

# LECTURE EIGHT

## Elements of the Traditional Rules of English Civil Jurisdiction

### Aim:

To outline the rules of civil jurisdiction in relation to:

- a defendant's presence in England;
- his submission to the jurisdiction of the court; and
- the circumstances under which a defendant out of the jurisdiction may be served with a claim form.

### Objectives.

After careful study of the following notes, and other prescribed readings for of this lecture, you will be able to:

1. Cite the appropriate case law and discuss the statutory authority relating to the service of a claim form on a defendant who is present in England, or who has established a place of business in England, but who is not domiciled in another Member State of the EC;
2. Explain how a defendant may be deemed to have submitted to the jurisdiction of the English court;
3. Discuss the requirements to be met for a court to exercise its discretion and serve a claim form out of the jurisdiction.

### Introduction.

Jurisdiction is an ambiguous term. Firstly, it seems to equate with a territorial unit or law district: so to be within the jurisdiction is synonymous with being in that particular territory, country or law district. However, for conflicts of laws purposes, a second meaning is often preferable, viz; that when a court has jurisdiction over a case, it means that the court is competent to hear and decide it. The jurisdiction of the court may be in respect of an action *in personam* or an action *in rem*. An action *in personam* is an action brought to compel a defendant to do or to refrain from doing something or to pay damages. An action *in rem* is an action such as that against a ship or a freight aircraft when jurisdiction of the court depends upon the presence of the *res* in England.

In essence, jurisdiction may be classified either as being based on common law jurisdiction (the traditional English approach), which is applicable when the defendant is *not* domiciled within the European Community [the focus of this Lecture]; or jurisdiction under (principally) *Council Regulation (EC) No 44/2001* of 22<sup>nd</sup> December 2001 on *Jurisdiction and the Recognition and enforcement of Judgments in Civil and Commercial Matters* together with any residual jurisdiction arising out of the *1968 Brussels Convention* as enacted by the *Civil Jurisdiction and Judgments Act 1982*; which apply when the defendant *is* domiciled within the European Community.<sup>2</sup> [the focus of Lecture Ten];

The effect, nonetheless, must be seen in the wider context of the *Council Regulation (EC) No 44/2001* which governs jurisdiction *in personam* where the defendant *is* domiciled in one of the Member States of the European Community. Another parallel (very similar / almost identical to the *Brussels Convention*) convention - the *Lugano Convention* - applies when the defendant is domiciled, not in an EC Member State, but in an EFTA country (Iceland, Norway, Switzerland). Moreover, if, *inter alia*, the defendant is domiciled, not within an EC Member State, nor an EFTA country, but within the United Kingdom, then another convention, the *Modified Convention* applies. The effect of the *Modified Convention* is that it applies to situations that are within the material scope of the Brussels Convention but, because Scotland and Northern Ireland are regarded as different countries from England, the general rule is that a defendant domiciled in one of those countries must be sued there, not in England.

Since 1998 the Rules of the Supreme Court (RSC) as they were known, regarding practice and procedure of the courts, are governed by the *Civil Procedure Rules 1998*, as amended from time to time. There have been 44 amendments to date. Amendments are now trackable on line at [www.justice.gov.uk/civil/procrules\\_fin](http://www.justice.gov.uk/civil/procrules_fin).

<sup>1</sup> *Official Journal of the European Communities 2001 L 12/1 16.1.2001*

<sup>2</sup> See Part III

## Courts Having Jurisdiction to Interpret the Conventions

What is known as the *Luxembourg Protocol* provides that the *ECJ* shall have jurisdiction to give rulings on the interpretation of the *Brussels Convention* but NOT on the *Lugano Convention* nor the *Modified Convention*. Whereas the jurisdiction under the Brussels Convention is *not* exclusive to the ECJ, any interpretation of the provisions of (say) the Brussels Convention by an English court must, by virtue of *s3(1) Civil Jurisdiction & Judgments Act 1982 (CJJA 1982)* be in accordance with the principles laid down by, and any relevant decision of, the ECJ.

**Article 4 Council Regulation (EC) No 44/2001** permits a court to employ its traditional rules of jurisdiction if the defendant is not domiciled in a *Contracting State*, i.e., not a Member State of the EC.

### Article 4 Council Regulation (EC) No 44/2001

1. *If the defendant is not domiciled in a Member State, the jurisdiction of the courts of each Member State shall, subject to Articles 22 and 23, be determined by the law of that Member State.*
2. *As against such a defendant, any person domiciled in a Member State may, whatever his nationality, avail himself in that State of the rules of jurisdiction there in force, and in particular those specified in Annex I, in the same way as the nationals of that State.*

#### 1. The Traditional Rules: Action *in personam*

##### (i) Where the Defendant is not Domiciled in the EC.

An English court has jurisdiction to hear and determine a case if

1. the defendant is *present* in England; or
2. the defendant *submits* to the jurisdiction of the court; or
3. it (the court) exercises its discretion under the *Part 6 IV Civil Procedure Rules* to grant leave to serve a writ on the defendant who is neither present in England nor has he submitted to the jurisdiction of the courts.

##### (ii) Where the Defendant is Present in England.

It is a firmly established principle that: “*whoever is served with the King’s writ and can be compelled consequently to submit to the decree made is a person over which the courts have jurisdiction.*”<sup>3</sup>

The general rule is that this principle applies even if the defendant is in England only for a very short time: no minimum time has to lapse before the writ can be served.

*Colt v Sarlie* (1996): A company incorporated in New York obtained a judgment in New York against a Frenchman and sought to enforce it in England by serving a writ on him at a London hotel where he was staying for one night. **HELD:** The English court had jurisdiction over him.<sup>4</sup>

*Maharaneef of Baroda v Wildenstein*. Both M and W lived in Paris. M had bought from W, in Paris, for £33,000, a painting described in a sale catalogue as *La Poesie* by Francois Boucher. Later, M learned that it was probably a copy and worth only about £750. M took out a writ in England, claiming rescission of the contract and repayment of the price, and within a year had it served on W when he came from France to pay a fleeting visit to England to attend the Ascot races. W applied to have M’s actions set aside on the ground that it was frivolous and vexatious and an abuse of the process of the court.<sup>5</sup>

**HELD:** “*In this case the writ has been properly served on the defendant in this country. ... [M] has validly invoked the jurisdiction of our courts in this, the one and only action she has brought*”. per **Lord Denning MR**. The decision was supported by **Edmund Davies LJ** who added that: “*Both in taking ... out [the writ] and serving it (albeit when the defendant was only fleetingly on British soil) [M] was doing no more than our law permits ... Some might regard her action as bad form; none can legitimately condemn it as an abuse of legal process ...*”

However, the principle in *Russell v Cayzer*<sup>6</sup> may not be applicable if the defendant has been tricked into or kidnapped and brought into England.<sup>7</sup>

<sup>3</sup> per Viscount Haldane, *John Russell v Cayzer, Irvine and Co Ltd* [1916] 2 AC 298.

<sup>4</sup> *Colt Industries v Sarlie (No.1)* [1966] 1 WLR 440 (CA)

<sup>5</sup> *Maharaneef of Baroda v Wildenstein* [1972] 2QB 283 :

<sup>6</sup> *John Russell and Company Limited v. Cayzer, Irvine and Company Limited* [1916] 2. A.C. 298

<sup>7</sup> *Watkins v North American Timber Co.* (1904) 20 T.L.R. 534

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A criticism of the exercise of this traditional jurisdiction is leveled at the mere presence of the defendant in England being sufficient for the court to exercise its jurisdiction: some believe the requirement for residence would be preferable.<sup>8</sup> However, two points favouring presence are,

- (i); **the virtue of simplicity.** As *Collier* notes: *it is obvious if a person is here, but not so obvious where he is resident or domiciled;*
- (ii) **its hardness**, if it has that quality, **can be tempered by the court** exercising its discretion to stay the action if it thinks it should more properly have been brought elsewhere.

### **Serving A Claim Form : Rule 6.3. Civil Procedure Rules.**

#### **A. Serving a claim form on an individual (a natural person)**

**6.3.(1)** A claim form may be served by any of the following methods –

- (a) personal service in accordance with rule 6.5;
- (b) first class post, document exchange or other service which provides for delivery on the next business day, in accordance with Practice Direction A supplementing this Part;
- (c) leaving it at a place specified in rule 6.7, 6.8, 6.9 or 6.10;
- (d) fax or other means of electronic communication in accordance with Practice Direction A supplementing this Part; or
- (e) any method authorised by the court under rule 6.15.

#### **B. Serving a claim form on a corporation**

**6.3.(2)** A company may be served –

- (a) by any method permitted under this Part; or
- (b) by any of the methods of service set out in the Companies Act 1985 (1985 c. 6.) or the Companies Act 2006 (2006 c. 46.).<sup>9</sup>

#### **C. Serving a claim form on a partnership**

**6.3.(3)** A limited liability partnership may be served –

- (a) by any method permitted under this Part; or
- (b) by any of the methods of service set out in section 725 of the Companies Act 1985.

#### **D. Serving a claim form on a foreign company that has established a place of business in England**

Where *the company is incorporated in some other foreign country* it is nevertheless, regarded as being present in England if it carries on business in England. In terms of serving a writ on such a company, it will normally suffice if it is posted to a person who is authorized to accept it on the company's behalf.<sup>10</sup>

However, should the named person be deceased or be no longer resident at the address given, then the writ may be served by leaving it at or posting it to any place of business established by the company in Great Britain.

As to what constitutes an *established place of business* fell to be decided in *South India Shipping v Export - Import Bank of Korea* [1985].<sup>11</sup> Here, the bank did not carry on the recognized banking practices of accepting deposits and making loans. What it did have, however, were premises and staff within the jurisdiction; it conducted external relations with other banks; it carried out the necessary line of enquiries prior to obtaining loans for clients; it sought to publicise the bank and it encouraged trade between the United Kingdom and Korea.

The court held that “... a company established a place of business within Great Britain if it carried on part of its business activities within the jurisdiction and it was not necessary for those activities to be either a substantial part of or more than

8 Under the provisions of the *Civil Jurisdiction and Judgments Act 1982*, which enacts the *Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, 1968*, it must be emphasised that mere presence does *not* suffice for jurisdiction over defendants domiciled elsewhere in the EC

9 *s.725 Companies Act 1985* provides that:

- (i) *a writ can be served on it by leaving it at, or posting it to, the Registered Office;*
- (ii) *if the company is registered in Scotland but carries on business in England and Wales, the writ may be served by leaving it at or sending it by post to the company's principal place of business in England and Wales though, in addition, a copy of the writ must be sent to the company's registered office in Scotland*

10 as provided for in *s.691(1) of the Companies Act 1985*

11 *South India Shipping Corp. Ltd. v Export - Import Bank of Korea* [1985] 1 WLR 585.

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*incidental to the main objects of company*” per *Ackner LJ*. Accordingly, the Export-Import Bank of Korea had established a place of business within Great Britain.<sup>12</sup>

### **Rule 6.6. Where to serve the claim form : General provisions.**

- (1) The claim form must be served within the jurisdiction except where rule 6.11 applies or as provided by Section IV of this Part.
- (2) The claimant must include in the claim form an address at which the defendant may be served. That address must include a full postcode, unless the court orders otherwise.  
(Paragraph 2.4 of the practice direction supplementing Part 16 contains provisions about postcodes.)
- (3) Paragraph (2) does not apply where an order made by the court under rule 6.15 (service by an alternative method or at an alternative place) specifies the place or method of service of the claim form.

In *Barclays Bank of Swaziland v. Hahn* (1989) it was held that a writ was deemed to have been validly served within the jurisdiction when the defendant arrived at Heathrow Airport at 17.30 but he was informed of a writ that had been pushed through the letter box of his London flat at 15.30 that same day. The fact that he did not go to the flat but returned to Geneva the next day was irrelevant: that he knew of the writ whilst in the jurisdiction was sufficient to bring about valid service of the writ.<sup>13</sup>

**Rule 6.7 Service of the claim form on a solicitor :** Subject to rule 6.5(1), where –

- (a) the defendant has given in writing the business address within the jurisdiction of a solicitor as an address at which the defendant may be served with the claim form; or
- (b) a solicitor acting for the defendant has notified the claimant in writing that the solicitor is instructed by the defendant to accept service of the claim form on behalf of the defendant at a business address within the jurisdiction,

the claim form must be served at the business address of that solicitor.

(‘Solicitor’ has the extended meaning set out in rule 6.2(d).)

### **Rule 6.8. Service of the claim form where the defendant gives an address at which the defendant may be served**

Subject to rules 6.5(1) and 6.7 –

- (a) the defendant may be served with the claim form at an address within the jurisdiction which the defendant has given for the purpose of being served with the proceedings; or
- (b) in any claim by a tenant against a landlord, the claim form may be served at an address given by the landlord under section 48 of the Landlord and Tenant Act 1987, c. 31.

### **Rule 6.9 Service of the claim form where the defendant does not give an address at which the defendant may be served**

(1) This rule applies where –

- (a) rule 6.5(1) (personal service);
  - (b) rule 6.7 (service of claim form on solicitor); and
  - (c) rule 6.8 (defendant gives address at which the defendant may be served),
- do not apply and the claimant does not wish to effect personal service under rule 6.5(2).

(2) Subject to paragraphs (3) to (6), the claim form must be served on the defendant at the place shown in the following table.

Nature of defendant to be served	Place of service
1. Individual	Usual or last known residence.
2. Individual being sued in the name of a business	Usual or last known residence of the individual; or principal or last known place of business.

<sup>12</sup> See also: *Cleveland Museum of Art v. Capricorn Art International* [1990] 2 Lloyd’s Rep 166, where it was held that it could be deduced that a place of business had been established, given that the defendant’s used their premises as extensive storage facilities for highly insured works of art and that they permitted the viewing of works of art there

<sup>13</sup> *Barclays Bank of Swaziland v. Hahn* (1989)

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Nature of defendant to be served	Place of service
3. Individual being sued in the business name of a partnership	Usual or last known residence of the individual; or principal or last known place of business of the partnership.
4. Limited liability partnership	Principal office of the partnership; or any place of business of the partnership within the jurisdiction which has a real connection with the claim.
5. Corporation (other than a company) incorporated in England and Wales	Principal office of the corporation; or any place within the jurisdiction where the corporation carries on its activities and which has a real connection with the claim.
6. Company registered in England and Wales	Principal office of the company; or any place of business of the company within the jurisdiction which has a real connection with the claim.
7. Any other company or corporation	Any place within the jurisdiction where the corporation carries on its activities; or any place of business of the company within the jurisdiction.

- (3) Where a claimant has reason to believe that the address of the defendant referred to in entries 1, 2 or 3 in the table in paragraph (2) is an address at which the defendant no longer resides or carries on business, the claimant must take reasonable steps to ascertain the address of the defendant's current residence or place of business ('*current address*').
- (4) Where, having taken the reasonable steps required by paragraph (3), the claimant –
- (a) ascertains the defendant's current address, the claim form must be served at that address; or
  - (b) is unable to ascertain the defendant's current address, the claimant must consider whether there is –
    - (i) an alternative place where; or
    - (ii) an alternative method by which, service may be effected.
- (5) If, under paragraph (4)(b), there is such a place where or a method by which service may be effected, the claimant must make an application under rule 6.15.
- (6) Where paragraph (3) applies, the claimant may serve on the defendant's usual or last known address in accordance with the table in paragraph (2) where the claimant –
- (a) cannot ascertain the defendant's current residence or place of business; and
  - (b) cannot ascertain an alternative place or an alternative method under paragraph (4)(b).

### **Rule 6.11 Service of the claim form by contractually agreed method**

- (1) Where –
- (a) a contract contains a term providing that, in the event of a claim being started in relation to the contract, the claim form may be served by a method or at a place specified in the contract; and
  - (b) a claim solely in respect of that contract is started,
- the claim form may, subject to paragraph (2), be served on the defendant by the method or at the place specified in the contract.
- (2) Where in accordance with the contract the claim form is to be served out of the jurisdiction, it may be served –
- (a) if permission to serve it out of the jurisdiction has been granted under rule 6.36; or
  - (b) without permission under rule 6.32 or 6.33.

### **Rule 6.12 Service of the claim form relating to a contract on an agent of a principal who is out of the jurisdiction**

- (1) The court may, on application, permit a claim form relating to a contract to be served on the defendant's agent where –
- (a) the defendant is out of the jurisdiction;
  - (b) the contract to which the claim relates was entered into within the jurisdiction with or through the defendant's agent; and

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- (c) at the time of the application either the agent's authority has not been terminated or the agent is still in business relations with the defendant.
- (2) An application under this rule –
- (a) must be supported by evidence setting out –
    - (i) details of the contract and that it was entered into within the jurisdiction or through an agent who is within the jurisdiction;
    - (ii) that the principal for whom the agent is acting was, at the time the contract was entered into and is at the time of the application, out of the jurisdiction; and
    - (iii) why service out of the jurisdiction cannot be effected; and
  - (b) may be made without notice.
- (3) An order under this rule must state the period within which the defendant must respond to the particulars of claim.
- (4) Where the court makes an order under this rule –
- (a) a copy of the application notice and the order must be served with the claim form on the agent; and
  - (b) unless the court orders otherwise, the claimant must send to the defendant a copy of the application notice, the order and the claim form.
- (5) This rule does not exclude the court's power under rule 6.15 (service by an alternative method or at an alternative place).

### **Rule 6.14 Deemed service**

A claim form served in accordance with this Part is deemed to be served on the second business day after completion of the relevant step under rule 7.5(1).

### **Rule 6.15 Service of the claim form by an alternative method or at an alternative place**

- (1) Where it appears to the court that there is a good reason to authorise service by a method or at a place not otherwise permitted by this Part, the court may make an order permitting service by an alternative method or at an alternative place.
- (2) On an application under this rule, the court may order that steps already taken to bring the claim form to the attention of the defendant by an alternative method or at an alternative place is good service.
- (3) An application for an order under this rule –
- (a) must be supported by evidence; and
  - (b) may be made without notice.
- (4) An order under this rule must specify –
- (a) the method or place of service;
  - (b) the date on which the claim form is deemed served; and
  - (c) the period for –
    - (i) filing an acknowledgment of service;
    - (ii) filing an admission; or
    - (iii) filing a defence.

### **Rule 6.16 Power of court to dispense with service of the claim form**

- (1) The court may dispense with service of a claim form in exceptional circumstances.
- (2) An application for an order to dispense with service may be made at any time and –
- (a) must be supported by evidence; and
  - (b) may be made without notice.

### **6.17 Notice and certificate of service relating to the claim form**

- (1) Where the court serves a claim form, the court will send to the claimant a notice which will include the date on which the claim form is deemed served under rule 6.14.
- (2) Where the claimant serves the claim form, the claimant –
- (a) must file a certificate of service within 21 days of service of the particulars of claim, unless all the defendants to the proceedings have filed acknowledgments of service within that time; and
  - (b) may not obtain judgment in default under Part 12 unless a certificate of service has been filed.

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- (3) The certificate of service must state –
- (a) where rule 6.7, 6.8, 6.9 or 6.10 applies, the category of address at which the claimant believes the claim form has been served; and
  - (b) the details set out in the following table.

Method of service	Details to be certified
1. Personal service	Date of personal service.
2. First class post, document exchange or other service which provides for delivery on the next business day	Date of posting, or leaving with, delivering to or collection by the relevant service provider.
3. Delivery of document to or leaving it at a permitted place	Date when the document was delivered to or left at the permitted place.
4. Fax	Date of completion of the transmission.
5. Other electronic method	Date of sending the e-mail or other electronic transmission.
6. Alternative method or place	As required by the court.

### **Rule 6.18 Notification of outcome of postal service by the court**

- (1) Where –
- (a) the court serves the claim form by post; and
  - (b) the claim form is returned to the court,
- the court will send notification to the claimant that the claim form has been returned.
- (2) The claim form will be deemed to be served unless the address for the defendant on the claim form is not the relevant address for the purpose of rules 6.7 to 6.10.

### **Rule 6.19 Notice of non-service by bailiff**

- Where –
- (a) the court bailiff is to serve a claim form; and
  - (b) the bailiff is unable to serve it on the defendant,
- the court will send notification to the claimant.

### **Rule 6.4 Who is to serve the claim form**

- (1) The court will serve the claim form except where –
- (a) a rule or practice direction provides that the claimant must serve it;
  - (b) the claimant notifies the court that the claimant wishes to serve it; or
  - (c) the court orders or directs otherwise.
- (2) Where the court is to serve the claim form, it is for the court to decide which method of service is to be used.
- (3) Where the court is to serve the claim form, the claimant must, in addition to filing a copy for the court, provide a copy for each defendant to be served.
- (4) Where the court has sent –
- (a) a notification of outcome of postal service to the claimant in accordance with rule 6.18; or
  - (b) a notification of non-service by a bailiff in accordance with rule 6.19,
- the court will not try to serve the claim form again.

### **Rule 6.5 Personal service**

- (1) Where required by another Part, any other enactment, a practice direction or a court order, a claim form must be served personally.
- (2) In other cases, a claim form may be served personally except –
- (a) where rule 6.7 applies; or
  - (b) in any proceedings against the Crown.
- (Part 54 contains provisions about judicial review claims and Part 66 contains provisions about Crown proceedings.)

- (3) A claim form is served personally on –
- (a) an individual by leaving it with that individual;
  - (b) a company or other corporation by leaving it with a person holding a senior position within the company or corporation; or
  - (c) a partnership (where partners are being sued in the name of their firm) by leaving it with –
    - (i) a partner; or
    - (ii) a person who, at the time of service, has the control or management of the partnership business at its principal place of business.

(Practice Direction A supplementing this Part sets out the meaning of ‘senior position’.)

### Where a Defendant has Submitted to the Jurisdiction of the English Court.

A defendant who is not present in England may, nevertheless, confer jurisdiction on the English court by way of submitting to it. Submission to jurisdiction may occur in any one of four ways:

**a) *The defendant accepts service of an English writ.***

This may occur, for example, by way of the defendant instructing a solicitor in England to go on the court record and accept service on his behalf. See above **CPR Rule 6.8**. Subject to rules 6.5(1) and 6.7.<sup>14</sup>

If the solicitor endorses the claim form with a statement that he has done so, then the claim form is deemed to have been duly served upon the defendant.<sup>15</sup> Alternatively, the defendant may submit by way of unconditionally acknowledging the service of the claim form upon himself.

**b) *The defendant pleads to the merits of the case.***

If, for example, D pleads to the merits of the case by way of disputing liability for breach of contract then he will be taken to have submitted to the jurisdiction of the court.<sup>16</sup> He will also be taken to have submitted if he asks the court to stay its proceedings since, implicit in such a stay, is acknowledgement that the court has jurisdiction.<sup>17</sup> However, if D merely argues that the court has no jurisdiction over him, this does not constitute submission.<sup>18</sup>

Furthermore, if D combines his challenge to the jurisdiction of the court with a request that the court should stay its proceedings pending the outcome of proceedings abroad, then this does not constitute submission.<sup>19</sup> Finally, a D who challenges the issue of an interlocutory injunction to restrain him from removing his assets out of England (a Mareva injunction) does not submit to the court’s jurisdiction.<sup>20</sup>

**c) *A Plaintiff who is resident in a foreign country sues a person within the jurisdiction of the English court.***

This gives the English court jurisdiction over any counterclaim made by the defendant arising out of a matter related to P’s claim, though not to a matter unrelated to D’s claim.<sup>21</sup>

Whereas methods of submission in (a)-(c) are methods of submission by way of D’s conduct, i.e. the court may deduce from D’s conduct that he has submitted to its jurisdiction, the fourth and last method of submission is based on prior agreement, i.e.:

**d) *The Defendant Contracts to Submit.***

Where D has contracted with P to submit any dispute arising from the principal transaction between them to the jurisdiction of the English court and he has agreed that a writ may be served on him or upon someone else on his behalf within the jurisdiction, he thereby submits to the jurisdiction of the English court. If no place for service of the writ within the jurisdiction is identified, service out of the jurisdiction is at the court’s discretion.<sup>22</sup>

<sup>14</sup> 1987 c. 31

<sup>15</sup> **CPR Rule 6.7(b)**.

<sup>16</sup> *Boyle v Sacker* (1888). 39 Ch D 249

<sup>17</sup> *The Messianiki Tolmi* [1983] 1 Lloyd’s Rep 666; (1984). 1 Lloyd’s Rep. 226 ;

<sup>18</sup> *Re Dulles’ Settlement (No. 2)* (1951) Ch. 842 C.A. 29.

<sup>19</sup> *Williams & Glyn’s Bank v Astro Dinamico* (1984) 1 WLR 438

<sup>20</sup> *Obikoya v Silvernorth* (1983).

<sup>21</sup> *High Commissioner For India v Gosh* (1960); *United Bank Of The Middle East v Clapham* (1981).

<sup>22</sup> **RSC O.11 r.1(1)(d)(iv)**.

### Service of a Claim Form outside the jurisdiction where leave is given under Rule 6 CPR.

As noted, at common law the court does not have jurisdiction over a defendant who is resident abroad unless either a claim form is served on him when he is present in England<sup>23</sup> or when he submits to the court's jurisdiction. Thus, the obvious lacunae is the inability to sue a defendant who is not present in England who has not submitted to the jurisdiction of the court. This lacunae remained even if England was the appropriate forum in which to hear and determine the dispute.

The first attempt at eliminating this unsatisfactory situation was provided for by the enactment of the *Common Law Procedure Act 1852*. This Act introduced the concept of an extended or exorbitant or assumed jurisdiction i.e. it gave the court a *discretionary power* to summon before it a defendant (irrespective of domicile / country of residence / nationality) who was not present in England, by having him served with the writ or notice of the writ.

This exorbitant jurisdiction<sup>24</sup> is without parallel in other countries. Consequently, the principles of international comity require the adherence to guidelines to ensure that its exercise is not abused. Indeed, it has been said that this discretionary power must be exercised "... with extreme caution and with full regard in every case to the circumstances."<sup>25</sup>

Predictably, then, the courts developed, piecemeal, factors to be taken into consideration before exercising their discretion to grant leave.<sup>26</sup> The factors had been frequently refined over the years by the courts e.g. by the *House of Lords* in *Seaconsar Far East v Bank Markazi Jomhuri Islami Iran* [1994],<sup>27</sup> which stated that ;

- 1) The plaintiff must have a serious issue to be tried. This may be a substantial question of fact or law;
- 2) the plaintiff's claim falls within one of the paragraphs of O.11 r.1(1); and
- 3) he satisfies the court that England is the *forum conveniens* in that it is the forum in which the case "may be tried more suitably for the interests of the parties and the ends of justice" .<sup>28</sup>

The rules are now contained in *CPR Rule 6* and supplemental *Practice Direction*.

#### 6.36 Service of the claim form where the permission of the court is required

In any proceedings to which rule 6.32 or 6.33 does not apply, the claimant may serve a claim form out of the jurisdiction with the permission of the court if any of the grounds set out in paragraph 3.1 of Practice Direction B supplementing this Part apply.

#### Practice Direction B : Service out of the jurisdiction where permission is required

3.1 The claimant may serve a claim form out of the jurisdiction with the permission of the court under rule 6.36 where –

##### General Grounds

- (1) A claim is made for a remedy against a person domiciled within the jurisdiction.
- (2) A claim is made for an injunction ordering the defendant to do or refrain from doing an act within the jurisdiction.
- (3) A claim is made against a person ('the defendant') on whom the claim form has been or will be served (otherwise than in reliance on this paragraph) and –
  - (a) there is between the claimant and the defendant a real issue which it is reasonable for the court to try; and
  - (b) the claimant wishes to serve the claim form on another person who is a necessary or proper party to that claim.
- (4) A claim is an additional claim under Part 20 and the person to be served is a necessary or proper party to the claim or additional claim.

##### Claims for interim remedies

- (5) A claim is made for an interim remedy under s25(1) of the Civil Jurisdiction and Judgments Act 1982.

<sup>23</sup> *Maharanees of Baroda v Wildenstein* [1972] 2. QB 283 (1972) 2 All E.R. 689

<sup>24</sup> *Mackender v Feldia* [1966] 2 Lloyd's Rep 449. *Mackender v. Feldia A.G.* [1967] 2 QB 590 CA

<sup>25</sup> *Cordova Land Co. Ltd. v Victor Brothers* [1966] 1 W.L.R. 793

<sup>26</sup> Initially under O.11, r.1(1) of the *Rules of the Supreme Court: RSC O.11, r.1(1)*.

<sup>27</sup> *Seaconsar Far East Ltd v. Bank Markazi Jomhuri Islami Iran* [1994] 1 AC 438

<sup>28</sup> per Lord Goff in *Spiliada Maritime Corporation v. Cansulex* [1987] AC 460

### Where the defendant is Domiciled Within the Jurisdiction.

Here, the concept of domicile does not equate with that at common law. Domiciled in means domiciled in accordance with the provisions in *ss.41-46 Civil Jurisdiction and Judgments Act 1982 (CJJA 1982)* as amended by the *CJJA 1991*. In essence, domicile means that

- (i) D is resident in a particular law district and that
- (ii) the nature and circumstances of his residence indicate that he has a *substantial connection* with it. Under *s.41(6)* a presumption of substantial connection arises where a person has been resident in the *United Kingdom* for the last three months.

With regard to the provision that this replaced, namely *RSC O.11, r.1(1)(a)* which was in similar terms *Cheshire & North*, noted that the provision rendered "... jurisdiction possible over practically any kind of action against an absent person (including a corporation), provided that he is domiciled in England. However, whereas the *CJJA 1982* is confined to civil and commercial matters only, *RSC O.11, r.1(1)(a)* had a wider scope in that it is was not restricted to cases which involve only those issues.

### Where a claim is made for an injunction is sought ordering the defendant to do or refrain from doing anything within the jurisdiction.

The central point of this paragraph is that the injunction must be the real remedy which is sought. It will not suffice if it is only *incidental* to the relief the plaintiff seeks.<sup>29</sup> Thus, under this sub rule, if a *Mareva injunction* is to be granted, the effect of which is to prevent a defendant from removing his assets from the jurisdiction until the dispute is resolved, then *the defendant must be subject to the jurisdiction of the court other than through the operation of this sub rule: The Siskina* [1977] 3 All ER 803: [1979] AC 210.<sup>30</sup>

### Service on a person who is a necessary or proper party to a claim.

This paragraph is concerned with the situation where there are two defendants: a first defendant who has already been served with a writ; and a second defendant whom the plaintiff now wishes to serve out of the jurisdiction. The purpose of this provision is to ensure that all the necessary and proper parties can have their dispute resolved in one trial. The second defendant will not be a necessary or proper party if he has, for example, either a good defence in law to P's claim and, thus, P's claim is doomed to fail:<sup>31</sup> or P's rights are predominantly against the first D from whom full recovery is possible.<sup>32</sup> Furthermore, leave will be refused if the claim against the first defendant is bound to fail, i.e. the process of serving a writ on D1 is a sham: he is, as described by *Collier*, a mere dummy, sued in order to get D2 before the court.

A ship belonging to D2, a domiciled Scotsman, docked in the Thames for unloading, as arranged by D, a London broker. P's husband was killed during the unloading. P sued D1, and attempted to serve a writ on D2 in Scotland. **HELD:** Leave to serve the writ was refused: D1 could not possibly have been liable to P.<sup>33</sup>

### Claims in relation to contracts (Practice Direct 3.1)

- (6) A claim is made in respect of a contract where the contract –
  - (a) was made within the jurisdiction;
  - (b) was made by or through an agent trading or residing within the jurisdiction;
  - (c) is governed by English law; or
  - (d) contains a term to the effect that the court shall have jurisdiction to determine any claim in respect of the contract.
- (7) A claim is made in respect of a breach of contract committed within the jurisdiction.
- (8) A claim is made for a declaration that no contract exists where, if the contract was found to exist, it would comply with the conditions set out in paragraph (6).

#### a) Was made within the jurisdiction.

Whether the contract was made in England or abroad is a matter to be decided by the standard rules applicable to the English domestic law of contract. Accordingly, a contract is made where a letter of

<sup>29</sup> *Rosler v Hilbery* [1925] 1 Ch. 250, CA.

<sup>30</sup> The reverse decision would now apply in relation to defendants domiciled in a Contracting State: *CJJA 1982, s.25* as amended

<sup>31</sup> *Multinational Gas and Petrochemical Company v Multinational Gas and Petrochemical Services Ltd.* (1983) Ch 258;

<sup>32</sup> *Chaney v Murphy* [1948] L.J.R. 1301, 1309.

<sup>33</sup> *Witted v Galbraith* (1893)

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acceptance is posted<sup>34</sup> : though in the case of instantaneous means of communication the contract has been held to be made where the acceptance is communicated to the offeror.<sup>35</sup>

However, the latter point may not be a rule of general application because

*“Since 1955 [when the **Entores case** was decided] the use of telex communication has been greatly expanded, and there are many variants on it. The senders and recipients may not be the principals to the contemplated contract. They may be servants or agents with limited authority. The message may not reach, or be intended to reach, the designated recipient immediately: messages may be sent out of office hours, or at night, with the intention, or on the assumption, that they may be read at a later time ... No universal rule can cover all such cases; they must be resolved by reference to the intentions of the parties, by sound business practice and in some cases by judgement where the risks should lie.”*<sup>36</sup>

### **b) was made by or through an agent trading or residing within the jurisdiction.**

Two points to be noted are:

- (i) the agent does not have to *make* the contract in England<sup>37</sup>; it is sufficient that he exercises a means of communication<sup>38</sup> to his principal abroad who, himself, concludes the contract there.<sup>39</sup>
- (ii) the agent must be the *agent of the defendant* and not the agent of the *plaintiff*.<sup>40</sup>

### **c) is governed by English law.**

In essence, this means that the law governing the contract, i.e. the *proper law of the contract*, is English law, irrespective of the law district in which the contract was concluded.<sup>41</sup>

### **d). contains a term to the effect that the High Court shall have jurisdiction to hear and determine any action in respect of the contract.**

This is the statutory authority providing for the service of a writ on a defendant who is abroad but who has already contractually submitted to the jurisdiction of the English court. It would appear that the express agreement to submit to the jurisdiction means that the court need not exercise the same extreme caution prior to permitting service of the writ out of the jurisdiction.<sup>42</sup>

## **7. A claim is made in respect of a breach of contract committed within the jurisdiction.**

This provision is now quite short and concise. Compare the prior **r.1(1)(e)** which provided that **“Where the claim is brought in respect of a breach committed within the jurisdiction of a contract made within or out of the jurisdiction, and irrespective of the fact, if such be the case, that the breach was preceded or accompanied by a breach committed out of the jurisdiction that rendered impossible the performance of so much of the contract as ought to have been performed within the jurisdiction”**.<sup>43</sup> Perhaps in the circumstances, less is more.

***Brinkibon v Stahag Stahl* [1980]**,<sup>44</sup> is authority for the proposition that the English law of contract determines where the breach was committed. ***Martin v Stout*** (1925) held that a letter repudiating a contract has the effect of breaching the contract in the law district where it was posted and not where it is received.<sup>45</sup> However, if a principal in a foreign country instructs his agent in England to repudiate a contract within the jurisdiction, and the agent does so, then the breach takes place in England and so the court may grant leave to serve a claim out of jurisdiction. That English law is not the proper law of a contract makes no difference to the effect of this sub rule: if the contract is breached in England, the English court has jurisdiction.<sup>46</sup>

34 ***Benaim v Debono*** (1924) AC 514;

35 ***Entores v Miles Far Fast Corporation*** (1955) 2 QB 327.

36 per Lord Wilberforce, ***Brinkibon v Stahag Stahl*** [1982] 1 All E.R. 293; [1983] 2 A.C. 34

37 if this was the case it could come under (i), above

38 i.e. *the contract was made ... through an agent ...*]

39 ***National Mortgage And Agency Co. Of New Zealand v Gosselin*** (1922). 38 TLR. 832 (CA)

40 ***Union International Insurance Co. v Jubilee Insurance Co.*** (1991).

41 The leading case on the proper law of the contract, is ***Amin Rasheed Shipping Corp. v Kuwait Insurance Co.*** (1983) 3 WLR 241, in which leave was not granted

42 ***The Chaparral*** (1968).

43 The words in italics were introduced to reverse the decision in ***Johnson v. Taylor Bros. & Co. Ltd*** [1920] A.C. 144, H.L.; i.e. that the rule was not applicable if the breach was subsidiary to the substantial breach abroad (Sweden) which rendered the breach which took place in England inevitable.

44 ***Brinkibon v Stahag Stahl*** [1980] A.C. 827,

45 ***Martin v Stout*** (1925). A.C. 359.

46 ***Oppenheimer v Louis Rosenthal*** [1937] 1 All ER 23

**Claims in tort (Practice Direction 3.1)**

(9) A claim is made in tort where

- (a) damage was sustained within the jurisdiction; or
- (b) the damage sustained resulted from an act committed within the jurisdiction.

This rule has been modeled on **Art.5(3) of the Brussels Convention 1968**, although in applying r.1(1)(f), the court applies exclusively English law. In *Metall und Rohstoff AG v. Donaldson, Lufkin & Jenrette, Slade LJ* said this paragraph permitted the English court to assume jurisdiction *if either the plaintiff sustained some significant damage in England or the damage resulted from substantial and efficacious acts committed by the defendant in England*. However, at least three weaknesses of this rule have been identified by *Cheshire & North* who say that: *Rule 1(1)(f) does not cover [i] injunctions to restrain threatened wrongs; nor [ii] is it appropriately worded to deal with cases of libel, since these do not require proof of damage to be actionable; nor [iii] does it solve all the definitional problems that can arise.*<sup>47</sup>

**Summary**

The traditional rules of jurisdiction relate to the serving of a writ when: (a) the defendant is present in the jurisdiction; or (b) when the defendant submits to the jurisdiction of the English court; or (c) the English court exercising its discretion under the CPR in relation to exorbitant jurisdiction and granting leave to serve a writ on a defendant who is abroad.

**FURTHER READING**

- Cheshire & North, Private International Law*, 12/e. London: Butterworths, 1992, Ch. 11.  
*Collier, The Conflict of Laws*, 2/e. Cambridge: C.U.P., 1994, Ch.7  
*Clarkson & Hill, Jaffey on the Conflict of Laws*. London: Butterworths, 1997, Ch.3, pp94 - 105  
*McClellan, Morris: The Conflict of Laws*, 5/e. London: Sweet & Maxwell, 2000, Ch.6.  
 O'Connell & Brien, *Smith's Conflict of Laws*, 2/e. London: Cavendish, 1999, Chs.10 & 11.  
*Stone, The Conflict of Laws*. London: Longman, 1995, p138!!

**Short-Answer Workshop Questions**

1. What is the essence of an action *in personam*?
2. When is it appropriate to apply to an action *in personam*: (a) common law jurisdiction; and (b) jurisdiction under the Brussels Convention; and (c) one of the parallel Conventions?
3. (a) What is the dictum on the basic principle relating to the traditional jurisdiction of the English courts when the defendant is present in England; and (b) how long does a defendant have to be present in England before the jurisdiction of the courts can be exercised?
4. By what methods may: (a) an individual person; (b) a partnership; and (c) a corporation be served with a writ in order to secure the jurisdiction of the English courts?
5. If a defendant challenges the jurisdiction of the English court **and** requests that the court should stay its proceedings pending the outcome of the proceedings abroad, what authority would you cite for stating that he has / has not submitted to the jurisdiction of the English court?
6. What contribution has the decision in *Seaconsar Far East* made to the English Conflict of Laws?
7. According to provisions of the Civil Jurisdiction and Judgments Act 1982 (as amended) when is an individual domiciled in England and Wales?
8. A letter was posted in Ruritania repudiating a contract with a corporation in England who received the letter there. If it was confirmed that the repudiation constituted a breach of contract, where (i.e., in which country / law district) would the contract be breached?
9. In essence, what has to be proved if an overseas company is to have established a place of business within Great Britain in order that it might be served with a writ?

<sup>47</sup> *Cheshire & North* at p199

## CIVIL PROCEDURE RULES, PART 6 SERVICE OF DOCUMENTS

### IV SERVICE OF THE CLAIM FORM AND OTHER DOCUMENTS OUT OF THE JURISDICTION

#### 6.30 Scope of this Section

This Section contains rules about –

- (a) service of the claim form and other documents out of the jurisdiction;
- (b) when the permission of the court is required and how to obtain that permission; and
- (c) the procedure for service. ('Jurisdiction' is defined in rule 2.3(1).)

#### 6.31 Interpretation

(1) For the purposes of this Section –

- (a) 'the Hague Convention' means the Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters signed at the Hague on 15 November 1965;<sup>48</sup>
- (b) 'the 1982 Act' means the Civil Jurisdiction and Judgments Act 1982;<sup>49</sup>
- (c) 'Civil Procedure Convention' means the Brussels and Lugano Conventions (as defined in section 1(1) of the 1982 Act) and any other Convention (including the Hague Convention) entered into by the United Kingdom regarding service out of the jurisdiction;
- (d) 'the Judgments Regulation' means Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters,<sup>50</sup> as amended from time to time and as applied by the Agreement made on 19 October 2005 between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters;<sup>51</sup>
- (e) 'the Service Regulation' means Regulation (EC) No. 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents),<sup>52</sup> and repealing Council Regulation (EC) No. 1348/2000,<sup>53</sup> as amended from time to time and as applied by the Agreement made on 19 October 2005 between the European Community and the Kingdom of Denmark on the service of judicial and extrajudicial documents on civil and commercial matters;<sup>54</sup>
- (f) 'Commonwealth State' means a state listed in Schedule 3 to the British Nationality Act 1981;<sup>55</sup>
- (g) 'Contracting State' has the meaning given by section 1(3) of the 1982 Act;
- (h) 'Convention territory' means the territory or territories of any Contracting State to which the Brussels or Lugano Conventions (as defined in section 1(1) of the 1982 Act) apply; and
- (i) 'domicile' is to be determined –
  - (i) in relation to a Convention territory, in accordance with sections 41 to 46 of the 1982 Act; and
  - (ii) in relation to a Member State, in accordance with the Judgments Regulation and paragraphs 9 to 12 of Schedule 1 to the Civil Jurisdiction and Judgments Order 2001.<sup>56</sup>

#### 6.32 Service of the claim form where the permission of the court is not required – Scotland & Northern Ireland

- (1) The claimant may serve the claim form on a defendant in Scotland or Northern Ireland 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 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
  - (b) (i) the defendant is domiciled in the United Kingdom;
    - (ii) the proceedings are within paragraph 11 of Schedule 4 to the 1982 Act; or
    - (iii) the defendant is a party to an agreement conferring jurisdiction, within paragraph 12 of Schedule 4 to the 1982 Act.

48 Cmnd. 3986.

49 1982 c. 27.

50 OJ No L 12, 16.1.2001, p.1.

51 OJ No L 299, 16.11.2005, p.62.

52 OJ No L324, 10.12.2007, p.79.

53 OJ No L160, 30.6.2000, p.37.

54 OJ No L300, 17.11.2005, p.53.

55 1981 c. 61.

56 S.I. 2001/3929.

- (2) The claimant may serve the claim form on a defendant in Scotland or Northern Ireland 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 any enactment other than the 1982 Act notwithstanding that –
- (a) the person against whom the claim is made is not within the jurisdiction; or
  - (b) the facts giving rise to the claim did not occur within the jurisdiction.

### **6.33 Service of the claim form where the permission of the court is not required – out of the United Kingdom**

- (1) 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 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 or any other Convention territory; and
  - (b) (i) the defendant is domiciled in the United Kingdom or in any Convention territory;
    - (ii) the proceedings are within article 16 of Schedule 1 or article 16 of Schedule 3C to the 1982 Act; or
    - (iii) the defendant is a party to an agreement conferring jurisdiction, within article 17 of Schedule 1 or article 17 of Schedule 3C to the 1982 Act.
- (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 the Judgments Regulation and –
- (a) no proceedings between the parties concerning the same claim are pending in the courts of any other part of the United Kingdom or any other Member State; and
  - (b) (i) the defendant is domiciled in the United Kingdom or in any Member State;
    - (ii) the proceedings are within article 22 of the Judgments Regulation; or
    - (iii) the defendant is a party to an agreement conferring jurisdiction, within article 23 of the Judgments Regulation.
- (3) 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 other than under the 1982 Act or the Judgments Regulation, notwithstanding that –
- (a) the person against whom the claim is made is not within the jurisdiction; or
  - (b) the facts giving rise to the claim did not occur within the jurisdiction.

### **6.34 Notice of statement of grounds where the permission of the court is not required for service**

- (1) Where the claimant intends to serve a claim form on a defendant under rule 6.32 or 6.33, the claimant must –
- (a) file with the claim form a notice containing a statement of the grounds on which the claimant is entitled to serve the claim form out of the jurisdiction; and
  - (b) serve a copy of that notice with the claim form.
- (2) Where the claimant fails to file with the claim form a copy of the notice referred to in paragraph (1)(a), the claim form may only be served –
- (a) once the claimant files the notice; or
  - (b) if the court gives permission.

### **6.35 Period for responding to the claim form where permission was not required for service**

- (1) This rule sets out the period for –
- (a) filing an acknowledgment of service;
  - (b) filing an admission; or
  - (c) filing a defence,
- where a claim form has been served out of the jurisdiction under rule 6.32 or 6.33.  
(Part 10 contains rules about acknowledgments of service, Part 14 contains rules about admissions and Part 15 contains rules about defences.)

#### **Service of the claim form on a defendant in Scotland or Northern Ireland**

- (2) Where the claimant serves on a defendant in Scotland or Northern Ireland under rule 6.32, the period –
- (a) for filing an acknowledgment of service or admission is 21 days after service of the particulars of claim; or
  - (b) for filing a defence is –
    - (i) 21 days after service of the particulars of claim; or
    - (ii) where the defendant files an acknowledgment of service, 35 days after service of the particulars of claim.
- (Part 7 provides that particulars of claim must be contained in or served with the claim form or served separately on the defendant within 14 days after service of the claim form.)

**Service of the claim form on a defendant in a Convention territory within Europe or a Member State**

- (3) Where the claimant serves the claim form on a defendant in a Convention territory within Europe or a Member State under rule 6.33, the period –
- (a) for filing an acknowledgment of service or admission, is 21 days after service of the particulars of claim; or
  - (b) for filing a defence is –
    - (i) 21 days after service of the particulars of claim; or
    - (ii) where the defendant files an acknowledgment of service, 35 days after service of the particulars of claim.

**Service of the claim form on a defendant in a Convention territory outside Europe**

- (4) Where the claimant serves the claim form on a defendant in a Convention territory outside Europe under rule 6.33, the period –
- (a) for filing an acknowledgment of service or admission, is 31 days after service of the particulars of claim; or
  - (b) for filing a defence is –
    - (i) 31 days after service of the particulars of claim; or
    - (ii) where the defendant files an acknowledgment of service, 45 days after service of the particulars of claim.

**Service on a defendant elsewhere**

- (5) Where the claimant serves the claim form under rule 6.33 in a country not referred to in paragraph (3) or (4), the period for responding to the claim form is set out in Practice Direction B supplementing this Part.

**6.36 Service of the claim form where the permission of the court is required**

In any proceedings to which rule 6.32 or 6.33 does not apply, the claimant may serve a claim form out of the jurisdiction with the permission of the court if any of the grounds set out in paragraph 3.1 of Practice Direction B supplementing this Part apply.

**6.37 Application for permission to serve the claim form out of the jurisdiction**

- (1) An application for permission under rule 6.36 must set out –
  - (a) which ground in paragraph 3.1 of Practice Direction B supplementing this Part is relied on;
  - (b) that the claimant believes that the claim has a reasonable prospect of success; and
  - (c) the defendant's address or, if not known, in what place the defendant is, or is likely, to be found.
- (2) Where the application is made in respect of a claim referred to in paragraph 3.1(3) of Practice Direction B supplementing this Part, the application must also state the grounds on which the claimant believes that there is between the claimant and the defendant a real issue which it is reasonable for the court to try.
- (3) The court will not give permission unless satisfied that England and Wales is the proper place in which to bring the claim.
- (4) In particular, where –
  - (a) the application is for permission to serve a claim form in Scotland or Northern Ireland; and
  - (b) it appears to the court that the claimant may also be entitled to a remedy in Scotland or Northern Ireland, the court, in deciding whether to give permission, will –
    - (i) compare the cost and convenience of proceeding there or in the jurisdiction; and
    - (ii) (where relevant) have regard to the powers and jurisdiction of the Sheriff court in Scotland or the county courts or courts of summary jurisdiction in Northern Ireland.
- (5) Where the court gives permission to serve a claim form out of the jurisdiction –
  - (a) it will specify the periods within which the defendant may –
    - (i) file an acknowledgment of service;
    - (ii) file or serve an admission;
    - (iii) file a defence; or
    - (iv) file any other response or document required by a rule in another Part, any other enactment or a practice direction; and
  - (b) it may –
    - (i) give directions about the method of service; and
    - (ii) give permission for other documents in the proceedings to be served out of the jurisdiction.

(The periods referred to in paragraphs (5)(a)(i), (ii) and (iii) are those specified in the Table in Practice Direction B supplementing this Part.)

**6.38 Service of documents other than the claim form – permission**

- (1) Unless paragraph (2) or (3) applies, where the permission of the court is required for the claimant to serve the claim form out of the jurisdiction, the claimant must obtain permission to serve any other document in the proceedings out of the jurisdiction.

- (2) Where –
  - (a) the court gives permission for a claim form to be served on a defendant out of the jurisdiction; and
  - (b) the claim form states that particulars of claim are to follow,
 the permission of the court is not required to serve the particulars of claim.
- (3) The permission of the court is not required if a party has given an address for service in Scotland or Northern Ireland.

### 6.39 Service of application notice on a non-party to the proceedings

- (1) Where an application notice is to be served out of the jurisdiction on a person who is not a party to the proceedings rules 6.35 and 6.37(5)(a)(i), (ii) and (iii) do not apply.
- (2) Where an application is served out of the jurisdiction on a person who is not a party to the proceedings, that person may make an application to the court under Part 11 as if that person were a defendant, but rule 11(2) does not apply. (Part 11 contains provisions about disputing the court's jurisdiction.)

### 6.40 Methods of service – general provisions

- (1) This rule contains general provisions about the method of service of a claim form or other document on a party out of the jurisdiction.

#### Where service is to be effected on a party in Scotland or Northern Ireland

- (2) Where a party serves any document on a party in Scotland or Northern Ireland, it must be served by a method permitted by Section II (and references to 'jurisdiction' in that Section are modified accordingly) or Section III of this Part and rule 6.23(4) applies.

#### Where service is to be effected on a defendant out of the United Kingdom

- (3) Where the claimant wishes to serve a claim form or any other document on a defendant out of the United Kingdom, it may be served –
    - (a) by any method provided for by –
      - (i) rule 6.41 (service in accordance with the Service Regulation);
      - (ii) rule 6.42 (service through foreign governments, judicial authorities and British Consular authorities); or
      - (iii) rule 6.44 (service of claim form or other document on a State);
    - (b) by any method permitted by a Civil Procedure Convention; or
    - (c) by any other method permitted by the law of the country in which it is to be served.
  - (4) Nothing in paragraph (3) or in any court order authorises or requires any person to do anything which is contrary to the law of the country where the claim form or other document is to be served.
- (A list of the countries with whom the United Kingdom has entered into a Civil Procedure Convention, and a link to the relevant Convention, may be found on the Foreign and Commonwealth Office website at – <http://www.fco.gov.uk/en/about-the-fco/publications/treaties/lists-treaties/bilateral-civil-procedure>.)

### 6.41 Service in accordance with the Service Regulation

- (1) This rule applies where the claimant wishes to serve the claim form or other document in accordance with the Service Regulation.
  - (2) The claimant must file –
    - (a) the claim form or other document;
    - (b) any translation; and
    - (c) any other documents required by the Service Regulation.
  - (3) When the claimant files the documents referred to in paragraph (2), the court officer will –
    - (a) seal the copy of the claim form; and
    - (b) forward the documents to the Senior Master.
  - (4) Rule 6.47 does not apply to this rule.
- (The Service Regulation is annexed to Practice Direction B supplementing this Part.)  
 (Article 20(1) of the Service Regulation provides that the Regulation prevails over other provisions contained in any other agreement or arrangement concluded by Member States.)

### 6.42 Service through foreign governments, judicial authorities and British Consular authorities

- (1) Where the claimant wishes to serve a claim form or any other document on a defendant in any country which is a party to a Civil Procedure Convention providing for service in that country, it may be served –
  - (a) through the authority designated under the Hague Convention (where relevant) in respect of that country; or
  - (b) if the law of that country permits –
    - (i) through the judicial authorities of that country, or
    - (ii) through a British Consular authority in that country (subject to any provisions of the applicable convention about the nationality of persons who may be served by such a method).

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- (2) Where the claimant wishes to serve a claim form or any other document on a defendant in any country with respect to which there is no Civil Procedure Convention providing for service in that country, the claim form or other document may be served, if the law of that country so permits –
  - (a) through the government of that country, where that government is willing to serve it; or
  - (b) through a British Consular authority in that country.
- (3) Where the claimant wishes to serve the claim form or other document in –
  - (a) any Commonwealth State which is not a party to the Hague Convention;
  - (b) the Isle of Man or the Channel Islands; or
  - (c) any British overseas territory,the methods of service permitted by paragraphs (1)(b) and (2) are not available and the claimant or the claimant's agent must effect service direct, unless Practice Direction B supplementing this Part provides otherwise.  
(A list of British overseas territories is reproduced in paragraph 5.2 of Practice Direction B supplementing this Part.)

- 6.43 Procedure where service is to be through foreign governments, judicial authorities and British Consular authorities
- (1) This rule applies where the claimant wishes to serve a claim form or any other document under rule 6.42(1) or 6.42(2).
  - (2) Where this rule applies, the claimant must file –
    - (a) a request for service of the claim form or other document specifying one or more of the methods in rule 6.42(1) or 6.42(2);
    - (b) a copy of the claim form or other document;
    - (c) any other documents or copies of documents required by Practice Direction B supplementing this Part; and
    - (d) any translation required under rule 6.45.
  - (3) Where the claimant files the documents specified in paragraph (2), the court officer will –
    - (a) seal the copy of the claim form or other document; and
    - (b) forward the documents to the Senior Master.
  - (4) The Senior Master will send documents forwarded under this rule –
    - (a) where the claim form or other document is being served through the authority designated under the Hague Convention, to that authority; or
    - (b) in any other case, to the Foreign and Commonwealth Office with a request that it arranges for the claim form or other document to be served.
  - (5) An official certificate which –
    - (a) states that the method requested under paragraph (2)(a) has been performed and the date of such performance;
    - (b) states, where more than one method is requested under paragraph (2)(a), which method was used; and
    - (c) is made by –
      - (i) a British Consular authority in the country where the method requested under paragraph (2)(a) was performed;
      - (ii) the government or judicial authorities in that country; or
      - (iii) the authority designated in respect of that country under the Hague Convention,is evidence of the facts stated in the certificate.
  - (6) A document purporting to be an official certificate under paragraph (5) is to be treated as such a certificate, unless it is proved not to be.

### 6.44 Service of claim form or other document on a State

- (1) This rule applies where a claimant wishes to serve the claim form or other document on a State.
- (2) In this rule, 'State' has the meaning given by section 14 of the State Immunity Act 1978.<sup>57</sup>
- (3) The claimant must file in the Central Office of the Royal Courts of Justice –
  - (a) a request for service to be arranged by the Foreign and Commonwealth Office;
  - (b) a copy of the claim form or other document; and
  - (c) any translation required under rule 6.45.
- (4) The Senior Master will send the documents filed under this rule to the Foreign and Commonwealth Office with a request that it arranges for them to be served.
- (5) An official certificate by the Foreign and Commonwealth Office stating that a claim form has been duly served on a specified date in accordance with a request made under this rule is evidence of that fact.
- (6) A document purporting to be such a certificate is to be treated as such a certificate, unless it is proved not to be.

<sup>57</sup> 1978 c. 33.

(7) Where –

- (a) section 12(6) of the State Immunity Act 1978 applies; and
- (b) the State has agreed to a method of service other than through the Foreign and Commonwealth Office, the claim form or other document may be served either by the method agreed or in accordance with this rule.

(Section 12(6) of the State Immunity Act 1978 provides that section 12(1) enables the service of a claim form or other document in a manner to which the State has agreed.)

#### **6.45 Translation of claim form or other document**

(1) Except where paragraph (4) or (5) applies, every copy of the claim form or other document filed under rule 6.43 (service through foreign governments, judicial authorities etc.) or 6.44 (service of claim form or other document on a State) must be accompanied by a translation of the claim form or other document.

(2) The translation must be –

- (a) in the official language of the country in which it is to be served; or
- (b) if there is more than one official language of that country, in any official language which is appropriate to the place in the country where the claim form or other document is to be served.

(3) Every translation filed under this rule must be accompanied by a statement by the person making it that it is a correct translation, and the statement must include that person's name, address and qualifications for making the translation.

(4) The claimant is not required to file a translation of a claim form or other document filed under rule 6.43 (service through foreign governments, judicial authorities etc.) where the claim form or other document is to be served –

- (a) in a country of which English is an official language; or
- (b) on a British citizen (within the meaning of the British Nationality Act 1981,<sup>58</sup> unless a Civil Procedure Convention requires a translation.

(5) The claimant is not required to file a translation of a claim form or other document filed under rule 6.44 (service of claim form or other document on a State) where English is an official language of the State in which the claim form or other document is to be served.

(The Service Regulation contains provisions about the translation of documents.)

#### **6.46 Undertaking to be responsible for expenses**

Every request for service filed under rule 6.43 (service through foreign governments, judicial authorities etc.) or rule 6.44 (service of claim form or other document on a State) must contain an undertaking by the person making the request –

- (a) to be responsible for all expenses incurred by the Foreign and Commonwealth Office or foreign judicial authority; and
- (b) to pay those expenses to the Foreign and Commonwealth Office or foreign judicial authority on being informed of the amount.

#### **6.47 Proof of service before obtaining judgment**

Where

- (a) a hearing is fixed when the claim form is issued;
- (b) the claim form is served on a defendant out of the jurisdiction; and
- (c) that defendant does not appear at the hearing,

the claimant may not obtain judgment against the defendant until the claimant files written evidence that the claim form has been duly served in accordance with this Part.

### **V SERVICE OF DOCUMENTS FROM FOREIGN COURTS OR TRIBUNALS**

#### **6.48 Scope of this Section**

This Section –

- (a) applies to the service in England and Wales of any document in connection with civil or commercial proceedings in a foreign court or tribunal; but
- (b) does not apply where the Service Regulation (which has the same meaning as in rule 6.31(e)) applies.

#### **6.49 Interpretation**

In this Section –

- (a) 'convention country' means a country in relation to which there is a Civil Procedure Convention (which has the same meaning as in rule 6.31(c));
- (b) 'foreign court or tribunal' means a court or tribunal in a country outside of the United Kingdom; and
- (c) 'process server' means –
  - (i) a process server appointed by the Lord Chancellor to serve documents to which this Section applies, or
  - (ii) the process server's agent.

<sup>58</sup> 1981 c. 61

**6.50 Request for service**

The Senior Master will serve a document to which this Section applies upon receipt of –

- (a) a written request for service –
  - (i) where the foreign court or tribunal is in a convention country, from a consular or other authority of that country; or
  - (ii) from the Secretary of State for Foreign and Commonwealth Affairs, with a recommendation that service should be effected;
- (b) a translation of that request into English;
- (c) two copies of the document to be served; and
- (d) unless the foreign court or tribunal certifies that the person to be served understands the language of the document, two copies of a translation of it into English.

**6.51 Method of service**

The Senior Master will determine the method of service.

**6.52 After service**

- (1) Where service of a document has been effected by a process server, the process server must –
  - (a) send to the Senior Master a copy of the document, and
    - (i) proof of service; or
    - (ii) a statement why the document could not be served; and
  - (b) if the Senior Master directs, specify the costs incurred in serving or attempting to serve the document.
- (2) The Senior Master will send to the person who requested service –
  - (a) a certificate, sealed with the seal of the Supreme Court for use out of the jurisdiction, stating –
    - (i) when and how the document was served or the reason why it has not been served; and
    - (ii) where appropriate, an amount certified by a costs judge to be the costs of serving or attempting to serve the document; and
  - (b) a copy of the document.

**PRACTICE DIRECTION – SERVICE OUT OF THE JURISDICTION**

**Scope of this Practice Direction**

- 1.1 This Practice Direction supplements Section IV (service of the claim form and other documents out of the jurisdiction) of Part 6.  
(Practice Direction A supplementing Part 6 contains relevant provisions supplementing rule 6.40 in relation to the method of service on a party in Scotland or Northern Ireland.)

**Service out of the jurisdiction where permission of the court is not required**

- 2.1 Where rule 6.34 applies, the claimant must file practice form N510 when filing the claim form.

**Service out of the jurisdiction where permission is required**

- 3.1 The claimant may serve a claim form out of the jurisdiction with the permission of the court under rule 6.36 where –

**General Grounds**

- (1) A claim is made for a remedy against a person domiciled within the jurisdiction.
- (2) A claim is made for an injunction ordering the defendant to do or refrain from doing an act within the jurisdiction.
- (3) A claim is made against a person ('the defendant') on whom the claim form has been or will be served (otherwise than in reliance on this paragraph) and –
  - (a) there is between the claimant and the defendant a real issue which it is reasonable for the court to try; and
  - (b) the claimant wishes to serve the claim form on another person who is a necessary or proper party to that claim.
- (4) A claim is an additional claim under Part 20 and the person to be served is a necessary or proper party to the claim or additional claim.

**Claims for interim remedies**

- (5) A claim is made for an interim remedy under section 25(1) of the Civil Jurisdiction and Judgments Act 1982.

**Claims in relation to contracts**

- (6) A claim is made in respect of a contract where the contract –
  - (a) was made within the jurisdiction;
  - (b) was made by or through an agent trading or residing within the jurisdiction;
  - (c) is governed by English law; or
  - (d) contains a term to the effect that the court shall have jurisdiction to determine any claim in respect of the contract.

- (7) A claim is made in respect of a breach of contract committed within the jurisdiction.
- (8) A claim is made for a declaration that no contract exists where, if the contract was found to exist, it would comply with the conditions set out in paragraph (6).

#### **Claims in tort**

- (9) A claim is made in tort where
  - (a) damage was sustained within the jurisdiction; or
  - (b) the damage sustained resulted from an act committed within the jurisdiction.

#### **Enforcement**

- (10) A claim is made to enforce any judgment or arbitral award.

#### **Claims about property within the jurisdiction**

- (11) The whole subject matter of a claim relates to property located within the jurisdiction.

#### **Claims about trusts etc.**

- (12) A claim is made for any remedy which might be obtained in proceedings to execute the trusts of a written instrument where –
  - (a) the trusts ought to be executed according to English law; and
  - (b) the person on whom the claim form is to be served is a trustee of the trusts.
- (13) A claim is made for any remedy which might be obtained in proceedings for the administration of the estate of a person who died domiciled within the jurisdiction.
- (14) A probate claim or a claim for the rectification of a will.
- (15) A claim is made for a remedy against the defendant as constructive trustee where the defendant's alleged liability arises out of acts committed within the jurisdiction.
- (16) A claim is made for restitution where the defendant's alleged liability arises out of acts committed within the jurisdiction.

#### **Claims by HM Revenue and Customs**

- (17) A claim is made by the Commissioners for H.M. Revenue and Customs relating to duties or taxes against a defendant not domiciled in Scotland or Northern Ireland.

#### **Claim for costs order in favour of or against third parties**

- (18) A claim is made by a party to proceedings for an order that the court exercise its power under section 51 of the Supreme Court Act 1981 to make a costs order in favour of or against a person who is not a party to those proceedings.  
(Rule 48.2 sets out the procedure where the court is considering whether to exercise its discretion to make a costs order in favour of or against a non-party.)

#### **Admiralty claims**

- (19) A claim is –
  - (a) in the nature of salvage and any part of the services took place within the jurisdiction; or
  - (b) to enforce a claim under section 153, 154, 175 or 176A of the Merchant Shipping Act 1995.

#### **Claims under various enactments**

- (20) A claim is made –
  - (a) under an enactment which allows proceedings to be brought and those proceedings are not covered by any of the other grounds referred to in this paragraph; or
  - (b) under the Directive of the Council of the European Communities dated 15 March 1976 No. 76/308/EEC, where service is to be effected in a Member State of the European Union.

#### **Documents to be filed under rule 6.43(2)(c)**

- 4.1 The claimant must provide the following documents for each party to be served out of the jurisdiction –
  - (1) a copy of the particulars of claim if not already contained in or served with the claim form;
  - (2) a duplicate of the claim form, of the particulars of claim (if not already contained in or served with the claim form) and of any documents accompanying the claim form;
  - (3) forms for responding to the claim; and
  - (4) any translation required under rule 6.45 in duplicate.
- 4.2 Some countries require legalisation of the document to be served and some require a formal letter of request which must be signed by the Senior Master. Any queries on this should be addressed to the Foreign Process Section (Room E02) at the Royal Courts of Justice.

**Service in a Commonwealth State or British overseas territory**

- 5.1 The judicial authorities of certain Commonwealth States which are not a party to the Hague Convention require service to be in accordance with rule 6.42(1)(b)(i) and not 6.42(3). A list of such countries can be obtained from the Foreign Process Section (Room E02) at the Royal Courts of Justice.
- 5.2 The list of British overseas territories is contained in Schedule 6 to the British Nationality Act 1981. For ease of reference, these are –
- |  |   |
|--|---|
| (a) Anguilla;  | (b) Bermuda;                                      |
| (c) British Antarctic Territory;                       | (d) British Indian Ocean Territory;               |
| (e) British Virgin Islands;                            | (f) Cayman Islands;                               |
| (g) Falkland Islands;                                  | (h) Gibraltar;                                    |
| (i) Montserrat;  | (j) Pitcairn, Henderson, Ducie and Oeno;          |
| (k) St. Helena and Dependencies;                       | (l) South Georgia and the South Sandwich Islands; |
| (m) Sovereign Base Areas of Akrotiri and Dhekelia; and | (n) Turks and Caicos Islands.                     |

**Period for responding to a claim form**

- 6.1 Where rule 6.35(5) applies, the periods within which the defendant must –
- (1) file an acknowledgment of service;
  - (2) file or serve an admission; or
  - (3) file a defence,
- will be calculated in accordance with paragraph 6.3, 6.4 or 6.5.
- 6.2 Where the court grants permission to serve a claim form out of the jurisdiction the court will determine in accordance with paragraph 6.3, 6.4 or 6.5 the periods within which the defendant must –
- (1) file an acknowledgment of service;
  - (2) file or serve an admission; or
  - (3) file a defence.
- (Rule 6.37(5)(a) provides that when giving permission to serve a claim form out of the jurisdiction the court will specify the period within which the defendant may respond to the claim form.)
- 6.3 The period for filing an acknowledgment of service under Part 10 or for filing or serving an admission under Part 14 is the number of days listed in the Table after service of the particulars of claim.
- 6.4 The period for filing a defence under Part 15 is –
- (1) the number of days listed in the Table after service of the particulars of claim; or
  - (2) where the defendant has filed an acknowledgment of service, the number of days listed in the Table plus an additional 14 days after the service of the particulars of claim.
- 6.5 Under the State Immunity Act 1978, where a State is served, the period permitted under paragraphs 6.3 and 6.4 for filing an acknowledgment of service or defence or for filing or serving an admission does not begin to run until 2 months after the date on which the State is served.
- 6.6 Where particulars of claim are served out of the jurisdiction any statement as to the period for responding to the claim contained in any of the forms required by rule 7.8 to accompany the particulars of claim must specify the period prescribed under rule 6.35 or by the order permitting service out of the jurisdiction under rule 6.37(5).

**Period for responding to an application notice**

- 7.1 Where an application notice or order is served out of the jurisdiction, the period for responding is 7 days less than the number of days listed in the Table.

**Further information**

- 7.2 Further information concerning service out of the jurisdiction can be obtained from the Foreign Process Section, Room E02, Royal Courts of Justice, Strand, London