# CHOICE OF LAW IN A QUESTION OF JURISDICTION

*Metall und Rohstoff A G* v. *Donaldson Lufkin & Jenrette Inc.*[1]
*J H Rayner (Mincing Lane) Ltd.* v. *Teck Hock & Co. (Pte) Ltd.*[2]

WHERE, as in an Order 11[3] case, the jurisdiction of a court predicates the existence of some subject matter (say tort or contract) which is by law appropriated to the forum, it is logically inevitable that choice of law issues may intrude into the determination of whether there is a proper foundation of jurisdiction. Suppose it is sought to serve a notice of writ outside the jurisdiction on an absent defendant on the basis that an action is brought to enforce a contract expressed to be governed by Singapore law (subrule 1(f)(iii)), then obviously choice of law rules must be applied so as to ascertain whether the governing law is indeed Singapore law.[4] The connecting factor, that the governing law is Singapore law, directs us, indeed impels us, to look at the choice of law rules. What is more, the intrusion of choice of law at this stage may occur even where there is no obvious reference to the governing law. Suppose Order 11 jurisdiction is sought on the ground that the breach of contract is within Singapore. Although there is no obvious reference to the governing law, it may be that the objection to the service out is that the contract is for some reason or other null and void or unenforceable. That objection in truth involves a substantive issue but since it is occurring at the jurisdiction stage, it must be answered before jurisdiction can be said to be established. Two systems of law at least may be seen as competing for application in the resolution of the issue. One may look to the *lex fori* (the forum's law minus its conflict rules) and disregard the choice of law rule, or *vice versa.* The weight of authority in contract cases favours application of the *lex fori* to the exclusion of the *lex causae* or perhaps more accurately,

1 [1989] 3 All E.R. 14.
2 [1990] 2 M.L.J. 142.
3 The Rules of the Supreme Court. The Singapore rules follow closely the English rules although in relation to torts the rules are now different. So whereas the Singapore Order 11 r. 1(1) (h) requires that an action begun by writ be founded on a tort committed within the jurisdiction, the English Order 11 r. 1 (1) (f) requires that the claim be founded on a tort and the damage be sustained or resulted from an act within the jurisdiction.
4 In the United States, attempts to justify this ground as a proper ground of jurisdiction in terms of the minimum contracts principle have generally been repulsed: see *Shaffer* v. *Heitner* (1977) 433 U.S. 186. Peter Hay argues that this separation of jurisdiction from choice of law is correct: see "The Interrelation of Jurisdiction and Choice-of-Law in United States Conflicts Law" (1979) 28 I.C.L.Q. 161.

disregarding choice of law rules beyond absolute necessity. Authority certainly there is.[5] But reasons for disregarding choice of law rules have yet to be fully canvassed and articulated.[6]

Two recent cases, one local and one English, bear on the point in relation to torts and disclose interesting facets in the problem of the intrusion of choice of law into a question of jurisdiction. Both cases deal with the Order 11 ground in paragraphs (f) (the English case) and (h) (the local case). In the local case, choice of law rules are disregarded, without reasons being assigned. But this may be a little inconsistent with the English case, in which a valiant, *albeit* a somewhat confusing, attempt is made by Slade L.J. to deal with the problem.

The facts of the English case, *Metall und Rohstoff AG* v. *Donaldson Lufkin & Jenrette Inc*.,[7] fall within a narrower compass. We have a fraudster who while occupying the position of chief aluminium trader of the plaintiff company, Metall, connives with AML Holdings, which acts as aluminium brokers for Metall. The fraudster thereby succeeds in secreting away huge sums of money from Metall, which cannot subsequently be recovered from the co-conspirator, AML Holdings, which is insolvent and under liquidation. Metall must therefore claim against the parent company of AML Holdings, Donaldson Lufkin, a Delaware corporation having its headquarters in New York. Metall must serve a writ out of jurisdiction because Donaldson Lufkin has no presence within the jurisdiction. Two grounds are mentioned: first, that a tort of conspiracy has been committed within jurisdiction and secondly, that a tort of inducing breach of contract has also been so committed.

If the facts of the case were transposed to the Singapore context, the commission of a tort within the jurisdiction would be what we would be looking for. But in England that would be past history because the present English Order requires not the commission of a tort within the jurisdiction but that the claim is founded on a tort and the damage was sustained or resulted from an act committed within the jurisdiction.[8]

The first significance of the change in wording in the equivalent English Order is that the grounds of jurisdiction are extended. Either the act (or an act giving rise to the tort) or the damage alone will now suffice for jurisdiction purposes.

More importantly, it becomes possible for one to suppose quite reasonably that although a tort may be committed in one place, yet jurisdiction to try that tort action may exist in two places. That is to say, under this formula, an English court may reasonably hold that a tort which is committed

5 See especially, *The T.S. Havprins* [19831 2 Lloyd's Rep. 356.
6 In *The T.S. Havprins* [1983] 2 Lloyd's Rep. 356 the justification for applying the *lexfori* is put, *inter alia,* in terms of sovereignty.
7 [1989] 3 All E.R. 14.
8 Introduced by the R.S.C. (Amendment No. 2) Rules 1983 (S.I. 1983 No. 1181) to take account of the Civil Jurisdiction and Judgments Act 1982.

in England (or abroad) may be tried in England as well as abroad, with the consequence that in the eyes of the English court, that tort properly is appropriated to two jurisdictions. Presumably, this is what is meant by the term "double locality torts" which is used in the judgment.

The most troublesome implication is that which was faced by the court in *Metall und Rohstoff AG.* Under the old Order 11, the English court was required to ensure that the tort was committed within the jurisdiction and adoption of the substance of the tort test virtually meant that in English eyes a tort could only be committed in one place.[9] The substance of the tort test had the effect of singling out that one place in which the tort was committed and if the court held that that tort was committed in England, there was nowhere else in the world in which it could be committed. Now the choice of law stage in respect of a tort involves the application of the double actionability rule. As stated by Lord Wilberforce in *Chaplin* v. *Boys*[10] the rule prescribes, subject to a proper law exception, the *lex fori* as the governing law provided that civil liability under the *lex loci delicti* exists as between the parties and in relation to the relevant claim between them. At the choice of law stage, and assuming that the substance of the tort test had localized the tort in England, the court could of course apply the double actionability rule because it was theoretically possible at this stage to redefine the *locus delicti* in a way different from the substance of the tort test.[11] If that was done, then notwithstanding for jurisdiction purposes the court had concluded that the tort was committed in England, the court could for choice of law purposes refer to a different *locus delicti.* However, the better view was that that would be wrong and that the *locus delicti* was to be defined in the same manner as dictated by the substance of the tort test.[12] Thus, if a tort was found to be committed within the jurisdiction, the *locus delicti* would be the forum for purposes of the double actionability rule. The case would be a purely domestic case, notwithstanding the presence of other foreign elements (which would have been implicitly held to be irrelevant) and the domestic tort law would be applied. Thus also, any attempt in these circumstances to invite the application of choice of law rules in a question of jurisdiction would

9 As laid down in *Distillers Co. (Bio-Chemical) Ltd.* v. *Thompson* [ 1971] A.C. 458, the right approach is, when the tort is complete, to look back over the series of events constituting it and ask the question: where in substance did this cause of action arise? See also *Castree* v. *E. R. Sauihb & Sons Ltd.* [1980] 1 W.L.R. 1248.

10 [1971] A.C. 356, 384-387; and as understood by judges in subsequent cases such as *Coupland* v. *Arabian Gulf Oil Petroleum* [1983] 2 All E.R. 434; [1983] 3 All E.R. 226.

11 Carter, for example, in (1980) B.Y.I.L. 242 argues that for policy reasons the location of a tort for choice of law purposes should not depend upon the notion of the substance of tort. First, for choice of law purposes it is not good enough to say that the tort is committed within the jurisdiction; one must say specifically where it is committed. Secondly, the plaintiff must be accorded the advantages extended to him by the law of any country in which one of the train of events alleged to constitute a tort occurred and with the laws of which it is reasonable to expect the defendant to have compiled.

12 Although there is little authority on the point, such decisions as exist such as *Szalatnay-Stacho v. Fink* [1947] *K.B.* 1; *Soutar* v. *Peters* [1912] 1 S.L.T. 111; *John Walker & Sons Ltd.* v. *Douglas McGibbon & Co. Ltd.* [1972] S.L.T. 128 are consistent with the proposition.

be purely academic.[13] Conversely, if the tort was found to be committed outside the jurisdiction, it would be equally quite beside the point and indeed, futile to try and show that by the substantive tort law of the *locus delicti* there was in fact no actionable tort committed. Where jurisdiction was sought under this particular Order 11 ground, there would be no jurisdiction in the action once it was decided that the substance of the tort lay elsewhere.

We see then that under the former regime, little would be achieved by raising the double actionability rule at the jurisdiction stage. Indeed, and further, there was probably no choice of law stage once it was decided that the substance of the tort occurred in England. On the other hand, if the substance of the tort did not exist in England, any reference to the tort choice of law rule would be unnecessary. It was principally when a defendant was served with a writ when present within the jurisdiction that it was necessary to consider the double actionability rule at the choice of law stage, for then the choice of law stage would be arrived at without a prior consideration of whether a tort had been committed. Likewise when a defendant was served out of the jurisdiction pursuant to a ground such as domicile within the jurisdiction,[14] a ground not obviously connected with the commission of a tort.

The point to emphasize is that in cases of service within the jurisdiction, the position remains the same as before. Probably this is true also of service out on the ground of domicile. But where service out is made specifically based upon a tort, it seems the former position is now superseded by the new formula which unlike the old formula could be taken to invite the application of choice of law rules at the stage of jurisdiction. Since it speaks of a claim founded on a tort in which either the act or damage exists within the jurisdiction, a proper foundation of jurisdiction seems to depend upon there being at least an arguable tort and either the requisite act or damage. So whereas before it would be pointless to introduce the double actionability rule at the jurisdiction stage, now there would be an incentive to do so. Take *Metall und Rohstoff AG* itself. There would be an incentive to say that since the tort of conspiracy is non-actionable in New York and since the tort of inducing breach of contract is time-barred in New York,[15] there could not, applying the tort choice of law rule,[16] be any claim on a tort even if the damage exists in England. In other words, there would be no tort to be sued upon by English choice of law rules and hence, no Order 11 jurisdiction. That argument, which could not have been maintained under the old formula, must now be addressed squarely.

13 The English Law Commission Working Paper No. 87 on *Choice of Law in Tort and Delict* (1984) recommends applying the double actionability rule in such a case, really for the reason that then the exception would become available. Even so, it is only in a rare case that there will be any difference from treating the case as a purely domestic one (for it is not conceivable that the exception will be found except in a rare case). The foregoing discussion would therefore still be largely valid.

14 Formerly ordinary residence was an alternative ground. But domicile in Order 11 r. 1 (I) (a) is now determined in accordance with the Civil Jurisdiction and Judgments Act 1982.

15 This is now a substantive issue by virtue of the Foreign Limitation Periods Act 1984.

16 *I.e.*, the rule in *Chaplin* v. *Boys* [1971] A.C. 356.

The case for intrusion of choice of law rules, put another way, is this. If, as the new formula contemplates, two jurisdictions may, in the eyes of an English court, properly try a tort action, it would be inconvenient that one jurisdiction will hold that there is no tort when another will declare to the contrary. The desire to avoid inconsistent results in such a case would therefore motivate the application of the double actionability rule at the jurisdiction stage.

How then to resolve the problem? One approach would be to ignore completely the potential intrusion of choice of law at the jurisdiction stage. Another approach, which has some support in contract cases, would be to say that whether there is an arguable tort must be decided solely by the *lex fori* and not by recourse to the choice of law rule with its reference to the *lex loci delicti.*

Slade L.J.'s "solution" to the problem posed before the Court of Appeal in *Metall und Rohstoff AG* follows neither of these approaches. He accepts the precise wording of the new Order 11 and comes to a two-fold conclusion:

> "In our judgment, in double locality cases our courts should first consider whether, by reference exclusively to English law, it can properly be said that a tort has been committed within the jurisdiction of our courts. In answering this question, they should now apply the well-familiar 'substance' test.... If on the application of this test they find that the tort was in substance committed in this country, they can thenceforth wholly disregard the rule in *Chaplin* v. *Boys;* the fact that some of the relevant events occurred abroad will thenceforth have no bearing on the defendant's liability in tort. On the other hand, if they find that the tort was in substance committed in some foreign country, they should apply the rule...."[17]

Slade L.J.'s solution is puzzling. The bewilderment concerns his second conclusion that if the court finds that the tort was in substance committed in some foreign country, it should then apply the double actionability rule and only if that be also satisfied should the jurisdictional requirements be met. So, as Fentiman points out, " ... it is unclear why the court thought they should have jurisdiction at all under Order 11(1)(1)(f) in cases where a tort is substantially committed abroad ... why did they not say that a tort is not 'committed' here, and so stands outside Order 11(1)(1)(f) altogether...?"[18]

The answer to Fentiman's query is that under the new formula an English court is unable to say, where the act occurs or the damage is sustained within England, that it has no jurisdiction. Clearly it has even if the tort is substantially committed elsewhere. But then additionally, there must also be a claim founded on a tort. We might see Slade L.J.'s solution as in essence construing the expression "a claim founded on a

17 At p. 32.
18 [1989] C.L.J. 191 at p. 193.

tort" in a formula which makes double locality torts inevitable. What is happening then is that there is a claim founded on a tort if that tort is substantially committed in England because then English law would be the *lex causae.* In other words, an English court *prima facie* does have jurisdiction if damage results within the jurisdiction although the relevant acts may have occurred elsewhere. And *vice versa.* This is inescapable. But on top of that, an English court will not assume jurisdiction unless the substance of the tort can be said to have occurred within the jurisdiction, for then the claim would be founded on a tort, if by the *lex fori* there is indeed a tort. If, however, a tort is substantially committed abroad, we must look to the choice of law rule to see whether there is in fact an actionable tort under that rule. So an English court will not assume jurisdiction unless the double actionability rule is also satisfied.

The solution of Slade L.J. is a complex solution because he could so easily have said that a question of jurisdiction is governed by the *lex fori* so that whether there is a claim founded on a tort must be decided by English law alone and on that basis precluded the intrusion of the choice of law rule with its reference to the *lex loci delicti.* That simple solution nevertheless would not have been satisfactory when in English eyes there is a double locality tort. It would not directly address the problem. The complex solution further avoids a situation in which a court assumes jurisdiction on the ground of a tort in England only to find at the choice of law stage that no actionability is possible by virtue of the double actionability rule. It is a compromise solution. The substance of tort test is used to identify those situations in which choice of law is ruled out and those in which choice of law will be allowed to figure at the jurisdiction stage. Insofar, however, as it permits choice of law to figure at the jurisdiction stage, it marks a departure from the contract cases. And this is precisely what makes the decision far-reaching. It means significantly that the so-called question of jurisdiction is in effect a substantive resolution of the tort claim. So if the tort is substantially committed in England, English law which has already been applied *via* the substance of the tort test will be applied. There is unlikely to be a stay of proceedings.[19] All that remains is to assess damages. On the other hand, if the tort is substantially committed elsewhere, upon proof of the *lex loci delicti,* that it regards the tort as actionable, the English court can proceed subject only to questions of natural forum. If despite the natural forum being elsewhere (the *locus delicti* is not England) the English court regards it as essential to justice being done to allow the plaintiff to proceed, again the substantive points would have been decided and it only remains to assess the damage. The question must therefore be whether the judgment is so far out of line as to be hard to defend.

At bottom, the desire in contract cases to disregard choice of law at the jurisdiction stage is transparent. What could explain this obvious distaste for choice of law? We have, looking at a contract case, *The T.S.*

[19] See, however, *Castanho* v. *Brown & Root (U.K.) Ltd.* [1981] A.C. 557 where a plaintiff was allowed to discontinue his English action and to continue with his American action in a case where Texas was as natural and proper a forum as England.

*Havprins,*[20] two answers. In that case, the plaintiffs brought an action to recover the price of bunkers which had been supplied to the defendants pursuant to negotiations between the plaintiffs' agents and the defendants. The defendants had no idea at that time that they were in fact dealing with the plaintiffs' agents as agents for a principal, the plaintiffs. After the fuel had been supplied, the plaintiffs issued an invoice in their name and required payment in England. According to the plaintiffs, the contract was made as part of a course of dealing with two consequences; that by English law as the *lex fori* the plaintiffs were parties to the contract and secondly, the standard terms of the plaintiffs' terms of dealing were incorporated, including an express choice of English law and submission to English jurisdiction. So the action was begun by way of a service of writ out of the jurisdiction on the ground, *inter alia,* of the governing law being English law and submission to English jurisdiction. Service out was complicated by the nature of the defendants' allegations. They did not allege that no contract had been made. They admitted that a contract had been made but they said it was made with a party other than the plaintiffs. The issues raised were: (1) with which party had the contract been made, and (2) what were its terms?[21]

Staughton J. gave two reasons why the law to determine the answers to those two questions must be the *lex fori.* First, the Order 11 rules are legislative rules of the conflict of laws and it seems "inconceivable that Parliament, or His Majesty in Council, or the Rule Committee, can have intended rules thus laid down to be applied by reference to the rules of conflict of laws of any other country."[22] Secondly, "it may be assumed that English law has adopted this prevailing opinion [that the connecting factor should be determined by the *lex fori*], and that, for the purpose of an English conflict rule, the connecting factor will be determined by English law as the *lex fori.*"[23] These arguments proceed by virtue of logic and principle. Commenting on a "similar" approach elsewhere,[24] Cheshire and North write:

> "It will be observed that the question whether a valid contract had been made was tested according to English internal law, not according to the Belgian law expressly chosen by the parties. This was surely correct. The first task of the court was to characterise the factual situation in order to ensure that a valid contract had been made, for unless this were established there was no jurisdiction to proceed with the hearing of the plaintiff's application."[25]

Viewed against this background, the willingness in *Donaldson Lufkin & Jenrette Inc.* to have some recourse to choice of law seems hard to reconcile with the rejection of choice of law in *The T.S. Havprins* and

20 [1983] 2 Lloyd's Rep. 356.
21 It is a little strange that Staughton J. considered that a question of whether a contract was made arose.
22 *Per* Staughton J. in *The T.S. Havprins* [1983] 2 Lloyd's Rep. 356 at p. 358.
23 *Ibid.*
24 *I.e., MacKender* v. *Feldia A.G.* [1967] 2 Q.B. 590.
25 *Private International Law* (11 ed., 1987), p. 477.

elsewhere in the context of jurisdiction.[26] Can one say that this is only justifiable in relation to torts? One can seize upon the peculiar wording in the new formula and therefore admit that the intrusion of choice of law in a tort case is unfortunate but logically necessary and compelled by the peculiar wording employed.

The latter might be too limited an approach. It is suggested that the time has come to deal with the general question itself, whether intrusion of choice of law in a question of jurisdiction is inherently wrong. While recognizing the force of the reasons advanced for keeping choice of law rules out at that stage, one cannot help but feel a sense of uneasiness at the practical results that ensue from such a course of action. It is, for example, not difficult to imagine a contract case in which applying the *lexfori* the court for purposes of jurisdiction determines that a contract was made but must come to a different and opposite conclusion when applying the choice of law rules during trial. That obviously seems like a waste of time which could so easily have been prevented by applying the choice of law rules at the outset. One reply then would be: "Well that may be so, but since at the jurisdiction stage we depend primarily on affidavit evidence, would you not be pre-judging the issue prematurely? Would it not be safer to apply the *lex fori* at this stage?" That is perfectly true but there may well be a case in which the only substantial dispute between the parties involves a point of law and in which no issues of fact will be raised. It may be observed that *The T.S. Havprins* itself was a case which would call for difficult fact-finding inquiries. In such a case, the temptation open to a defendant is to preclude the fact-finding inquiries by throwing in a choice of law rule at the jurisdiction stage. A court would be quite right to resist an attempt along these lines. But there should be no reason to ignore the choice of law rules when facts are not in dispute. Moreover, it is quite clear that insofar as an Order 11 application is concerned, the evidence must disclose a good and arguable case on the merits. When that is already the requirement, admitting the consequences of the choice of law application would not seem insurmountable. It is admitted that logic and principle support shutting out choice of law rules at the jurisdiction stage, but the practical consequences seem at times indefensible. A proper intersection between jurisdiction and choice of law would seem to warrant taking choice of law rules into account.

This submission can be strengthened by considering the local case *of J H Rayner (Mincing Lane) Ltd.* v. *Teck Hock & Co. (Pte.) Ltd.*[27] The rejection of choice of law in the local case in connection with jurisdiction is more implicit than expressed. The facts may be shortly described. A Singaporean company having contracted to buy a cargo of coffee beans from the English plaintiff shippers procured their delivery to itself under false pretences and without authority and sold them under a contract to

[26] See *e.g., MacKender* v. *Feldia A.G.* [1967] 2 Q.B. 590 in which English underwriters unsuccessfully sought service out and a declaration that a Belgian contract containing a submission to Belgian jurisdiction and made in England was tainted with illegality or void for non-disclosure.

[27] [1990] 2 M.L.J. 142.

Californian buyers, the defendants. The English plaintiff shippers alleged that the defendants were liable for the tort of conversion committed within the jurisdiction and sought service out of the jurisdiction on that ground. It may be observed that the relevant Order 11 ground here, unlike the new English Order, is clearly subject to the substance of tort test. Nevertheless, it will be seen that a problem analogous to that in the English case is presented.

It is quite clear that though a defendant makes a contract for consideration he may be liable in conversion of the subject matter of the contract and upon that uncontroverted proposition Chao Hick Tin J.C. (as he then was) proceeded. He found that the substance of the tort of conversion was in the act of receiving possession of the goods and since by Singapore law the contract was an f.o.b. contract possession passed to the defendants at the port of shipment, namely, Singapore. The tort of conversion having been committed within Singapore, the exercise of jurisdiction could not be resisted save upon the principle of *forum non conveniens.* Nothing in that principle as applied here could repulse the *prima facie* conclusion that where a tort was committed within jurisdiction, that jurisdiction was the natural forum. So leave was granted.

The judge's rejection of the relevance of choice of law rules is in these terms:

> "[C]ounsel for the third defendant contended that the conversion did not take place here but in California. I am unable to accept that contention. Firstly, from the documents, this appears to me to be an F.O.B. contract....[Considering all the circumstances, I would be inclined to think that the contract was governed by Singapore law. I am, of course not making a definite ruling on this *as I do not think there is any need to do so.*"[28] (Emphasis added.)

The rejection of choice of law rules is amply justified by the absence of any evidence tendered that "the United States [*sic.*] contract law on the point in issue is different from that which applies in Singapore". It is noticeable, however, that Chao Hick Tin J.C. goes further than that and expresses the opinion that it is immaterial what the governing law may be.

Suppose for the sake of argument that by Californian law, the contract would have been regarded on true construction as an ex-dock contract (providing for delivery at destination). Applying the governing law of the contract, possession would not have passed in Singapore. Now in determining the location of the natural forum for the dispute, the governing law figures in an important way and if the only dispute concerns the construction of the contract, it would seem that the governing law will be determinative of the natural forum. Upon this supposition, California would be the natural forum since Californian courts are best able to interpret and apply Californian law. The difficulty then in rejecting the

[28] At p. 144.

governing law in such a case is this. Notwithstanding that the *lex fori* is applied in determining where possession passes to the defendants the action itself must ultimately be stayed because the governing law would point to California being the natural forum.[29] Such an anomalous result would have to be avoided by saying that the contract question is merely an incidental question and therefore unable to detract from Singapore's status as the natural forum. Even so, suppose a stay is refused and we come to trial of the action. It may be that the court must now admit that the conversion took place in California so that California would be the *locus delicti.* Now the double actionability rule must be applied. One must reckon also with California's law on conversion by sale. Would it not be better in these circumstances to apply the governing law at the outset when considering whether an Order 11 nexus exists? Then if according to the governing law the delivery of possession occurred in California, there would be no jurisdiction to serve out of the jurisdiction and no involvement in California's tort law.[30]

It would seem right that generally the *lexfori* should determine whether a jurisdictional nexus within the forum exists. Nevertheless, the two cases which have been discussed show that there must be sensitivity to the *lex causae* and that there are situations in which a judge ought to be able to consider the difference the *lex causae* makes. The attempt in *Metall und Rohstoff AG* is a tentative formulation of when it is right to have regard to choice of law in a question of jurisdiction in tort. It may perhaps be explained as a response to the peculiar wording in the English formula rather than the beginning of a change of English judicial attitude towards the consideration of choice of law rules in a question of jurisdiction. But it shows at least some sensitivity to the connections between jurisdiction and choice of law. Readers in Singapore may well see it as therefore a peculiar English case of little relevance to us; but that it is suggested would be unfortunate. It is true that the particular "tort" ground of jurisdiction in the Singapore Order 11 generally avoids the logical intrusion of choice of law issues because as was earlier shown there is little sense in arguing choice of law issues when the commission of a tort within the jurisdiction is construed to mean the commission of the substantive acts (whether or not they amount to a tort by the choice of law rule) within the jurisdiction. But even though intrusion of choice of law issues is generally avoided by the Singapore phraseology of Order 11 r. l(l)(h), it is not invariably shut out. The Singapore case under discussion is an excellent example of an exceptional situation where choice of law issues

[29] This is not a criticism of Chao Hick Tin J.C.'s judgment in relation to natural forum. Although he does not consider the governing law in determining the natural forum, he observes that in fact the Californian court itself had ruled that it had no jurisdiction over J.H. Rayner for the purposes of granting a declaration in favour of the defendants. (The Californian courts do not assume jurisdiction on the ground of the governing law being Californian law and it would seem they did not think that the contract had been made in California, although it seems to have been accepted by the Singapore court that the contract was made there.)

[30] I am assuming that the governing law of the contract will be given effect to in the trial as determining an incidental question. *Cf. United States Surgical Products* v. *United Hospital International Pty. Ltd.* [1982] 2 N.S.W.L.R. 766 at pp. 797 -798; affirmed on other grounds in (1984) 58 A.L.J.R. 587.

will intrude in a question of jurisdiction. One wonders whether the sensitivity shown in the English case may some day inspire Singapore courts to depart justifiably from orthodoxy.

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