementation

▶ Rome I and Rome II Regulations retained in domestic

law as retained direct EU legislation

▶ Enables direct rights of action against an insurer

using the law of the insurance policy

▶ Applies also to intra-UK choice of law

Foreign law: default rule

► "Default rule"

► Raising alternatives when serving out?

► Argue? Advance foreign law claim for relief? Both?

Foreign law: presumption

▶ Procedural rule of evidence

▶ Reasonable to expect

 similarity?

▶ Experts?

Motor Insurance Directives

Colley v Shuker and MIB [2020] EWHC 3433

►C able to rely on the direct effect of the MID:

> ►Article 3(1) [duty to ensure that civil liability in respect of the use of vehicles is covered by insurance]

> ►Article 10 [right to claim against the MIB]

> ►Article 12 [the insurance in Article 3 shall cover liability for personal injuries to all passengers]

►Appeal to be heard in February 2022

European Union (Withdrawal) Act 2018

▶ Section 4(1): rights, powers, liabilities, obligations … are

recognised and available in law and are enforced, allowed and

followed accordingly

▶ Applies to rights (etc.) immediately before 31 December 2020

▶ *Colley* recognises these directly effective rights: per section

4(2)(b) these directly effective rights continue to be available

Motor Vehicles (Compulsory Insurance) Bill 2021-2022

▶ Excludes the operation of Article 3 MID rights to use of

vehicles other than motor vehicles or otherwise than on a

road or public place

▶ Relevant section 4 rights cease to be recognised and available

▶ Retained case law ceases to have effect in so far as

inconsistent with the above provisions

Thanks