Jeśli chodzi o wymiar sprawiedliwości w sprawach cywilnych, bieżące procedury i postępowania wszczęte przed końcem okresu przejściowego będą nadal prowadzone na mocy prawa UE. W portalu e-Sprawiedliwość do końca 2024 r. będą nadal aktualizowane informacje dotyczące Wielkiej Brytanii na podstawie dwustronnej umowy z tym krajem.

Which country's law applies?

Anglia i Walia

1 Sources of the rules in force

1.1 National rules

The conflict of laws rules in England and Wales dealing with applicable law today derive mainly from directly applicable EU Regulations. In relation to civil and commercial matters these are: Regulation 593/2008 (Rome I) on the law applicable to contractual obligations and Regulation 864/2007 (Rome II) on the law applicable to non-contractual obligations. The Contracts (Applicable Law) Act 1990 (which implemented the Rome Convention 1980) remains relevant in relation to contracts entered into before 17 December 2009 (the Rome I Regulation applies to contracts entered into on or after that date). The Private International Law (Miscellaneous Provisions) Act 1995 is relevant only in relation to situations not covered by the Rome II Regulation (the Regulation applies to cases in which damage occurred after 11 January 2009). The traditional common law rules remain applicable to the tort of defamation and in relation to succession and property law.

In family matters, it is generally the common law that is the source of rules on applicable law, with some exceptions. English law is generally applied in family matters, subject to limited exceptions in common law (e.g. in relation to nullity of marriage) or in statute (e.g. in relation to maintenance under the Maintenance Orders (Facilities for Enforcement) Act 1920 and the Maintenance Orders (Reciprocal Enforcement) Act 1972). In parental responsibility and child protection matters covered by EU Regulation 2201/2003 and the Hague Convention of 19 October 1996, it is the Parental Responsibility and Measures for the Protection of Children (International Obligations (England and Wales and Northern Ireland)) Regulations 2012, and Article 15 of the 1996 Convention that contain the applicable law rules respectively i.e. that English law applies subject to limited exceptions.

1.2 Multilateral international conventions

Hague Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions 1961.

Rome Convention 1980 on the Law Applicable to Contractual Obligations (replaced by the Rome I Regulation in relation to contracts entered into on or after 17 December 2009).

Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition.

1.3 Principal bilateral conventions

We are unaware of any bilateral conventions containing choice of law provisions to which the UK is a party.

However, it should be noted that, although the Rome Convention 1980 and Hague Conventions permit a State to apply some other choice of law regime to “internal” conflicts – such as conflicts between the laws of England and Wales and Scotland – the UK has chosen not to make use of this facility. Hence, the Rome Convention (in relation to contracts entered into pre 17 December 2009) and Hague Convention rules apply to conflicts between the different jurisdictions of the UK as well as in international conflicts.

2 Implementation of conflict of law rules

2.1 Obligation of the judge to apply conflict of law rules on his own initiative

The general position is that the conflict of laws rules are only applied if at least one of the parties has argued that they be applied. If this has not been argued, or if there is no satisfactory evidence of the content of foreign law, the judge will normally apply English law to the issue. This rule is one relating to evidence and procedure, and hence is unaffected by the EU Regulations.

2.2 Renvoi

The EU Regulations exclude the application of the doctrine of renvoi in cases regulated by EU choice of law rules and this was also the prevailing view under the Private International Law (Miscellaneous Provisions) Act 1995 and Contracts Applicable Law Act 1990. Hence, if the English choice of law rule for a tort of negligence points to French law, French domestic law will be applied, even if a French court would have applied some other country’s law. One justification put forward for the rejection of renvoi in these spheres seems to be that the complex rules established by the statutes would be upset if renvoi were applied.

The role of renvoi in remaining areas of law is now somewhat limited, and in some cases not entirely clear. In can be said that renvoi will apply in the case of land situate abroad, to which the lex situs is applied by English law. In such cases, there is a pragmatic desire to apply the same law of the court in whose jurisdiction the property is located, to increase the chance that any English decision concerning the property will be effective. The balance of first instance court decisions as regards tangible movable property situate abroad is that a reference to the lex situs will not include renvoi.

In family matters, there is some limited case law that the doctrine of renvoi may apply in certain circumstances, but the issue very seldom arises because English law is generally applied in family matters.

It should be noted, however, that in many cases the proof of the content of foreign choice of law rules is expensive and parties frequently choose not to argue for their application (see 2.1 above).

2.3 Change of connecting factor

This problem is dealt with by specifying in each choice of law rule the relevant time at which the connecting factor is identified. For example, in the case of transfers of movables, the relevant applicable law is that applicable at the location of the movable in question at the time of the transfer.

2.4 Exceptions to the normal application of conflict rules

Under the traditional rules, English courts can refuse to apply a foreign law that is contrary to English public policy. However, the threshold is very high: for example, where it would lead to a result “wholly alien to fundamental requirements of justice as administered by an English court”. The content of English

public policy is influenced by the UK's international obligations, in particular the European Convention on Human Rights; breaches of human rights is one well-known example of the public policy exception, another is where the law is a "flagrant violation of rules of international law of fundamental importance" (e.g. the invasion of Kuwait by Iraq in 1990).

In addition, the Rome 1 and Rome II Regulations both now provide for the application of the overriding mandatory rules of the forum irrespective of the law otherwise applicable to the contract. Those rules that exist are generally to be found in the consumer and employment spheres or in legislation supplementing an international convention.

2.5 Proof of foreign law

The content of foreign law is proved as if it were a fact. As such, it is for the parties to prove the content of foreign law; judges are not permitted to investigate the content of foreign law themselves. In the event of conflict between the evidence submitted by the parties, the judge may assess the credibility of the experts and is permitted to consider the primary evidence (e.g. foreign statutes and cases), especially where they are written in English and apply concepts that are familiar to an English judge.

The content of foreign law is normally proved by expert evidence. It is not enough to put the text of a foreign statute, case or text of authority before the court. Expert evidence as to foreign law may be given by anyone "suitably qualified to do so on account of his knowledge or experience," irrespective of whether he is entitled to act as a legal practitioner in the relevant jurisdiction. Nonetheless, it is usual for experts to be either academics or practitioners in the jurisdiction in question. If the content of foreign law has been determined in an earlier English case, this case may be cited as evidence of the content of foreign law, and the content of foreign law will be presumed to be the same as determined in that case unless proved otherwise.

The burden of proof is on the party relying on the foreign law. If foreign law is not proved satisfactorily, the general rule is that English law will be applied. However, in cases where there is no reason to think that the foreign law in any way resembles English law (e.g. a tax statute from another European jurisdiction), the suit may be dismissed.

3 Conflict of law rules

3.1 Contractual obligations and legal acts

In all cases concerning contractual obligations and involving a choice of law, the Rome 1 Regulation is directly applicable. The choice of law rules in the Rome Regulation may also apply to cases that English domestic law would not recognise as being contractual (e.g. where the agreement is not supported with consideration e.g. contracts of gift).

Matters of procedure are determined by the lex fori. Hence, the assessment of the level of damages (but not the heads of damage) and means of proof are regulated by the law of the forum. Limitation periods are substantive, and hence in the case of contractual obligations are determined by the law applicable under the Regulation. The primary substantive rules are as follows.

In cases where the parties have made an express choice of law, or one that is demonstrable by reasonable certainty, this law applies. A choice is likely to be demonstrated with reasonable certainty where the contract is in a standard form that is known to be governed by a particular law (e.g. a Lloyd's marine insurance policy), or in light of previous dealings between the parties. Where there is a choice of court agreement, this is often enough to infer that the law of that court was intended to be chosen, but this is not always the case. In the case of an arbitration agreement, if the selection criteria for the arbitrators is specified, this will more readily permit an inference of a choice of law, but if arbitrators are identified by reference to some international body, then it is much less likely that the choice has been demonstrated with reasonable certainty.

Freedom of choice is circumscribed in several respects. First, in consumer and employment contracts, the choice of law cannot deprive the consumer or employee of the protection of mandatory rules that exist under the law that would, if there had not been an express choice of law, have applied to the case. Secondly, where all the elements of the situation are connected with one country, a choice of a different law cannot deprive the mandatory rules of that country of effect. There are also protective rules for consumers in relation to insurance contracts. It might also be noted that where there is disagreement in respect of the effectiveness of choice – for example, an allegation of duress – the question as to whether such a choice was effective is determined by the putative applicable law (i.e. the law that would govern the contract if the choice were valid), unless this would be "unreasonable" (in which case, the law of the habitual residence of the party claiming not to have consented may be applied).

In cases where there is no express choice of law, or one that is demonstrable with reasonable certainty, the Rome 1 Regulation provides specific rules depending on the type of contract, but where these rules are inconclusive, the law will generally be the law of the habitual residence of the characteristic performer. The characteristic performer is not always easy to identify, but is usually the party who is not providing payment for the good or service (e.g. the characteristic performer is the vendor of a product, the lender in a banking transaction, the guarantor in a contract of guarantee). This presumption may be rebutted in favour of a country with which the contract is more closely connected.

3.2 Non-contractual obligations

In respect of non-contractual obligations the Rome II Regulation will apply in most cases. The Private International Law (Miscellaneous Provisions) Act 1995 will only apply to issues relating to tort that do not fall under the Regulation, and defamation remains governed by the common law (see below). Limitation periods are also determined by the applicable law.

Under the Rome II Regulation the general rule is to apply the law of the place where the damage occurs. Special rules determine the applicable law for certain types of non-contractual obligation, including product liability, unfair competition, environmental torts and torts relating to intellectual property rights. The Regulation also allows the parties to choose the applicable law in certain circumstances, but this provision cannot be used to avoid mandatory rules of EU or domestic law. It should be noted that the assessment of damages is a matter for the applicable law.

As noted above, defamation (which includes slander of title, slander of goods, malicious falsehood and any foreign law claim "corresponding to or otherwise in the nature of [such] a claim") remains governed by the common law. In such cases, the "double actionability rule" applies: a tort is only actionable in England and Wales if it is civilly actionable under the foreign law of the jurisdiction in which the act occurred (usually publication) and, if the act had occurred in England and Wales, it would be civilly actionable under English law. This rule was retained after pressure from media organisations fearful of the application of oppressive foreign laws. However, this rule is subject to an exception: where another country has a more significant relationship with the occurrence and the parties, the law of that jurisdiction will apply instead. It should be noted that this area is particularly uncertain.

In respect of the administration of trusts, the applicable law is governed by the Recognition of Trusts Act 1987 which implements the Hague Convention on the law applicable to trusts. This provides that the applicable law is that chosen by the settlor, or, in the absence of such choice, by the law with which the trust is most closely connected. This law determines the validity of the trust, its construction, effects and the administration of the trust.

3.3 The personal status, its aspects relating to the civil status (name, domicile, capacity)

At birth, a person's domicile (the domicile of origin) is the same as that of the child's father at the time of the child's birth, if the child is legitimate. If the child is illegitimate, or the father is dead at the time of birth, the child's domicile is the same as that of the child's mother. This rule continues to apply until the child is 16 (i.e. the child's domicile changes with that of the father or mother respectively).

For persons over 16 years of age, the domicile of origin continues to apply unless they adopt a domicile of choice. To adopt a domicile of choice, they must actually reside in the relevant jurisdiction and intend to reside there indefinitely or permanently. If either of these elements ceases to exist, the domicile of choice no longer applies and the domicile of origin applies.
The domicile of a wife is no longer determined by reference to that of her husband: it is assessed independently.
Capacity to undertake particular obligations (e.g. to contract, to make a will, to marry) is determined by rules specific to that area, and are discussed in the relevant sections.

3.4 Establishment of parent-child relationship, including adoption

Parental responsibility and child protection matters are generally determined by English law, subject to limited exceptions such as those (discussed above) applicable to 1996 Hague Convention matters and those matters falling under the Brussels IIa Regulation. Legitimacy matters and adoption matters are also generally determined by English law, subject to certain exceptions.

3.5 Marriage, unmarried/cohabiting couples, partnerships, divorce, judicial separation, maintenance obligations

The formal validity of a marriage is generally governed by the law of the place of celebration of the marriage, subject to certain exceptions.
The capacity of persons to marry is generally determined by the domicile of the relevant person at the time immediately before the marriage. This law governs issues such as whether the parties consented, age requirements and which persons within one's extended family one may not marry. In the special case of age, no marriage will be valid if either of the participants was under 16 at the time, if they are domiciled in England and Wales.
In matters of divorce or separation, English law will generally be applied, subject to limited exceptions.
In respect of maintenance obligations, it is generally English law that applies, subject to certain exceptions.

3.6 Matrimonial property regimes

'Matrimonial property regime' is not a concept generally known in common law. In matters of financial provision on divorce, separation or nullity or matters of maintenance, English courts will generally apply English law, subject to limited exceptions.

3.7 Wills and successions

In cases of intestate succession (i.e. where there is no will), the law of the domicile of the testator at the time of death applies to the succession to movable property; the law of the jurisdiction in which the property is located (lex situs) applies to succession to immovable property.
In cases involving wills (testamentary succession), the capacity of the testator to make a will of movable property is determined by the law of the testators' domicile on the date of the will. A legatee will have capacity to receive movables if he has capacity under either the law of his own domicile or under the law of the domicile of the testator. There is no specific authority on the position regarding immovable property, but the lex situs would be the most likely outcome, and probably also determines a legatee's capacity to take a bequest of immovable property.
Pursuant to the Wills Act 1963, and where the testator died on or after the 1st January 1964, a will is formally valid (e.g. correct number of witnesses) if it complies with any of the following laws: the law of the place where the will was executed (i.e. usually where it is signed and witnessed) at the time it was executed; the law of the domicile, habitual residence or nationality of the testator at the time the will was executed; the law of the domicile, habitual residence or nationality of the testator at the time of death. A will will also be formally valid to pass immovable property if it complies with the internal law of the jurisdiction in which the property is situated (thus excluding the application of renvoi despite this concerning immovables).
A will of movable property is materially valid (e.g. limitations on the amount one can leave under a will) if it complies with the law of the domicile of the testator at the time of death; a will of immovable property is materially valid if it complies with the law of the jurisdiction in which the property is located, i.e. whatever system of domestic law the lex situs would apply.
A will is interpreted by the law intended by the testator, which is presumed to be the law of his domicile at the date of the will. This presumption is a prima facie rule which can be displaced by evidence that the testator manifestly contemplated and intended that his will should be contstrued under another system of law. In relation to immovable property, there may be an addtional limitation, whereby if the interest that arises from such construction is not permitted or not recognised by the lex situs, the latter law prevails.
The validity of an alleged revocation of a will is determined by the law of the domicile of the testator at the time of the alleged revocation (it should be noted that under English domestic law, if that applies, marriage revokes a will unless it is shown that the will was expressly made in contemplation of marriage). However, where the revocation is alleged to have been achieved by a later will (as opposed to, for example, tearing up the will), whether this second will revokes the earlier one is determined by the laws applicable to the formal validity of the second will. If it is unclear whether a second will revokes an earlier will, the question of construction will be determined by the law intended by the testator, which is presumed to be the law of his domicile at the date of the second will.

3.8 Real property

Property cases are divided into movable and immovable property; whether property is movable or immovable is for the law of the place in which the property is situated.
In the case of immovable property, the applicable law is the law of the place in which the property is situated, and renvoi applies. This applies to all questions regarding the transaction, including capacity, formalities and material validity. It should be noted that there is of course a distinction between the transfer of land or other immovables, and the contract which governs the rights and liabilities of the parties to that transfer – the latter is governed by distinct applicable law rules (in particular, under the Rome I Regulation).
In the case of proprietary (note, as opposed to contractual) questions concerning the transfer of tangible movable property, in general the applicable law is the law of the place in which the property was situated at the time of the event that was alleged to have affected title to it. It is unclear whether renvoi applies in this situation and the overall effect of first instance decisions of the English courts suggest it does not. A title to tangible property acquired in accordance with this general rule will be recognised as valid in England if the movable is then removed from the country in which it was situated at the time of the acquisition of title, unless and until that title is displaced by a new title acquired in accordance with the law of the country to which the property has been moved. A particular exception to the general rule on tangible movable property relates to where the tangible is in transit and its situs is not known to the parties, or temporary, a transfer which is valid under the applicable law of the transfer will be effective in England.
In the case of the assignment of intangible movable property, where the relationship between assignor and assignee is contractual (as in the case of most debts) and the issue relates only to the validity and effect of the assignment itself, the Rome I Regulation applies.
It should be noted that the choice of law rules on assignment and transfer of intangible property are difficult to summarise and no single choice of law rule covers them, mainly because the category of intangibles covers a very wide range of rights, not all of which are contractual in origin. It is suggested that specialist advice should be sought in the case of intangible movable property.

3.9 Insolvency

The UK is a party to Council Regulation 1346/2000 on insolvency proceedings, which sets out the relevant rules in proceedings involving the complete or partial divestment of the debtor and appointment of a liquidator where the debtor’s main interests are in an EU Member State (other than Denmark). If the English courts have jurisdiction (which will be the case if the debtor’s main interests were centred in England and Wales, presumed to be the place of the registered office), English law will be applied.

In cases falling outside of Regulation 1346/2000, English law will be applied where the English courts have jurisdiction (which will be the case if the company is registered in England and Wales, or if there are persons in England and Wales who would benefit from the winding up and there are no good reasons to decline jurisdiction). An English discharge of debts is valid, irrespective of the law governing the debt.

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