

THE CONFLICT OF LAWS. By J. H. C. MORRIS. (3rd Edition). [London: Stevens & Sons. 1984. xxxix + 533 pp. Softcover: S\$74.10]

*Comments*

WHAT can one say about a standard text? Morris' book has become standard fare for students of conflict of laws; this edition is the last that he produced before his death in late 1984. Only four years separate the third edition from the second. This was mainly due to the enactment of the Civil Jurisdiction and Judgment Act 1982,<sup>1</sup> which was designed to implement a 1968 EEC Convention on jurisdiction and enforcement of judgments. As such, much of the new material added is of very little relevance to Singapore.

The most noticeable difference between the third edition and the second is the rearrangement of the contents. The part on foreign judgments and arbitration, which used to be Part Seven, is now Part Three. This is again a side-effect of the Civil Jurisdiction and Judgments Act 1982. It may be more convenient to deal with the matters raised by this act together as Parts Two and Three, but the flow of book is somewhat marred. In particular, eight chapters now separate the discussion on domicile from the part on family law. However, this is but a minor inconvenience.

Despite the introduction of much new material, the author has by dint of "judicious pruning" and tighter printing managed to keep the book concise. The pruning has come in mainly peripheral areas; for instance, the discussion of persons who cannot sue in Chapter 5 has been removed (Chapter 5 itself has been retitled "Sovereign and Diplomatic Immunity", instead of "Persons Who Cannot Sue or be Sued"). Another instance is the discussion on recognition of foreign judgments as a defence to an action brought within the jurisdiction; this has been truncated somewhat. This is a pity, since the discussion in both these areas could be relevant to Singapore.

Most of the new material included in this edition relates to the Civil Jurisdiction and Judgments Act 1982. This is to be found mainly in Chapters 6 (Jurisdiction in Actions in Personam) and 9 (Foreign Judgments). The Act is of course completely inapplicable to Singapore. Fortunately the portions of those chapters that may be of some use here are preserved. For instance, the author still expounds the law relating to service out of the jurisdiction under Order 11 of the UK Rules of the Supreme Court. As our Order 11 is substantially the same, this discussion remains valuable. In passing it should be noted that the UK O.11 r.1(1)(f) has been rewritten and a new paragraph (m) was introduced. The discussion of these two paragraphs of Order 11 (on pages 75 and 76 respectively) will therefore not be relevant to Singapore. In any case a Singapore lawyer reading Chapter 6 should exercise caution; the jurisdictional rules that obtain in England are far different from those that obtain here, and most of what is written can only be accepted locally (if at all) with severe modification.

<sup>1</sup> 1982 c.27.

In the case of foreign judgments, local readers may simply skip the parts that pertain to the Civil Jurisdiction and Judgments Act 1982. The rest of the Chapter, which discusses the position at common law and under the relevant English statutes,<sup>2</sup> is still relevant to Singapore.

Although the Civil Jurisdiction and Judgments Act 1982 has no application in Singapore, it should be said that in many ways it makes some improvements in the law. For instance, it has been made clear that appearing merely to contest the jurisdiction of a court does not amount to submission to the jurisdiction of that court.<sup>3</sup> The rule that an English court will not grant damages in respect of a trespass to foreign land has also been abolished.<sup>4</sup> Similarly abolished is the doctrine of non-merger of causes of action in relation to foreign judgments.<sup>5</sup> This archaic and illogical doctrine allows a litigant to sue on the original cause of action within the jurisdiction, notwithstanding a foreign judgment on the very point.<sup>6</sup> The abolition or modification of these legal dinosaurs by statute in England is just one more argument against applying them in Singapore.

More valuable to the Singapore reader than the discussion of recent English acts is the discussion of recent English cases. However, the difficulty about relying upon foreign textbooks is that the law expounded may differ in subtle ways from local law, and unless one is very alert it is possible to slip into error. For instance the *Vrontados*<sup>7</sup> (which deals with service of process on foreign companies) cannot apply in Singapore because our statutory provisions differ slightly but significantly from the English provisions. Having said that however, cases like the *Abidin Dover*,<sup>8</sup> *Vervaeke v. Smith*,<sup>9</sup>

<sup>2</sup> The Administration of Justice Act 1920 (10 & 11 Geo. 5, c.33) and the Foreign Judgments (Reciprocal Enforcement) Act 1933 (23 & 24 Geo. 5, c.13). Equivalent to the Reciprocal Enforcement of Commonwealth Judgments Act (Cap. 24) and the Reciprocal Enforcement of Foreign Judgments Act (Cap. 25) respectively.

<sup>3</sup> Civil Jurisdiction and Judgments Act 1982, s.33, reversing *Henry v. Geoprosco International Ltd.* [1976] Q.B. 726 (Court of Appeal, England). This rule has never (to the best of this writer's admittedly superficial researches) been applied in Singapore. Dicta in the case of *Re Maria Menado* [1964] M.L.J. 266 suggest that it will not be applied; the abolition of the rule by the English is one more cogent argument for ignoring it.

<sup>4</sup> Civil Jurisdiction and Judgments Act 1982, s.30, reversing *Hesperides Hotels Ltd. v. Aegean Turkish Holidays Ltd.* [1979] A.C. 508 (House of Lords). The *Hesperides Hotels* case reaffirmed the rule laid down in *British South Africa Company v. Companhia de Mocambique* [1893] A.C. 602. The *Mocambique* rule has in fact been applied in Singapore, though not recently; see, e.g., *Smith v. Sultan of Kedah* (1906) 10 S.S.L.R. 1 (I am grateful to my students Mr Chandra Mohan and Mr Kevin Tan for bringing this case to my attention). It can be argued that the enactment of the Supreme Court of Judicature Act (Cap. 15) repealed all the common law jurisdictional rules, and therefore the *Mocambique* rule should not be applied in Singapore today. The fact that the English have themselves abolished part of the rule would be another argument in favour of not applying the *Mocambique* rule here.

<sup>5</sup> Civil Jurisdiction and Judgments Act 1982, s.34.

<sup>6</sup> It must be said however that if the foreign judgment is for the defendant, the plaintiff may be precluded from suing by the operation of the doctrine of estoppel *per rem judicatum*; see e.g., *Carl Zeiss Stiftung v. Rayner & Keeler (No. 2)* [1967] 1 A.C. 853 (House of Lords).

<sup>7</sup> [1982] 2 Lloyd's Rep 241 (Court of Appeal, England); discussed on p. 67.

<sup>8</sup> [1984] 2 W.L.R. 196 (House of Lords); discussed on p. 98.

<sup>9</sup> [1983] 1 A.C. 145 (House of Lords); see pp. 210 and 214.

*Alcom Ltd. v. Republic of Columbia*,<sup>10</sup> *Amin Rasheed Shipping Corporation v. Kuwait Insurance Co.*,<sup>11</sup> *Re Eloc Electro Optieck BV*<sup>12</sup> and *Winkworth v. Christie's*<sup>13</sup> are all persuasive in Singapore. Morris' interpretation of these cases and his evaluation of their significance would be as valuable here as in England. It is rather a pity though that he does not discuss the *Halcyon Isle*<sup>14</sup> (which is arguably the most important Singapore case on conflict of laws in recent years) in more detail; he devotes a mere half-paragraph to it on p. 466. But to be fair, Morris was not writing for Singapore readers.

All in all, the third edition maintains the high standard set by its predecessors. Some chapters may of course be inapplicable to Singapore without severe modification; chapters 6, 7, 10, 11, 12, 13, 14, 23, 24 and 28 in particular. However, the Singapore reader may rely on other chapters for guidance as to how our courts might resolve conflict of laws problems; for instance chapters 2, 5, 8, 9, 15, 16, 17, 18, 19, 20, 21, 22 and 29. Morris is a good book; not ideal, but the best we have until someone gets down to writing a text for Singapore.

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- <sup>10</sup> [1983] 3 W.L.R. 906; see p. 58.
- <sup>11</sup> [1984] A.C. 50 (House of Lords); see pp. 269, 270.
- <sup>12</sup> [1982] Ch. 43 (High Court, England); see p.446.
- <sup>13</sup> [1980] Ch. 496 (High Court, England); see pp. 353, 354.
- <sup>14</sup> [1981] A.C. 221; [1980] 2 M.L.J. 217 (Privy Council).