



**THE ENGLISH APPROACH TO
CONFLICTING OR
INCONSISTENT ARBITRATION
OR JURISDICTION CLAUSES
BETWEEN THE SAME PARTIES**

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How the issue arises

- More than one agreement between the same parties.
- Conflicting or inconsistent agreements to arbitrate or litigate.
- e.g. Relationship Agreement: ICC arbitration in Paris.
Security Agreement: LCIA arbitration in London.

Procedural Matters

- Claimant commences proceedings (e.g. LCIA London).
- Respondent objects to jurisdiction (e.g. ICC Paris) “*as soon as possible*”: 1996 Act s.31(2).
- Ruling by Arbitral Tribunal: Preliminary (Partial, Final) Award or in Final Award.
- Application to Court within 28 days to challenge Award on jurisdiction: 1996 Act ss.67, 70(3).

Satyam Computer Services v. Upaid Systems (CA, 2008)

- Assignment Agreement, NY law/no jurisdiction clause.
- Services Agreement, VA law/no jurisdiction clause.
- Settlement Agreement, English law/ exclusive jurisdiction English courts.
- Collins LJ: Same principles for arbitration and litigation.
- Examine *claims in dispute*, decide *which agreement parties intended to govern those claims*.
- *Held*, IP claims arose under Assignment Agreement; not excluded by Settlement Agreement; can be decided by Texas court applying NY law.

UBS Securities v. HSH Nordbank (CA, 2009)

- Series of agreements re CDOs.
- Some agreements subject to NY law and jurisdiction; others English law and jurisdiction.
- HSH action in NY for mis-selling, fraud, misrepresentation, etc.
- UBS action in England for negative declaration.
- Collins LJ: Jurisdiction agreements to be construed *in the light of the transaction as a whole*.
- Where parties enter into a complex transaction, it is the jurisdiction clauses in the agreements *at the commercial centre of the transaction* which the parties must have intended to apply: *CSFB v MLC Bermuda* (Rix J, 1999).
- UBS action for declaration dismissed.

Sebastian Holdings v. Deutsche Bank (CA, 2010)

- Series of agreements re trading in equities and foreign exchange.
- Trading agreements subject to English law and jurisdiction; Brokerage Agreement subject to NY jurisdiction.
- Sebastian action in NY for mis-selling, fraud, misrepresentation, etc.
- Deutsche Bank action in London for debts under trading agreements.
- Thomas LJ: Summary of applicable principles.
- *UBS v HSH Nordbank* approved.
- Parties may be taken to have intended that a dispute which falls within two sets of agreements should be governed by jurisdiction clause in contract which is *closer to the claim*.
- Deutsche Bank entitled to pursue debt claims *regardless of defences*.

PT Thiess v. KPC (Blair J., 2011)

- OAMS subject to Australian law, Singapore arbitration.
- CDA subject to English law and jurisdiction.
- Principles in *Sebastian Holdings* applied.
- *Held*, claim more closely related to payment mechanism under CDA than to pricing arrangements under OAMS.
- Therefore claim subject to English jurisdiction, not Singapore arbitration.

Brussels Regulation Cases

- Agreements as to jurisdiction will be overridden by the exclusive jurisdiction provisions of Article 22 of the Brussels Regulation (e.g. Article 22.2 re corporate matters) only where the proceedings are *principally concerned* with an issue under Article 22: *BVG v JP Morgan* (CA, 2010).
- Courts should be alive to the risk of applicants displaying only part of their hand in order to wrest jurisdiction away from the contractually chosen forum: *UBS v KWL* (Gloster J, 2010).

Conclusions

- Question of construction: intention of the parties at the time agreements were made.
- Consider “*overall scheme of the agreements*”.
- Dispute within two or more sets of agreements: jurisdiction clause “*closer to the claim*”: *Sebastian Holdings*.
- Complex transaction: jurisdiction clause “*at the commercial centre of the transaction*”: *UBS v HSH Nordbank*.
- Claimants “*displaying only part of their hand*”: *UBS v KWL*.
- Significance of defences to claims: *Sebastian Holdings*.

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