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From Recast Brussels I to the Civil Procedure Rules: Jurisdiction in Cross-Border Employers' Liability Cases Before and After Brexit

A Presentation for PEOPIL

Θεσσαλονίκη, Ελλάδα

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Before Η Καταστροφή

- Domicile
- Section 5 of recast Brussels I (No 1215/2012)
- Article 21: *“1. An employer domiciled in a Member State may be sued: (a) in the courts of the Member State in which he is domiciled; or (b) in another Member State: (i) in the courts for the place where or from where the employee habitually carries out his work or in the courts for the last place where he did so; or (ii) if the employee does not or did not habitually carry out his work in any one country, in the courts for the place where the business which engaged the employee is or was situated. 2. An employer not domiciled in a Member State may be sued in a court of a Member State in accordance with point (b) of paragraph 1.”*

Before Η Καταστροφή

- Article 20(2): *“2. Where an employee enters into an individual contract of employment with an employer who is not domiciled in a Member State but has a branch, agency or other establishment in one of the Member States, the employer shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State.”*
- Article 23: *“The provisions of this Section may be departed from only by an agreement: (1) which is entered into after the dispute has arisen; or (2) which allows the employee to bring proceedings in courts other than those indicated in this Section.”*

Before Η Καταστροφή

- Personal injury claims and the contract of employment: ***Shannon v Global Tunneling*** [2015] EWHC 1267 (QB), "*I conclude that Articles 18-20 of the Brussels Regulation apply to claims for damages in personal injuries where a relevant contract of employment exists.*"
- *Forum conveniens* and recast Brussels I: ***Owusu v Jackson*** C-281/02.
- Service and the Service Regulation (No 1393/2007 as was).



After Η Καταστροφή

- Applicable law (Rome I No 593/2008 and Rome II No 864/2007):
contract (of employment) and tort/delict?
- The appropriate Defendant(s)



After Η Καταστροφή

- CPR 6.33

"(2) The claimant may serve the claim form on a defendant out of the United Kingdom where each claim made against the defendant to be served and included in the claim form is a claim which the court has power to determine under sections 15A to 15E of the 1982 Act and—

(a) no proceedings between the parties concerning the same claim are pending in the courts of any other part of the United Kingdom; and ...

(iii) the defendant is an employer and a party to a contract of employment within section 15C(1) of the 1982 Act."



After Η Καταστροφή

"15C. [CJJA] — *Jurisdiction in relation to individual contracts of employment*

(1) This section applies in relation to proceedings whose subject-matter is a matter relating to an individual contract of employment. (2) The employer may be sued by the employee— (a) where the employer is domiciled in the United Kingdom, in the courts for the part of the United Kingdom in which the employer is domiciled, (b) in the courts for the place in the United Kingdom where or from where the employee habitually carries out the employee's work or last did so (regardless of the domicile of the employer), or (c) if the employee does not or did not habitually carry out the employee's work in any one part of the United Kingdom [or any one overseas country], in the courts for the place in the United Kingdom where the business which engaged the employee is [or was] situated (regardless of the domicile of the employer)."



After Η Καταστροφή

- "*Opting-out*": s. 15C(6) CJJA
- The standard test to be applied: ***Brownlie*** Mark I
- The relevant date: ***Pangaki***.

After Η Καταστροφή

- *Forum conveniens*
- s. 49 CJJA and some case law:
 - ***Cook v Virgin Media*** [2016] 1 WLR 1672 (CA)
 - ***Kennedy v National Trust*** [2020] 2 WLR 275 (CA)
 - ***Soleymani*** [2022] EWCA Civ 1297, [2023] 1 WLR 436 (CA).

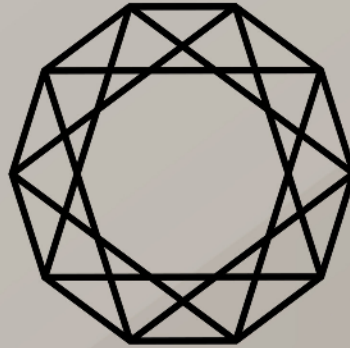


After Η Καταστροφή: the English lawyer's lament ...

“Δώδεκα και μισή. Πώς πέρασεν η ώρα.

Δώδεκα και μισή. Πώς πέρασαν τα χρόνια.”

(“Half past twelve. How the time has passed./Half past twelve. How the years have passed.” (CP Cavafy, “Since Nine O’Clock”))



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