that Vedanta's liability should be based on its significant financial benefit from the Zambian operations, corresponds with the factual nature of transnational corporations. Any further acceptance by the English courts of the reasoning based on the economic relationship between parent companies and their subsidiaries may result in a shift from the conventional approaches to the allocation of responsibility within corporate groups.

Second, although, at this stage of the proceedings, the judge did not consider the case on the merits, there is nonetheless acceptance, reading between the lines, that the parent company may be held responsible for the human rights abuses committed against the members of the community at the place where the subsidiary runs its operations. The judge's reliance on the decision in *Chandler* allowed it to conclude that the claim against Vedanta was arguable in English law. The reasoning left no doubt that *Chandler*, which itself did not have any foreign element, should nevertheless be considered as an authority for the resolution of the tort liability cases involving foreign operations of the English-domiciled parent companies. However, a final determination of the parent company's liability for the overseas corporate abuses must await a future decision.

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TRANSFER OF JURISDICTION AND THE BEST INTERESTS OF THE CHILD

ARTICLE 8 of the Brussels IIa Regulation sets out the general rule regarding jurisdiction in intra-EU parental responsibility cases, namely that jurisdiction lies with the courts of the Member State of the habitual residence of the child. However, exceptionally, the court that has been seised of a case pursuant to Article 8 may not be the best placed to hear the case. To cater for such situations, the Regulation contains an innovative rule according to which a court that is seised of a case, and has jurisdiction on the substance, can transfer the case to a court of another Member State, if the latter is "better placed" to hear the case, and if the transfer is in the best interests of the child. Additionally, the transfer is subject to the condition that there is a "particular connection" between the child and the other Member State (e.g. the child is a national of that Member State). The "transfer of jurisdiction" rule, which is embodied in Article 15 of the Regulation, is at the heart of the Supreme Court decision in *Re N (Children) (Adoption: Jurisdiction) (AIRE Centre and others intervening)* [2016] UKSC 15; [2016] 2 W.L.R. 1103.

The decision concerned two young girls, aged two and four, who were born and lived all their lives in England. The girls, like their parents, were Hungarian nationals. In May 2013, the local authority placed the

children with foster carers. Care proceedings pursuant to s. 31 of the Children Act 1989 were later commenced in respect of the children and the local authority sought placement orders under the Adoption and Children Act 2002 with a view to the children's adoption in England. In the meantime, the mother fell pregnant with the couple's third child and left for Hungary, where she gave birth. The Hungarian authorities proposed that the girls be placed in a foster care in Hungary with ongoing contact with the parents and wider family. In March 2014, the mother applied under Article 15 of the Brussels IIa Regulation for the English proceedings to be transferred to Hungary. By a decision dated 11 November 2014, Bellamy J. directed that the case and placement proceedings be transferred to Hungary ([2014] EWFC 45). The local authority, supported by the children's guardian, appealed. On 2 November 2015, the Court of Appeal (Sir James Munby P., Black L.J. and Sir Richard Aikens) dismissed the appeal, upholding the first instance decision. The children's guardian appealed pursuant to permission given on 19 January 2016 by the Supreme Court. The key issue before the Supreme Court was the correct approach to the evaluation of the child's best interests in the context of an Article 15 transfer application.

The principles for the interpretation of Article 15 were first set out in *AB v JLB (Brussels IIR: Art 15)* [2008] EWHC 2965 (Fam), where Munby J. suggested that Article 15 required consideration of three separate questions: (1) whether the child has a particular connection with the other Member State; (2) whether the other court is better placed to hear the case; and (3) whether the transfer is in the child's best interests, the best interests' evaluation being limited to matters of forum. These principles were expressly endorsed by the Court of Appeal in *Re M (Brussels II Revised: Art 15)* [2014] EWCA Civ 152. In this decision, the Court also analysed the relationship between Article 15 and Article 12 of the Brussels IIa Regulation, holding that the scope of any best interests' enquiry when deciding whether to make a transfer request under Article 15 should be the same as when determining jurisdiction under Article 12. Importantly, such inquiry should not involve any in-depth investigation of the child's situation and upbringing, but rather should be an "attenuated" one with focus on the considerations relevant to the choice of the forum, which informed the considerations that came into play when deciding upon the most appropriate forum.

In *Re N*, the previous approach to Article 15 applications as outlined above was rejected by the Supreme Court. In particular, Lady Hale held that the best interests' assessment should not be "attenuated", but rather it should involve an inquiry into important welfare factors. As a part of the best interests' assessment, the court should take account of the long- as well as short-term consequences for the child of transferring the proceedings (on the facts of this case, the removal of the children from their current

placement to an alternative placement in Hungary) and the impact of the transfer on the choices that would be available to the court reaching the eventual substantive outcome in the case. On the facts of the present case, the Supreme Court ordered that the appeal be allowed, the transfer request be set aside and the case be returned to the High Court for the children's future to be decided.

At first sight, Lady Hale's reasoning indicates a complete departure from the way Article 15 was approached previously. Nevertheless, a careful analysis of the Supreme Court judgment reveals that the departure may not necessarily be so outright. Indeed, in her reasoning, Lady Hale was careful to point out that there was a difference between the examination of the best interests in substantive proceedings and the best interests' exercise for the purposes of Article 15. Indeed, as Lady Hale said, "[t]his is a different question from what eventual outcome to the case will be in the child's best interests" (at [57]). This suggests that Lady Hale's intention was to propose a middle-ground approach between a meagre forum-type assessment and a full welfare enquiry in transfer proceedings. This seems to be a very sensible method of dealing with Article 15 cases. The proposed approach is meant to prevent a full welfare inquiry at the jurisdiction stage of the proceedings, whilst providing safeguards against "inappropriate" transfers, such as in situations where the court of the other Member State would not be able to consider one of the possible outcomes for the child (in the present case, the possibility of the children remaining with their English foster carers, whether through adoption, a special guardianship order or a residence order). The view that the new test was not intended to import a proper welfare inquiry into Article 15 proceedings but rather represents a compromise between two extreme solutions – best interests' assessment as a forum-type evaluation and full best interests' inquiry – finds support also in the efficiency argument. When reaching her decision, Lady Hale was certainty well aware of the risk of delay if courts were to engage in a full best interests' analysis at the jurisdiction stage. It was common ground that there is a likely tension between a detailed assessment of the best interests of the child in Article 15 cases and the need for a speedy resolution of any proceedings concerning children, including transfer cases.

There is no doubt that the Supreme Court decision will entail a change of judicial approach to Article 15 cases, as the originally simple and straightforward process that was limited to considerations of the forum will be replaced by a more elaborate approach to the "best interests" limb of Article 15, although different from a full welfare inquiry. The significance of the decision lies also in the number of cases it will affect, as indicated by the proliferation of Article 15 cases in recent years. It is to be hoped that judges will find the practical application of the new approach feasible. It will require them to strike a fine balance between the traditional "pro-transfer" approach based on a relatively straightforward process whereby

the finding that the other court was better placed to hear the case implied that it would be in the best interests to transfer, whilst at the same time avoiding the temptation of going into the full merits of the case at this preliminary stage.

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DEFINING TAX AVOIDANCE: FLIRTING WITH CHAOS, AGAIN

THE decision in the conjoined appeals in *UBS v HMRC* and *DB v HMRC* [2016] UKSC 13 invites us to revisit a note published by John Tiley in 2005 concerning the decisions in *Barclays Mercantile Business Finance v Mawson* [2004] UKHL 51 and *Scottish Provident v IRC* [2004] UKHL 52 and subtitled "less chaos but more uncertainty" ([2005] B.T.R. 273). This is a richly textured piece that repays close reading; the central observation is that the cases reflected the settlement of long-running debates on the nature and scope of the *Ramsay* doctrine, which allows the courts to hold ineffective certain attempts at tax avoidance. As is well known, the years following *Ramsay v IRC* [1982] A.C. 300 itself were characterised by a tension between the need to clarify the circumstances in which the doctrine would apply and an understanding that too much clarity might allow taxpayers to circumvent the doctrine altogether.

One of the first attempts at regularisation was made by Lord Brightman in *Furniss v Dawson* [1984] A.C. 474, at 527, in which he set out two conditions for the operation of the *Ramsay* doctrine. Where there was (1) a "pre-ordained series of transactions; or … one single composite transaction" and (2) there were component steps with "no commercial (business) *purpose* apart from the avoidance of a liability to tax", the inserted steps could be disregarded for the purpose of applying tax legislation. This is a reasonable sketch but leaves unclear various important points. What is the source of the courts' jurisdiction to disregard real (i.e. not sham) transactions? Might this develop into a more thoroughgoing substance over form doctrine? How much attention should be paid to the exact words of the applicable legislation? Might taxpayers avoid the doctrine by ensuring that transactions are pre-planned but not precisely preordained?

The *Barclays* and *Scottish Provident* cases provided a simple and convincing answer to these questions, drawing on a gradual but sustained shift in judicial opinion: the importance of *Ramsay* was to confirm that purposive interpretation applies to tax statutes. In many although not all cases, tax provisions so interpreted will require composite transactions to be treated as a single event, so as to deprive taxpayers of advantages that would