

Post-Brexit Litigation



27th May 2021

Post-Brexit Litigation

Litigation in the aftermath of Brexit

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Post-Brexit Litigation

What hasn't changed?

- Some EU law has been retained.
- Applicable law is still governed by Rome II: Article 18 is of particular note.
- English proceedings are still governed by English procedural rules.

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What has changed? Jurisdiction

- Recast Brussels only applies in respect of claims issued prior to 1st January 2021, and closely connected claims.
- Closely connected claims comprise anchored claims and Part 20 claims.

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What has changed? Jurisdiction

- Claims issued since Exit Day are governed by common law rules.
- Litigants must bring themselves within the 'gateways' to be found in CPR6PD6B.
- England and Wales must also be the *forum conveniens*.

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What has changed? Jurisdiction

- Anchor Defendants.
- Contract formed within the jurisdiction.
- Contract governed by English law.
- Damage sustained within the jurisdiction.

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What has changed? Jurisdiction

- *forum conveniens* factors to be taken into account:
 - a. Domicile of the parties.
 - b. Location of the harmful event.
 - c. Applicable law.
 - d. Practical considerations.

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What has changed? Service

- Service must now be effected on the Defendant or nominated solicitors, *not* on insurers' UK handling agents.
- Service on UK handling agents is defective and will be set aside and claims struck out.

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What has changed? Enforcement

- Claims issued prior to 1st January 2021 may be enforced via the recast Brussels mechanism.
- Claims issued on or after 1st January 2021 are not subject to this mechanism.

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What has changed? Enforcement

- Judgments given in respect of claims issued before Exit Day are enforceable in the courts of the EU.
- Judgments given in respect of other claims are not, as matters now stand.

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What has changed? Enforcement

- There are currently no enforcement provisions in respect of EU judgments.
- The Commission has recommended that the UK should not be allowed to join the Lugano Convention.

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What is likely to change? Enforcement

- Will the UK be allowed to accede to the Lugano Convention?
 - Will bilateral treaties be concluded?
- This is currently not possible.

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What is likely to change? *Vnuk* liability

- The government has announced that it intends to 'bin' *Vnuk* liability.

What does this mean?

- The decision in *Vnuk v Zavarovalnica Triglav* (Case C-162/13).

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What is likely to change? *Vnuk* liability

- The fallout from *Vnuk*:
- *Wastell v Woodward* [2017] 2 WLUK 717;
- *Lewington v MIB* [2017] 10 WLUK 672;
- *RoadPeace v Secretary of State for Transport* [2017] 11 WLUK 114

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What is likely to change? *Vnuk* liability

- The fallout from *Vnuk*:
- *MIB v Lewis* [2019] 6 WLUK 26;
- *Colley v Shuker* [2020] 12 WLUK 183.

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What is likely to change? *Vnuk* liability

- The fallout from *Vnuk*:
- The Government Actuary Department Report.
- The Government's announcement.
- The policy behind the decision.

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What is likely to change?

The government review may lead to other EU based regulations being stripped away.

Will the same policy considerations apply?

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Will the UK and EU reach any measure of juridical cooperation?

This appears unlikely at present.

Almost six months after Brexit, it appears that the UK and EU are likely to diverge within a relatively short timeframe.

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Next week...

Occupiers' Liability -
a Reminder of the Basics

Robert Parkin and Henk Soede

Thursday 10th June at 1.00