10. CONFLICT OF LAWS

Joel **LEE** Tye Beng
LLB (Hons) (Wellington), LLM (Harvard), DCH (AIH);
Barrister and Solicitor (New Zealand), Advocate and Solicitor (Singapore);
Associate Professor, Faculty of Law, National University of Singapore.

Introduction

10.1 For 2009, there are eight cases which will be examined in this review.

10.2 As in previous years, it is useful to note that conflict of laws cases sometimes relate to other areas of law. In these situations, this review will only examine those parts of the case that are relevant to the field of conflict of laws.

Stay of proceedings and natural forum

10.3 There were four cases relating to stay of proceedings and natural forum.

10.4 The first case was *Goh Suan Hee v Teo Cher Teck* [2010] 1 SLR 367. This was an appeal from the decision in *Teo Cher Teck v Goh Suan Hee* [2009] 1 SLR(R) 749. While reported last year, that case did not make any significant pronouncements relating to *forum non conveniens*. As such, it was not included in the digest for last year. This appeal, however, does raise some interesting points.

10.5 The Malaysian appellant's vehicle collided with the Singaporean respondent's vehicle in Malaysia. The respondent commenced proceedings in the Singapore District Court and the appellant applied to stay the proceedings on the basis that Malaysia was the more appropriate forum. The application failed at first instance, succeeded on appeal to the District Court, and on further appeal to the High Court, the District Court decision was overturned.

10.6 At the High Court (*Teo Cher Teck v Goh Suan Hee* [2009] 1 SLR(R) 749), Choo Han Teck J held that the appellant had not discharged the burden of showing that Malaysia was the more appropriate forum. This was upheld on appeal to the Court of Appeal (*Goh Suan Hee v Teo Cher Teck* [2010] 1 SLR 367). In delivering its decision, the court reviewed the law relating to *forum non conveniens*, emphasising the need to bear in mind that the process was to identify

which forum meets the ends of justice, the two-stage test, the factors considered at stage one and how the process of weighting and weighing those factors will vary from case to case. The factors the court considered were, *inter alia*, the place where the tort occurred (pointing to Malaysia), the availability of witnesses (pointing to Singapore), the *lex causae* (a neutral factor) and the quantification of damages (a neutral factor).

10.7 There are a number of observations one could make about this decision. First, the court correctly pointed out that the place where the tort occurred is *prima facie* the natural forum for the dispute (*Goh Suan Hee v Teo Cher Teck* [2010] 1 SLR 367 at [10]). What is interesting is that the court seems to juxtapose this with the point that the *lex causae* was the *lex loci delictii* which was Malaysian law (at [12]). While it is true that in some cases, the *lex causae* would be the *lex loci delictii*, the application of the double actionability rule and its exception may mean otherwise. Put another way, the two factors are not synonymous. The point of course is that the place where the tort occurred and the *lex causae* as factors in the *forum non conveniens* analysis are usually treated separately. Conflating them may confuse the analysis for future cases. In fairness, however, it may be that in the context of this case, the court was simply making an observation that the place where the tort occurred and the *lex causae* pointed in varying degrees to Malaysia.

10.8 This leads us to the second point. The court pointed out that while the presumption is that a foreign court is best able to apply foreign law, in this case, as there is little difference between the Singapore and Malaysian laws on negligence, this factor is at best neutral (*Goh Suan Hee v Teo Cher Teck* [2010] 1 SLR 367 at [13]).

10.9 Third, the court noted that most of the witnesses were located in Singapore. In recent years, the importance of this factor has lessened due to the influence of first, modern air travel, and, second, the development of video-conferencing technology. The argument of course being that it is no longer as difficult for witnesses to travel to the country of trial and, even where it is difficult, giving testimony through video-conferencing technology was now possible. Interestingly, the court, while noting this point, gave this factor enough weight to tip the scales (*Goh Suan Hee v Teo Cher Teck* [2010] 1 SLR 367 at [11]).

10.10 On one view, it could be said since the other factors were neutral or not very strong in favour of Malaysia, this "convenience" factor made a difference. On another view, one wonders if the lack of evidence that the Malaysian court was willing to hear evidence by video-conferencing was of significant concern to the court thereby prompting its decision. It is useful to note that this concern was not an issue in the case of *Chan Chin Cheung v Chan Fatt Cheung* [2009] SGCA 62 (see

paras 10.18–10.30 below). Perhaps, the practical lesson here is that the use of technology to lessen the importance of the convenience factor is dependent upon whether the proposed natural forum is able and willing to utilise that technology. Otherwise, this factor, which the writer coins as one of "legally relevant convenience", remains both real and significant.

10.11 Fourthly, this point of "legally relevant convenience", which is relevant in a *forum non conveniens* analysis, should not be confused with considerations of, for lack of a better term, "factual inconvenience". At the High Court, Choo J had opined that where the inconvenience was roughly the same to the parties, the court would prefer not to cause inconvenience to an injured plaintiff rather than the defendant tortfeasor, unless it appeared that the plaintiff's claim was unlikely to succeed (*Teo Cher Teck v Goh Suan Hee* [2009] 1 SLR(R) 749 at [6]). Presumably, Choo J meant that where the factors in the *forum non conveniens* analysis were roughly balanced, *ie*, the legal inconvenience was roughly the same, a presumption of not "factually inconveniencing" the plaintiff operated. This is very strange indeed as it would lead to there being a "forum bias". Fortunately, the Court of Appeal rightly pointed out that at this jurisdictional stage, making an assessment of blameworthiness without the benefit of a full trial was inappropriate and that this consideration of "factual inconvenience" was irrelevant at stage one of the *forum non conveniens* analysis (*Goh Suan Hee v Teo Cher Teck* [2010] 1 SLR 367 at [27]).

10.12 The final point relates to quantification of damages. In support of its application, the appellant argued that by choosing to sue in Singapore, the respondent obtained a juridical advantage in that the general damages awarded in Singapore would be higher than in Malaysia. This is an odd submission as this argument would only have been relevant in stage two of the test from *Spiliada Maritime Corp v Cansulex Ltd* [1987] AC 460 after the appellant had shown that there was another more appropriate forum elsewhere. It is only when the court has decided to stay the proceedings that the respondent might argue that the stay would deprive it of a legitimate advantage. The *forum non conveniens* analysis, however, was not at this point.

10.13 The court could have easily dismissed this submission on this basis. It is therefore odd that the court devoted a significant part of its judgment to this point. It first stated that the deprivation of certain types of advantage, *eg*, more complete discovery rules, the ability to award interest or higher interest, a more generous limitation period, would not deter the court from staying the proceedings as long as substantive justice can be obtained for the parties in the other forum (*Goh Suan Hee v Teo Cher Teck* [2010] 1 SLR 367 at [14]). This is a straight stage two analysis and is correct. The advantage of having

higher awards in Singapore would not qualify as a sufficient advantage to prevent a stay. However, as mentioned earlier, the inquiry was not yet at this point. It is therefore curious that the court went on to conclude that this was a neutral factor in the *forum non conveniens* analysis.

10.14 One way to make sense of this is to say that the court is now considering the respondent's advantage at stage one of the *forum non conveniens* analysis. This would be undesirable indeed as it conflates the considerations at two different stages of the test, and while there may have been some suggestion of moving in this direction (see *PT Hutan Domas Raya v Yue Xiu Enterprise (Holdings) Ltd* [2001] 1 SLR(R) 104, digested in (2001) 2 SAL Ann Rev 107 at 111–112, paras 8.22–8.26), the courts have maintained the two-stage distinction. If it is the Court of Appeal's intention to conflate the two stages, it is hoped that the court will do so after the benefit of full arguments on this point. Having said this, it seems unlikely as the Court of Appeal in a later case, *Chan Chin Cheung v Chan Fatt Cheung* [2009] SGCA 62, reiterated the two-stage test from *Spiliada Maritime Corp v Cansulex Ltd* [1987] AC 460. It would appear then that the court felt it had to respond to this argument once it had been brought up by the appellant. This was kind but unnecessary as the court could have simply dismissed the point as being irrelevant at stage one.

10.15 Odder still, however, is that after the court concluded that this point is a neutral factor, the court engaged in a curiously involved discussion as to the law that would apply to determining the quantification of damages (*Goh Suan Hee v Teo Cher Teck* [2010] 1 SLR 367 at [16]–[24]). Traditionally, quantification of damages was seen as a matter of procedure and, therefore, governed by the *lex fori*. This was the position in England until it was superseded by the Rome II Regulation (Regulation (EC) No 864/2007) which provided that where the *lex causae* has legal rules in relation to assessment of damage, it will be applied to the quantification of damages. The court also noted that the common law position in Australia was also being modified and that it was no longer a foregone conclusion that quantification of damages was a matter for the *lex fori*. After canvassing the undesirability of the traditional approach, the court went on to indicate a willingness to consider a similar modified position in Singapore which would remain an open question until the court had an opportunity to hear full arguments in an appropriate case.

10.16 Without expressing an opinion about the merits of the traditional position versus the modified one, it is not clear why the court chose to explore this point in such detail, especially when it related to a submission that was not even relevant to the inquiry before them. Even if the inquiry was at stage two, the fact that the forum awards higher damages is usually not sufficient reason not to order a stay. Changing

from the traditional to a modified position would make no difference in the *forum non conveniens* analysis.

10.17 Perhaps the intention of the court was to warn potential litigants against shopping for a forum where they thought they might obtain higher damages? Or perhaps it was to seed the discussion for future desired changes in the law? Either way, this discussion seems out of place in this case. At the end of the day, however, the court's decision was correct, even if the route was somewhat circuitous.

10.18 The second case was *Chan Chin Cheung v Chan Fatt Cheung* [2009] SGCA 62. This was an appeal from *Chan Chin Cheung v Chan Fatt Cheung* [2009] SGHC 96 where Lai Siu Chiu J allowed the respondents' appeal and ordered a stay of proceedings of the appellant's defamation suit in Singapore pending the outcome of certain proceedings in Malaysia. The appellant was the half brother of the first two respondents and uncle to the third. All the parties were beneficiaries of the will of their father/grandfather respectively. The respondents were trustees of the deceased's estate and a dispute arose between the respondents and the appellant revolving around which test was to be used to determine who were "grandson" beneficiaries under the will. The appellant favoured the use of DNA testing as this would bring his two sons into the group of beneficiaries. The respondents chose to continue using the test of whether the person in question was born to a son of the deceased and that son's legally wedded spouse and requested this proof of the appellant. Obviously unhappy, the appellant commenced three suits in Malaysia against the respondents alleging, *inter alia*, their unsuitability as trustees.

10.19 The appellant instituted proceedings in Singapore because of allegedly defamatory statements made by the respondents about the appellant in their periodic circulars to beneficiaries of the estate. After successfully routing an attempt by the appellant to stay the Malaysian proceedings, the respondents applied to stay the proceedings in Singapore. The application failed before the assistant registrar but succeeded on appeal to the High Court before Lai J. The matter then came before the Court of Appeal.

10.20 The first point of appeal addressed by the court was one of civil procedure. The appellant sought to argue that the respondents were out of time to apply for a stay and that Lai J had erred in granting them an extension of time. The appellant also argued that by taking steps in the proceedings, the respondents could not now seek to stay the proceedings on the basis of *forum non conveniens*. As these are matters relating to procedural law, without going into too much detail, it is sufficient for our purposes to note two points. First, while the Rules of Court (Cap 322, R 5, 2006 Rev Ed) provide for time limits within which one

can apply for a stay of proceedings, these timelines are not absolute and the court has the power to extend the timelines in appropriate situations. The Court of Appeal held that Lai J did not err in so extending the timelines (*Chan Chin Cheung v Chan Fatt Cheung* [2009] SGCA 62 at [26]). Secondly, the court clarified that whether a party had taken steps in the proceedings is relevant only where that party was seeking to challenge the jurisdiction of the courts (at [22]). It was not relevant where they were seeking a stay of proceedings because such an application presupposed that the court was seised of jurisdiction and that the court was being asked not to exercise its jurisdiction.

10.21 The second point on appeal was whether Lai J had erred in holding that Malaysia was a more appropriate forum and staying the proceedings. The Court of Appeal opined that Lai J had not erred and upheld her decision. A number of observations can be made about the Court of Appeal's analysis.

10.22 First, the court affirmed the applicability of the two-stage test from *Spiliada Maritime Corp v Cansulex Ltd* [1987] AC 460 and pointed out that its role as an appellate court in an application for a stay was to review the lower court's exercise of its discretion and not to replace it with its own exercise of discretion (*Chan Chin Cheung v Chan Fatt Cheung* [2009] SGCA 62 at [27]–[28]). This is unremarkable and correct.

10.23 Secondly, one of the factors in favour of Singapore in stage one of the *forum non conveniens* analysis was that the majority of likely witnesses were in Singapore. As mentioned earlier (see para 10.9 above), the approach of the courts recently has been to diminish the weight of this factor due to advances in travel and technology. Predictably, the court agreed with Lai J that this was not a critical factor as travel between Malaysia and Singapore was easy and that the Singapore court had the power to compel witnesses to give evidence for trial in Malaysia (*Chan Chin Cheung v Chan Fatt Cheung* [2009] SGCA 62 at [34]–[36]).

10.24 In this case, the court did not seem concerned with whether the Malaysian courts were able or willing to hear testimony through video-conferencing technology. Juxtaposed with the court's concern with regards to the same point in *Goh Suan Hee v Teo Cher Teck* [2010] 1 SLR 367 (see paras 10.4–10.17 above), this is curious indeed. It is not clear from the reading of both judgments why this was a concern in that case and not a concern here. The author can only assume that something in *Goh Suan Hee v Teo Cher Teck* had raised a flag of concern.

10.25 Thirdly, another factor that the court considered was the *lex causae*, which was Singapore law. The *prima facie* position is that the country from which the *lex causae* flows is a more appropriate forum to

apply that law. The rider, of course, is that this factor decreases in significance if the laws of the competing fora are from the same legal tradition and heritage, *eg*, common law. In such a situation, it is no longer as strong an argument to say that Singapore is best suited to apply Singapore law when Malaysia, sharing a similar heritage, would be well suited to apply Singapore law. What is of interest is the route by which a court takes cognisance of the similarities or differences in the laws of the competing fora. At trial, the burden of proving foreign law as a matter of fact falls on the party asserting that law. Where the foreign law is not sufficiently proved, it will be assumed that the foreign law is the same as the law of the forum. While this presumption is one of convenience and has somewhat of a forum bias, it is a necessary evil.

10.26 The question is whether a similar presumption of equivalence applies at this jurisdictional stage. In *Multi-Code Electronics Industries (M) Bhd v Toh Chun Toh Gordon* [2009] 1 SLR(R) 1000 (digested in (2008) 9 SAL Ann Rev 186 at 194–196 and 209–210, paras 9.38–9.50 and 9.109–9.114), Chan Seng Onn J held that the evidential burden was on a plaintiff who was resisting the stay to show that there were no significant differences between Malaysian and Singapore law, and where no such proof was forthcoming, the court was entitled to assume that there were significant differences. This author had expressed unease with this approach from both an evidential point of view and the presumption of equivalence ((2008) 9 SAL Ann Rev 186 at 195–196, paras 9.46–9.50).

10.27 The Court of Appeal in *Chan Chin Cheung v Chan Fatt Cheung* [2009] SGCA 62 provided some, but not full, clarity on this. The court opined that where there was not sufficient proof of foreign law, the court could take judicial notice that the principles in the foreign jurisdiction would differ from Singapore (at [33]). This is a different approach from the presumptive differences one adopted in *Multi-Code Electronics Industries (M) Bhd v Toh Chun Toh Gordon* [2009] 1 SLR(R) 1000 and is easier to accept. It is more acceptable to say that where there is no proof, the court is able to take judicial notice of similarities and differences between the laws of competing fora and decide appropriately. This is exactly what the court did. It noted that the competing fora shared a common legal heritage and opined that Malaysia would be no less adept in applying Singapore defamation law. As such, the choice of law factor decreased in significance in stage one of the *forum non conveniens* analysis.

10.28 Two remaining points can be made before moving on to the next observation. First, as a matter of completeness, it is important to point out that the factual matrices of *Multi-Code Electronics Industries (M) Bhd v Toh Chun Toh Gordon* [2009] 1 SLR(R) 1000 ("*Multi-Code Electronics*") and the present case, *Chan Chin Cheung v Chan Fatt*

Cheung [2009] SGCA 62 ("*Chan Chin Cheung*"), were different. In *Multi-Code Electronics*, the *lex causae* was Malaysian law, whereas in the present case, it was Singapore law. It could be argued that where the *lex causae* and competing fora was Malaysian, proof of difference was more important than in the present case where the Singapore courts needed to make an assessment whether the Malaysian legal system could easily apply Singapore law. The second observation is a practical one. Where counsel plan to run the argument that the *lex causae* is not Singapore law and that the competing fora is best able to apply that law, it is best to be prepared to prove some difference so as not to render this factor less potent than it could be.

10.29 Fourthly, the court found it significant that while the causes of action in the Malaysian and Singapore actions were distinct, they stemmed from similar factual matrices. As such, much of what would be traversed in the Singapore action for defamation would overlap with those in the Malaysian ones. This gave rise to the risk of conflicting judgments. Lai J considered this an important factor and the Court of Appeal agreed (*Chan Chin Cheung v Chan Fatt Cheung* [2009] SGCA 62 at [44]).

10.30 Finally, the court noted and approved Lai J's decision to grant a limited stay pending the outcome of the Malaysian proceedings (*Chan Chin Cheung v Chan Fatt Cheung* [2009] SGCA 62 at [46]). This is an interesting twist as it allowed the court to keep its options open. The court acknowledged that the factors in the *forum non conveniens* analysis were not immutable and that their respective weights could change after the Malaysian proceedings had been completed. A limited stay ensures the Singapore courts obtain the benefits of the Malaysian findings thereby side-stepping the concern of having conflicting judgments, which in turn is conducive to international comity. This also ensures that the work already done in Singapore does not go to waste. It is useful to note the court's reminder that where a limited stay is applied for, it is not necessary for the court to go through the *forum non conveniens* analysis (at [47]). Instead, it has the full discretion to stay the proceedings for sufficient reasons until appropriate conditions are met. It is not clear at this point what would constitute sufficient reasons and in what circumstances a limited stay would be opted for instead of a full one. It is hoped that the courts will provide more guidance on this in the near future.

10.31 The third case was *Shafeeg bin Salim Talib v Helmi bin Ali bin Salim bin Talib* [2009] SGHC 180. The plaintiffs in the originating summons were the administrators of the estate of one Obeidillah bin Salim bin Talib, who died intestate while domiciled in Singapore. The defendants were nephews of the deceased and beneficiaries of the deceased's estate under Muslim law. At the time of his death, the

deceased held shares in an Egyptian-established independent legal entity of which the defendants were managers from 1986 to 2007 until they were removed by an Egyptian court order. The plaintiffs claimed that, under the foundation contract establishing the entity, the deceased was entitled to, but did not receive, accounts and profits for the period 2005–2007. They also claimed that the defendants had failed to hand over the property of the company to the receiver at the time. In October 2008, the plaintiffs, in their capacity as administrators of the deceased's estate, filed proceedings against the defendants seeking, *inter alia*, production of accounts and payment of moneys due. There was an application for substituted service on the fourth defendant (who resided in Cairo), which was eventually dismissed. The fourth defendant then applied to set aside the proceedings on the basis of irregularity or, alternatively, on the basis of *forum non conveniens*.

10.32 On the first issue, for the purposes of this article, it is sufficient to note that the court opined that there was an irregularity and held that the proceedings should be set aside (*Shafeeg bin Salim Talib v Helmi bin Ali bin Salim bin Talib* [2009] SGHC 180 at [29] and [59]). This was sufficient to dispose of the matter. However, as the parties had canvassed arguments relating to a stay based on *forum non conveniens*, the court went on to consider this second issue. In a standard application of the two-stage *forum non conveniens* analysis from *Spiliada Maritime Corp v Cansulex Ltd* [1987] AC 460, the court opined that Egypt was the more appropriate forum to hear the matter and that had the court concluded differently on the first issue, it would have, nonetheless, stayed the proceedings on this ground (*Shafeeg bin Salim Talib v Helmi bin Ali bin Salim bin Talib* [2009] SGHC 180 at [63]–[87]).

10.33 In terms of stage one, the court took into account the location of the relevant documents, the *lex causae* and the ongoing proceedings in Egypt and opined that all the factors were neutral save for the *lex causae* which was Egyptian law. As such, this weighed in favour of Egypt (*Shafeeg bin Salim Talib v Helmi bin Ali bin Salim bin Talib* [2009] SGHC 180 at [65]–[79]). This analysis is eminently correct.

10.34 It is interesting to note that the plaintiffs had submitted, as another factor for consideration at this stage, that Singapore was the only jurisdiction that could issue effective orders against the first to third defendants. The court correctly pointed out that this application for a stay was *vis-à-vis* the fourth defendant and concluded that this factor was neutral (*Shafeeg bin Salim Talib v Helmi bin Ali bin Salim bin Talib* [2009] SGHC 180 at [77]–[78]). This conclusion is odd in that if the application was *vis-à-vis* the fourth defendant, then this factor was not just neutral, it was not relevant to the analysis.

10.35 In terms of stage two of the *forum non conveniens* analysis, the court opined that differences in the laws between Egypt and Singapore did not go to the question of whether justice required a stay to be nonetheless refused (*Shafeeg bin Salim Talib v Helmi bin Ali bin Salim bin Talib* [2009] SGHC 180 at [81]). In the interests of international comity, this must be correct. The plaintiffs also argued that since the action against the first three defendants would be heard in Singapore, it made more sense to hear this related action in Singapore so as not to give rise to conflicting decisions.

10.36 The effect of closely-related actions against multiple defendants in different jurisdictions on stay applications was considered in *PT Hutan Domas Raya v Yue Xiu Enterprise (Holdings) Ltd* [2001] 1 SLR(R) 104 ("*PT Hutan*") (digested in (2001) 2 SAL Ann Rev 107 at 111–112, paras 8.22–8.26). The court distinguished the present case, *Shafeeg bin Salim Talib v Helmi bin Ali bin Salim bin Talib* [2009] SGHC 180, from *PT Hutan Domas* on two grounds. First, the court pointed out that in this case, the fourth defendant had never properly been served. As such, a stay in favour of the fourth defendant would not change this (at [84]). While correct, this point does not really go to addressing the concern of conflicting decisions. Secondly, the court noted that the fourth defendant had led some evidence to show that the plaintiffs would not, as a matter of substantive Egyptian law, be able to institute proceedings in Egypt. There would, therefore, be no risk of conflicting decisions caused by a stay (at [84]). It is hard to dispute this second point. However, the plaintiffs could have argued that it was for precisely this reason that it would suffer injustice, and this was why a stay should, nonetheless, be refused. It does not appear that this argument was made. Of course, considering that the proceedings were going to be set aside anyway, this argument is moot. At the end of the day, the court concluded that the plaintiffs had not discharged their burden in stage two of the *forum non conveniens* analysis.

10.37 The final case was *John Reginald Stott Kirkham v Trane US Inc* [2009] 4 SLR(R) 428. This was an appeal from Tay Yong Kwang J's decision in *Trane US, Inc v Kirkham John Reginald Stott* [2008] SGHC 240 (digested in (2008) 9 SAL Ann Rev 186 at 208–209, paras 9.104–9.108) finding that Singapore was the natural forum and that it was in the interests of justice to grant an anti-suit injunction. We will now look at the pronouncements of the Court of Appeal relating to natural forum. The part of the judgment relating to anti-suit injunctions will be considered later (see paras 10.80–10.87 below).

10.38 This case essentially involved various agreements leading to distribution arrangements for the first respondent's products by the appellants. The commercial relationship broke down and the then current distribution arrangement was terminated. The appellants

commenced proceedings in Indonesia claiming damages for wrongful termination of their rights. The respondents successful applied to the High Court for an anti-suit injunction.

10.39 After reviewing the facts and the parties' arguments, the Court of Appeal began by noting that its function as an appellate court, as it relates to an interlocutory application, is one of review. It must defer to the lower court's exercise of discretion and must not interfere with it even if the members of the appellate court would have exercised the discretion differently (*John Reginald Stott Kirkham v Trane US Inc* [2009] 4 SLR(R) 428 at [23]). There are times when the discretion may be set aside and these were outlined by the court (quoting at [23] from *Hadmor Productions Ltd v Hamilton* [1983] AC 191 at 220, *per* Lord Diplock) as follows:

> It may set aside the judge's exercise of his discretion on the ground that it was based upon a misunderstanding of the law or of the evidence before him or upon an inference that particular facts existed or did not exist, which, although it was one that might legitimately have been drawn upon the evidence that was before the judge, can be demonstrated to be wrong by further evidence that has become available by the time of the appeal; or upon the ground that there has been a change of circumstances after the judge made his order that would have justified his acceding to an application to vary it.

10.40 These comments would apply to the High Court's decision relating to both natural forum and the anti-suit injunction.

10.41 After noting that one of the factors involved in granting an anti-suit injunction is for Singapore to be the natural forum for the resolution of the dispute and that the onus fell upon the applicant for an anti-suit injunction to show this (*John Reginald Stott Kirkham v Trane US Inc* [2009] 4 SLR(R) 428 at [33]), the court went on to consider the four factors raised by the parties' arguments. These were the location/residence of the parties, location of the witnesses, location of the evidence and issues relating to the tort's location and its governing law.

10.42 With regards to the first three factors, the court found them to be neutral, not pointing definitively to one location or another. The court did make two observations. First, it reiterated that with advances in technology, in particular video conferencing, the location of witnesses is no longer as significant as long as compellability or coercion of the witness is not in issue (*John Reginald Stott Kirkham v Trane US Inc* [2009] 4 SLR(R) 428 at [38]–[39]). Secondly, with modern transportation, the location of evidence and documents is increasingly less significant (at [40]). The author agrees and suspects that in future

considerations of natural forum or *forum non conveniens*, this group of factors will fade in significance.

10.43 As to the fourth factor, the High Court had considered that three documents were integral to determining whether a non-contractual cause of action existed and that the preponderance of choice of Singapore law clauses in these three documents swung the natural forum balance in favour of Singapore. The Court of Appeal disagreed with the significance of the three documents. It accepted the argument that the appellant's Indonesian action in tort was not based on the three documents except in so far as to provide background information. In addition, the court noted that the appellant had nullified this factor by undertaking not to use the documents in the Indonesia action except by way of background.

10.44 The court went on to opine that while the place where a tort occurred was not conclusive of it being the natural forum, in this case, it was a weighty factor in favour of Indonesia (*John Reginald Stott Kirkham v Trane US Inc* [2009] 4 SLR(R) 428 at [41]). In addition, the court also opined that the governing law of the informal distribution arrangement would be relevant and the system of law with which the arrangement had its closest and real connection was Indonesia (at [43]). As such, it concluded that the natural forum for the dispute was not Singapore but Indonesia.

10.45 This finding, while not incorrect, is problematic. It was noted earlier that an appellate court can only set aside a lower court's exercise of discretion on certain grounds (see para 10.39 above). The basis upon which the Court of Appeal substituted its decision for the High Court's is not clear. The author respectfully submits that it does not seem that Tay J had misunderstood either the law or the evidence or misapprehended the existence or non-existence of facts (which had since been corrected by further evidence) or that there had been a change in circumstances between the time the order was made in the High Court and when the appeal was heard.

10.46 If we assume that Tay J was aware of the informal distribution arrangement, and there is nothing to suggest that he was not, then the conclusion must be that he had weighted the factors and exercised his discretion according to that assessment. That the Court of Appeal weighted the same factors differently and would have exercised the discretion differently is not a sufficient ground for overturning the finding of the High Court on this point.

10.47 In fairness, the Court of Appeal did say that even if the natural forum for resolving the dispute was Singapore, it did not automatically

mean that an anti-suit injunction would have been issued (*John Reginald Stott Kirkham v Trane US Inc* [2009] 4 SLR(R) 428 at [45]).

10.48 Before leaving this case, it is useful to mention that there was an appeal before Judith Prakash J from an assistant registrar's decision arising from this matter. The defendants (the appellants at the Court of Appeal) had applied for a stay of proceedings and when the plaintiffs did not agree to defer the filing of the defence till the determination of the stay application, an application for extension of time was filed and granted. The plaintiffs appealed and in *Trane US Inc v Kirkham John Reginald Stott* [2009] SGHC 59, Prakash J noted that while a stay application did not halt court timelines, the Court of Appeal in *Carona Holdings Pte Ltd v Go Go Delicacy Pte Ltd* [2008] 4 SLR(R) 460 (digested in (2008) 9 SAL Ann Rev 186 at 187–188, paras 9.9–9.14) had held that the courts can vary timelines in appropriate cases so as to avoid the prejudice caused to defendants by making them adopt two contradictory courses of action. As such, the learned judge upheld the decision to grant an extension of time.

Choice of law

10.49 There were two cases relating to choice of law. The first was *Peters Roger May v Pinder Lillian Gek Lian* [2009] 3 SLR(R) 765. This case involved an application by the executor for Dennis William Pinder, deceased, for a notation to be endorsed on the grant of probate that he had died domiciled in Singapore. The caveator, Pinder's widow, objected to the issue of the grant of the probate on the ground that Pinder was domiciled in England at the time of death. She had initially applied for a stay of the notation proceedings on the basis of *forum non conveniens*. This was dismissed in *Peters Roger May v Pinder Lillian Gek Lian* [2006] 2 SLR(R) 381 (digested in (2006) 7 SAL Ann Rev 155 at 157–159, paras 9.10–9.17 and 161–162, para 9.28).

10.50 In *Peters Roger May v Pinder Lillian Gek Lian* [2009] 3 SLR(R) 765, the widow made two alternative arguments. The first was that Pinder never abandoned his domicile of origin, *ie*, England. Secondly, even if Pinder had acquired a domicile of choice in Singapore, he had abandoned this domicile of choice and reverted to his domicile of origin. The determination of one's domicile is a factually dependent query, and after considering the law and the facts, the High Court found that Pinder did acquire a domicile of choice in Singapore and had not abandoned it in favour of England. There are a number of noteworthy observations about the court's judgment.

10.51 First, in terms of the law, it is trite that everyone obtains a domicile of origin at birth (*Peters Roger May v Pinder Lillian Gek Lian*

[2009] 3 SLR(R) 765 at [16]). This domicile of origin remains until a domicile of choice or dependence is acquired (at [17]). A domicile of choice is acquired by the combination of voluntary residence and intention of permanent or indefinite residence (at [19]). It is more difficult to prove that a person had abandoned his domicile of origin than to prove that he had abandoned a domicile of choice. A domicile of choice is lost when both the residence and the intention, which must exist for its acquisition, are given up. It is not lost merely by giving up the residence or merely by giving up the intention. Upon abandonment of his domicile of choice, a person's domicile of origin revives unless he acquires a new domicile of choice (at [25]).

10.52 Secondly, the widow had argued that there is a presumption against the acquisition of a domicile of choice by a person in a country whose religion, manners and customs differ widely from those of his country of origin. While this presumption makes some sense, the court pointed out that this presumption is rebuttable and that, in this case, Singapore was not altogether alien to an Englishman and that there was evidence that Pinder had adopted local customs (*Peters Roger May v Pinder Lillian Gek Lian* [2009] 3 SLR(R) 765 at [68]–[69]). The author would hasten to suggest that this presumption, while making sense in an age where the world was a large place, should begin to adopt less significance in an increasingly shrinking world.

10.53 Thirdly, it was pointed out that Pinder had arranged for his sons to avoid national service. The court drew a clear distinction between allegiance and domicile (*Peters Roger May v Pinder Lillian Gek Lian* [2009] 3 SLR(R) 765 at [70]–[71]). This should be correct in that one can be domiciled in Singapore and still feel allegiance towards one's country of birth. Further, this factor speaks more to the allegiance of Pinder's sons than Pinder himself.

10.54 Finally, on the question of whether Pinder had reverted back to his domicile of origin, the court noted that (in accordance with the law laid out in para 10.51 above), all the widow had to show was that Pinder had abandoned his Singapore domicile. While there was some evidence to show that Pinder had intended to relinquish his Singapore domicile, there was no evidence to prove that he had given up Singapore residence. As such, the court held that he had not abandoned his Singapore domicile of choice and reverted to English domicile (*Peters Roger May v Pinder Lillian Gek Lian* [2009] 3 SLR(R) 765 at [108]–111]).

10.55 The second case was *TQ v TR* [2009] 2 SLR(R) 961. This case involved an appeal to the Court of Appeal relating to a prenuptial agreement between foreign nationals. The High Court decision in this matter (*TQ v TR* [2007] 3 SLR(R) 719) was digested in (2007)

8 SAL Ann Rev 133 at 141–143, paras 9.43–9.49. The parties entered into a prenuptial agreement in the Netherlands, providing for each party to keep their own assets. The marriage was dissolved in Singapore and the ancillary issues came before the High Court. Choo Han Teck J undertook an involved analysis and upheld the prenuptial agreement. The parties cross-appealed on various matters.

10.56 In the course of delivering a thorough decision on the types and effects of marriage agreements, the Court of Appeal made certain observations relating to the conflict of laws aspect of prenuptial agreements. First, Choo J had determined the validity of the agreement through an involved analysis taking into account, *inter alia*, the domicile of the parties. The Court of Appeal differed from this approach, opining instead that the validity of a prenuptial contract is governed by its proper law which is determined by the express choice of the parties; failing which the implied choice of the parties; and in the absence of these, by ascertaining the system of law with which the agreement has the closest and most real connection. This last stage is where the law of the domicile of the parties would be relevant (*TQ v TR* [2009] 2 SLR(R) 961 at [32]). A prenuptial agreement, therefore, is valid according to its proper law as long as it is not repugnant to and does not contravene any overriding public policy of Singapore. The author agrees with this approach having made similar observations (see (2007) 8 SAL Ann Rev 133 at 142, para 9.45).

10.57 Secondly, the court noted that the prenuptial agreement itself did not expressly state that it was to be governed by Dutch law. Instead, it referred to the matrimonial property regime of the marriage being governed by Dutch law. The court, adopting a robust construction, opined that there was no meaningful distinction between the agreement and "the marital property regime". As such, the court concluded that the clause could be read either as an express choice of law clause in favour of Dutch law, or as a clause supporting an implied choice of Dutch law (*TQ v TR* [2009] 2 SLR(R) 961 at [33]).

10.58 Having concluded that the agreement was valid, the court went on to consider the effective reach of the prenuptial agreement. While the rest of the judgment dealt with the types and effects of marriage agreements and not with private international law aspects, it is useful to summarise the court's views.

10.59 The starting point is that Singapore law is the governing law for ancillary matters. Where there is a prenuptial agreement relating to maintenance, the courts have the overall power to override this agreement (*TQ v TR* [2009] 2 SLR(R) 961 at [63]). Where there is a prenuptial agreement relating to the custody or care and control of children, there is a presumption that such an agreement is

unenforceable unless it is clearly demonstrated that that agreement is in the best interests of the children concerned (at [70]). Where there is a prenuptial agreement relating to the division of matrimonial assets, while the ultimate power resides in the court to order the division of matrimonial assets, the prenuptial agreement can be used to assist the court in doing so (at [73]). This is especially where the prenuptial agreement is wholly foreign in nature in that it is entered into by foreign nationals and is governed by a foreign law. In these circumstances, the court may accord significant and even critical weight to the terms of that agreement (at [87]).

10.60 The author submits that this decision is a significant contribution to the jurisprudence relating to prenuptial agreements in general, and specifically, those that involve foreign elements. For a commentary on this case, see Ong, "Prenuptial Agreements: A Singaporean Perspective in *TQ v TR*" (2009) 21 Child and Family Law Quarterly 536.

Foreign judgments

10.61 There was one case relating to foreign judgments. *Poh Soon Kiat v Desert Palace Inc* [2009] SGCA 60 was an appeal from *Desert Palace Inc v Poh Soon Kiat* [2009] 1 SLR(R) 71 (digested in (2008) 9 SAL Ann Rev 186 at 201–203, paras 9.72–9.82). The facts are straightforward. The respondent casino extended credit to the appellant to obtain chips to play at the gambling table. The appellant made losses and did not repay the debt. Three judgments were obtained from different states in the US to enforce the debt; the Nevada judgment (29 March 1999); the first judgment (2 June 1999); and the second judgment (9 November 2001). The respondent sought to sue on the second judgment in Singapore and its application for summary judgment was dismissed at first instance.

10.62 Two matters arose for consideration by the High Court. The first was whether the claim was void or unenforceable under ss 5(1) and 5(2) respectively of the Civil Law Act (Cap 43, 1999 Rev Ed). The second was whether the claim was time-barred.

10.63 On the first matter, Chan Seng Onn J drew a distinction between an action in Singapore to recover an overseas gambling debt and an action in Singapore based upon a foreign judgment (*Desert Palace Inc v Poh Soon Kiat* [2009] 1 SLR(R) 71 at [40]). Drawing guidance from the Court of Appeal decision in *Liao Eng Kiat v Burswood Nominees Ltd* [2004] 4 SLR(R) 690 (digested in (2004) 5 SAL Ann Rev 145 at 159–161, paras 8.60–8.69), Chan J concluded that s 5(2) did not procedurally bar the respondent's claim (at [55]).

10.64 On the second matter, Chan J opined that the time bar for suing on a foreign judgment is six years. As such, the Nevada and first judgments were time-barred. As for the second judgment, Chan J held that the second judgment created a new obligation on the debtor and was not time-barred. This determination was made on the basis of expert evidence about Californian law which operated, as the law of the jurisdiction from which the judgment originated, to determine the true nature and legal effect of the second judgment (*Desert Palace Inc v Poh Soon Kiat* [2009] 1 SLR(R) 71 at [84] and [110]–[112]).

10.65 On appeal (*Poh Soon Kiat v Desert Palace Inc* [2009] SGCA 60), the Court of Appeal was invited to make findings on three questions. The first was to find that the limitation period for suing on a foreign judgment was six years and not 12 years. The second was to find that the second judgment was not a foreign judgment for a fixed sum of money which could be sued upon in a common law action. The third was to find that the respondent's claim was in reality a gambling debt that was prohibited by s 5(2) of the Civil Law Act (Cap 43, 1999 Rev Ed).

10.66 The Court of Appeal dealt with the second question first. As a starting point, the court restated the law relating to the enforceability of foreign judgments in Singapore, *ie*, the judgment must be for a definite sum of money, either ascertained or ascertainable, and is final and conclusive. Such a judgment is enforceable unless procured by fraud or in circumstances contrary to natural justice or its enforcement would be contrary to public policy (*Poh Soon Kiat v Desert Palace Inc* [2009] SGCA 60 at [13]–[14]). As mentioned earlier, on the basis of expert evidence, Chan J found that the second judgment fulfilled these conditions.

10.67 The Court of Appeal, while agreeing that the determination of the true nature and effect of the second judgment was according to the law of the jurisdiction from which the judgment originated, disagreed with Chan J's assessment of the expert evidence. The court noted that while a judge is not entitled to substitute his own views for those of an uncontradicted expert's, he must, nonetheless, not unquestioningly accept unchallenged evidence. The judge must sift, weigh and evaluate the evidence in the context of the case's factual matrix. As such, an appellate court must be slow to criticise a trial judge's findings on expert evidence unless it doubts whether the evidence has been satisfactorily sifted or assessed by the trial court (*Poh Soon Kiat v Desert Palace Inc* [2009] SGCA 60 at [22]–[24]). The court went on to opine that Chan J had erred in that on a closer examination of the evidence and accompanying documents, it was clear that the second judgment was not a foreign money judgment of the kind that was enforceable in Singapore (at [32]–[34]).

10.68 This would have been sufficient to dispose of the appeal. However, the court went on to decide on the questions of the applicable limitation period and the scope of s 5(2) of the Civil Law Act (Cap 43, 1999 Rev Ed).

10.69 On the question of the applicable limitation period, it is appropriate to make one important observation before considering the views of the Court of Appeal: in *Desert Palace Inc v Poh Soon Kiat* [2009] 1 SLR(R) 71 at [84], Chan J had held that the applicable limitation period was six years as he felt that this was the conclusion of the Court of Appeal in *Murakami Takako v Wirayadi Louise Maria* [2007] 4 SLR(R) 565 (digested in (2007) 8 SAL Ann Rev 133 at 143–145, paras 9.50–9.57). He did, however, express, *obiter*, that it was a preferable outcome that the applicable limitation period was 12 years and invited the Court of Appeal to revisit this issue (at [82] and [85]).

10.70 When it did, the Court of Appeal disagreed with the learned judge that there was no difference between the legal status of a foreign and domestic judgment and opined that a foreign judgment is simply an implied obligation to pay a debt. It cannot be enforced as a judgment in Singapore until it is sued upon at common law or registered. The differences between the two types of judgments also extend to the legal defences available (*Poh Soon Kiat v Desert Palace Inc* [2009] SGCA 60 at [41]–[43]).

10.71 Holding that the applicable limitation period is 12 years would also make a nonsense of the statutory provisions for registering a judgment. In the Reciprocal Enforcement of Foreign Judgments Act (Cap 265, 2001 Rev Ed) ("REFJA"), for example, the applicable limitation period is six years. If it was correct that the limitation period for suing at common law on a foreign judgment from a jurisdiction not covered by the Act was 12 years, then there would be inconsistent treatment between foreign judgments from different jurisdictions and there would be no incentive for any foreign State to enter into an arrangement with Singapore for the reciprocal enforcement of its judgments under the REFJA as it would shorten the period during which its judgments could be enforced in Singapore (*Poh Soon Kiat v Desert Palace Inc* [2009] SGCA 60 at [44]).

10.72 As such, the court upheld the finding of Chan J, opining that the limitation period applicable to a common law action on a foreign judgment is six years pursuant to s 6(1)(*a*) of the Limitation Act (Cap 163, 1996 Rev Ed) (*Poh Soon Kiat v Desert Palace Inc* [2009] SGCA 60 at [54]).

10.73 On the question of whether the respondent's claim was in reality a gambling debt that was prohibited by s 5(2) of the Civil Law

Act (Cap 43, 1999 Rev Ed), since Chan J in *Desert Palace Inc v Poh Soon Kiat* [2009] 1 SLR(R) 71 had drawn heavily from *Liao Eng Kiat v Burswood Nominees Ltd* [2004] 4 SLR(R) 690, the court began by examining this case. The courts in *Liao Eng Kiat v Burswood Nominees Ltd* and *Star City Pty Ltd v Tan Hong Woon* [2002] 1 SLR(R) 306 had opined that since the Singapore government was then considering setting up integrated resorts, this meant that gambling was no longer contrary to Singapore's public policy. The Court of Appeal in this case disagreed and opined that the existence of regulated gambling is not inconsistent with unregulated gambling and gambling on credit being against public policy in Singapore (*Poh Soon Kiat v Desert Palace Inc* [2009] SGCA 60 at [97]–[98]). That the Government has imposed strict controls upon casino gambling and retained s 5 of the Civil Law Act supports this conclusion (at [100]).

10.74 The court went on to note that it was held in *Liao Eng Kiat v Burswood Nominees Ltd* [2004] 4 SLR(R) 690 that s 5(2) of the Civil Law Act (Cap 43, 1999 Rev Ed) did not preclude the registration of a foreign judgment founded on a gambling debt. The High Court in *Desert Palace Inc v Poh Soon Kiat* [2009] 1 SLR(R) 71 at [48], [51] and [53] extrapolated from this that s 5(2) also did not preclude suing on a similar foreign judgment as there was no reason for distinguishing between the relevant public policy considerations at common law and under statute for enforcement action upon a foreign judgment obtained on a gambling debt.

10.75 The Court of Appeal disagreed with this approach. It opined that not only did *Liao Eng Kiat v Burswood Nominees Ltd* [2004] 4 SLR(R) 690 not deal with whether s 5(2) of the Civil Law Act (Cap 43, 1999 Rev Ed) precluded the suing on a foreign judgment founded on a gambling debt, there is a clear distinction between statutory public policy and international public policy at common law, and noted that in a contest between the two, the former would prevail as statute takes precedence over the common law (*Poh Soon Kiat v Desert Palace Inc* [2009] SGCA 60 at [112]–[113]). As such, even if *Liao Eng Kiat v Burswood Nominees Ltd* was correct in holding that statutory public policy did not preclude registration of a foreign judgment obtained on a gambling debt, common law public policy did so preclude suing on such a judgment (at [118]).

10.76 The court went on to make two observations. First, if *Liao Eng Kiat v Burswood Nominees Ltd* [2004] 4 SLR(R) 690 was wrong to allow the registration of the foreign judgment under the Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed) ("RECJA") and that the public policy of Singapore did exclude a foreign judgment founded upon a gambling debt, then it should follow that such a judgment should equally not be enforceable if sued upon in a

common law action (*Poh Soon Kiat v Desert Palace Inc* [2009] SGCA 60 at [120]). Put another way, it doubted whether the public policy requirement in s 3(2)(*f*) of the RECJA was different from and overrode the public policy stated in s 5(2) of the Civil Law Act (Cap 43, 1999 Rev Ed). Secondly, the court suggested the possibility that since a foreign judgment can be seen as an implied obligation to pay a judgment debt, it might be possible for the court to recharacterise a common law action on a foreign judgment which rests on a gambling debt as a direct action to recover a gambling debt and therefore precluded by s 5(2) of the Civil Law Act (at [121]). The court chose not to express a definitive view on either of these observations until the issues were fully canvassed in future proceedings.

10.77 For our purposes, there are a number of points worthy of note. First, the ratio of this case can be limited to the court's finding on the nature of the second judgment. Its comments on the applicable limitation period, whether public policy precludes enforcement at common law of a foreign judgment founded upon a judgment debt and whether this type of foreign judgment can be recharacterised as a direct enforcement of a gambling debt remain *obiter*.

10.78 Despite this, and this is the second point, it is difficult to ignore the very clear and strongly worded views of Singapore's highest court. In Singapore law, there now appear to be two opposing positions with regards to the enforcement of a foreign judgment founded on a gambling debt. *Liao Eng Kiat v Burswood Nominees Ltd* [2004] 4 SLR(R) 690 stands for the position that it is possible to register such a judgment as public policy does not preclude its registration. *Poh Soon Kiat v Desert Palace Inc* [2009] SGCA 60 can be taken to support the view that public policy precludes the suing at common law of such a judgment. While the court did stop short of overruling *Liao Eng Kiat v Burswood Nominees Ltd*, it seems clear that it disagreed with the position held in that case and the author suspects that it is a matter of time before *Liao Eng Kiat v Burswood Nominees Ltd* will no longer be good law. When this happens, then we will treat a foreign judgment founded upon a gambling debt consistently, whether its enforcement is sought via the common law or by registration. This consistency of treatment is to be welcomed.

10.79 Thirdly, there is an odd sense of incongruity in this judgment. At points, the court seemed to say that a foreign judgment founded on a gambling debt was contrary to public policy (*Poh Soon Kiat v Desert Palace Inc* [2009] SGCA 60 at [127(b)]). At other points, the court maintained that this is an open question (at [126(b)]). It is not clear from the judgment the cause of this incongruity. For our purposes, it is clear that any statement on whether such a judgment is contrary to public policy is *obiter*. It therefore remains an open question. What is

also clear is the very strong indication by this court that gambling is contrary to the public policy of Singapore. This is both useful and important as Singapore's integrated resorts launch and become operational.

Anti-suit injunctions

10.80 There were two cases involving anti-suit injunctions. The first was *John Reginald Stott Kirkham v Trane US Inc* [2009] 4 SLR(R) 428. This case was discussed earlier in relation to natural forum (see paras 10.37–10.48 above). In the High Court, the respondent had applied successfully for an anti-suit injunction and the appellant appealed to the Court of Appeal.

10.81 At the risk of being repetitive, it is important to point out that the Court of Appeal began by stating clearly that its role as an appellate court as it relates to an interlocutory application is one of review. Therefore, it cannot substitute its own discretion for that of the lower court except in limited situations (*John Reginald Stott Kirkham v Trane US Inc* [2009] 4 SLR(R) 428 at [23]; see para 10.39 above).

10.82 The court then went on to review the law relating to anti-suit injunctions (*John Reginald Stott Kirkham v Trane US Inc* [2009] 4 SLR(R) 428 at [28]). The elements to be considered are whether:

(a) the party sought to be enjoined is amenable to the jurisdiction of the Singapore court;

(b) Singapore is the natural forum for the resolution of the dispute;

(c) the foreign proceedings are vexatious and oppressive to the party seeking the injunction; and

(d) the party sought to be enjoined will suffer injustice by being prevented from suing outside Singapore.

10.83 The court had considered (*obiter*) a fifth factor, *ie*, whether the institution of the foreign proceedings were in breach of any agreement between the parties (*John Reginald Stott Kirkham v Trane US Inc* [2009] 4 SLR(R) 428 at [29]). Having said that, the court noted that this was not relevant to the factual matrix of this case and went on to apply the first four elements to the facts.

10.84 Amenability to jurisdiction not being an issue and on the assumption that the Court of Appeal's finding that Singapore was not the natural forum was incorrect (see the discussion in paras 10.37–10.38

above), the court turned to the question of whether the foreign proceedings were vexatious or oppressive.

10.85 In the High Court, Tay J had granted the anti-suit injunction on the basis that it would be undesirable if the Singapore court and the Indonesian court arrived at different conclusions. The author had expressed concern as to whether this was sufficient to constitute vexation and oppression, especially when the appellants had not commenced proceedings in multiple jurisdictions (see (2008) 9 SAL Ann Rev 186 at 208–209, paras 9.106–9.108).

10.86 On this point, the Court of Appeal disagreed with the High Court. It first declined to define the terms vexation and oppression and observed that courts in the past have held that vexation or oppression existed in situations where a party was subjected to oppressive procedures in the foreign court or there was bad faith in the institution of the foreign proceedings or where the foreign proceedings were commenced for no good reason or bound to fail or where extreme inconvenience caused by the foreign proceedings existed. The court noted that these situations could be summarised by the term "unconscionable" (*John Reginald Stott Kirkham v Trane US Inc* [2009] 4 SLR(R) 428 at [46]–[47]).

10.87 It went on to opine that the tortious action in Indonesia was appropriately adjudicated in Indonesia. There was no concern about conflicting decisions as the action in Singapore was based on different grounds (*John Reginald Stott Kirkham v Trane US Inc* [2009] 4 SLR(R) 428 at [48]). Further, the court also noted that this was not a situation of actions commenced in multiple jurisdictions (at [52]). As such, it concluded that the Indonesian action was not vexatious and oppressive and allowed the appeal.

10.88 The second case is *Relfo Ltd v Bhimji Velji Jadva Varsani* [2009] 4 SLR(R) 351. The prequel to this case, *Relfo Ltd v Bhimji Velji Jadva Varsani* [2008] 4 SLR(R) 657, was digested last year ((2008) 9 SAL Ann Rev 186 at 210–211, paras 9.115–9.120). While the issues in this case are different, the facts are the same (see (2008) 9 SAL Ann Rev 186 at 210–211, paras 9.115–9.117). It is sufficient for our purposes to note that the defendant was a shareholder in the plaintiff company. After its voluntary winding up, the liquidator traced certain funds to the defendant's account and commenced action against the defendant for knowing receipt and dishonest assistance.

10.89 In the prequel, Judith Prakash J held, *inter alia*, that as the only creditor of the plaintiff was the UK Inland Revenue, this claim was to recover funds to pay outstanding taxes, which was tantamount to enforcing a foreign penal law. Invoking the principle that in private

international law the courts of one country will not enforce the penal and revenue laws of another country, she dismissed the claim.

10.90 In *Relfo Ltd v Bhimji Velji Jadva Varsani* [2009] 4 SLR(R) 351, the defendant then applied to enjoin the plaintiff from pursuing any foreign proceedings against the defendant for matters or issues related to the action in Singapore. There were also two appeals against the decision of the assistant registrar pertaining to the adduction of documents and stay of proceedings. The observations relating to these will be considered at paras 10.92–10.94 below.

10.91 On the application for an anti-suit injunction, Andrew Ang J briefly reviewed the law and opined that the court must look at all the relevant factors and exercise its jurisdiction to order an anti-suit injunction only when the ends of justice require it (*Relfo Ltd v Bhimji Velji Jadva Varsani* [2009] 4 SLR(R) 351 at [10]–[12]). Turning to the factors, the learned judge concluded that UK proceedings would not be vexatious and oppressive, and because the plaintiff's Singapore action was dismissed as an indirect way to enforce a foreign revenue law, the plaintiff would suffer injustice if it could not proceed in the UK. As such, the application was, and it is submitted correctly, dismissed.

Exclusion of foreign law

10.92 The final case is *Relfo Ltd v Bhimji Velji Jadva Varsani* [2009] 4 SLR(R) 351. This case was discussed earlier under "Anti-suit injunctions" at paras 10.88–10.91 above. As a result of Prakash J's decision that the plaintiff's action was an indirect enforcement of a foreign revenue law in *Relfo Ltd v Bhimji Velji Jadva Varsani* [2008] 4 SLR(R) 657 (digested in (2008) 9 SAL Ann Rev 186 at 210–211, paras 9.115–9.120), the defendant applied to restrain the plaintiff from proceeding in foreign courts as well as appealed against the decisions of the assistant registrar pertaining to the adduction of documents and stay of proceedings based on the court's inherent jurisdiction.

10.93 While these issues relate to areas other than private international law, it is useful to consider the observations of the court as they related to the defendant's submission that the court granting leave to adduce documents would amount to an indirect enforcement of a foreign revenue law.

10.94 Ang J made short work of this by drawing a distinction between enforcing foreign revenue law and assisting a foreign court (*Relfo Ltd v Bhimji Velji Jadva Varsani* [2009] 4 SLR(R) 351 at [33]). It is not permissible to enforce a foreign revenue law in Singapore. That was the holding in the prequel. The plaintiff's present application sought leave

to adduce documents from the Singapore proceedings in UK proceedings. This was seen as assisting a foreign court and was permissible as long as it was in accordance with the "*Riddick* principle" established in *Riddick v Thames Board Mills Ltd* [1977] QB 881 and as applied in Singapore (at [22]).