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**SHORT PAPER**

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**Q. 15 - The US and England are jurisdictions that have relaxed rules permitting foreign entities to use their restructuring systems. Analyse and compare the mechanisms, legal rules and case law in both jurisdictions that can be employed by a foreign entity wishing to utilize the US or English law and courts for a restructuring. Also, analyse whether the rulings of the US or English court can be enforced elsewhere.**

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**Introduction - Global Competition for Restructuring Plans**

Preservation of value in a financially troubled business is a key driver of contemporary restructuring law and practice. The rationale is clear – a restructured going-concern entity offers the possibility of retaining value for stakeholders that would otherwise evaporate in a distressed sale.[[1]](#footnote-1) An effective restructuring solution requires both a restructuring plan, and a process that binds all relevant stakeholders to that plan. This Paper address the latter issue in respect of foreign corporations.

Multiple solutions now exist in jurisdictions around the world, which compete to offer their services as restructuring venues for global businesses, within a general normative framework of ‘collectivity, equality of treatment and efficiency’ (Gopalan & Guihot 2016). These now include a number of European jurisdictions, which have followed the 2019 European Directive on preventative restructuring frameworks,[[2]](#footnote-2) as well as Singapore.[[3]](#footnote-3)

Despite the different options now available, the ultimate question remains: how can a restructuring plan be made in a foreign jurisdiction and implemented elsewhere to bind all relevant stakeholders. To simplify the analysis, this question is examined by reference to the well-established restructuring jurisdictions of the US and England, from which conclusions can be drawn that are also relevant to the other, newly emerging, global restructuring jurisdictions.

**I – The Restructuring Challenge**

The decision to start a business necessarily involves the taking of risks, and some businesses will fail. The hypothetical entity addressed in this Paper is that of a company (although it could equally be a non-corporate vehicle) operating internationally.[[4]](#footnote-4) At some point when the risk of loss materialises, the company enters into financial distress. Assuming the core business is sound and does not require an operational restructure, the commercial problem for stakeholders is one of allocating current or future losses between them, depending upon the extent of the company’s financial distress. This is the restructuring challenge.

In order to understand this challenge, it must be acknowledged that the company is an artificial entity created and recognised by law to exist and have a legal personality. The business and affairs of company exist due to a range or ‘nexus’ of different contracts with and between stakeholders (Jensen & Meckling 1976). All of those counterparties will assess the company’s financial distress against their individual contractual or other legal rights – including their security interests, and their extra-contractual bargaining leverage, for example as vital suppliers to the business. Any one or more of these stakeholders may have therefore have the ability to open formal insolvency proceedings, and force a value-destructive liquidation, or other distressed sale of the business or its assets.

Financial restructuring requires the company to make new or different contracts with some or all of its debt or equity stakeholders to facilitate the survival of the core business (Sundarsam & Lai 2001). The insolvency literature recognises this process as ‘informal’ restructuring, which operates ‘in the shadow of the law’ of formal liquidation (Adriaanse & Kujil 2006). In its strict sense, ‘informal’ restructuring contemplates a mutual and voluntary agreement between affected stakeholders to adjust or re-form their contractual rights, using a consensual process such as that contemplated by the INSOL principles,[[5]](#footnote-5) or some other ‘soft law’ instrument (Wessels & Boon 2019).

The restructuring challenge arises more distinctly if one or more affected stakeholders will not agree to a variation or re-formation of their contractual or other rights.[[6]](#footnote-6) This challenge arises because most legal systems assume that the decision to enter into a contract, or vary a contract, is a voluntary decision based on the free and autonomous will of the contracting party (Chrenkoff 1996).

Thus, the function of restructuring legislation is to impose a variation or re-formation of the contractual rights upon dissenting stakeholders, within a collective procedure that transforms multiple individual rights and relationships.[[7]](#footnote-7) In the US and England this is done by way of a ‘cram down’ for individual creditors, or ‘cross-class cram down’ for dissenting classes,[[8]](#footnote-8) which forces them to relinquish or vary their pre-existing rights, upon approval by the court of the restructuring plan, scheme or arrangement (referred to generically in this Paper as the Plan).

In this way, court-assisted restructurings have the potential to fill the gap that exists in a classical ‘informal’ restructuring. The courts do this by seeking to overcome the lack of consent to enable the Plan to be finalised and implemented by the company, in order to save its valuable business. It is the availability and effectiveness of these court-assisted restructurings for foreign companies that is the subject of the following sections of this Paper.

**Section II – Jurisdiction to Restructure Global Businesses**

The threshold issue in any court-assisted restructuring is that of jurisdiction. That is, whether the court (or tribunal) in which the proceedings are filed has the power under the *lex concursus*, being the place of the filing, to hear and make the orders sought in the proceedings. Establishing jurisdiction does not mean the court will make the orders sought, it simply means that the court will enter into a substantive consideration of the application.

Here, the jurisdiction question is whether a company can utilise court-assisted restructuring mechanisms in another jurisdiction, specifically the US and England. For this purpose, a foreign company is defined to be a company that would not ordinarily be subject to the jurisdiction of the restructuring court, without entering into the debate about how one determines ordinary jurisdiction over a company for private international law purposes, including for example by reference to its Centre of Main Interests (COMI),[[9]](#footnote-9) or its place of incorporation.[[10]](#footnote-10)

In the US, Chapter 11 of the US Bankruptcy Code is concerned with the confirmation by the US Federal Court of a restructuring ‘Plan’. That Plan is one that will ordinarily be filed by the ‘debtor’, although it may also be filed by other interested parties, including creditors and equity-holders of the ‘debtor’ (11 USC §1121). Jurisdiction therefore depends upon the definition of ‘debtor’ in §109, and specifically subsection (a), which provides that ‘only a person who resides or has a domicile, a place of business, or property in the United States, or a municipality, may be a debtor’ under the US Bankruptcy Code.

The US Courts have taken an expansive view of their jurisdiction under Chapter 11 by reference to the words ‘has…property in the United States’, in the definition of ‘debtor’. In *McTague*, the placing of $194 in an attorney’s trust account, to pay the fees for filing a petition, was held to be sufficient to ground the Court’s jurisdiction.[[11]](#footnote-11) On this approach, any company from any part of the world could validly file a Chapter 11 petition and invoke the jurisdiction of US Courts to effect a global restructuring. Such a view may be appropriately characterised as fulfilling a ‘universalist’ approach to restructuring, without the necessity of being tethered to the debtor’s ‘home country’.[[12]](#footnote-12)

A different route to jurisdiction, but one which is equally expansive, prevails in restructuring proceedings in England, in respect of Schemes of Arrangement under Part 26, or Restructuring Plans under Part 26A, of the *Companies Act* 2006. The relevant test is whether there is a ‘sufficient connection’ between the Scheme or Restructuring Plan and England. This is based on the view that the English Court has jurisdiction to approve Schemes or Plans over both registered and unregistered companies (s.895(2)(b)).[[13]](#footnote-13) The logical extent of this approach would allow the English courts to approve a Scheme in respect of any company anywhere in the world. In order to avoid claiming such ‘exorbitant’ jurisdiction, the English courts have developed a flexible ‘sufficient connection’ test, as the gateway to jurisdiction.

Unlike the objective ‘property in the US’ test of Chapter 11, which can be satisfied in a relatively formalistic manner, the ‘sufficient connection’ test involves a weighing of factors for and against the acceptance of jurisdiction by the English courts, based on a consideration of the actual interests involved. Thus, for example, in *Rodenstock*, a Scheme was approved for a German company that was neither incorporated in England, nor had its COMI in England, on the basis that the Senior Lenders in that case had nominated English law as the governing law, and the English Courts as the venue for resolving disputes arising under their financing documents. Allen & Ovary (2015) have noted that the English courts have been open to permitting ‘jurisdictional manoeuvring’ by foreign companies to take advantage of English Schemes, particularly where the outcome is viewed by the Court as beneficial to creditors, and no ‘serious challenge’ is made to the Court’s jurisdiction.

The difference between the two approaches, in the US and the England, may not be as great as it seems, because of the ability of a disaffected party to challenge the invocation of the US Court’s jurisdiction. The most direct route for a challenge in the US is the Abstention clause (11 USC §305), which permits a case to be dismissed and proceedings suspended ‘if the interests of the creditors and debtors would be better served by such dismissal or suspension’.[[14]](#footnote-14) However, other possible grounds include the abuse of process ground under 11 USC §105(a), or the doctrine of *forum non conveniens*, if the ‘oppression and vexation to a defendant’ would be ‘out of all proportion to plaintiff’s convenience’.[[15]](#footnote-15)

However, if the jurisdictional threshold can be satisfied, the foreign company must then address the substantive issues of law and procedure required by the restructuring law of the *lex concursus,* in order to ‘cram down’ the known or expected dissenters.

In the US, a Plan will be confirmed it is ‘fair and equitable’, is not unfairly discriminatory, and is passed by at least one impaired class by a majority of 2/3rds in value and 50% in number (§1129(b)). The Court’s confirmation discretion is relatively confined by §1129(b)(2) which deems a plan to be ‘fair and equitable’ if creditors are no worse off under the Plan than they would be in a liquidation.

A broader discretion is conferred on the Court in England, by the use of the words ‘may…sanction’ in ss.899 and 901F of the *Companies Act*.[[16]](#footnote-16) This is generally understood as being a test of fairness and reasonableness,[[17]](#footnote-17) provided the requisite class majorities are obtained – being 75% in value and 50% in number for a Scheme under Part 26 (s.899) or 75% in value for a Plan under Part 26A (s.901F). Where a ‘cross-class cram down’ is sought for under Part 26A, the Court must also be satisfied that ‘none of the members of the dissenting class would be any worse off’ than the next best alternative (s.901G).

One important additional discretionary factor in England, to which reference was made in *DeepOcean*, was that of enforceability of the Scheme or the Plan in ‘relevant jurisdictions outside England and Wales’.[[18]](#footnote-18) Apart from the Absention clause mentioned earlier, there is no equivalent consideration by a US Court of the extra-territorial effect of its approval of a Plan under Chapter 11, once jurisdiction is established or confirmed. One answer to this potential conundrum was suggested by Richards J in *Magyar* (at [21]) by pointing out that the question of enforceability at the confirmation hearing was closely related to the test of ‘sufficient connection’ that arises in relation to jurisdiction. If so, for reasons developed in Section III below, there may be merit in all courts, that seek to exercise jurisdiction over foreign companies, considering the potential enforceability issues at the jurisdiction stage.[[19]](#footnote-19)

This brief review of the position suggests that both the US and UK statutes provide a very broad reach for their respective jurisdictions to open restructuring proceedings for foreign entities, thereby permitting them to proceed to sanction or confirm the Plan provided relevant statutory criteria are satisfied. Second, it will be difficult for a dissenting shareholder to challenge jurisdiction in either the US or UK court unless there are clear and compelling reasons why the court should decline to open these proceedings.

**Section III – Enforcing the Restructuring Plan**

Upon the Plan being approved, focus then shifts to the enforcement of the Plan and the role of the enforcing court. The resolution of this problem will be straightforward in many cases, such as *Rodenstock*, where the governing law of the contracts was English law, and it was and English court that approved the Scheme.

On the other hand, the refusal of the Isle of Man court in *Cambridge Gas*, to effect share transfers ordered under a Chapter 11 Plan, demonstrated ‘territoriality’ at work. That refusal was overcome by a powerful appeal made by Lord Hoffman in the Privy Council to a sentiment of ‘universalism’, based on equating the outcome between the Chapter 11 Plan with an English Scheme that could have achieved the same result.[[20]](#footnote-20) In a later Privy Council decision in *Singularis*, Lord Sumption criticised Lord Hoffman’s approach on the basis that ‘the principle of modified universalism is part of the common law, but it is necessary to bear in mind, first, that it is subject to local law and local public policy’. [[21]](#footnote-21)

The tension referred to by Lord Sumption is that a Plan may be valid under the orders of the approving court (located in State A), but is not enforceable against the stakeholder who matters (located in State B). To avoid a pyrrhic outcome of this type in relation to an approved Plan, three possible solutions can be identified.

First, there may be a law of general application in State B which allows judgments of the Plan approving jurisdiction, State A, to be ‘automatically’ recognised and enforced. An example of such a law is the Australian *Foreign Judgments Act* 1991 (Cth), which allows judgments of specified States to be registered in Australia.[[22]](#footnote-22) These include judgments of the English High Court, but not judgments of the US Courts. Even where a judgment is entitled to recognition, it can be set aside if the Australian court is satisfied that the original court ‘had no jurisdiction in the circumstances of the case’.[[23]](#footnote-23) This is a question for the enforcing court (in State B) to judge by its private international law rules, and is not pre-empted by an assumption of jurisdiction by the Plan approving court (State A).[[24]](#footnote-24)

Another possible example is the European Judgments Regulation (EJR), also known as the Recast Brussels Regulation.[[25]](#footnote-25) However, even before Brexit, the EJR excluded ‘Bankruptcy proceedings’, as well as ‘judicial arrangements, compositions and analogous proceedings’, which arguably encompass restructuring Plans.[[26]](#footnote-26) In any event, Allen & Ovary (2015) noted that the pre-Brexit application of the EJR to English Schemes depended upon certain preconditions being satisfied – such as whether there was submission to the English Court’s jurisdiction by all affected parties, or one creditor was domiciled in England. The existence of gateway conditions of this type in general recognition statutes will require close examination in each individual case, as it cannot be assumed that simply because the English, US or other court has accepted jurisdiction, that the Plan will be recognised by the enforcing court in another State.

Second, there are insolvency specific laws and texts which may be incorporated into the law of State B that rely upon the subject matter of the judgment, rather than the place it was delivered. This is an evolving area of international law and practice, led by the work of UNCITRAL in relation to two of its model laws, the Model Law on Cross-Border Insolvency (MLCBI) and the Model Law on Insolvency Related Judgments (MLIJ). The first of these was promulgated in 1997 and has been adopted in 50 States.[[27]](#footnote-27) The latter is more recent, 2018, and has not yet been adopted in any State.

These Model Laws may be complemented by other regional laws, such as the European Union’s Insolvency Regulation 2015 (EUIR).[[28]](#footnote-28) The solution to the problem of ‘territoriality’ adopted by the Model Laws and the EUIR is one of ‘modified universalism’, based on the predicate that the appropriate court to open any insolvency,[[29]](#footnote-29) and in the case of the EUIR pre-insolvency proceedings,[[30]](#footnote-30) is determined by the COMI (Goode 2011). However, by definition, the acceptance of jurisdiction in respect of a foreign debtor, excludes the COMI as a basis for jurisdiction. Thus, in principle, the Model Laws and the EUIR will, or may be, of little assistance in the enforcement of a restructuring order of a court in respect of a foreign company. It is also difficult to see how the express or implicit disfavour of ‘forum shopping’ under these texts would lead to a relaxation of their basal COMI requirement. [[31]](#footnote-31)

There may be other problematic issues under the MLCBI and MLIJ in relation to the restructuring of foreign companies, which may also be noted. For example, English Schemes may not satisfy the requirements in the MLCBI and MLIJ, as Part 26 of the English *Companies Act* may not be characterised as a ‘law relating to insolvency’.[[32]](#footnote-32) More critically, as noted in its Guide to Enactment, the need for the MLIJ was a result of significant ‘uncertainty’ about the application of the MLCBI to the recognition and enforcement of judgments given in foreign insolvency proceedings, and the fact that very few States had specific recognition and enforcement regimes for insolvency related judgments.[[33]](#footnote-33)

Although the MLIJ seeks to solve some of these problems, it does not expressly remove the ‘territoriality’ concerns. In particular, one of the grounds for refusal of recognition and enforcement of an insolvency related judgment under Art 14(h) is whether ‘The judgment originates from a State whose insolvency proceeding is not or would not be recognised’ in the enforcing state, with certain exceptions to this rule.[[34]](#footnote-34) As Boraine has noted wryly, ‘In general, states are more willing to export than import insolvency proceedings’.

Third, the company could seek to rely on general principles of comity as between the courts in the enforcing state, State B, for the approval of the restructuring Plan in State A.[[35]](#footnote-35) Principles of comity are inherently discretionary and therefore uncertain, and may produce inconsistent results (Boraine 2021).[[36]](#footnote-36) Implicit in such cases are normative, ‘territorial’ judgments based on the enforcing court’s standards, about the appropriateness of the applicant company bringing proceedings in a foreign jurisdiction and/or the exercise by the foreign court of that jurisdiction, as Lord Sumption stated in *Singularis*.

By way of summary, there is more work to be done at an international level to support the emergence of a global market for court-assisted restructuring, to ensure the same spirit of ‘universalism’ exists at the enforcement stage, as it does at the jurisdiction stage. However, at present, the enforcement options examined in this Section do not inspire confidence that orders of an approving court that ‘cram down’ individuals or classes under *lex concursus* will necessarily be enforceable against the dissenting creditors or classes where needed. In that case, the Plan, in relation to which the company and its consenting stakeholders will have invested considerable time and money to gain approval, will not achieve its intended effect of binding dissenting creditors and re-forming their contractual or other rights.

**Conclusion – Minimising Enforcement Risk is Critical**

The answer to the underlying question addressed in this Paper is that enforcement issues are an important constraint on the use of foreign courts to provide assistance in restructuring an entity in financial distress. As the US and English examples demonstrate, the jurisdictional threshold is a low bar to cross in most cases. Once satisfied, these courts have the ‘cram down’ powers to overcome the objections of dissenting stakeholders, by approving a Plan that re-forms the contracts between those stakeholders and the entity, or between the stakeholders themselves, to allow the underlying busines to survive. However, the ‘universalist’ nature of these low jurisdictional bars, falters when confronted with ‘territorial’ enforcement problems required to give effect to the approved ‘cram downs’.

Unless the entity’s restructuring advisers carefully consider the enforceability of the proposed Plan, there is a risk that the approving court’s orders will not be effective, and the restructuring may fail. Thus, a critical issue for the restructuring of a foreign company is identifying which court’s orders will be required to enforce the Plan against the likely dissenters. This may be seen to invert the choice of jurisdiction for the approving court, but it may be the only way to answer the restructuring challenge safely. Approving courts can assist in this process too, by addressing the enforceability question at the jurisdiction stage, and not merely at the approval stage. Thus, rather than asking which foreign court offers the most appropriate restructuring system for the entity, the better question to ask is which court approved Plan is mostly likely to be enforceable against the likely opponents of the Plan, and best resolve the restructuring challenge for the entity in question.

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1. UNCITRAL Legislative Guide (2004), Objective 3, para [6]. [↑](#footnote-ref-1)
2. EU Directive 2019/1023 has been, or will soon be, implemented in The Netherlands, Germany, France, Spain and Italy (Ashurst 2021). [↑](#footnote-ref-2)
3. *Insolvency, Restructuring and Dissolution Act* 2018 (Sing). [↑](#footnote-ref-3)
4. To simplify the analysis the entity is assumed to be a single company, rather than a group, with international operations. [↑](#footnote-ref-4)
5. INSOL International. (2017). *Statement of Principles for a Global Approach to Multi-Creditor Workouts II.* [↑](#footnote-ref-5)
6. For the purpose of this Paper, to simplify the analysis, other rights such as statutory rights are assumed to involve an analogous question of consent to that applicable to contractual rights. [↑](#footnote-ref-6)
7. Gopalan and Guihot (2016) at [1.17] quoting Fletcher. [↑](#footnote-ref-7)
8. In the US, see the US Bankruptcy Code, Chapter 11, 11 USC §1141; In England, ss.899 and 901F provide a ‘cram down’ of individual class members under Parts 26 and 26A of the *Companies Act* 2006, and s.901G provides a ‘cross class cram down’ under Part 26A only. [↑](#footnote-ref-8)
9. Cf. European Insolvency Regulation, EU 2015/848, Art 3(1); UNCITRAL Model Law on Cross-Border Insolvency, Art 2 (definition of “foreign main proceeding”). [↑](#footnote-ref-9)
10. Cf. *Lazard Brothers v Midland Bank Ltd* [1933] AC 289; Davies et al (2010) at [35.36]. [↑](#footnote-ref-10)
11. *In re McTague*, 198 B.R. 428 (Bank. W.D.N.Y. 1996) which concerned a Chapter 7 petition. The same test applies to Chapter 11, see eg. *In re: Global Ocean Carriers Ltd* 251 B.R. 31 (Bank. D. Del. 2000). [↑](#footnote-ref-11)
12. See Goode (2011) at [16-04]-[16-11]. [↑](#footnote-ref-12)
13. See, by way of example, *In the matter of Rodenstock GmbH* [2011] EWHC 1104 (Ch); *Primacom Holding GmbH v Credit Agricole* [2012] EWHC 164 (Ch); *In the matter of Magyar Telecom BV* [2013] EWHC 3800 (Ch). [↑](#footnote-ref-13)
14. This provision was applied in *In re Northshore Mainland Services, Inc.*, 537 B.R. 192, 208 (Bankr. D. Del. 2015) (the Baha Mar Resort case) where the US court abstained from exercising jurisdiction in favour of the court in the Bahamas, where the project in question was still under construction, and government interests were involved. [↑](#footnote-ref-14)
15. *American Dredging Co. v Miller*, 510 U.S. 443 (1994). [↑](#footnote-ref-15)
16. The English Courts adopt the same general approach to the discretion in Part 26A as they do to Part 26: *In the Matter of DeepOcean UK Ltd* [2021] EWHC 138 (Ch) at [44]. [↑](#footnote-ref-16)
17. *DeepOcean* at [20] quoting, inter alia, *Re Telewest Communications plc (No. 2)* [2005] BCC 36 at [20]-[22]. [↑](#footnote-ref-17)
18. *DeepOcean* at [67], citing also *Re Magyar Telecom BV* at [16]. It would seem from *DeepOcean* at [68] that the English Courts receive expert evidence at the confirmation hearing that addresses any potential enforceability issues. [↑](#footnote-ref-18)
19. In *Re McTague*, Kaplan J entered into such a discussion, although it was strictly *obiter dicta*. [↑](#footnote-ref-19)
20. *Cambridge Gas Transport Corporation* *v The Official Committee of Unsecured Creditors of Navigator Holdings PLC* [2006] UKPC 26; [2007 1 AC 508. [↑](#footnote-ref-20)
21. *Singularis Holdings Ltd v Pricewaterhouse Coopers* [2014] UKPC 36; [2015] 1 AC 1675, and see also *Rubin v Eurofinance SA* [2012] UKSC 46, [2013] 1 AC 236, in which reference was made at [20] to a similar statement of principle in *Re Maxwell Communication Corp* 170 B.R. 800 (Bankr. SDNY 1994). [↑](#footnote-ref-21)
22. *Rubin* referred to another example, s.426 of the English *Insolvency Act* 1986. [↑](#footnote-ref-22)
23. *Foreign Judgments Act* 1991, s.7(2)(a)(iv). [↑](#footnote-ref-23)
24. *Henry v Geoprosco International Ltd* [1976] 1 QB 726 at 734; *Rubin v Eurofinance SA* [2012] UKSC 426; [2013] 1 AC 236 at [7]-[9]; *Quarter Enterprises Pty Ltd v Allardyce Lumber Company Ltd* [2014] NSWCA 3, 85 NSWLR 404 at [53]. [↑](#footnote-ref-24)
25. EU 1215/2012. [↑](#footnote-ref-25)
26. EJR Art 2. [↑](#footnote-ref-26)
27. UNCITRAL, Status: UNCITRAL Model Law on Cross-Border Insolvency (1997), <https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency/status>, accessed 8 February 2022. [↑](#footnote-ref-27)
28. EU Regulation 2015/848. [↑](#footnote-ref-28)
29. MLCBI, Art 2(b) describes ‘foreign main proceedings’ by reference to the COMI; MLIJ Art.14(h)(i) provides a ground of refusal for a judgment which does not comply with the MLCBI. [↑](#footnote-ref-29)
30. EUIR Arts.19, 20 32 tie recognition and enforcement of judgments to Art.3 jurisdiction based on the COMI. [↑](#footnote-ref-30)
31. See eg. EUIR Recital para 5 which does not look favourably upon forum shopping. [↑](#footnote-ref-31)
32. See the definitions of ‘Foreign proceeding’ under Art 2 of the MLCBI, and ‘Insolvency proceeding’ under Art 2 of the MLIJ. There is no equivalent in Part 26 of the English Companies Act to the ‘financial difficulties’ precondition in Part 26A under s.901A(2). [↑](#footnote-ref-32)
33. UNCITRAL (2019) at [2], citing inter alia the *Rubin* decision, and [8]. [↑](#footnote-ref-33)
34. An example, in the context of an arbitration award, of the refusal to enforce an award where the enforcing Court took a different view about the exercise of jurisdiction by the Court at the arbitral seat, highlights the dangers under Art 14(h): *Hub Street Equipment Pty Ltd v Energy City Qatar Holding Company* [2021] FCAFC 110 at [49], [60], [82]. [↑](#footnote-ref-34)
35. *Hilton v Guyot,* 159 US 113 (1895) at 163-164; see also *Rubin* at [29]-[34]. [↑](#footnote-ref-35)
36. Boraine (2021) cites, by way of example, the difference in approaches between the Privy Council decisions in *Cambridge Gas* and *Singularis*, discussed above. Another example of lack of comity, from the US, is the anti-, anti-suit injunction granted in *Laker Airways v Sabena* 731 F 2d 909 (1984)(DC Circ.) at 937, cited in Gopalan & Guihot (2016). [↑](#footnote-ref-36)