

**BREXIT -**  
**EVERYTHING WE DON'T KNOW**

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3 HARE COURT

# WHAT HAPPENED?

- 51.9% OUT, 48.1% IN
- European Union (Notification of Withdrawal) Act 2017 Act (16 March 2017)
- TOMORROW IS THE DAY!

# Article 50 TFEU

- 1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.
- 2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.
- 3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.

# 29/3/17 to 28/3/19...

- Still bound by all obligations and entitlements
- At point of exit, membership of EU comes to an end together with application of all instruments of EU
- Except those in force by then as part of UK law
- Which will probably be most of them

# Jurisdiction

- E&W will have jurisdiction over any claim properly issued before date of exit (not date of trigger)
- Brussels recast 1215/2012 will (may) fall away

# OPTIONS

- Make it express part of UK law (no reciprocity – what would be the point; challenges galore)
- Reciprocal agreement with rEU on same terms (no CJEU; how much respect will be paid)
- Lugano/Hague independently (EFTA? Jurisdiction without freedom of movement?)

# Old common law (6.36 etc)

- Jurisdiction founded on service
- Gateway and forum
- Damage within the jurisdiction
- Brownlie, Lazar etc
- Consistency of approach?
- Forum non conveniens/Turner v Grovit...
- Lis pendens?

# Rome II

- Will no longer apply from date of exit
- Impetus to argue for retention?
- Private International Law (Miscellaneous Provisions) Act 1995 still in force – revert?



# BUT...

- Cox v Ergo Versicherung [2014] UKSC 22
- Cause of action and extent of liability go hand in hand
- ‘There is no basis on which an English procedural provision can expand a defendant’s liability under the substantive principles of the relevant governing law.’

# CJEU

- No more references
- What about any ongoing references?
- No obligation to follow/mirror reasoning (and different purposes)
- Same law; different outcomes

# Recognition and enforcement

- Advice to claimants versus advice to defendant insurers...
- PPO
- What confidence in rEU to acknowledge and enforce much-hated costs orders if not obliged to do so?



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