

APIL CONFERENCE 2014

PRIVATE INTERNATIONAL LAW:

Jurisdiction, applicable law and questions of evidence/procedure

Matthew Chapman
Barrister, 1 Chancery Lane

Introduction

There has been a great deal of case law activity, but the EU Institutions have also been busy ...

- Recast Brussels I (1215/2012)
- Rome II (see, Art 30)



JURISDICTION

STYLIANOU v TOYOSHIMA

[2013] EWHC 2188 (QB)

- RTA in Western Australia (during a holiday);
- English Claimant, but tortfeasor was Japanese and motor insurer was Western Australian;
- Western Australia?
England/Wales?



JURISDICTION

- Liability admitted;
- Voluntary interim payments made;

and then,

- Claimant issued a Claim Form in England ...

JURISDICTION

- The Jurisdictional gateways
 -
 - (1) Damage sustained within the jurisdiction?
 - (2) Reasonable prospect of success?



JURISDICTION

- (1) Damage sustained within the jurisdiction?
- *Booth v Phillips; Cooley v Ramsey; Harty v Sabre; Wink v Croatia ...*



JURISDICTION

(2) Reasonable prospect of success?

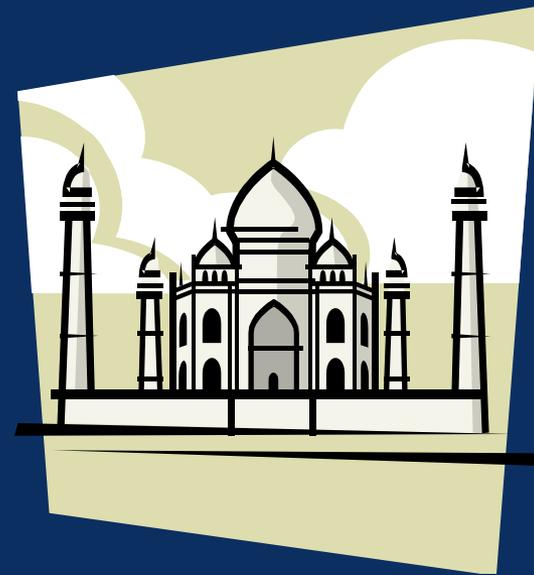
(3) *Forum conveniens* ...



JURISDICTION

Pike & Another v The Indian Hotel Company Limited [2013] EWHC 4096 (QB)

- Damage sustained within the jurisdiction (again);
- *Forum conveniens* (again).



APPLICABLE LAW

It's now all about Rome II ... but what is substantive and what is evidence/procedure?



Rome II: Assessment of damages

Article 1(3):

Rome II “... *shall not apply to evidence and procedure.*”

- *Wall v Mutuelle de Poitiers Assurances* [2013] EWHC 53 (QB);
- *Stylianou v Toyoshima* [2013] EWHC 2188 (QB)

- What about the assessment of damages?

Article 15(c):

“The law applicable to non-contractual obligations under this Regulation shall govern in particular: ... (c) the existence, the nature and the assessment of damage or the remedy claimed.”

Rome II: Assessment of Damages

- By comparison with article 15(c):
 - Article 10(1)(c) of Rome I;
 - Articles 3 and 8 of the Convention on the Law Applicable to Traffic Accidents 1971.

- Some more confusion. Recital (33):

“According to the current national rules on compensation awarded to victims of road traffic accidents, when quantifying damages for personal injury in cases in which the accident takes place in a State other than that of the habitual residence of the victim, the Court seised should take into account all the relevant actual circumstances of the specific victim, including in particular the actual losses and costs of after-care and medical attention.”

Rome II: Assessment of Damages

What does Recital (33) actually mean?

* See *Stylianou*

Some options for reform
(at least in road traffic
cases)?

The 2009 Road Traffic
Accident Study (ETD/2007/
IM/H2/116)

English Judges do not like
applying Rome II if they can avoid it:
see, *Jacobs v MIB* [2010] EWCA Civ 1208.



SOME LESSONS FROM WALL & STYLIANOU

- The continuing relevance of Part 35;
- The meaning of “*manifestly closer connection*” in art 4(3) of Rome II;
- The use of recital (33) to Rome II;
- Discount rates for multipliers - substantive or procedural.

A POSSIBLE TEST?

(1) Is this rule concerned with the *administrative or judicial machinery* by which the assessment of damages is *conducted*?

If the answer is yes, then the rule is procedural and a matter for the law of the forum and if the answer is no, then it is necessary to ask 2. below;

(2) Is this rule -

(a) concerned with the assessment of the losses *actually experienced* by the Claimant (to put the matter another way, is the rule concerned with the *organisation* of the factual evidence by which the loss is accurately calculated); or,

(b) is it *determinative* of the *valuation* of the claim (whatever the actual losses might have been)?

If (a) then the rule is procedural/evidential within the meaning of article 1(3) and dealt with by the forum and if (b) then it is part of the applicable law for article 15(c).



Matthew Chapman
1 Chancery Lane

mchapman@1chancerylane.com