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Legal profession supports Ukraine

Lawyers condemn 'act of war' & warn of exposure to sanctions

Lawyers have expressed solidarity with Ukraine and called on the government to assist refugees.

In a joint statement, Bar leaders in England and Wales, Northern Ireland and Ireland and the Faculty of Advocates in Scotland, unequivocally condemned the invasion as an 'act of war' and 'a gross violation of international law'.

Law Society president I Stephanie Boyce said: 'The Law Society stands in solidarity with the Ukrainian people, the Ukrainian National Bar Association and the Ukrainian Bar Association.

'We also stand with the Russian people who oppose their government's illegal invasion of Ukraine, and lawyers who are defending the rule of law in the region.'

Meanwhile, lawyers have been advised to keep a close eye on client exposure to Russian sanctions, including in supply chains.

Pinsent Masons senior associate Stacy Keen, a specialist in sanctions, said any ramping-up of sanctions is likely to affect a far wider range of businesses than previous sector-based measures, hitting not just UK oil exploration and production companies but other strategic sectors such as the information, communications and digital technologies sectors. 'Businesses should plan on the basis that the sanctions already announced are just the first wave,' Keen said.

Boyce: solidarity matters

'They should urgently be identifying not just Russian and Ukrainian business partners but also non-Russian/Ukrainian counterparties that have a significant exposure to these countries.'

However, reports this week that Foreign Secretary Liz Truss briefed MPs that London law firms are delaying sanctions against Russian oligarchs prompted raised eyebrows in the profession.

Human rights barrister Jessica Simor QC tweeted: 'Law firms can't hold it up. Only a court could. Are there any court orders? I doubt it.'

Boyce responded, on behalf of the Law Society: 'It's the job of solicitors to represent their clients, whoever they may be, so that the courts act fairly.

'This is how the public can be confident they live in a country that respects the rule of law—unlike Putin's tyrannical regime. Solicitors are highly regulated and are not allowed to bring spurious objections to processes.'

NEWS IN BRIEF

NLJ: No blame?
Romantic relationships are complicated, particularly when they end. Writing in this week's *NLJ*, David Burrows, solicitor advocate and *NLJ* columnist, surveys the main provisions in the Divorce, Dissolution and Separation Act 2020, and rules made thereunder. With a fine toothcomb, Burrows compares old with new, identifying some unfortunate gaps and omissions along the way See pp13-14.

NLJ: Family, data, RTA
Former DJ Stephen Gold covers an increase in the small claims track limit for non-road traffic accidents, in 'Civil way' this week. His coverage includes incidents on the parameters—'an incident that looks, smells and talks like a road traffic accident but is outside the definition'. Gold also looks at a family court pilot taking place at some seaside locations, as well as investigating why 'the High Court is fed up with low-value data protection cases and the customary ragbag of heads of claim'. He also covers caselaw concerning a looked after child whose mother opposed vaccination. See p17.

UK signs NZ trade deal

UK lawyers will benefit from the UK-New Zealand free trade agreement, signed this week, the Law Society has said.

The agreement removes tariffs on all UK exports to New Zealand (currently 10% on clothing and 5% on ships and bulldozers), while removing many restrictions on professional services.

Law Society president I Stephanie Boyce said: 'The UK-New Zealand FTA commits to liberalising services in a way that strengthens existing bilateral relations and deepens market access, making it easier for professionals like lawyers to operate in each other's economies.

'Professional services and mechanisms to facilitate further recognition of professional qualifications are also outlined in the agreement. The Professional Services Annex confirms existing rights of UK and New Zealand lawyers to advise clients in their home country and international law and to provide arbitration, mediation and conciliation services in the other country's territory using their original qualifications and title.'

Ukraine v Putin

President Vladimir Putin's invasion of Ukraine may represent an attempt to revive the use of force as an acceptable tool of national policy, Marc Weller, professor of international law at Cambridge University and a barrister at Doughty Street, writes in this week's *NLJ*.

In his article, Weller traces the lead-up to the invasion and highlights the Kremlin's consistent challenges to the prohibition of the use of force, including disowning peace agreements, false allegations of terrorism and armed incursions to justify claims of self-defence.

Weller looks at Putin's disputed claim to Ukraine as well as the Kremlin's recognition of Donetsk and Luhansk Oblasts, and its annexation of Crimea.

He writes, 'Moscow has retained its forces in several former Soviet territories along its western borders, generally unlawfully, against the will of the states concerned... creating permanent instability.' See pp8-10.

Barristers to vote on no returns

Criminal Bar could refuse returns from next month

Ballot papers have been issued to criminal barristers, asking them to vote on a 'no returns' policy from 11 April.

The Criminal Bar Association (CBA) set out the two options for its members this week. 'Returns' are where another barrister takes over the case if there's a diary clash. The ballot ends at one minute to midnight on 11 March.

Option A is to refuse all return work under the advocates graduated fee scheme (AGFS) from 11 April, unless the government agrees to: a 25% per annum increase in remuneration under the AGFS; pay for written work as recommended by the Independent Review of Criminal Legal Aid (CLAR); create an effective pay review body; expedite the timetable for consultation on the CLAR recommendations; pay a second brief fee payment for s 28 YJCE hearings; and index link AGFS payments.

Option B is to wait for the government's response on CLAR in the week of 14 March, followed by a consultation until end of June 2022, and any relevant statutory instruments being implemented by end of September.

The CLAR recommended an increase of at least 15% in fees. A survey of CBA members in January found 94% in favour of action if the government did not set out its proposals to expedite reform by 14 February. However, this was 'simply ignored' by the government.

Jo Sidhu QC, CBA chair, said: 'The overall timetable for the reform of criminal legal aid funding set by government takes us to October 2022 with no prospect of an increase in fees until 2024.

'Neither criminal barristers nor criminal solicitors can afford to wait that long. We have already paid a heavy price in attrition from our ranks for the inexcusable failure to deal post-haste with the impact of diminishing real incomes, and we are both facing decimation if critical intervention is not forthcoming.'

Dirty money

Long-awaited legislation to tackle corporate anonymity and add crunch to the enforcement of unexplained wealth orders has been introduced in Parliament, following the invasion of Ukraine.

The Economic Crime (Transparency and Enforcement) Bill, laid in Parliament this week, sets up a register of overseas entities and their beneficial owners, requires registration of land ownership (reaching back to 2002 in England and Wales, and 2014 in Scotland), and makes provision for freezing orders, unexplained wealth orders and sanctions.

A spokesperson for the Law Society said that solicitors 'play an important role in tackling money laundering and we look forward to working with the government to ensure that the reforms are effective and help make the UK a hostile place for money launderers'.

Police Bill passes Commons

The House of Commons voted to reject the Lords amendments to the Police, Crime, Sentencing & Courts Bill this week, in a hotly debated late night vote.

MPs voted 288 to 238 in favour of reinstating a clause that would allow the police to close down peaceful protests deemed too noisy, and 298 votes to 236 in favour of a ban on protests outside Parliament. MPs asked what was meant by 'too noisy'? The policing minister Kit Malthouse MP did not address this but said the provision would be used for 'rare and exceptional circumstances'.

Opposing the noise restriction, Labour MP Lloyd Russell-Moyle said: 'Democracy is noisy, that's the point… the minister is a snowflake, and the Cabinet cry into their port at night because they can't handle robust democracy.'

Some MPs drew comparisons with curbs on protests in Russia. Referring to the proposed curbs on noise, Conservative MP Jesse Norman said: 'No case has been made, no serious case has been made, that this is a real and genuine problem.' However, Steve Baker MP was the only Conservative to rebel, and the government won comfortably.
The amendments will now return to the Lords.

Human rights group Liberty responded, in a Tweet, the proposals reinserted by the government were 'a clear attack on the fundamental right to protest' and pledged to continue to fight the measures.

In January, the Lords rejected several amendments to the Bill, including the creation of offences of 'locking on', obstructing major transport works and interference with the use or operation of key national infrastructure. These clauses, which were aimed at tactics used by climate protest group Extinction Rebellion, could not be resurrected by MPs because they were not included when the Bill went to the Lords and so would require a new Bill.

THIS WEEK ON THE WEB

MOST READ ON NLJ ONLINE

- Hundreds of cases stayed as Belsner adjourned (News)
- Man or machine? AI in criminal cases (Faras Baloch)
- The insider: Costs, Horizon and careless talk by judges

THIS WEEK'S TOP TWEET

Ukraine Advice Project UK @ukraine_advice Founded by legal professionals with immigration and asylum expertise to provide free UK immigration and asylum legal advice to Ukrainians affected by the war

READ MORE ONLINE AT WWW.NEWLAWJOURNAL.CO.UK

NEWS IN BRIEF

NLJ: Stand out

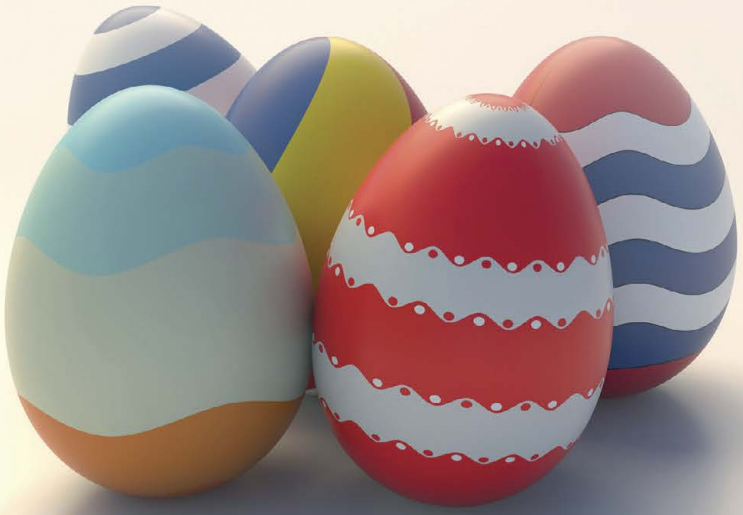
How do you make yourself stand out from the crowd when you're starting your law career, along with all the other talented professionals? Writing in this week's *NLJ,* Tom Moyes, training partner, Blacks Solicitors, shares some advice. Moyes looks at what 'standing out from the crowd' really means, and why practice makes perfect when it comes to improving your communication skills. 'Do not let setbacks or knockbacks put you off because everyone will receive some rejections and failures'. See p22. For more insight into overcoming obstacles and achieving career success, visit *NLJ*'s new jobs hub at *www.newlawjournal.co.uk/content/nlj-jobs-careerhub*.

Rise in cryptoassets

Litigation concerning cryptoassets and smart contracts is 'increasing significantly', the Master of the Rolls, Sir Geoffrey Vos has revealed. Speaking at the launch of LawtechUK's Smarter Contracts report, in London in February, Sir Geoffrey said blockchain was at the stage now that the internet was at in 1995, and 'would become "ubiquitous" simply because 'it allows for the immutable recording of data'. He said a sub-committee of the Civil Procedure Rules Committee is currently drafting rules for serving proceedings out of jurisdiction to trace cryptoassets abroad, as this is a major obstacle when tackling crypto fraud.

FLEET STREET WEALTH

Scheduling time now to ensure you're taking advantage of the tax year end opportunities could pay dividends.



The top five areas to consider before 5 April are:

1. VCTs and EISs
Venture Capital Trusts (VCTs) and Enterprise Investment Schemes (EISs) are attractive for experienced investors and offer many tax benefits to investors.

2. Pensions
Consider contributing more into your pension (you are limited to tax relief on £40,000 per tax year). The Lifetime Allowance is currently £1,073,100. Don't forget you can invest into a pension for a non-working or non-tax paying spouse or civil partner, and for children under 18.

3. ISAs
Don't overlook your ISA allowance (£20,000 for 2021-22). Use it or lose it! Junior ISAs are a tax-efficient way to build up savings for children and grandchildren (maximum investment is £9,000 per child).

4. Inheritance Tax (IHT)
The sums you can gift for IHT purposes are small, but you should use these exemptions where possible (gifts worth up to £3,000 in each tax year are exempt from IHT on death). Certain gifts don't use up this annual exemption but incur no IHT.

5. Capital gains tax (CGT)
Every individual is entitled to a CGT annual exemption – currently £12,300 (£6,150 for trusts). You can't carry forward this relief, so consider crystallising any gains or offsetting any losses before 5 April.

This information is based on our understanding of current allowances and rates which could be subject to change. The value of investments can go down as well as up and you may not get back the full amount you invested. The past is not a guide to future performance and past performance may not necessarily be repeated. It is important to take professional advice before making any decision relating to your personal finances.

Act now – download our free guide

Download our 2021-22 end of tax year guide www.fswealth.co.uk/eoytg.

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Post Office: the battle continues

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Nothing less than full compensation is owed to the victims of this grave miscarriage of justice, argues David Greene

Having had involvement in the Post Office scandal on behalf of sub-postmasters (most recently in a judicial review of the Post Office Compensation Scheme), I have met many of those former sub-postmasters who have been let down by the law and its administration.

It was the judgments of Mr Justice Fraser in 2019 in the *Bates and others v Post Office Limited* group litigation (in particular 'Common Issues' [2019] EWHC 606 (QB), [2019] All ER (D) 100 (Mar) and 'Horizon issues' [2019] EWHC 3408 (QB)) that really kicked off all that has since been revealed and the overturning of criminal convictions. Those affected, however, are in the early stages of finding out the full story and resolving their own issues with the Post Office, including standing convictions. The Fraser judgments followed hard-fought—to put it mildly—litigation.

A fatally flawed process

A public inquiry into events surrounding the criminal proceedings and civil claims and judgment is underway. It started as a non-statutory inquiry but was converted into a 'public' inquiry under statute in June 2021. Headed by retired judge Sir Wyn Williams, the inquiry is currently taking evidence, starting with sub-postmasters themselves, to describe the human impact of events. This evidence is being taken in writing and in focus groups. As this form of fact-finding evidences, the inquiry procedure is a long way from the adversarial battles in the High Court that led to the Fraser judgments.

The whole case raises questions of the capability of the adversarial justice process in both crime and civil claims to achieve the just resolution of matters before the court. It might be said that the process has worked in the end, but all evidence suggests that, to the contrary, this is a process that has failed all involved.

The criminal prosecution process utterly failed, and it must call into question private prosecutions of this nature. There were 918 successful prosecutions brought by the Post Office against sub-postmasters, sub-postmistresses and other employees from 1991 until 2015. The Post Office is in a unique position as a prosecutor. Although it has no direct investigative powers, it undertakes joint investigations with the police and has other special powers to investigate. For sub-postmasters it acted as investigator and prosecutor, proffering evidence to the court that was flawed. It was a role played out with little supervision or inspection. Indeed, Fraser J said of the Post Office that it feared 'objective scrutiny of its behaviour' and worked within a 'culture of secrecy and confidentiality'.

Prosecutions by the state have been on the decline for many years and private prosecutions have sharply risen. Following the Post Office debacle, the House of Commons Justice Committee suggested that 'reports that the number of private prosecutions is rising, justify a proactive approach to examining the effectiveness of the regulation of this area of the criminal justice system'.

The evidence the prosecutions relied upon was the data from the Post Office accounting system, Horizon. This was presented and accepted by the criminal court as fail-safe. It was not.

The Horizon system had faults that led to inaccuracies in accounting. Second, in order to be of forensic worth, it needed to be sealed so that it could not in any way be manipulated. It was not. Both problems meant that forensically the system provided no fail-safe evidence.

Horizon was developed by Fujitsu and employees gave evidence in support of the prosecutions. In the Horizon Issues judgment, Fraser J expressed 'very grave concerns regarding the veracity of evidence given by Fujitsu employees to other courts in previous proceedings about the known existence of bugs, errors and defects in the Horizon system'.

Courts everywhere rely on data systems and the algorithms that drive them. There has been a presumption of the reliability of computer evidence. The Post Office cases remind us, however, that a court, both criminal and civil, must always have an open and questioning mind as to their integrity. Digital evidence should be the subject of forensic interrogation by the court before acceptance.

David & Goliath

What of the adversarial system for achieving justice? It failed the sub-postmasters. Perhaps ever thus, it allowed a large rich corporation to bully its way through the process at the expense of poorly-resourced wronged individuals. The 550 sub-postmasters who litigated were only able to do so because they secured third-party funding, at enormous expense. Otherwise, they would have been crushed under the Post Office litigation juggernaut with every point being taken, including seeking to remove Fraser J.

The funding saved the day, but the Post Office's conduct in the litigation cost the claimants dearly. The vast majority of the settlement went to funders and lawyers (who undertook the work on risk), leaving the claimants with little financial reward. The Jackson reforms re-established the principle that the costs of financing litigation are irrecoverable, but as has recently happened in arbitration (see *Essar Oilfields v Norscot* [2016] EWHC 2361 and *Tenke v Katanga* [2021] EWHC 3301) there must be an argument in these circumstances that the Post Office should make good full compensation to the claimants themselves. It was they who drove the costs skyward with submissions that Fraser J described as having 'no attention to the actual evidence, and seem to have their origin in a parallel world'.

The justice system has failed this body of people. This is the time to ensure they have full reparation. NLJ

David Greene, *NLJ* consultant editor, senior partner, head of group action litigation at Edwin Coe (*www.edwincoe.com*; *@LitLawyer*).

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Ukraine—how the new normal came about

Does President Putin's denial of the right of Ukraine to exist represent an attempt to revive the use of force as an acceptable tool of national policy? Marc Weller reports

The prohibition of the use of force is the most crucial cultural achievement of humankind of the past century. In fact, transforming war from a glorious pursuit, bestowing honour on the heroic fighters and nations participating in it, into a shamefully destructive activity took thousands of years of human history.

It was the horror and futility of placing human lives by the tens of thousands in the face of mechanised destruction which led to the conviction that World War I was meant to be the war to end all wars. The League of Nations Covenant was augmented with the Kellogg–Briand Pact which finally outlawed war as a means of national politics in 1928.

World War II, this time also and mainly affecting millions of civilian victims, showed that belief in peace and the international rule of law is not enough. The United Nations system was meant to add the teeth of military enforcement to the prohibition of the use of force as a means of national policy.

Oddly, the prohibition of the use of force survived the difficult years of the Cold War. Nuclear deterrence prevented global war. Significant violence erupted in Africa, Central America and Asia. But the states involved generally took care to justify their actions in terms of the prohibition of war, rather than questioning it. They invoked the exceptions of self-defence or invitation of military assistance by the local government rather than claiming a general right to use force.

The post-Cold War new order started with a resounding confirmation of the rule that foreign territory must not be acquired through the use of force. Saddam Hussein's attempt to incorporate the state of Kuwait through invasion was defeated by a very broad international coalition operating under UN authority.

The new consensus was, however, strained; first by NATO's operation against the former Yugoslavia in 1999, and subsequently, and more seriously, by the US and UK attack against Iraq of 2003. After this latter, unnecessary conflict, the world, including the US and UK, rallied and reconsecrated the authority of the use of force. Still, the international system remained unable to grapple with further violations of this critical rule by a permanent member of the UN Security Council, this time the Russian Federation under Vladimir Putin.

Over the past quarter of a century, Russia has consistently challenged the prohibition of the use of force in international relations. In fact, all the elements now advanced by the Kremlin to justify the massive invasion of Ukraine were put forward on previous occasions, although the scale of the present operation is unprecedented.

This practice started with the disowning of previous peace agreements, as is the case now in relation to the Minsk agreements on Ukraine. It includes false allegations of terrorism and of armed incursions to justify claims of self-defence. It also includes the assertion that force is needed to rescue Russian-speakers in the near-abroad. Even the recognition of notional states created by Russia's military intervention, and their protection through force, is not new.

Disowning peace agreements

In 1996, Russia concluded a peace agreement with its own autonomous province, Chechnya. The Chechens had prevailed in their armed confrontation with Moscow after the collapse of the Soviet Union and its armed forces. The agreement, endorsed by then President Boris Yeltsin and solemnly approved by the Russian parliament, or Duma, recognised that future relations with Chechnya would be conducted on the basis of international rather than Russian internal law. It promised self-determination for the Chechens after a period of five years.

However, by the end of 1999, Russia had rebuilt its military. Moscow inaugurated the new millennium with a massive invasion of Chechnya. In view of controversial claims that Chechen terrorists had bombed two Moscow apartment blocks, the Duma tore up the peace promise.

The Kremlin's response wiped out the indigenous administration of Chechnya and turned its capital, Grozny, into a landscape resembling Dresden after World War II. Thousands of civilians perished in what appeared to be a brutal campaign of revenge, designed to demonstrate that Russia was a dominant military power once more.

Nevertheless, international criticism was muted, modestly focusing on human rights

violations rather than the disproportionate and indiscriminate use of force in violation of the peace agreement in itself.

In this present instance, Moscow has complained that Ukraine has not implemented the promise made in the Minsk agreements of 2014–15 to offer an enhanced status for Donbas in its constitutional order.

In fact, though, the Kremlin has failed to put in place the agreed preconditions for these changes. Vladimir Putin has flouted the provisions on the withdrawal of his forces and heavy weapons from the territory and instead provoked unending military confrontations. Nevertheless, he has now torn up the agreements entirely, blaming the other side.

Occupation by stealth

Moscow has retained its forces in several former Soviet territories along its Western borders, generally unlawfully, against the will of the states concerned. This allows Russia to raise tension at any moment of its choosing, creating permanent instability. Moreover, as active conflicts, they inhibit the prospect of Euro-Atlantic integration of the affected states. Neither the EU nor NATO accept states affected by ongoing conflict or unresolved border disputes as new members. These include Georgia (Abkhazia and South Ossetia), Moldova (Transnistria), Armenia and Azerbaijan (Nagorno-Karabakh) and Ukraine (Donbas and Crimea).

It is often assumed that these conflicts are so-called 'frozen conflicts,' due to the intransigence of the local actors. The reality is that the unwanted Russian troop presence permits the existence on foreign territory of separatist fiefdoms that are entirely dependent on Moscow. This situation has been essentially accepted by the West for decades, hiding behind fruitless mediation efforts that fail to distinguish victim from aggressor.

Some 18 months ago, Azerbaijan sought to break this stalemate, forcibly re-integrating some parts of Nagorno-Karabakh, which had been occupied by Armenia with Russian blessing since 1994. The episode resulted in the introduction of Russian peacekeepers in the territory, once more giving Moscow a controlling presence in the region and freezing the conflict.

In Donbas, Russia has maintained its own regular and irregular forces since the conflict of 2014 at the level of several thousands. It has resupplied them, at times claiming the right to mount supposedly humanitarian convoys across the border to Ukraine. It reportedly provided the anti-air missile that shot down Malaysian Airlines Flight 17 in 2014, killing all 283 civilian passengers and 15 crew.

For eight years, the Russian forces deployed in the territory have allowed the local militias—trained, equipped and in part led by Moscow—to resist the attempts by the Ukrainian forces to re-establish control for the central government. This is a very significant armed intervention and aggression that had already cost in excess of 14,000 lives before the present invasion commenced. However, over the past decade and a half, the West did not have the courage to attach this label.

Defending supposedly threatened populations

In 2008, Moscow lured the Georgian government into an attempt to re-capture its break-away provinces of Abkhazia and South Ossetia. Their separate existence was also underwritten by a mainly Russian 'peacekeeping' force which effectively prevented the authorities in Tbilisi from re-establishing their authority.

In international law, it would have been difficult to oppose the operation—after all, Georgia was moving its forces within its internationally recognised boundaries. Nevertheless, Russia asserted that Georgia was assaulting both the supposed peacekeepers and the local population. Awaiting just such a development, it had pre-deployed a very large force just outside of South Ossetia which moved in rapidly, permanently removing the territory from Georgia.

While Abkhazia had not in fact been involved in the hostilities, Putin simply detached it from Georgia as well, for good measure, as it were.

Moscow argued that it had to rescue the local South Ossetian population from its own government. It had also launched a campaign of 'passportisation', granting its citizenship to nationals of neighbouring states. This was meant to lay the groundwork for arguing that force is necessary to prevent abuses of its ethnic Russian brethren or even fellow citizens on the other side of the border. Of course, there had been no actual, significant threat against them.

This ploy is also being applied in the present case. After supposed attacks against the civilian population of Donbas, Moscow has claimed that nothing less than a campaign of genocide has been launched by the Ukrainian authorities to justify their recognition of the two pseudo-states and the invasion, supposedly in a rescue mission at their request.

Gradual absorption of independent states

Moscow took a similar step when recognising South Ossetia and Abkhazia as independent states after its victory over Georgia. It argued that the supposed assaults by the Georgian government on the two provinces had made their independence under Moscow's military protection inevitable. In so doing, it somewhat gleefully replayed the arguments advanced by the West in favour of Kosovo's independence.

Of course, the Kosovo case was very different. There, the local, mainly ethnic-Albanian population had indeed suffered for a decade under massive repression and what many considered an apartheid-style regime administered by Slobodan Miloševi ć's Yugoslavia.

Before the NATO intervention of early 1999, several hundred thousand civilians had been forcibly displaced by Belgrade's counter-insurgency campaign marked by mass executions, torture and other forms of intimidation of the civilian population. NATO governments feared that they might be witnessing another impending genocide, as had been observed in Bosnia and Herzegovina.

As opposed to Abkhazia and South Ossetia, Kosovo emerged as a genuinely independent state, following the recommendation of the UN Special Representative for Kosovo, former Finnish president Martti Ahtisaari. He argued that it was not conceivable to hand the Kosovars back to the control of the state that had persecuted them with such brutality,

Kosovo's declaration of independence was declared lawful by the International Court of Justice. Moscow's recognition of the supposed independence of Abkhazia and South Ossetia was a clear breach of fundamental rules of international law. Given the Russian veto in the UN Security Council, it fell to the General Assembly to reject this grave violation of the territorial integrity of Georgia.

Of course, both entities are economically entirely dependent on, and politically controlled by, Moscow. Moreover, the Kremlin has gradually integrated the local military forces with its own army, effecting an enforced incorporation and annexation in all but name.

Vladimir Putin's recognition of Donetsk and Luhansk Oblasts as independent states amounts to a major violation of international law. Any possible claim to effective statehood rests entirely on its enforcement by the Russian military against Ukraine, the territorial sovereign. Moreover, the conclusion of supposed treaties of alliance with both entities was used to prepare the ground for further military intervention.

In fact, the recognition was immediately followed by the deployment of further Russian forces in both provinces, this time undisguised and formally re-branded as supposed 'peace-keepers'. In fact, this already amounted to the invasion of Ukraine.

Formal annexation

Russia went a step further when it forcibly and formally annexed Crimea in 2014. The territory had initially declared independence after a referendum on separation from Ukraine. However, within days, the

supposedly newly independent Crimea requested annexation by the Russian Federation. Unsurprisingly, that request was granted rapidly and with grand ceremony.

In fact, the purported Crimean referendum on independence had come about under cover of the 'little green men.' These were Russian elite forces operating without their identifying insignia. They had been in part stationed in the Crimean naval bases granted by Ukraine to Russia under strict conditions meant to prevent their intervention in local affairs. They were then used illegally to remove the Ukrainian authorities from their own territory. This rendered Crimea's purported independence a sham, intended to cover its forcible incorporation by the Kremlin.

While the International Court of Justice had ruled that Kosovo's declaration of independence was genuine and had come about in accordance with international law, the UN General Assembly immediately rejected the supposed Crimean referendum as illegal. And so was Crimea's purported annexation by Russia.

The prohibition of the annexation of foreign territory by force is one of the most central principles of international law, inaugurated by then US Secretary of State Henry Stimson in the wake of Japan's invasion of Manchuria in 1931. This rule was confirmed in many key international standards since, including the UN Declaration on Aggression.

The EU and other Western governments responded with sanctions, but in rather a half-hearted way. There was some sympathy for the Russian position. In 1954, Stalin had detached Crimea from Russia and transferred it to Ukraine. Its 'return' to Russia seemed legitimate to some.

However, the prohibition of the use of force in international law applies even if such use of force is supposed to rectify accidents or injustices of history. Moreover, in this particular case, the Russian Federation had pledged to guarantee the territorial integrity of Ukraine upon the dissolution of the USSR—a commitment restated in binding legal terms when Kyiv agreed to give up the Soviet-era nuclear missiles left on its territory and when it accepted the continued presence of Russian naval forces in their bases in Crimea.

The supposed consecration of Luhansk and Donetsk as sovereign states seems to offer an eerie parallel to developments concerning Crimea. Before the invasion, the Russian Parliament had already requested the recognition of both territories—a request immediately granted by Mr Putin. A further request to effect annexation may well follow as the crisis develops further.

The need to avert a future conflict

In his speech to his nation announcing the operation in Ukraine, President Putin also referred to the need to neutralise the Ukrainian military. He seemed to anticipate border incursions, sabotage actions or even larger military action by Ukraine against Russia. He even asserted that Ukraine might be able over a comparatively short period of time to develop nuclear weapons. It could then extend its delivery vehicles, at present tactical missiles of less than 100km range, to reach further, threatening Moscow.

This implied invocation of a right to self-defence on behalf of Russia or the two supposedly independent republics is, of course, not persuasive. As a matter of fact, that was no threat of any suicidal offensive by Kyiv. As a matter of law, the right of self-defence only applies when such an attack actually occurs, or is really imminent.

Perhaps this reference was meant to conjure up the memory of US and UK arguments invoked to justify the Iraq War of 2003. The UK government had famously claimed that Baghdad could attack UK forces in Cyprus with weapons of mass destruction with only 45 minutes' warning. The US government under President Bush the Younger had advanced a theory of a right to respond to 'gathering threats' preventatively, beyond the traditional restraints on the doctrine of self-defence. The US had also claimed a right to 'diminish and degrade' Iraq's military potential over previous years, given his consistent threats of further military acts in the region.

A mirror-image of Western sins?

It is true that international faith in the prohibition of force has not only been undermined by Russian action. Some, including Moscow and China, argued that Western action on Kosovo was unlawful. They also assert that the UK and French operation that led to the displacement of Colonel Muammar Gaddafi from Libya exceeded the humanitarian mandate granted by the UN Security Council.

In truth, the right to save foreign populations, or indeed passportised Russians living abroad, is strictly limited. There must be an imminent threat of the actual destruction of that population—a threat that can only be averted through intervention and no other means. Moreover, the existence of the overwhelming humanitarian emergency must be duly attested by objective international institutions like the UN.

In addition, the doctrine of forcible humanitarian action requires that the intervening state must be disinterested, in the sense that it cannot pursue its own political aims. Evidently this excludes invading a territory with a view to detaching and annexing it. The interventions concerning Kosovo and Libya pass this test. Russia's actions relating to Abkhazia, South Ossetia, Crimea, and now Donbas, do not.

On the other hand, it is generally agreed that the US invasion of Iraq in 2003 was unlawful, although the Bush administration and the UK government tried to rely on some measure of claimed UN Security Council authority in that instance. There was dispute about whether Security Council Resolution 1441 (2002) authorised further military action, or whether an additional resolution was required.

The US also asserted that its intervention was intended to liberate the people of Iraq from the yoke of tyranny and abuse administered by Saddam Hussein. Of course, this argument, which was not really a legal one, was rather diminished by the chaos, destruction and loss of life that prevailed in the country in the aftermath of the operation.

At the time, there were fears that the episode had fatally wounded international law. However, the world rallied shortly afterwards, regarding the operation as something of a blip in the commitment to the prohibition of the use of force. Rather, in 2005 the global community, including the US, overwhelmingly re-confirmed the continued operation of the prohibition of the use of force in the important Millennium-plus-five Declaration of the UN General Assembly.

A new level of threat to international order?

Western leaders are now loudly lamenting what NATO Secretary-General Jens Stoltenberg has called 'the new normal' of Russian or even global conduct. In truth, by failing to respond to the consistent challenges by Russia to the prohibition of the use of force more effectively, the West may have encouraged Vladimir Putin's belief that he can weave these strands of his previous justifications for force together and deploy them as cover for even more open and audacious aggression.

The use of force against Ukraine, long prepared and conducted in plain international sight, extends previous practice, largely unopposed by the West. But it also goes further than that. It represents an even more fundamental and lasting challenge to the international system. President Putin's denial of the very right of Ukraine to exist as an independent state is a chilling abandonment of the doctrine of the sovereign equality of states. Moreover, this episode represents nothing less than the—this time hardly disguised—attempt to revive the use of force as an acceptable tool of national policy. **NLJ**

Marc Weller is Professor of International Law and International Constitutional Studies and a Fellow of the Lauterpacht Centre in the University of Cambridge, a barrister at Doughty Street Chambers and the editor of *The Oxford Handbook on the Use of Force on International Law*.

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Sidelining the legal system—a catastrophe in Canada

Never take our liberties for granted, says David Locke

Imagine a hypothetical scenario: In London this week, a demonstration is taking place against a government 'vaccine passport' policy arising from the COVID-19 pandemic. It is causing local inconvenience, but it is peaceful and some of the demonstrators have even brought their children and pets along. A woman watching the news at home is sympathetic to the aims of the protestors, which are neither illegal nor immoral, and contributes a small sum of money to their campaign using a popular online crowdfunding website. For that matter, many other people make contributions and the total donations are reaching £7.5m. A young couple who own a small independent coffee shop in the locality of the demonstration are also sympathetic. They give the protesters free coffee and let some of them huddle inside the premises from time-to-time, because it is bitterly cold outside given the time of year.

Imagine then the response of the government is as follows: legislation which has been on the books for decades (expressly to deal with 'national emergencies') but has not been used for 40 years, is invoked to deal with the 'crisis' of the demonstration. The online funder is required to seize all donated funds (only eventually agreeing to return them to the donors). The woman who made the small donation has her bank account frozen, without any due process or judicial oversight, and has her name published in the press. The owners of the coffee shop find their business is effectively closed by the police and they are threatened with financial sanctions for aiding and abetting the demonstrators. The demonstrators all have their personal and corporate bank accounts frozen, as do some of their families. As a coup de gras, on the day that the invocation of the emergency legislation is due to be debated in Parliament, the Speaker of the House closes Parliament down because the very legislation that was to be debated is being used to facilitate paramilitary action by the police force to clear the demonstrators, who are in the vague vicinity of the Parliament building. The children are removed from their parents. The pets are taken away under the express threat they may be put down. Journalists are advised they will be arrested if they are inside a designated zone, presumably intended to ensure they cannot report on the police action. However, social media distributes many live scenes of police brutality, including a wheelchair bound lady being trampled by mounted police.

Does that scenario seem in any way credible, or is it ludicrous to imagine a UK government acting in such a fashion? Does it seem reminiscent of some distant authoritarian regime, where the legal system is subjugated to the agenda of an unelected government? Well, the only fact that distinguishes the hypothetical scenario from reality is its location; because in Ottawa, Canada, this is precisely what has just occurred (and much more besides). Not only did this affront to justice take place in a western democracy, the total abrogation of civil liberties, the sidelining of the judiciary and the circumvention of parliamentary process took place with barely a ripple of international condemnation.

Lessons from Canada

The lesson we must draw from this spectacle—and we must learn it well—is the judicial system in the UK cannot be taken for granted. There have been important recent interventions by the courts here on constitutional matters, for example in relation to the prorogation dispute in 2019, *R (on the application of Miller) v The Prime Minister* [2019] UKSC 41, [2019] All ER (D) 61 (Sep). The government has also been repeatedly brought before the courts to justify various aspects of its handling of the COVID-19 pandemic, including the award of PPE contracts, and while some of that litigation has seemed frivolous, it did at least demonstrate accountability before an independent judiciary.

At the same time, however, we cannot be complacent. We have already seen enacted the Coronavirus Act 2020 and the unprecedented restrictions that were imposed upon society, to the extent of the police checking shopping bags to make sure only 'essential' purchases had been made and pursuing fell-walkers with drones. We must look to some clauses of the Police, Crime, Sentencing and Courts Bill 2021, which are criticised as an authoritarian restriction on the right to protest, and perhaps even to the speculative plans for offshore refugee processing camps.

The ability to bring our government and its servants before the UK courts, and the willingness of the judiciary to hold them to account is sacred, because in Canada, of all places, we have just witnessed what an unaccountable government can do. More than ever now we must look sceptically at the use of emergency powers and we must ensure our legal protections are never sidelined. NLJ

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Blame-free divorce, but how fair?

David Burrows takes issue with the new divorce and civil partnership dissolution law and rules

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IN BRIEF

- Summarises main provisions in Divorce, Dissolution and Separation Act 2020, and rules made thereunder.
- Compares new law with previous law. Identifies problematic areas.

This article provides a summary of the main provisions in the new divorce and civil partnership dissolution legislation, and in the rules which have now been made under the Divorce, Dissolution and Separation Act 2020 (DDSA 2020) which legislated for the new law. A second article will pick up on a small number of legislative shortcomings in the new scheme which require further thought.

DDSA 2020 received royal assent on 20 June 2020. Draft rules under it were already under serious discussion by the Family Procedure Rules Committee (the committee delegated to produce rules for family proceedings) in December 2020. It took until 17 January 2022 for those rules to be laid before Parliament. And, though we are told commencement is intended to be 6 April, no commencement order has yet been laid. The 2020 Act's main provisions were simple. To provide divorce and civil partnership dissolution, more or less on demand, DDSA 2020 sets out new statutory provisions: Matrimonial Causes Act 1973 (MCA 1973) s 1 and in parallel and to the same effect, Civil Partnership Act 2004 (CPA 2004) ss 44 and 37A.

A new terminology is introduced. Some are defined in the brief interpretation rule, others include the following.

- An 'application' is the term that replaces petition (for divorce, civil partnership dissolution applications were in CPA 2004).
- 'Conditional order'—replaces decree nisi in divorce proceedings.
- 'Final order'—replaces decree absolute.
- 'Same relief' in relation to a marriage or civil partnership is a term which appears in r 7.12; but it is not clear what is meant by this.
- 'Recission' of orders is retained alongside the term set aside.

New law and rules

The new provisions incorporated by DDSA 2020 state the following.

(1) That divorce or civil partnership dissolution shall be on the sole ground of irretrievable breakdown (and there is no longer any need to prove one of the fault grounds or living apart), proved by a statement by one, or both parties jointly, asserting breakdown.

(2) Application is still to a court. The court 'must take the statement to be conclusive evidence that the marriage has broken down irretrievably…' (s 1(3)(a), discussed below).

(3) The first order is a conditional order (decree nisi) which cannot be made until 20 weeks after issue of the application. It cannot be made final until six weeks after that. These two periods can be shortened or lengthened by the Lord Chancellor, but not cumulatively for more than 26 weeks. And the court can on application shorten the period.

Court procedure for new divorce and civil partnership dissolution is defined by amendment to the Family Procedure Rules 2010 (FPR 2010), mainly Part 7. The former Part 7 goes. The rules start by defining a very limited list of 'disputed cases' (mostly nullity and status declarations, see later) and of 'standard cases' (r 7.1(3)), which means every other sort of dissolution case. What is striking is that, for very new statutory provisions, the rule-makers (ie Family Procedure Rules Committee (FPRC)) have often done little more than renumber and reproduce the old rules.

The bones of the procedure for standard cases is outlined in MCA s 1 and CPA ss 37A and 44 as outlined above, supplemented by FPR 2010 Part 7 Ch 3. Once the 20 weeks is up, a party (or both parties jointly) can apply for a conditional order (r 7.9). The court must satisfy itself (means for this being 'satisfied' is not clear) that the couple are entitled to a conditional order. If so, then the case can be listed 'before a judge for the making of' the conditional order (r 7.10(1)(a)). If the court is 'not satisfied', the court can direct the filing of further information or set the case down for a case management hearing (r 7.10(1)(b)). It is not easy to imagine when this might be, given the likely simplicity of the law and the forms involved; and that Parliament says the issue of irretrievable breakdown cannot be queried.

Procedure for 'disputed cases'

FPR 2010 Part 7 Ch 4 deals with disputed cases. For practical purposes, the meat of this part of the rules is relatively short. Rule 7.17 deals with a case management hearing which is intended to lead to a hearing of the disputed issue, mainly—it seems likely—an issue as to marital status (Family Law Act 1986, s 55), or as to the court's jurisdiction to deal with the case at all. Case management will also involve the case management judge applying the relevant case management rules in FPR 2010 r 1.4 and 4.1, such as defining issues, controlling lay and expert evidence, staying any other proceedings (such as preventing application for a final order). An unresolved (at this stage, anyway) question is how to manage together the question of a declaration of marital status application, which proceeds under FPR 2010 Pt 19, with its prescriptive procedure and directions, and the more diffuse procedure implied by r 7.17 if an answer to a divorce etc application is filed.

Once the parties have a conditional order they can give notice to the court, six weeks after that order, that the conditional order be made final (r 7.19(1)(a)). Parties who have applied jointly can apply together; or if one has dropped out, that party must be given notice to make the order final (r 7.19(1)(c) and (2)).

Any hearing covered by Part 7 is to be 'in public'; though hitherto many marital and other family proceedings status applications have been in private (see eg *Dunkley v Dunkley* [2018] EWFC 5, [2018] 2 FLR 258, Mostyn J) subject to the usual Civil Procedure Rules 1998 r 39.2 exceptions (r 7.30). 'Recission' of a conditional order can be made on a joint application by both parties, stating that they are reconciled (r 7.34).

Three legal issues arise from the new scheme which may give rise to family proceedings beyond the 'disputed cases' defined above.

(1) Is there any way of challenging a statement of irretrievable breakdown where a couple have become reconciled since their conditional order?
(2) Does Parliament have a power to make the assertion that a marriage or civil partnership has irretrievably broken down; or can this be challenged as a 'civil right'?
(3) Can the rule-makers FPRC restrict 'disputed cases' which the family courts can deal with?

The last two of these will be considered in the next article. The first is considered here.

Scope for reconciliation; truth of irretrievable breakdown

The precise wording of MCA 1973 s 1(3) (the same as CPA 2004 s 44(4)) is above. It tells the court it must accept something which may, very occasionally, be untrue. What does the agreed reconciliation of a couple say of the s 1(3) 'conclusive evidence' of irretrievable breakdown? Suppose this reconciliation has lasted more than 12 months since the couple's conditional order? Where a party wants to give notice for a final order, the new rules at r 7.19(5) say:

> (5) Where the notice is received more than 12 months after the making of the conditional order, it must include or be accompanied by an explanation in writing stating why the application has not been made earlier.

That is all. Comparison of the new rule with established law is chilling. The former long-standing law was summarised in r 7.32(3)(b), which said:

> (3) Where the notice is received more than 12 months after the making of the decree nisi… it must be accompanied by an explanation in writing stating…
>
> (b) *whether the applicant and respondent have lived together since the decree nisi or the conditional order was made, and, if so, between what dates…* (italics added).

Cohabitation and common law; discretion as to a decree absolute

The rule-makers have deliberately left out r 7.32(3)(b) (italicised above). Yet no indication is given by the new rules as to what the court is looking out for if there has been a 12 month-plus delay. One factor might be whether a couple have resumed cohabitation; but how, in logic does this fit with a s 1(3) assertion of irretrievable breakdown? And how, by any honest view of the position, can it be said that for the period a couple have been reconciled, that their marriage has irretrievably broken down? Does the irretrievable breakdown go underground in some way?

> *"Comparison of the new rule with established law is chilling"*

Reconciliation and a decree nisi were considered by Parker J in *Kim v Morris* [2012] EWHC Fam 1103, [2013] 2 FLR 1197, [2012] All ER (D) 108 (Jul). The wife petitioned for divorce in 2006 on the husband's adultery. A decree nisi was pronounced. Before decree absolute the couple resumed married life for four years. The wife, from Hong Kong, applied for rescission of her decree nisi and permission to file a supplemental petition. Parker J rescinded the decree nisi, and dismissed the English petition. She left unresolved whether she did this as a matter of law or of her discretion.

Does the court have a discretion as to whether a final order is to be granted; or is it a matter of law? The new statute does not help; and rules cannot change the law. Parker J held that she was bound by earlier case law, that there was—as the law stood pre-DDSA 2020—then an absolute bar on making the decree absolute where there was cohabitation of more than six months (MCA 1973, s 2 was still in force then). It allowed for periods of reconciliation up to six months to be ignored in assessment of irretrievable breakdown. Section 2 has been repealed; but the facts—as opposed to law—undermining 'irretrievable breakdown' remain.

The alternative for Parker J—before s 1(3)(b) then was that she said she had a discretion as to whether to rescind (see [59]-[68]). Where parties have lived together for longer than six months during the 12-month period while they had not applied for the decree nisi, the pre-2020 Act law was that there would be a presumption the marriage has not irretrievably broken down. Parker J said she had a duty to take account of the cohabitation:

> '[61] I have to have regard to the reasons for the delay and whether the parties have lived with each other (which I accept means "as husband and wife") since the decree nisi. Those are the only specific matters referred to….'

Order 'as the court thinks fit': cohabitation and irretrievable breakdown

In *Biggs v Biggs and Wheatley* [1977] Fam 1, [1977] 1 All ER 20 the question was, as in *Kim*, what is the position if the parties have resumed cohabitation? Can it be said that their marriage or partnership has irretrievably broken down? The view of Payne J (at 11C) was that the court could not 'turn a blind eye to the facts':

> 'At the date of the application for a decree absolute, it is impossible to say that there has been irretrievable breakdown of the marriage because in fact the marriage has been retrieved. The parties have become reconciled. One must at the date of decree absolute take into account all the facts which are known to the court at that time….'

Statutory provision in s 1(3)(a) comes up against the facts. How will the court be expected to exercise any discretion, and to face facts on the ground? Parliament has said that a statement that a marriage has irretrievably broken down is 'conclusive evidence'? Can Parliament legislate for what the court and the parties know is a lie, with rule-makers in effect condoning it? Reconciliation may be rare; but it is the rare cases which are not legislated which, in matters of law, are the majority which come to court. NLJ

David Burrows, *NLJ* columnist, solicitor advocate, author o author of *Divorce and dissolution: the new law* (in preparation, The Law Society).

Is it time to amend the tort gateway?

Andrew Barns-Graham

offers some reflections on the jurisdictional gateway, in light of *Brownlie*

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IN BRIEF

- Looks at *FS Cairo (Nile Plaza) LLC v Brownlie (as dependant and executrix of Sir Ian Brownlie CBE QC).*
- Discusses narrow and broad interpretation of 'damage'.
- Asserts both interpretations are flawed, and suggests amending the 'gateway'.

Under the English common law, a claimant seeking the court's permission to serve proceedings out of the jurisdiction must demonstrate a serious issue to be tried, a good arguable case that each claim satisfies a jurisdictional gateway in Practice Direction 6B, and that England is the *forum conveniens* and the court should exercise its discretion to permit service.

Each part of this test serves a distinct purpose. The merits threshold protects foreign defendants from being dragged to England to defend unmeritorious claims. The gateways prevent the English courts from hearing disputes lacking any substantial connection to this jurisdiction. The *forum conveniens* assessment occurs because, even where such a connection does exist, this does not necessarily make England the place where the dispute can most suitably be tried.

The *Brownlie* case

In *FS Cairo (Nile Plaza) LLC v Brownlie (as dependant and executrix of Sir Ian Brownlie CBE QC)* [2021] UKSC 45, [2021] All ER (D) 105 (Oct) the Supreme Court had to decide between two competing interpretations of the first limb of the tort gateway in para 3.1(9)(a) of Practice Direction 6B. This gateway applies where: '[a] claim is made in tort where… damage was sustained, or will be sustained, within the jurisdiction'.

The narrow interpretation was that 'damage' means only the direct damage that is the immediate result of the tort. The broad interpretation was that 'damage' encompasses all actionable damage, including indirect and consequential losses. The court was split 4:1 but the majority favoured the broad interpretation.

The decision has proved controversial, but in my view the broad and narrow interpretations are equally flawed and the underlying problem is the wording of the gateway, which is not working and should be amended.

The decision

Brownlie is a sad case which arose out of a road accident in Egypt in January 2010 in which the claimant, Lady Brownlie, was injured, her husband Sir Ian Brownlie and his daughter Rebecca were killed, and Rebecca's two children were injured.

Lady Brownlie brought tort and contract claims against the hotel operator which had organised the excursion. She issued a claim form in England and there was a jurisdiction challenge which went to the Supreme Court. During the hearing it emerged that the wrong defendant had been sued. Lady Brownlie then sued the correct defendant who proceeded to make another jurisdiction challenge, which again went to the Supreme Court. The two judgments are commonly known as *Brownlie 1* and *Brownlie 2*.

The issue was whether damage had been sustained within the jurisdiction. On the narrow interpretation of the gateway, the only direct damage took place in Egypt, ie the deaths and injuries. On the broad interpretation, damage also occurred in England, ie the consequential financial losses and ongoing pain and suffering.

The court first considered the fact that the term 'damage' has been interpreted narrowly in the EU context in relation to the Rome II Regulation (Rome II) and the Brussels Recast Regulation (Brussels). It found this to be irrelevant to the appropriate interpretation of the common law gateway.

As regards Rome II, which concerns the law applicable to non-contractual obligations and disputes, the basic point is that you need a narrow interpretation in this context because you can only ever have one governing law. The same reasoning does not apply to jurisdiction.

As regards Brussels, the court rejected Lord Sumption's finding in *Brownlie 1* that the common law gateway had been amended to replicate its narrow Brussels equivalent. Further, whereas the Brussels regime was designed for application across numerous member states with a high degree of certainty, predictability and uniformity and no element of discretion, the same cannot be said of the more flexible common law regime.

The court also unanimously rejected Lord Sumption's finding in *Brownlie 1* that 'damage' means damage which completes the necessary ingredients for a cause of action in tort. The court found this approach to be unduly restrictive, while also noting that some torts do not include damage as a necessary ingredient, such as trespass to person or goods.

In *Brownlie 2*, the majority, led by Lord Lloyd-Jones, found the broad interpretation to be the more natural one. Lord Leggatt's dissenting view was that the broad interpretation is so broad that it renders the tort gateway ineffectual. Indeed, he found that '[it] is not so much a gateway… as an open territory with no fence'.

Lord Lloyd-Jones's rebuttal to this was that a broad tort gateway will nevertheless not result in inappropriate acceptances of jurisdiction because the court can fall back on the 'safety valve' of *forum conveniens* and discretion.

This brings us to the heart of the controversy of this case, which is this: which part of the test should do the heavy lifting in jurisdiction disputes? Should it be the gateways? Or the discretion?

Objections to both interpretations

Broad interpretation

The majority's endorsement of the broad interpretation results in the discretion doing most of the work. There are five main objections to this.

First, it is unprincipled. The purpose of the gateways is to identify a substantial connection between the dispute or the defendant and this jurisdiction. Indirect damage will sometimes constitute a substantial connection, but not always. The broad interpretation therefore produces a gateway that cannot be relied upon to achieve its purpose.

Second, it results in unpredictability. Lord Lloyd-Jones contended that the discretion

is highly structured and has been refined in the authorities, such that it is applied in a predictable manner. There is force in this, but the counterargument is that any discretionary exercise which involves weighing in the balance numerous diverse factors is bound to result in inconsistent and unpredictable outcomes.

Third, *forum conveniens* principles are not always applied appropriately. Lord Leggatt described it as 'human nature' for judges to be reluctant to turn away claimants and to be predisposed in favour of their own justice system. Consequently, he held, judges cannot be relied upon to require a substantial connection with the jurisdiction as part of their discretionary assessment. In other words, the discretion cannot be trusted as a 'safety valve' to filter out cases which ought to have been excluded at the gateway stage.

Fourth, it is unfair on foreign defendants, as it exposes them to expensive *forum conveniens* disputes even in cases involving only tenuous connections with the jurisdiction. Moreover, it enables claimants to 'create' jurisdiction in England by engineering a situation whereby they suffer some indirect damage here. The courts should be obliged to reject such forum-shopping at the gateway stage, not merely permitted to do so as a matter of discretion.

Fifth, Professor Andrew Dickinson has forcefully argued in 'Faulty powers: one-star service in the English courts' [2018] LMCLQ 189 that the uncertainty, delay, expense and injustice caused by the broad interpretation is inconsistent with the overriding objective of the Civil Procedure Rules (CPR).

These are all powerful objections. However I will now turn to the narrow interpretation.

Narrow interpretation

In my view the narrow interpretation is equally objectionable, for two main reasons.

First, it essentially replicates the position under Brussels but, as noted above, the common law regime is unrestricted by the constraints of Brussels and should therefore have greater flexibility.

Second, it attracts the same criticism as Lord Sumption's approach in *Brownlie 1* of identifying damage which is a necessary ingredient of a tort: it is unduly restrictive. There is no principled reason why indirect damage should invariably be disqualified from representing a sufficient connection to the jurisdiction. The narrow interpretation therefore exposes claimants to unfairness.

An alternative gateway

In my view, the wording of the gateway is the source of the problem. As noted above, the purpose of the gateways is to identify a sufficient connection to justify an assertion of jurisdiction. In this respect the broad interpretation is too broad and permissive, but the narrow interpretation is too narrow and restrictive.

I would therefore argue that the gateway needs to be amended. In my view, the key consideration is not whether damage was direct or indirect, but rather whether damage within the jurisdiction was reasonably foreseeable for the particular defendant at the time of one or more of the alleged tortious acts.

I refer to this below as the 'alternative gateway' and its usefulness can be seen when it is applied to the facts of the *Brownlie* case.

> *"The key consideration is not whether damage was direct or indirect, but rather whether damage within the jurisdiction was reasonably foreseeable"*

Had the defendant in *Brownlie* been an ordinary Egyptian citizen with no prior relationship with the claimant who had collided with the claimant's vehicle while driving carelessly, it would have been objectionable for the English court to assert jurisdiction over him. However, the defendant was instead a hotel operator which had organised excursions for the claimant, an English tourist, as part of its business. The nature of the defendant's business was in my view a critical factor, but it barely receives mention in the judgment due to the misdirection caused by the current gateway.

A reasonable foreseeability qualification would also enable a coherent approach to economic tort claims, where the current gateway has proved especially difficult to apply.

Consider *Bastone & Firminger v Nasima Enterprises* [1996] CLC 1902, in which an English company exported goods to Nigeria. The goods were released from consignment without payment and the exporter sought to bring tort claims against a Nigerian bank which had made false representations regarding the buyer's creditworthiness.

The claimant argued it had sustained damage in England, but Mr Justice Rix rejected this argument, holding that the damage was sustained in Nigeria, as it was there that the goods and title documents were lost. It was 'only' the financial consequences of that loss which were felt in England.

This outcome was rather hard on the claimant. It was reached largely through analogy with the Brussels position and so the logic does not survive the *Brownlie* decision. However, it is not the fact that indirect financial damage was sustained in England that makes the decision objectionable; it is the fact that such damage was readily foreseeable for the defendant, which knew it was doing business with an English counterparty.

Of course, there would be difficult borderline cases for the alternative gateway. It would be necessary, for example, to consider with what degree of specificity the damage in England would need to be foreseeable for the defendant. Nevertheless, the alternative gateway would in my view be more principled, predictable and fair than either the broad or narrow interpretation of the current version.

Final thoughts

According to the minutes of its November 2021 meeting, the CPR Committee has established a Part 6 Service Sub-Committee, whose first objective is to produce proposals concerning reforms to the gateways in Practice Direction 6B. I would welcome consideration by the Sub-Committee of the alternative gateway suggested above.

For the time being, though, we are stuck with the current gateway and the clarification that it should be interpreted broadly is helpful. It will be interesting to see whether *Brownlie* leads to the broadening of any other gateways—eg the gateway for breach of confidence and misuse of private information claims, which resembles the tort gateway save the words 'detriment' and 'suffered' are used instead of 'damage' and 'sustained'.

It will also be interesting to see what impact *Brownlie* will have on how judges exercise their discretion in future jurisdiction disputes. Will their discretion serve as an effective 'safety valve' to prevent inappropriate exercises of jurisdiction, as Lord Lloyd-Jones anticipated? Or will they, as Lord Leggatt feared, continue to find in favour of claimants even in cases which are only tenuously linked to this jurisdiction?

Only time will tell. NLJ

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CIVIL WAY

BY STEPHEN GOLD, NLJ COLUMNIST

IN BRIEF

- 140 and still counting.
- New family pilot.
- DJs given some work.
- Kid jabs.

CPR UPDATES HIT 140

Congratulations on your 140th and may you continue to unsettle the judiciary, practitioners, practice and procedure books and supplements, law lecturers, law students, legal slaves and court staff with your constant additions, revisions, amendments, substitutions, pilots, protocols and homages to the internet until a ripe old age. We love you. Here's the first part of our look at the 140th job taking in a raft of PD amendments and a couple of new PDs along with the Civil Procedure (Amendment) Rules 2022 (SI 2022/101)—the rule references in parenthesis are to these. The provisions featured come into force on 6 April 2022.

Small but not beautiful There is an increase in the small claims track limit for non-road traffic accident personal injury claims from £1,000 to £1,500 so long as the overall value of the claim does not exceed £10,000 (rule 9). This is an inflationary increase and was threatened when the nation was limbering up for the whiplash reforms which hit on 31 May 2021 (see Civil way, *NLJ* 12 March 2021 p15 and just published simplified MoJ guidance for bemused LiPs). Claimants can still look forward to a fast-track feast where the accident occurred before 6 April 2022 (r 2). And since every scratch counts on the small claims track, it may be productive to check out the Judicial College's guidelines on the assessment of personal injury damages which is due for an update publication in April 2022. And if you were pondering who on earth gets themselves personally injured off the highway these days, how about employers' liability and public liability claimants? They will be caught by the change.

But what of an incident that looks, smells and talks like a road traffic accident but is outside the definition of one for the purposes of allocation to track? Enter CPR 26.6(2A) which requires a road or other public place in England and Wales and a motor vehicle. Yes, a motor vehicle and so when a pedal cyclist, with unfortunate results, asserts a right to parity with a skater or pedestrian as they brandish the revised Highway Code, you do not have a road traffic accident and you do have a £1,500 personal injury limit.

Consequential amendments are made to the requirements of the statement of value to be included in the claim form under r16.3 and, in relation to a road traffic accident personal injury claim where the £1,000 limit still applies (for example, pre-31 May 2021 accident, claimant a motor cyclist etc) the statement must disclose whether the general damages expectation for personal injuries is either more or not more than the £1,000 (r8). The fixed costs tables 6C and D at r45.29E are consequentially revised (r13 and PD7A amended).

All change If notice of change is being given by a solicitor who has a MyHMCTS account, it is to be filed online through the account and not by way of practice form N434 (rr5 and 12 and PDs42 and 51ZB amended).

More next time.

AT THE SEASIDE WITH FAMILY

If litigating in the family court locations of Bournemouth, Caernarfon, Mold, Prestatyn, Weymouth or Wrexham held a certain allure for you then you may wish to think again. A pilot scheme for applications under s 8 of the Children Act 1989 and enforcement orders will hit you there if filing over the period of two years as from 21 February 2022. It is introduced by FPC PD update 1 of 2022, running to 36 pages. The pilot seeks a more investigative approach with earlier gatekeeping and information gathering to enable earlier triaging and to front-load engagement with the parties. The aim is to hear the child's voice more clearly.

DATA PROTECTION NOW LESS TASTY

The High Court is fed up with low-value data protection cases and the customary ragbag of heads of claim, usually arising out of one incident, on the grounds of misuse of private information, breach of confidence, negligence and breach of, at the least, article 82 UK-GDPR and ss 168/9 of the Data Protection Act 2018. They find themselves allocated to the QBD's media and communications list. Master Thornett was uncomplimentary about High Court issue in one of these cases—*Johnson v Eastlight Community Homes Ltd* [2021] EWHC 3069 (QB)—where he explained why commencement in the High Court was not mandatory. And now comes *Stadler v Currys Group Ltd* [2022] EWHC 160 (QB) where, before any defence had been filed, the claimant had clocked up application costs of close to £11,000 plus costs of the substantive claim and the defendant application costs of around £5,500 'in the context of a claim that might be worth just a few hundred pounds'. The claimant's solicitors' letter before action had stated that allocation to the multi-track would be sought because of the complexity of the issues and the claimant seeking declaratory and injunctive relief and that the claimant would be fully protected by ATE insurance all the way to trial with a staged policy premium. ATE premiums are still recoverable in publication and privacy claims. That does not include breach of data protection legislation but does include misuse of private information and breach of confidence. That can explain the multiplicity of the heads of claim in these cases.

Judge Lewis declared that the claim should have been issued in the county court to which he transferred it. Consumer disputes of equivalent complexity were heard every day on the small claims track (which will please the district judges with nothing else to do). CPR PD53B only applied to cases in the media and communications list but parties to county court cases still needed to plead their cases properly and so would be well advised to follow that PD regardless of whether they were required to do so.

JABLAW

In *Re C (Looked After Child) (Covid-19 Vaccination)* [2021] EWHC 2993 (Fam) Poole J was concerned with a boy in care, just turning 13, and both COVID-19 and winter flu vaccines. Everyone was in favour except the unsuccessful mother who suggested there might be a contra-indication and relied on anti-vaccination propaganda. The judge ruled that in cases concerning vaccines that are part of national programmes, expert evidence will only arise if there is an identifiable and well-evidenced concern about contraindication due to the child's individual circumstances or new peer-reviewed research indicating significant concern over efficacy or safety. Even in the latter situation, he had serious reservations about letting it in although 'perhaps an expert could assist the court as to the quality and relevance of such new research'. But if the child refused vaccination, the different question of whether the local authority with care could override their decision would be raised. Otherwise, in the great majority of cases involving looked after children, no application need be made to the court by the local authority in respect of COVID-19 or flu vaccinations provided under a national programme, even where there is parental objection. NLJ

Adjudication

Steve Ward Services (UK) Ltd v Davies & Davies Associates Ltd [2022] EWCA Civ 153, All ER (D) 70 (Feb)

The Court of Appeal, Civil Division, dismissed the appellant's appeal against the decision of the Technology and Construction Court that an adjudicator was entitled to recover his fees in circumstances where he had resigned because he did not consider that he had the necessary jurisdiction to decide the dispute. The respondent adjudicator issued proceedings to recover his fees in an adjudication brought by the appellant. The court held, among other things, that (i) there was a real jurisdictional issue in the adjudication; (ii) the respondent was entitled to decline jurisdiction and resign in consequence; (iii) the judge's construction of clause 1 of the respondent's terms and conditions to mean that he was entitled to be paid fees for the work he had done, unless there had been an act of bad faith on his part was correct; (iv) the respondent was not guilty of bad faith; (v) the Unfair Contract Terms Act 1977 had no application to the case; and (vi) there was no basis on which the court should interfere with the judge's costs order. The court further allowed the respondent's cross-appeal that he did not go outside the ambit of para 13 of the Scheme for Construction Contracts (England and Wales) Regulations 1998, SI 1998/649 and his reasons for resigning were not erroneous.

Extradition

Safin v Polish Judicial Authority [2022] EWHC 186 (Admin), All ER (D) 54 (Feb)

The Administrative Court dismissed the appellant's renewed application for permission to appeal against his extradition to Poland in conjunction with a conviction Extradition arrest warrant issued in relation to a 12-month prison sentence, all of which had been unserved, for criminal offending involving child cruelty and assault taking place over a certain period of time. The judge had refused the application for permission to appeal on the papers on the basis that the relevant court fees for the application for permission to appeal and the application for an extension of time for the perfected grounds of appeal had not been paid. The had court agreed to consider the appeal on its legal merits, namely, the art 8 argument and evaluate whether it was a reasonably arguable ground of appeal. The court held that all of the features of the case had been assessed by the judge including the important considerations regarding the impact on the appellant's blameless partner and the two children. However, the judge had been not only entitled to find that the factors against extradition had been decisively outweighed by those in its favour; he had been, beyond argument, right to do so. The court considered that that was sufficient to simply refuse the renewed application for permission to appeal. There was no need to grapple with the considerations that might arise from the fee-default invalidity which had underpinned the paper refusal.

Nuisance

Prime London Holdings 11 Ltd v Thurloe Lodge Ltd [2022] EWHC 303 (Ch), All ER (D) 71 (Feb)

The Chancery Division allowed the claimant's application made under s 1 Access to Neighbouring Land Act 1992, seeking an access order to the defendant's land, in order to carry out works to the wall of the claimant's property. The court held that the claimant did reasonably require access to the defendant's property in order to do basic preservation works that were reasonably necessary. Further, the defendant had not shown that the defendant or any other person would suffer from the proposed works in any way which would make it unreasonable for those works to be ordered, having regard to the terms that would be appropriate features for such an access order. Accordingly, the court considered that it should make an appropriate order and provided guidance as to the terms of the order, the detail of which, if possible, should be agreed by the parties.

Practice

Vardy v Rooney and another [2022] EWHC 304 (QB), All ER (D) 69 (Feb)

The Queen's Bench Division ruled on the claimant's libel claim against the defendant. Both the claimant and the defendant were well-known media and television personalities who were married to former England footballers. The respondent was the agent and a friend of the claimant. The libel claim concerned a post published by the defendant on her Instagram, Twitter and Facebook. The court held, among other things, that (i) the defendant's application for permission, under CPR 20.9 (1) (a) to make an additional claim was refused; (ii) the defendant's application for an order that the libel claim and her proposed CPR Pt 7 claim against the respondent should be tried on the same occasion and managed together was refused; (iii) the defendant's application for permission pursuant to CPR 31.22(1)(b) for the use of documents disclosed in the libel claim in her proposed CPR Pt 7 claim against the respondent was refused; (iv) the defendant's application to amend the defence was refused; (v) the claimant's application for further information was refused; (vi) the defendant's disclosure application was refused save to certain disclosure orders; (vii) the claimant's disclosure application was refused, however, steps had to be taken with the assistance of the experts to obtain the information referred to in para 6(b) of the claimant's draft order; and (viii) the defendant's application for an order to make a request to Instagram was granted.

Tort

Kwok and others v UBS AG (London Branch) [2022] EWHC 245 (Comm), All ER (D) 67 (Feb)

The Commercial Court dismissed the application by the defendant, the London branch of a Swiss investment bank (the bank), which challenged the jurisdiction of the court in relation to the claim brought by the first and second claimants. By that claim, the claimants alleged that misstatements which had been given to them by the bank's managing director of wealth management had led them to make an investment in 'H-shares' which had been almost entirely lost when, contrary to the advice and statements, the defendant had exercised security over those shares, held by it in London as a mortgagee. The court held that it had jurisdiction to try the claim under: (i) art 5(3) of the Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters 2007 (the Convention), on the basis that the harmful event had occurred in London; and (ii) art 5(5) of the Convention given that the defendant had sufficiently and significantly participated in several elements of the cause of action. There had been a sufficient nexus between the defendant and the claim given that the misstatements had regarded the policies of the bank's London branch, and the London branch had been identified in various agreements as the relevant contractual counterparty on the bank's side. NLJ

International arbitration: spotlight on Singapore

The standalone rules of the Singapore International Commercial Court: how do they measure up? Gary J Shaw & Michael Evan Jaffe investigate

IN BRIEF

- The background and key features of the Singapore International Commercial Court.
- The unique aspects of the court which are well suited to the resolution of international disputes, and certain challenges to be aware of.

In December 2021, the Singapore International Commercial Court (SICC) adopted a standalone set of court rules (SICC Rules) to govern its proceedings. The SICC is a court within the Singapore judiciary designed to resolve cross-border disputes, traditionally the province of international arbitration. The court has some unique features typically not available in arbitration. At the same time, it retains features of arbitration that are well suited for resolution of international disputes. This note will review and comment on some of those features.

Background

For background, the SICC is a specialised court within Singapore's national judiciary designed to handle cross-border commercial disputes having 'little connection to the actual physical jurisdictions within which they are situated'. Each dispute is overseen by one judge or a panel of three judges, in each instance drawn from a roster of both High Court (Singaporean) judges and 'international judges' from civil and common law countries.

The court's judgments are appealable to the Singapore Court of Appeal, the highest court in Singapore. Except as the parties may agree to limit the scope of the appeal, any part of the judgment is appealable. Somewhat uniquely for an appellate court, the Court of Appeal has the power, at its discretion, to receive further evidence. The Court of Appeal may order a new trial only if 'substantial injustice' would otherwise occur.

To come before the SICC, the parties must consent to jurisdiction in writing, or have their case transferred from another court in Singapore. The matter in dispute must be between the plaintiffs and the defendants named in the originating process and must be 'of an international and commercial nature'. 'International' means that the action must arise outside Singapore, or one of the parties must be located outside Singapore. 'Commercial' means that the action must also relate to a business relationship or intellectual property.

Before the SICC, in Singapore, transnational business disputes were resolved primarily through arbitration administered by the Singapore International Arbitration Centre (SIAC), one of the principal centres for the resolution of international disputes. In recent years, arbitration proceedings administered by the various international arbitration institutions have been criticised as too expensive (both in administrative costs and the arbitrator fees), inconsistent in result, and lacking in appellate review. The SICC was intended to provide a forum that would not be subject to those criticisms while burnishing Singapore's standing as a hub for resolving cross-border disputes.

By design, the SICC preserves some of the notable advantages of arbitration, including confidentiality (parties can apply to have the case heard in private) and procedural efficiency. The Rules also lay out a simplified discovery regime limited to documents relied upon and exchanged. This regime, based largely on the International Bar Association (IBA) Rules on the Taking of Evidence in International Arbitration, echoes the approach to pre-hearing information exchange often found in international arbitration proceedings, balancing the differences between common law and civil law jurisprudence.

Notable features of SICC litigation

Appellate review

Under the SICC Rules, parties have a right to appeal to Singapore's highest court, which has the authority to review any part of the judgment, subject to the parties' agreement. Typically, review of arbitral awards in international disputes are circumscribed by the grounds provided in the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the 'New York Convention').

Signalling a more robust appellate review, the SICC's appellate review is not confined to the grounds in the New York Convention.

Although appellate review may mean additional time to resolution and impose some additional cost, it does provide a safety net against a rogue decision. In addition, it provides a body of law that can serve as a basis for applying *stare decisis*-like principles.

Cost

SICC fees are lower than arbitration. They are set on a 'milestone' basis—meaning, as the case progresses—and most likely will not exceed $50,000 per party, which is well below what may be expected in matters before prominent arbitral institutions. While the milestone fees are higher if the dispute is heard by three judges versus one judge, fees are not charged for the work of the individual SICC judges. This is very different from arbitration, where the arbitrators' fees are typically in the hundreds of thousands of dollars.

Control

SICC judges enjoy a great deal of power to control the proceedings—more than an arbitral tribunal, as a practical matter. SICC judges have the authority to strike filings or dismiss matters if a party causes unreasonable delay. Arbitrators, by contrast, are often hesitant to take such actions for fear that their awards will be set aside. In addition, SICC judges decide whether to admit expert evidence, a power less likely to be exercised by arbitrators, again for fear of the award being set aside. SICC judges can also decide to publish a judgment even if the case is deemed confidential.

Further, SICC judges have the power to join parties if the claims are 'appropriate to be heard in the court'. Notably, consent is not required to join additional defendants or third parties, unlike arbitration where joinder is rooted in the governing contracts. It remains to be seen how this feature will be received by the courts of other nations when a judgment is challenged for lack of consent.

Reasons to reconsider

Language

In arbitration, the parties often select the language of the proceedings. SICC proceedings on the other hand are conducted in English only. In addition, non-Singapore qualified lawyers must register as 'foreign lawyers' before they can appear before the SICC.

To register, a lawyer must:

i) be authorised to practice law in another jurisdiction;
ii) have at least five years' advocacy experience;
iii) be sufficiently proficient in English; and
iv) must not have been disbarred or penalised in the practice of law.

Once registered, a foreign lawyer may appear in disputes as long as the dispute does not have substantial connection to Singapore.

> *"Five years in, the data shows that the SICC has gained some traction"*

Composition

While the desirability of having party-appointed arbitrators on the tribunal is subject to debate, party-appointed arbitrators assure that each party has a say in the composition and, with that, some assurance that that party's evidence and arguments will be fairly heard and considered. In addition, a party can have confidence that at least one member of the arbitral tribunal will have substantive expertise, which is frequently seen as a desirable attribute.

In SICC proceedings, on the other hand, the parties have no say in selection of the judges before whom the case will be heard. That feature of SICC proceedings may not be the deciding factor in selecting SICC versus arbitration, it is at least a difference to be considered.

Enforcement

Finally, judgments of the SICC do not enjoy the same worldwide recognition and enforcement as arbitral awards, which are recognised and enforced under the New York Convention in 169 contracting states. Although Singapore is a signatory to the Hague Convention on Choice of Court Agreements, which provides for enforcement of court judgments in contracting states, the Hague Convention does not have nearly as widespread acceptance as the New York Convention. Mexico, the UK and the EU are signatories, but other major commercial centres, such as the US, China, Japan and countries in the Middle East with substantial economies, are not.

The SICC today

Five years in, the data shows that the SICC has gained some traction. By the end of 2020, the court had registered 62 cases in total according to the court's annual reports. To put these numbers in perspective, the SIAC saw a record-breaking number of new cases filed in 2020: 1,080 new cases, up from 479 in 2019, according to its annual reports. Admittedly, the SIAC is much more established, but the gap suggests that the SICC has a lot of ground to cover before it can claim to be a preferred method of international dispute resolution in Singapore. And, perhaps most important to its future is the extent to which its judgments are recognised and enforced beyond Singapore. NLJ

Gary J Shaw & **Michael Evan Jaffe**, Pillsbury Law (*www.pillsburylaw.com*).

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Standing out from the crowd

Tom Moyes shares some top tips & advice on starting a career in the legal profession

A career in law is an exciting prospect for any young professional, with a wealth of opportunity for engaging and varied work. However, getting started can be a daunting prospect, with a highly competitive market of graduates and trainees, it can be difficult to know how to secure the best start in a legal career and stand out from the crowd.

Going into any profession, people are often advised to 'stand out from the crowd', but what does this really mean? Demonstrating some of the key skills and abilities required in the legal profession is the best way to shine amongst other applicants and young professionals.

As a service industry, much of a legal professional's time is devoted to interacting with clients. For these relationships to be a success, it is important to quickly build rapport and cultivate an approachable persona to ease communication between the firm and the client.

Being a confident social communicator is a great way to stand out, but it does not come naturally to everyone. For many it is a learned skill, and working on this skill ahead of a legal role will be highly beneficial. Attending networking events can build confidence for communicating in a professional context, so when the opportunity to interview arrives a candidate is able to demonstrate readiness to work with clients and build strong professional relationships.

Practising communication extends to a variety of methods. Beth Brindley, solicitor apprentice at Blacks Solicitors, suggests building a strong LinkedIn profile: 'Having a professional online presence is key in law. It allows you to stay visible in the industry and expand your connections, making it easier to network in the long run, and demonstrating to potential employers that you are engaged in the industry.'

Practice interviews

Interview situations are stressful for most people, and do not always present an applicant at the same level of confidence they would exhibit professionally. Finding a way to be as comfortable and confident as possible in an interview will help an applicant better present their professional ability.

Practising interview scenarios is the best way to prepare for these situations, but is not something most people do. For those that are nervous or uncomfortable in interview scenarios, or even those who do feel confident, it is better to practise interviewing as much as possible. This will cultivate a more comfortable attitude when it comes to real-world experience, and better prepare applicants to respond to challenging questions.

Beth Brindley, comments: 'Interviewers will not only look at your skills, but whether you will fit in with the firm, so do your research on how the firm approaches practice.

'Although many employers have similar practices, demonstrating your awareness of the subtle differences, and highlighting how you can fulfil their specific expectations will make a difference.'

Preparation and practise go a long way to making an impact at an interview, and a confidently handled meeting with an employer could be the difference between success and failure.

Get work experience

There is no better way to understand the legal profession than to get involved with a practical professional environment. Gaining work experience with a firm not only demonstrates commitment to the profession, but also exposes an aspiring legal professional to the way solicitors operate, providing key insights into the skills and qualities most desired.

Victoria Adamson, trainee solicitor at Blacks Solicitors, suggests: 'Try to gain experience in different legal settings. Exploring firms of different sizes and specialities, even for a day or two, will give you a great idea of the options available for your early career and help you find the avenue you most want to pursue.'

Much like any profession, law can be quite daunting to anyone hoping to enter and start a career, and even understanding how an organisation is structured could be confusing. By gaining work experience in a firm, young professionals will begin to see who is responsible for different elements of work, and how qualified solicitors approach their tasks.

Beth Brindley adds: 'Taking the time to get some work experience in law is enormously beneficial. Many firms are keen to offer work experience opportunities, and understanding how a firm operates is invaluable for demonstrating knowledge of the profession at interview stage.'

Be prepared for knockbacks

Even the most competitive candidates can expect to receive some rejections and failures, so be prepared. Starting in a new field can be difficult, and it is important to remember that everyone makes mistakes and it's not always possible to succeed on the first try.

Victoria Adamson comments: 'Be patient, persistent, and resilient. Most people experience rejections and knockbacks when applying for roles in the legal profession, but it is important to remember that you will find a role where you want to be.'

Rejections are part of the process of job hunting, and it is valuable to be mentally robust and take a positive approach toward the application process. Take into account any feedback received, work on weaknesses, and persevere while addressing professional development opportunities. NLJ

Tom Moyes, training partner, Blacks Solicitors (*www.lawblacks.com*). For insight into overcoming obstacles and achieving career success, visit *NLJ*'s jobs hub at *www.newlawjournal.co.uk/content/nlj-jobs-career-hub*.

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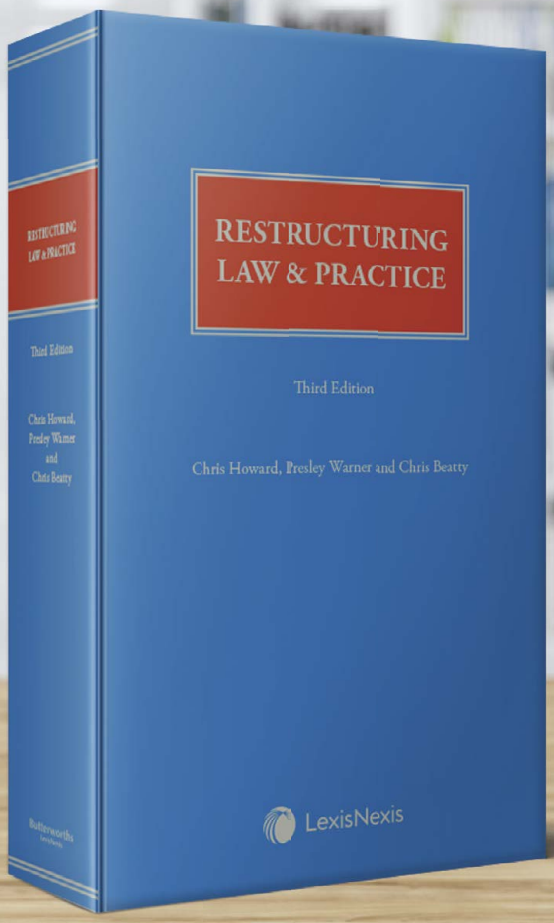

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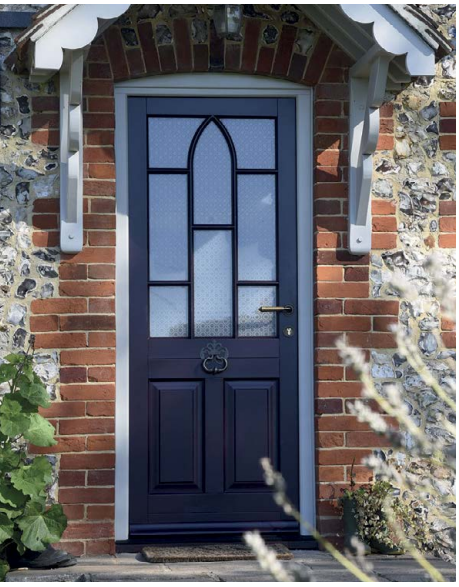





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