BOOK REVIEWS

A Conflict of Laws Companion – Essays in Honour of Adrian Briggs, edited by Andrew Dickinson and Edwin Peel [Oxford University Press, Oxford, 2021, 448pp, ISBN: 978-0-198-86895-8, £95 (h/bk)]; *Civil Jurisdiction and Judgments* by Adrian Briggs [7th edn, Informa, Abingdon, 2021, 1040pp, ISBN: 978-0-367-41532-7, £470 (h/bk)]

This review looks at two books. In the first, Professor Adrian Briggs's work is celebrated by his former pupils upon his retirement from Oxford. The second is a new edition of one of Professor Briggs's most influential works on international jurisdiction and foreign judgments. These two books highlight two facets of the career of an English academic who has been both a great teacher and mentor, as well as one of the most influential academics in the field.

A Conflict of Laws Companion is a collection of 13 essays written by scholars or practitioners who studied for the BCL or for their DPhil at Oxford with or under the guidance of Professor Briggs. The essays cover all fields of the conflict of laws (jurisdiction, choice of law and foreign judgments).

The first part of the book includes two assessments of the doctrine of *forum non conveniens* (respectively by Andrew Bell and Martin Davies), along with chapters considering the role of discretion in the taking of jurisdiction (Janet Walker), a critical analysis of the use of anti-suit injunctions by English courts (Andrew Dickinson) and a comparative analysis of the rules governing jurisdiction over co-defendants under English law and the Brussels I*bis* Regulation (Andrew Scott). The chapters in the second part of the book discuss the law governing jurisdiction and arbitration agreements (Koji Takahashi), the law governing interests in securities (Maisie Ooi), and the law governing remedies (Adam Rushworth). A fourth chapter addresses both jurisdiction and choice of law with respect to unjust enrichment (Andrew Burrows). The third part includes two chapters dedicated to the law of foreign judgments: one discussing anti-enforcement injunctions (Tiong Min Yeo) and one concerned with the recognition of divorces under the Family Law Act 1986 (Maire Ni Shuilleabhain). Finally, two more general chapters complete the book, in a fourth part. The first asks how private is English private international law (Edwin Peel) and the second explores whether the principle of comity should be limited by fundamental principles of justice (James Edelman and Madeleine Salinger).

Half of the contributors came to study at Oxford from, and then returned to, Australia, Canada, Hong Kong, Ireland and Singapore. As Professor Briggs himself has followed closely the evolution of the conflict of laws in many of these jurisdictions and the various ways in which it has developed within these jurisdictions, it was both natural and appropriate that many of the essays would offer a comparative analysis of the issues under discussion from the perspective of the common law jurisdiction in which their author is based.

One of the themes which is common to several of the contributions is the impact of technological change on judicial discretion concerning the exercise of jurisdiction. Janet Walker discusses this in the context of her comparative reflections on jurisdiction over holiday torts. More radically, Martin Davies wonders whether the availability of documentary evidence electronically and the possibility of hearing witnesses by videoconferencing will make the private interest factors lose most of their significance in the doctrine of *forum non conveniens* and whether the test should now focus essentially on public law factors. He certainly has a point, but it is unclear whether this means that private interest factors have become irrelevant: he argues that the potential applicability of foreign law and the unavailability of funding for impecunious litigants are public interest factors, something which is at the very least debatable.

The only contributor from the civil law tradition is Koji Takahashi, who is based in Japan. It would be wrong to deduce from this that Professor Briggs would rarely supervise students from the civil law world. Indeed, he was this reviewer's doctoral supervisor at Oxford more than 25 years ago, and he supervised many other students from the 'Continent' seeking to understand

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the intricacies of the common law (and, indeed, sometimes participated in their doctoral defence in Paris or elsewhere).

Professor Briggs now has also published the seventh edition of his treatise on *Civil Jurisdiction and Judgments*. In his review of the sixth edition ((2016) 65 ICLQ 515), Trevor Hartley observed that 'there is no doubt that Briggs is the leading work on the subject in English today' and emphasised that it is frequently cited by English courts. This has not changed, but it should be underscored that the book is also frequently cited outside of England, in particular by Advocates General to the European Court of Justice, and is one of the leading European texts on the European law of jurisdiction and judgments.

The seventh edition, however, comes after Brexit. Professor Briggs makes clear in the preface that he is not happy with 'the unending catastrophe of the last five years'. 'Four incoherent years later there is chaos where there was order, mendacity where there was accountability, disrespect where there had been civility, incompetence where there had been ability, lying where there was once honour, and insouciance where once there was government.'

Professor Briggs has chosen to significantly restructure his book as a consequence of Brexit. Logically, he starts with a new part which is essentially aimed at assessing the effects of Brexit on the law (Part A, Chapter 2). As in previous editions, he then distinguishes between the European law of jurisdiction and the common law. But he makes the dramatic decision to limit his analysis of the European law of jurisdiction to the Lugano Convention, on the grounds that it is still possible (even more so in September 2021) that it will become the statutory basis for the jurisdiction of an English court, while it is clear that the Brussels regulation will not be.

Whilst one can understand that Professor Briggs wants to maintain the status of the book as the leading authority on the law of jurisdiction and judgments in English courts, one can only deeply regret what amounts, in effect, to a decision to withdraw from the intellectual debate and exchanges concerning the EU law of jurisdiction and judgments to which he has participated influentially for decades. The idea that the legitimacy of his commenting and expressing views on this topic has in any way been tarnished is risible. EU law might well have become foreign in the United Kingdom on 31 December 2020, but this has not stripped English specialists of their competence in the field.

The book also contains a chapter on the 2005 Hague Choice of Court Convention, which will become increasingly important for English practitioners if the UK is not allowed to join the Lugano Convention. As usual, the analysis is sharp and convincing. On asymmetric clauses, Briggs notes that the Hartley/Dogauchi Report is clear enough that such clauses should be considered as excluded from the scope of the Convention. He is obviously aware of the opinions to the contrary expressed by English courts (though obiter) that this is not obvious from the text of the Convention, but he suggests that the call for uniformity of interpretation in Article 23 of the Convention may eventually require English courts to swallow the objection. Briggs then wonders whether some creative drafting could allow such agreements to benefit from the Convention and makes some suggestions. It is submitted, however, that the extent of the obligation established by Article 23 is unclear, and that time will tell whether it will genuinely constrain the courts of the Contracting States.

If Professor Briggs is looking for new challenges, perhaps he might consider starting a new career in English legal history and comparative law and allow us to benefit from an updated treatise on the Brussels I*ter* Regulation.

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