

APIL 2018

BREXIT AND CROSS-BORDER PERSONAL INJURY

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CONSTITUTIONAL “NICETIES”: ARTICLE 50

Article 50 of the Lisbon Treaty 2007 (in force Dec. 2009) -

“1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.”

...



CONSTITUTIONAL NICETIES MAY NOT BE SO NICE!

BUT Article 50(2)

“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.”

AND, the Agreement, *“... shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.”*

- See also, Article 50(4) for the participation (or otherwise) of the departing Member State.

A DEADLINE ...

Article 50(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.”



THE ARTICLE 50(3) PERIOD

- All change and no change ...
- Simple repeal of the European Communities Act 1972 (without extensive saving provisions) is not the UK Government's preferred option;
- What is part of UK law and what is an instrument of EU law?
- Retention of *acquis communautaire* post-Brexit day: EU Withdrawal Bill (completed Third Reading in HL on 16 May 2018);
- The jurisdictional rules are likely to be the subject of first-priority consideration as a result of commercial imperatives?

JURISDICTION: SOME OPTIONS

- Recast Brussels I (1215/2012) is a Regulation, rather than a Directive;
- Recast Brussels I depends on reciprocity - what if this no longer exists?
- Can we agree to retain recast Brussels I with the other EU Member States (because it is in everyone's interests?)
- What about the continuing role of the CJEU in the interpretation of recast Brussels I?
- An opt-in to the (similar-ish) Lugano Convention?
- Bilateral or multilateral jurisdictional treaties?
- Default position: old-style rules in CPR Part 6 and *forum non conveniens*?



JURISDICTION & BREXIT: IMPACT ON ENGLISH COURTS?

An example of divergence: *Brownlie v Four Seasons Holdings Inc* [2015] EWCA Civ 665; [2016] 1 WLR 1814 (CA); [2018] 1 WLR 192 (SC).



JURISDICTION & BREXIT: *ODENBREIT* CLAIMS

Use of recast Brussels I (and, before it, Council Regulation No 44/2001) to provide a basis for large volume overseas motor vehicle claims in the English Courts. What will happen now?



APPLICABLE LAW

For the time being there is Rome II (and will be until 31 December 2020), but what lies beyond this?

Could it be the Private International (Miscellaneous Provisions) Act 1995 again?



PACKAGE TRAVEL: THE PROBLEM IN MINIATURE

POINT 1: Don't forget that PTR is domestic, albeit secondary legislation

POINT 2: Don't forget the politics? DfT (Oct 2016), "*our obligation to transpose EU law, including the PTD 2015, will remain in place*" - at least, during the Art 50 process. There is now a (draft) Package Travel and Linked Travel Arrangements Regulations 2018 (expressed as coming into force on 1 July 2018).

POINT 3: Don't forget the CJEU!



WITHDRAWAL AGREEMENT 19 March 2018

Transitional period: to 31 December 2020

- JURISDICTION: Recast Brussels I (No 1215/2012);
- APPLICABLE LAW: Rome I (Contract) and Rome II (Tort);
- SERVICE OF DOCUMENTS: Service Regulation.
- BUT, only during the period before 31 December 2020.
- We retain the existing rules until 31 December 2020 and, accordingly, will continue to be bound by EU law (and, at least in practice, the decisions of the CJEU) without any opportunity to influence these rules (or to nominate Judges to the CJEU).



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