

Next Talk: 09:00 – 09:40

Personal injury claims in the post-Brexit world



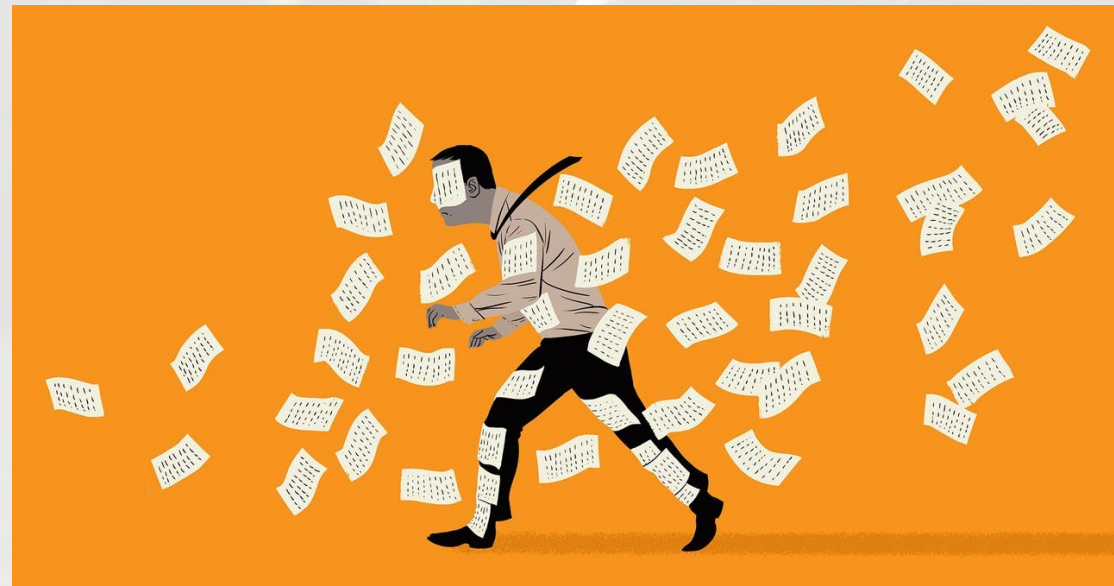
Philip Mead
mead@12kbw.co.uk



James Beeton
beeton@12kbw.co.uk

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 distinction
- ▶ 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, CJA 1982

- ▶ “Matter relating to a consumer contract”
- ▶ C domiciled in UK



What is it?

Section 15E(1), CJA 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), CJA 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?

Clint Eastwood The Enforcer



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

12

King's Bench Walk

Thanks
