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**Volume I - General Principles**  
**Part 3 - Capacity of Parties**  
**Chapter 12 - Political Immunity and Incapacity**  
**Section 1. - Foreign States, Sovereigns, Ambassadors and International Organisations**

**Foreign states and sovereigns: the common law rule**

### **12-001**

⚠ The rule at common law was that no independent foreign state or foreign sovereign could be sued in an English court without consent. <sup>1</sup> ⚠ This immunity was derived from rules of public international law which had become part of English law. <sup>2</sup> The immunity extended both to direct actions against the state or sovereign and to indirect actions against its property. Formerly, foreign states were afforded immunity not only with regard to governmental activities but also with regard to their purely commercial activities. <sup>3</sup> This absolute theory was abandoned by the courts in favour of the more restricted approach under which immunity did not apply either to an action, whether in rem <sup>4</sup> or in personam, <sup>5</sup> against a ship belonging to a sovereign state, or one of its organs, if the ship was being operated as an ordinary trading ship, nor indeed to actions in personam generally in relation to ordinary commercial activities <sup>6</sup>; but did extend to governmental acts, *acta iure imperii*, of the sovereign state. <sup>7</sup>

**Common law and State Immunity Act 1978**

### **12-002**

The law of sovereign immunity was largely placed on a statutory basis by the State Immunity Act 1978. <sup>8</sup> The 1978 Act is not, however, a complete code and matters which are excluded from its scope will be governed by the rules developed by the common law. Thus the 1978 Act excludes proceedings relating to anything done by or in relation to the armed forces of a state while in the United Kingdom. <sup>9</sup> Such cases are subject to immunity under the common law rules. <sup>10</sup>

**Sovereign immunity and human rights**

### **12-003**

⚠ In *Holland v Lampen-Wolfe* <sup>11</sup> the House of Lords held that to accord sovereign immunity to the defendant did not deprive the claimant of a fundamental right of access to the English court under art.6 of the European Convention on Human Rights since the immunity of a state was an attribute of the state itself under international law which all other states are, by international law, obliged to accept. Lord Millett said that the doctrine of state immunity deprived the court of the ability to determine or adjudicate upon a certain type of dispute and where the doctrine applied, art.6 was not engaged, because the court had no jurisdiction to exercise in the first place. <sup>12</sup> By contrast, in a series of cases the European Court of Human Rights has either held or assumed that art.6 is engaged in such cases but that the application of the principles of state immunity was compatible with art.6 of the Convention. <sup>13</sup> ⚠ The court maintained that while a limitation on a right of access to a court must

pursue a legitimate aim and must be proportionate, according immunity to a state in civil proceedings was designed to achieve the legitimate aim of complying with international law by promoting comity and good relations between states through mutual respect for the sovereignty of states. Immunity which reflected generally held rules of public international law did not amount to a disproportionate restriction on the right of access to a court since some such restrictions, including those generally accepted in international law, were inherent. But in *Cudak v Lithuania* <sup>14</sup> the European Court of Human Rights decided that the art.6 rights of a Lithuanian secretary and switchboard operator in Lithuania had been violated by the Lithuanian courts' refusal to exercise jurisdiction over Poland in her claim for unfair dismissal: although immunity pursued a legitimate aim, the grant of immunity was disproportionate in the light of growing agreement that there was no immunity for employment claims by non-nationals. In *Jones v Ministry of the Interior of the Kingdom of Saudi Arabia* <sup>15</sup> the House of Lords assumed that art.6 of the Convention was engaged, as decided by the European Court of Human Rights in the above cases, but held that according sovereign immunity to the state and its servants, agents, officials or functionaries in respect of civil claims arising out of alleged acts of torture committed in the state was not disproportionate as inconsistent with a peremptory norm of international law. <sup>16</sup> Lord Bingham of Cornhill, however, had reservations as to whether art.6 was engaged at all, since the rule of international law is not that a state should not exercise over another state a jurisdiction which it has, but that save in cases recognised by international law, of which this case was not an example, a state has no jurisdiction over another state: it was therefore difficult to accept that a state had denied access to its court if it had no access to give. <sup>17</sup> In *Benkharbouche v Secretary of State for Foreign and Commonwealth Affairs*, <sup>18</sup> the Supreme Court, like the Court of Appeal below, preferred not to choose between the competing approaches, but noted that Lords Millet's and Bingham's views were compelling or powerfully made. In this case, the Supreme Court held that ss.4(2)(b) and 16(1)(a) of the State Immunity Act 1978 to the extent that they were relied on in the claims before the Court were incompatible with art.6 and, in the case of s.4(2)(b), art.14 of the Human Rights Convention, because they did not reflect a principle of international law.

## State Immunity Act 1978

### 12-004

! The Act <sup>19</sup> applies both to cases where the question of the immunity of a foreign state arises directly in the proceedings as where the state is named as a defendant, and also to the common case of "indirect impleading", as where an action between two other parties puts the title to the state's goods in issue. <sup>20</sup> ! The basic principle of the Act is that a foreign state is immune from the jurisdiction of the English courts <sup>21</sup> ! whether or not it appears in the proceedings, <sup>22</sup> and the issue of immunity must be decided as a preliminary issue before the substantive action can proceed. <sup>23</sup> This immunity applies to any foreign or Commonwealth state, other than the United Kingdom, to the sovereign or other head of state in his public capacity and to the government or any department of that state. <sup>24</sup> ! It also applies to a "separate entity", such as a state corporation, not being a department of the state, where proceedings relate to something done by the separate entity in the exercise of sovereign authority and the state itself would have been immune. <sup>25</sup> ! It will be for the courts to develop criteria for determining what constitutes a separate entity. It is suggested, however, that the notion of separate entity does not extend to any agent of a foreign state. Rather, it should be regarded as limited to an entity owned or controlled by the foreign state since it is only if such ownership or control exists that an entity can realistically be regarded as capable of doing something in the exercise of sovereign authority. <sup>26</sup>

### 12-005

! To the general principle of immunity there are several important and wide-ranging exceptions. The most important is that there is no immunity for a state's commercial transactions, <sup>27</sup> ! thus confirming the judicial developments confining the common law rule to *acta iure imperii*, though it may still be difficult to determine in any particular case the dividing line between commercial and governmental activity. <sup>28</sup> The funds in the bank account of a state's London embassy have been

considered not to be used for commercial purposes.<sup>29</sup> If a State grants a lease of its premises to a privately owned company to which the State outsources consular activities such as the handling of passport and visa applications, the property is not being used for commercial purposes within the meaning of s.13(4) of the 1978 Act.<sup>30</sup> **!** There is no immunity for contractual obligations (whether arising out of a commercial transaction or not) to be performed in the United Kingdom<sup>31</sup>; or in the case of contracts of employment made or to be performed in the United Kingdom<sup>32</sup> **!**; or as to claims for personal injury or damage to property caused by misconduct in the United Kingdom<sup>33</sup>; or in proceedings relating to immovables in the United Kingdom<sup>34</sup> or to an interest in other property by way of succession, gift or bona vacantia<sup>35</sup>; or in the case of proceedings relating to various forms of intellectual property<sup>36</sup>; or the administration of estates or trusts, or insolvency, even though a state may claim an interest in the property<sup>37</sup>; or where a state is a member of a corporate or unincorporated body constituted under United Kingdom law or controlled from the United Kingdom<sup>38</sup>; or in relation to various tax claims<sup>39</sup>; or as to claims arising from use of ships for commercial purposes<sup>40</sup> (again confirming an important common law development); or, finally, where the state has submitted to the jurisdiction of our courts.<sup>41</sup> **!** Such immunity may not be relied on by persons in proceedings provided for under the International Criminal Court Act 2001 where that immunity arises by reason of a connection with a State party to the Statute of the International Criminal Court, done at Rome on July 17, 1998.<sup>42</sup>

## 12-006

**!** The 1978 Act also deals with a variety of procedural matters, such as service of process on a foreign state.<sup>43</sup> **!** Power is given to restrict or extend the Act's immunities and privileges by Order in Council in relation to individual foreign states<sup>44</sup>; and provision is also made for the recognition here of foreign judgments involving the United Kingdom as a foreign state.<sup>45</sup> A certificate from the Secretary of State is conclusive evidence on the question as to whether for the purposes of the Act any country is a state, is part of a federal state and as to the person or persons to be regarded as the head or government of a state.<sup>46</sup> **!**





### Acts of sovereign states

## 12-007

**!** In addition to the law relating to the immunity of foreign states or sovereigns, there are other circumstances in which an English court will decline to entertain proceedings involving sovereign states.<sup>47</sup> Under the "act of state" doctrine, the courts have no jurisdiction to investigate the propriety of an act of the Crown<sup>48</sup> performed in the course of its relations with a foreign state<sup>49</sup> and the concept of "act of state" may extend to cover acts authorised or ratified by the Crown in the exercise of



sovereign power.<sup>50</sup> **!** In *Rahmatullah v Ministry of Defence*,<sup>51</sup> **!** the Supreme Court explained the application of the doctrine which rendered Crown Acts of State as non-justiciable, namely that (1) the act should be an exercise of sovereign power, inherently governmental in nature; (2) the act should be done outside the United Kingdom; (3) the act should be done with the prior authority or subsequent ratification of the Crown; and (4) the act should be done in the conduct of the Crown's relations with other states or their subjects. Furthermore, English courts have no jurisdiction, it appears, to investigate the propriety of the acts of a foreign sovereign state recognised by Her Majesty's Government, where the act is performed on the territory of that state.<sup>52</sup> **!** The principle of non-justiciability under the "act of state" doctrine may also extend to the acts of a foreign sovereign state performed on territory other than its own territory.<sup>53</sup> **!** Indeed, there is now established a general principle that "the courts will not adjudicate upon the transactions of foreign sovereign states" (i.e. non-commercial transactions)—a principle which calls in such cases for "judicial restraint or

abstention".<sup>54</sup> **!** In *Belhaj v Straw*,<sup>55</sup> **!** the Supreme Court analysed the Act of State doctrine in the context of its application to foreign sovereign nations and, in so doing, identified separate strands or rules of the doctrine: (1) a foreign state's legislation will normally be recognised and treated as

valid, so far as it affects movable or immovable property within the foreign state's jurisdiction; (2) a domestic court will not normally question the validity of any sovereign act in respect of property within the foreign state's jurisdiction, at least in times of civil disorder; (3) a domestic court will treat as non-justiciable, meaning that it would abstain or refrain from adjudicating upon or questioning, certain categories of sovereign act by a foreign state abroad, even if they occur outside the foreign state's jurisdiction. Further, the doctrine does not apply where there is no challenge to the validity or lawfulness of an act of a foreign state.<sup>56</sup>  This principle does not, however, preclude an English court from ever taking cognisance of international law or from ever considering whether a violation of international law has occurred.<sup>57</sup>  Thus, in appropriate circumstances, it is legitimate for an English court to have regard to the content of international law in deciding whether to recognise a foreign law on the grounds of public policy.<sup>58</sup> Further, the principle does not mean that the court must shut its eyes to a breach of an established principle of international law committed by one state against another when the breach is plain, since in such cases the standards being applied to adjudicate on the issues are clear and manageable and do not call for the exercise of judicial self-restraint.<sup>59</sup>  Unlike sovereign immunity, the principle of non-justiciability under the "act of state" doctrine is not capable of being waived, because it is a matter going to the substantive jurisdiction of the Court.<sup>60</sup> 

## Foreign heads of state, ambassadors and their staffs

### 12-008



 The immunity from suit of foreign ambassadors and members of their staffs is conferred by the Diplomatic Privileges Act 1964,<sup>61</sup> which enacts as part of the law of the United Kingdom certain articles of the Vienna Convention on Diplomatic Relations (1961). These articles are set out in Sch.1 to the Act. Where a foreign sovereign or other head of a recognised state acts in his public capacity, effectively as the embodiment of the state, he is entitled to all the immunities which the state has under the State Immunity Act 1978.<sup>62</sup>  When acting in a private capacity, however, such a foreign sovereign or other head of a recognised state is entitled to the immunities, with certain appropriate modifications, which are conferred by the Diplomatic Privileges Act 1964, since the 1978 Act extends those immunities to such persons.<sup>63</sup>

### 12-009

The immunity from suit of the chief representatives in the United Kingdom of countries of the Commonwealth and of the Republic of Ireland, and of members of their staffs, formerly depended on s.1(1) of the Diplomatic Immunities (Commonwealth Countries and Republic of Ireland) Act 1952. But that subsection has been repealed<sup>64</sup> and such immunity now depends on the Diplomatic Privileges Act 1964, i.e. on the Vienna Convention.<sup>65</sup>

## Categories of persons entitled to diplomatic immunity

### 12-010

 The Convention divides persons entitled to diplomatic immunity into three categories<sup>66</sup> : (1) "diplomatic agents", namely, the head of the mission and members of his diplomatic staff; (2) "members of the administrative and technical staff", e.g. persons employed in secretarial, clerical, communications and public relations duties; and (3) "members of the service staff", namely, members of the staff of the mission in its domestic service.

## Diplomatic agents

### 12-011

⚠ Diplomatic agents enjoy immunity from criminal, civil <sup>67</sup> and administrative jurisdiction and from execution, except in three cases: (a) a real action relating to private immovable property situated in the United Kingdom (unless the property is held for the purposes of the mission, <sup>68</sup> and this does not include a diplomatic agent's private residence) <sup>69</sup>; (b) an action relating to succession in which the diplomatic agent is involved as executor, administrator or beneficiary as a private person; and (c) an action relating to any professional or commercial activity exercised by the diplomatic agent outside his official functions. <sup>70</sup> ⚠ A like immunity is conferred on the members of the family of a diplomatic agent forming part of his household. <sup>71</sup> The Diplomatic Privileges Act 1964 applies only to permanent diplomatic missions; the status of special or ad hoc missions is a matter for the common law. <sup>72</sup> ⚠

## Diplomatic premises

### 12-012

The actual premises of a diplomatic (or consular mission) are inviolable, <sup>73</sup> as is the private residence of a diplomatic agent, <sup>74</sup> despite the fact that a diplomatic agent may not enjoy immunity from suit in respect of it. <sup>75</sup> However, the inviolability of diplomatic premises only applies to ones which are currently so used <sup>76</sup>; and the Diplomatic and Consular Premises Act 1987 gives the Secretary of State power to determine whether land has diplomatic or consular status.

## Administrative, technical and service staff

### 12-013

The members of the administrative and technical staff of the mission, together with their families forming part of their respective households, and the members of the service staff of the mission, enjoy a like immunity, but with the important qualification that the immunity does not extend to acts performed outside the course of their duties. <sup>77</sup>

## Period of immunity


### 12-014

⚠ Every person entitled to immunity from jurisdiction enjoys it from the moment he enters the United Kingdom to take up his post or, if he is already there, from the moment when his appointment is notified to the department of the Secretary of State concerned. <sup>78</sup> ⚠ In the former case it would not seem necessary, in addition, that his appointment be notified to, or accepted by, the department of the Secretary of State concerned. <sup>79</sup> ⚠ He can claim the immunity even if he only became entitled to it after the issue of the claim form. <sup>80</sup> When his functions come to an end, his immunity normally ceases at the moment when he leaves the country, or on the expiry of a reasonable period in which to do so <sup>81</sup>; but it continues to subsist in the case of acts performed in the exercise of his functions. <sup>82</sup> If a claim form is issued before immunity has ceased, then provided it has not been struck out, the proceedings may continue once the immunity has come to an end. <sup>83</sup> If he dies, the members of his family continue to enjoy the immunity to which they were entitled until the expiry of a reasonable period in which to leave the country. <sup>84</sup> The running of the Statute of Limitations is suspended during such time as the defendant enjoys diplomatic immunity. <sup>85</sup>

## Certificate of entitlement

### 12-015

⚠ If in any proceedings any question arises whether or not any person is entitled to diplomatic

immunity, a certificate issued by or under the authority of the Secretary of State stating any fact relating to the question is conclusive evidence of that fact. <sup>86</sup> 

## British citizens

### 12-016

Diplomatic immunity is restricted if the person entitled to it is a British citizen, a British Dependent Territories citizen or a British Overseas citizen. <sup>87</sup> Diplomatic agents who are such citizens or are permanently resident in the United Kingdom only enjoy immunity from jurisdiction in respect of official acts performed in the exercise of their functions, except in so far as additional immunities may be granted by the receiving state. <sup>88</sup> Other members of the staff of the mission and private servants of members of the mission who are such citizens or are permanently resident in the United Kingdom enjoy immunities only to the extent admitted by the receiving state. <sup>89</sup> The “extent admitted by the receiving state” and the “additional immunities” here referred to mean such as may be specified by Order in Council. <sup>90</sup> Members of the family of diplomatic agents or of members of the administrative or technical staff, or members of the service staff of the mission, enjoy no immunity from jurisdiction if they are British, British Dependent Territories or British Overseas citizens or are permanently resident in the United Kingdom. <sup>91</sup>

## Consular immunity

### 12-017

The regulation of consular immunity so far as foreign consuls and their staffs are concerned is governed by the Consular Relations Act 1968 <sup>92</sup> giving effect to certain articles of the Vienna Convention on Consular Relations 1963. In the case of civil proceedings, consular officers, who are defined as “any person, including the head of a consular post, entrusted in that capacity with the exercise of consular functions”, <sup>93</sup> and consular employees, who are any persons “employed in the administrative or technical service of a consular post”, <sup>94</sup> shall not be amenable to the jurisdiction of the courts of this country in respect of acts performed in the exercise of consular functions. This immunity shall not apply, in the case of a contractual action, where such officer or employee did not contract expressly or impliedly as an agent of his sending state or in the case of an action by a third party for damage arising from an accident in the United Kingdom caused by a vessel, vehicle or aircraft. <sup>95</sup> Special provision is made for the fact that immunity from civil jurisdiction shall not be accorded to consular employees who carry on private gainful occupation in the United Kingdom. <sup>96</sup> The position of officers from the Commonwealth and the Republic of Ireland who perform duties substantially similar to those performed by consular officers from foreign countries is governed by the Consular Relations Act 1968 <sup>97</sup> and Orders in Council made thereunder.

## International organisations

### 12-018

The International Organisations Acts 1968 <sup>98</sup> and 1981, which replaced the International Organisations (Immunities and Privileges) Act 1950, empower the Crown by Order in Council to confer complete immunity from suit and legal process <sup>99</sup> upon any international organisation of which the United Kingdom and any other Sovereign power are members, <sup>100</sup> and to confer the like immunity from suit and legal process as is accorded to the head of a diplomatic mission upon representatives of the organisation or representatives of a member of any organs or committees of the organisation, and upon specified high officers of the organisation and persons employed by or serving on the organisation as experts or as persons engaged on missions for the organisation. <sup>101</sup> Similar immunity extends to the members of the official staff of such representatives, provided they are recognised as holding a rank equivalent to that of diplomatic agent, <sup>102</sup> and to the members of the family forming part of the household of such representatives, high officers and members of their official staffs holding diplomatic rank. <sup>103</sup> A limited immunity from suit extending only to things done or omitted to be done in the course of the performance of official duties is conferred upon specified subordinate officers and



servants of the organisation <sup>104</sup> and upon members of the administrative or technical service of the representative <sup>105</sup> and members of their families forming part of their households. <sup>106</sup> However, no such immunities may be conferred on any person as the representative of the United Kingdom or as a member of his staff. <sup>107</sup>

### Other persons entitled to immunity

## 12-019

Special provision is made in the Acts of 1968 and 1981 for conferring immunity on officers of specialised agencies of the United Nations, <sup>108</sup> and on other organisations of which the United Kingdom is not a member, <sup>109</sup> including international commodity organisations. <sup>110</sup> The Acts further provide for the grant of immunity from suit to the judges and registrars of any international tribunal and to parties to any proceedings before any such tribunal and to their agents, advisers or advocates and to any witnesses in or assessors for the purposes of any proceedings before any international tribunal, <sup>111</sup> and for the grant of similar immunity to the representatives of foreign states and their official staffs attending conferences in the United Kingdom. <sup>112</sup> (The Diplomatic Immunities (Conferences with Commonwealth Countries and the Republic of Ireland) Act 1961 <sup>113</sup> makes similar provision for representatives of the Commonwealth and of the Republic of Ireland and their official staff attending conferences in the United Kingdom.) Orders in Council have been made applying the Acts of 1950, 1968 and 1981 to a large number of organisations and (in most cases) to their representatives, officers, etc. <sup>114</sup> Any Order in Council made under the 1950 Act in force at the time of the passage of the 1968 Act shall continue to have effect, notwithstanding the repeal of the 1950 Act, until revoked or varied. <sup>115</sup> Special statutes, or Orders in Council made thereunder, confer immunity from suit on a number of international organisations and their representatives in the United Kingdom. <sup>116</sup> The immunities of major international organisations of which the United Kingdom is a member, such as the United Nations, the European Union <sup>117</sup> and the Council of Europe, and of persons employed by or connected with such organisations, are provided for in a variety of separate international agreements. <sup>118</sup>

### Waiver of immunity: common law

## 12-020

⚠ At common law, both sovereign <sup>119</sup> ⚠ and diplomatic <sup>120</sup> immunity could be waived by or on behalf of the foreign state concerned. But the doctrine was confined within narrow limits. In the first place, there could be no waiver except with full knowledge of the right and with the authority of the foreign sovereign or ambassador. <sup>121</sup> Secondly, waiver had to take place at the time when the court was asked to exercise jurisdiction <sup>122</sup>: it could not be inferred from a prior contract to submit to the jurisdiction of the court, <sup>123</sup> nor from the agreement to submit to arbitration, <sup>124</sup> nor even from an application to the court to set aside an arbitration award, <sup>125</sup> nor (semble) could it take place after judgment had been pronounced. <sup>126</sup>

### Submission to jurisdiction

## 12-021

⚠ The State Immunity Act 1978 now makes express provision for a state to submit to the jurisdiction of the court and thereby waive its state immunity, but such waiver does not exclude the assertion of absolute privilege <sup>127</sup> nor does submission to the adjudicative jurisdiction of the courts necessarily imply submission to the enforcement jurisdiction of the courts. <sup>128</sup> ⚠ There are detailed rules as to what constitutes submission <sup>129</sup> but one of their main effects is to free the doctrine of waiver from its narrow common law limits. Submission may, under the Act, be by prior written agreement and is permitted after a dispute has arisen. <sup>130</sup> A state is also deemed to submit if it institutes the proceedings <sup>131</sup> or if it intervenes, or takes any step, in proceedings unless it does so in reasonable

ignorance of facts entitling it to immunity and immunity is then claimed as soon as reasonably practicable.<sup>132</sup> However, intervention merely to claim immunity or to assert an interest in property in circumstances where the state would have been entitled to immunity in any proceedings brought against it does not constitute submission.<sup>133</sup> A contractual waiver of immunity, without any submission to the jurisdiction of the court, is not a submission for the purposes of the Act<sup>134</sup>; nor is submission to be deduced from a choice of law clause.<sup>135</sup> Submission extends to any appeal, but not to any counterclaim unless it arises out of the same legal relationship or facts as the claim.<sup>136</sup> The head of a state's diplomatic mission is deemed to have authority to submit on behalf of the state,<sup>137</sup> as is any person who entered into a contract on behalf of the state in respect of proceedings arising out of the contract.<sup>138</sup> Once submission to the jurisdiction is established, the waiver of state immunity is irrevocable.<sup>139</sup> Submission to the jurisdiction is not submission to execution, though such process may be issued with the written consent of the state.<sup>140</sup>

### Waiver of diplomatic or consular immunity


#### 12-022

The Diplomatic Privileges Act 1964<sup>141</sup> and the Consular Relations Act 1968<sup>142</sup> provide that diplomatic and consular immunity may be waived by the sending state; and both Acts provide that a waiver by the head or acting head of the mission is deemed to be a waiver by that state.<sup>143</sup> Waiver must always be express, except that the initiating of proceedings precludes the claimant from invoking immunity from jurisdiction in respect of any counterclaim directly connected with the principal claim. But though waiver must be express, there is no requirement under the Acts (as there was at common law<sup>144</sup>) that it must take place at the time when the court is asked to exercise jurisdiction. The better view, it is submitted, is that there is no such requirement since although waiver is not defined, the term in both Acts is derived from international conventions and should not, therefore, be given the narrow interpretation attributed to it at common law.<sup>145</sup> Unfortunately, however, it has been held that diplomatic immunity cannot be waived by contract *inter partes* but only by an undertaking or consent, given when the court is asked to exercise jurisdiction,<sup>146</sup> a regressive view which, it is submitted, should not be followed.<sup>147</sup> Waiver of immunity from jurisdiction in civil or administrative proceedings does not imply waiver of immunity in respect of the execution of the judgment, for which a separate waiver is required.<sup>148</sup>


### Waiver of other statutory immunities

#### 12-023

The possibility of waiver of the immunity is specifically provided for in Orders in Council made under the International Organisations Act 1968,<sup>149</sup> and in the Commonwealth Secretariat Act 1966,<sup>150</sup> and the Arbitration (International Investments Disputes) Act 1966.<sup>151</sup>

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1.  *Duke of Brunswick v King of Hanover* (1844) 6 Beav. 1, (1848) 2 H.L.C. 1. The immunity is not available to a State before its own Courts: *Iraqi Civilians v Ministry of Defence (No.2)* [2016] UKSC 25, [2016] 1 W.L.R. 2001 at [11].
  2. *The Christina* [1938] A.C. 485, 490; *Thai-Europe Tapioca Services Ltd v Government of Pakistan* [1975] 1 W.L.R. 1485. On the current position in public international law, see Jurisdictional Immunities of the State (Germany v Italy: Greece intervening) (International Court of Justice, February 3, 2012, available at <http://www.icj-cij.org>). As to the international law of diplomatic privilege being applied as part of the common law, see *Triquet v Bath* (1764) 3 Burr. 1478, 1480–1481.
  3. *The Porto Alexandre* [1920] P. 30; *The Christina* [1938] A.C. 485, 490; *Kahan v Pakistan Federation* [1951] 2 K.B. 1003; *Baccus S.R.L. v Servicio Nacional del Trigo* [1957] 1 Q.B. 438.



4. *The Phillippine Admiral* [1977] A.C. 373.
5. *I Congreso del Partido* [1983] 1 A.C. 244, 261.
6. *Trendtex Trading Corp v Central Bank of Nigeria* [1977] Q.B. 529; *Hispano Americana Mercantil SA v Central Bank of Nigeria* [1979] 2 Lloyd's Rep. 277; *Planmount Ltd v Republic of Zaire* [1981] 1 All E.R. 1110; *I Congreso del Partido* [1983] 1 A.C. 244, 261–262; *Alcom Ltd v Republic of Columbia* [1984] A.C. 580, 598–599; *La Generale des Carrieres et des Mines v FG Hemisphere Associates LLC* [2012] UKPC 27, [2013] 1 All E.R. 409.
7. *I Congreso del Partido* [1983] 1 A.C. 244, 262, 272, 276; *Sengupta v Republic of India* [1983] I.C.R. 221; *Littrell v Government of the United States (No.2)* [1995] 1 W.L.R. 82. For discussion of the changes, see *J.H. Rayner (Mincing Lane) Ltd v Dept of Trade and Industry* [1989] Ch. 72, affirmed without reference to these points, [1990] 2 A.C. 418; *La Generale des Carrieres et des Mines v FG Hemisphere Associates LLC*, above.
8. See below, para.12-004.
9. State Immunity Act 1978 s.16(2).
10. *Littrell v Government of the United States (No.2)* [1995] 1 W.L.R. 82; *Holland v Lampen-Wolfe* [2000] 1 W.L.R. 1573. Since the 1978 Act is not retrospective (s.22(3)) it will only apply to matters which occurred after it entered into force (November 1978) but it is now most unlikely that matters which occurred before that date, which would be governed by the common law, will arise in practice. cf. *Planmount Ltd v Republic of Zaire* [1981] 1 All E.R. 1110; *Sengupta v Republic of India* [1983] I.C.R. 221. See also *Bat v Germany* [2011] EWHC 2029 (Admin), [2013] Q.B. 349, noted by Sanger (2013) 62 I.C.L.Q. 193.
11. [2000] 1 W.L.R. 1573. See also *Matthews v Ministry of Defence* [2003] UKHL 4, [2003] 1 A.C. 1163.
12. [2000] 1 W.L.R. 1573, 1588.
13.  *Fogarty v United Kingdom* (2002) 34 E.H.R.R. 302; *Al-Adsani v United Kingdom* (2002) 34 E.H.R.R. 273, arising out of *Al-Adsani v Government of Kuwait*, *The Times*, March 29, 1995, 107 Int. L.R. 536; *McElhinney v Ireland* (2002) 34 E.H.R.R. 322, arising out of *McElhinney v Williams* [1996] 1 I.L.R.M. 276. See Kloth, *Immunities and the Right of Access to Court under Article 6 of the European Convention on Human Rights* (2010); Fox (2001) 117 L.Q.R. 10; Garnett (2002) 118 L.Q.R. 367; Voyiakis (2003) 52 I.C.L.Q. 297; Lloyd Jones (2003) 52 I.C.L.Q. 463; Yang (2003) 74 B.Y.I.L. 333; Garnett (2005) 54 I.C.L.Q. 705; See also *Bat v Germany*, above; Sanger, above; *Reyes v Al-Malki* [2017] UKSC 61; Sanger [2014] C.L.J. 1.
14. (2010) 51 E.H.R.R. 15; see also *Sabah El Leil v France* [2010] E.C.H.R. 1055.
15. [2006] UKHL 26, [2007] 1 A.C. 270. The European Court of Human Rights came to the same conclusion: *Jones v United Kingdom* [2014] E.H.R.R. 1, applying the decision of the International Court of Justice in *Jurisdictional Immunities of the State* (Germany v Italy: Greece intervening), February 3, 2012. cf. *Mahamdia v Algeria* (C-154/11) [2013] I.C.R. 1. See Seymour [2006] C.L.J. 479; Ranganathan [2015] C.L.J. 16. See *Belhaj v Straw* [2017] UKSC 3, [2017] 2 W.L.R. 456, [11(v)], [108]–[109] (Lord Mance), [258]–[268] (Lord Sumption).
16. Although international law had established universal criminal jurisdiction in respect of torture, there is as yet no universal civil jurisdiction in respect of torture: [2006] UKHL 26 at [19]–[34].
17. [2006] UKHL 26 at [14]. See, to the same effect, Lord Hoffmann at [64] and *Holland v Lampen-Wolfe* [2000] 1 W.L.R. 1573, 1588, per Lord Millett. See also *AIG Capital Partners Inc v Republic of Kazakhstan* [2005] EWHC 2239 (Comm), [2006] 1 W.L.R. 1420 (restriction on the right of a party to enforce a judgment against a central bank—see State Immunity Act 1978 s.14(4)); *Grovit v Nederlandsche Bank* [2005] EWHC 2944 (QB), [2006] 1 W.L.R. 3323 (according immunity to employees of immune central bank is legitimate and proportionate;

affirmed on other grounds, [2007] EWCA Civ 712, [2008] 1 W.L.R. 51). cf. *Cudak v Lithuania* (2010) 51 E.H.R.R. 15, above. See also *Taurus Petroleum Ltd v State Oil Marketing Co of the Ministry of Oil, Iraq* [2015] EWCA Civ 835 at [49]–[52]. See also *Aziz v Aziz* [2007] EWCA Civ 712, [2008] 2 All E.R. 501. In *Lechouritou v Dimosio tis Omospondiakis Dimokratias tis Germanias* (C-282/05) [2007] E.C.R. I–1519 the European Court of Justice found it unnecessary to decide whether immunity was compatible with the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters 1968. In *Grovit v Nederlandsche Bank* it was held at first instance that immunity was compatible, but the point was not decided by the Court of Appeal. See also *Entico Corp Ltd v UNESCO* [2008] EWHC 531 (Comm), [2008] 1 Lloyd's Rep. 673 (immunity of international organisation).

18.

❗ [2015] EWCA Civ 33, [2015] H.R.L.R. 3 at [16]; [2017] UKSC 62 at [30]. See also *Ogelegbanwei v President of the Federal Republic of Nigeria* [2016] EWHC 8 (QB) at [21]–[26]; *Al Attiya v Al Thani* [2016] EWHC 212 (QB) at [82]; *Reyes v Al-Malki* [2017] UKSC 61.

19.

Implementing the 1972 European Convention on State Immunity: Cmnd.5081, though the Act is more extensive in scope. For discussion and references to relevant literature (which is copious) see Dicey, Morris and Collins on the Conflict of Laws, 15th edn (2012), paras 10-002 et seq.; Cheshire, North and Fawcett, *Private International Law*, 14th edn (2008), pp.491–510; Fox, *The Law of State Immunity*, 3rd revised edn (2015). See also United Nations Convention on Jurisdictional Immunities of States and their Property (December 2004, not yet in force). For the text of the Convention see (2005) 44 Int. Leg. Mat. 803. Although not in force the Convention has been regarded as a strong indicator of international thinking on questions of sovereign immunity: see *AIG Capital Partners Inc v Republic of Kazakhstan* [2005] EWHC 2239 (Comm), [2006] 1 W.L.R. 1420; *Jones v Ministry of the Interior of the Kingdom of Saudi Arabia* [2006] UKHL 26, [2007] 1 A.C. 270; *Koo Golden East Mongolia v Bank of Nova Scotia* [2007] EWCA Civ 1443, [2008] Q.B. 717; *NML Capital v Argentina* [2011] UKSC 31, [2011] 2 A.C. 495; *Cudak v Lithuania* (2010) 51 E.H.R.R. 15; Jurisdictional Immunities of the State (Germany v Italy: Greece intervening) (International Court of Justice, February 3, 2012), available at <http://www.icj-cij.org>. For comment on the Convention, see Denza (2006) 55 I.C.L.Q. 395; Fox (2006) 55 I.C.L.Q. 399; Gardiner (2006) 55 I.C.L.Q. 407; Hall (2006) 55 I.C.L.Q. 411; Dickinson (2006) 55 I.C.L.Q. 427; McGregor (2006) 55 I.C.L.Q. 437.

20.

❗ e.g. *The Parlement Belge* (1880) L.R. 5 P.D. 197; *United States of America and Republic of France v Dollfus Mieg et Cie SA and Bank of England* [1952] A.C. 582. On the scope of the Act in respect of immunity from taxation, see *R. v IRC Ex p. Camacq Corp* [1990] 1 W.L.R. 191 and below, para.12-005. However, the concept of “indirect impleading” would not extend beyond proceedings relating to property: *Belhaj v Straw* [2014] EWCA Civ 1394, [2015] 2 W.L.R. 1105; *Rahmatullah v Ministry of Defence* [2014] EWHC 3846 (QB) at [45]–[70], [2015] EWCA Civ 843. In this case, Leggatt J. said at [66] “I cannot see any justification for extending state immunity to proceedings against a third party which merely create a risk of future proceedings against the foreign state”. In *Belhaj v Straw* [2017] UKSC 3, [2017] 2 W.L.R. 456 at [12]–[31] (Lord Mance), the Supreme Court affirmed the decision of Leggatt J.

21.

❗ The principle of immunity also precludes registration in England of a foreign judgment against a foreign state under the Administration of Justice Act 1920: see *AIC Ltd v Federal Government of Nigeria* [2003] EWHC 1357 (QB). Civil Jurisdiction and Judgments Act 1982 s.31, as to which see *NML Capital Ltd v Argentina* [2011] UKSC 31, [2011] 2 A.C. 495. See also *LR Avionics Technologies Ltd v Federal Republic of Nigeria* [2016] EWHC 1761 (Comm), [2016] 4 W.L.R. 120.



22.

1978 Act s.1. See *United Arab Emirates v Abdelghafar* [1995] I.C.R. 65; *Malaysian Industrial Development Authority v Jeyasingham* [1998] I.C.R. 307; *Military Affairs Office of the Embassy of the State of Kuwait v Caramba-Coker* (EAT/1054/02/RN, April 10, 2003); *Koo Golden East Mongolia v Bank of Nova Scotia* [2007] EWCA Civ 1443, [2008] Q.B. 717; *ETI Euro Telecom International NV v Republic of Bolivia* [2008] EWCA Civ 880, [2009] 1 W.L.R. 665. The burden of proof is upon the party asserting that the state is subject to the jurisdiction of the English court: *Donegal International Ltd v Zambia* [2007] EWHC 197 (Comm), [2007] 1 Lloyd's Rep. 397.

23. *J.H. Rayner (Mincing Lane) Ltd v Dept of Trade and Industry* [1989] Ch. 72, 194–195, 252, affirmed without reference to this point, [1990] 2 A.C. 418; *A Co Ltd v Republic of X* [1990] 2 Lloyd's Rep. 520, 525; *Aziz v Republic of Yemen* [2005] EWCA Civ 754, [2005] I.C.R. 1391; *ETI Euro Telecom International NV v Republic of Bolivia* [2008] EWCA Civ 880, [2009] 1 W.L.R. 665. See also *Mauritius Tourism Promotion Authority v Wong Min* (UKEAT/0186/08/LA November 24, 2008) (EAT). A claim to immunity should be heard in public: *Harb v King Fahd Bin Abdul Aziz* [2005] EWCA Civ 632, [2006] 1 W.L.R. 578. See also *Aziz v Aziz* [2007] EWCA Civ 712, [2008] 2 All E.R. 501.
24. ¶s.14. See *Propend Finance Pty Ltd v Sing*, *The Times*, May 2, 1997, 111 Int. L.R. 111; *Bank of Credit and Commerce International (Overseas) Ltd v Price Waterhouse* [1997] 4 All E.R. 108; *Al Attiya v Al Thani* [2016] EWHC 212 (QB) (former prime minister of Qatar). The immunity extends to servants or agents, officials and functionaries of a foreign state in respect of acts done by them as such in the foreign state: *Jones v Ministry of the Interior of the Kingdom of Saudi Arabia* [2006] UKHL 26, [2007] 1 A.C. 270; *Pocket Kings Ltd v Safenames Ltd* [2009] EWHC 2529 (Ch), [2010] Ch. 438 (Commonwealth of Kentucky, a constituent territory of the United States, not a "State" for the purposes of State Immunity Act 1978 s.14(1)); *R. (on the application of HRH Sultan of Pahang) v Secretary of State for the Home Department* [2011] EWCA Civ 616 (Sultanate of Pahang, Malaysia, not a "state" for the purposes of the State Immunity Act 1978 and Sultan of Pahang not a "Head of State" for those purposes). See also *Grovit v Nederlandsche Bank* [2005] EWHC 2944 (QB), [2006] 1 W.L.R. 3323; affirmed on other grounds, [2007] EWCA Civ 953, [2008] 1 W.L.R. 51. See also *Taurus Petroleum Ltd v State Oil Marketing Co of the Ministry of Oil* [2013] EWHC 3494 (Comm), [2013] 2 C.L.C. 835 at [44]–[65], [2015] EWCA Civ 835. As to members of a foreign royal family who were not part of the household of the sovereign or head of state, within the meaning of the State Immunity Act 1978 s.20(1)(b), see *Apex Global Management Ltd v Fi Call Ltd* [2013] EWCA Civ 642, [2014] 1 W.L.R. 492; see below para.12-008.
25. ¶s.14. See *Kuwait Airways Corp v Iraqi Airways Co* [1995] 1 W.L.R. 1147 (for further proceedings, see *Kuwait Airways Corp v Iraqi Airways Co* (No.2) [2001] 1 W.L.R. 430; *Kuwait Airways Corp v Iraqi Airways Co* [2003] EWHC 31 (Comm), [2003] 1 Lloyd's Rep. 448); *Propend Finance Pty Ltd v Sing*, *The Times*, May 2, 1997, 111 Int. L.R. 611; *Ministry of Trade of the Republic of Iraq v Tsavliris Salvage (International) Ltd* [2008] EWHC 612 (Comm), [2008] 2 Lloyd's Rep. 90; *Wilhelm Finance Inc v Ente Administrador del Astillero Rio Santiago* [2009] EWHC 1074 (Comm), [2009] 1 C.L.C. 867; *Pocket Kings Ltd v Safenames Ltd* [2009] EWHC 2529 (Ch), [2010] Ch. 438; *R. (on the application of HRH Sultan of Pahang) v Secretary of State for the Home Department* [2011] EWCA Civ 616; *Pearl Petroleum Co Ltd v Kurdistan Regional Government of Iraq* [2015] EWHC 3361 (Comm), [2016] 4 W.L.R. 2. see also *Koo Golden East Mongolia v Bank of Nova Scotia* [2007] EWCA Civ 1443, [2008] Q.B. 717; *PT Garuda Indonesia Ltd v Australian Competition and Consumer Commission* [2011] FCAFC 52, (2011) 277 A.L.R. 67, affirmed [2012] HCA 33, (2012) 290 A.L.R. 681. For the position of a state's central bank or other monetary authority, see State Immunity Act 1978 s.14(3), (4); *AIC Ltd v Federal Government of Nigeria* [2003] EWHC 1357 (QB); *AIG Capital Partners Inc v Republic of Kazakhstan* [2005] EWHC 2239 (Comm), [2006] 1 W.L.R. 1420. For discussion of the meaning of "separate entity" see *La Generale des Carrieres et des Mines v FG Hemisphere Associates LLC* [2012] UKPC 27, [2013] 1 All E.R. 409. See also *Taurus Petroleum Ltd v State Oil Marketing Co of the Ministry of Oil* [2013] EWHC 3494 (Comm), [2013] 2 C.L.C. 835 at [44]–[65], [2015] EWCA Civ 835.
26. Dicey, Morris and Collins on the Conflict of Laws, 14th edn (2006), para.10–09. See also *Re Rafidain Bank* [1992] B.C.L.C. 301; *Kuwait Airways Corp v Iraqi Airways Co* [1995] 1 W.L.R. 1147 (for further proceedings, see *Kuwait Airways Corp v Iraqi Airways Co* (No.2) [2001] 1 W.L.R. 430; *Kuwait Airways Corp v Iraqi Airways Co* [2003] EWHC 31 (Comm), [2003] 1 Lloyd's Rep. 448); *Propend Finance Pty Ltd v Sing*, *The Times*, May 2, 1997; 111 Int. L.R. 611; *Ministry of Trade of the Republic of Iraq v Tsavliris Salvage (International) Ltd* [2008] EWHC 612, [2008] 2 Lloyd's Rep. 90; *Wilhelm Finance Inc v Ente Administrador del Astillero Rio Santiago* [2009] EWHC 1074 (Comm), [2009] 1 C.L.C. 867.
27. ¶s.3(1)(a). In *NML Capital Ltd v Argentina* [2011] UKSC 31, [2011] 2 A.C. 495 it was held (by a



majority) that proceedings to enforce a foreign judgment entered in respect of a commercial transaction are not, of themselves, proceedings relating to a commercial transaction: the same principle applies in respect of proceedings to register a foreign judgment against a foreign state under Administration of Justice Act 1996, *AIC Capital Partners v Federal Government of Nigeria* [2003] EWHC 1357 (QB), and to applications to enforce an arbitration award under Arbitration Act 1996 s.101, *Svenska Petroleum Exploration AB v Republic of Lithuania (No.2)* [2006] EWCA Civ 1529, [2006] Q.B. 886, applied in *Ministry of Trade of the Republic of Iraq v Tsavlis (International) Ltd* [2008] EWHC 612 (Comm), [2008] 2 Lloyd's Rep. 90. See further *ETI Euro Telecom International NV v Republic of Bolivia* [2008] EWCA Civ 880, [2008] 1 W.L.R. 665; *Continental Transfert Technique Ltd v Federal Government of Nigeria* [2009] EWHC 2898 (Comm); *Servaas Inc v Rafidain Bank* [2011] EWCA Civ 1256, [2012] 1 All E.R. (Comm) 527, affirmed [2012] UKSC 40, [2013] 1 A.C. 595; *La Generale des Carrieres et des Mines v FG Hemisphere Associates LLC* [2012] UKPC 27, [2013] 1 All E.R. 753; *Taurus Petroleum Ltd v State Oil Marketing Co of the Ministry of Oil, Iraq* [2015] EWCA Civ 835 at [39]–[48]; *Gold Reserve Inc v Bolivarian Republic of Venezuela* [2016] EWHC 153 (Comm), [2016] 1 W.L.R. 2829; *LR Avionics Technologies Ltd v Federal Republic of Nigeria* [2016] EWHC 1761 (Comm), [2016] 4 W.L.R. 120 cf. *Kensington International Ltd v Congo* [2005] EWHC 2684 (Comm), [2006] 2 B.C.L.C. 296.

28. *I Congreso del Partido* [1983] 1 A.C. 244, where the House of Lords divided 3<sup>2</sup> on this issue. Section 3(3) of the 1978 Act defines a “commercial transaction” as any contract and any guarantee or indemnity in respect of such a transaction or other financial obligation, or any other transaction or activity into which a state enters (apart from a contract of employment between a state and an individual) otherwise than in the exercise of sovereign authority. On this provision, see *Alcom Ltd v Republic of Colombia* [1984] A.C. 580; *Amalgamated Metal Trading Ltd v Dept of Trade and Industry, The Times*, March 21, 1989; *Kuwait Airways Corp v Iraqi Airways Co* [1995] 1 W.L.R. 1147 (for further proceedings, see *Kuwait Airways Corp v Iraqi Airways Co (No.2)* [2001] 1 W.L.R. 430; *Kuwait Airways Corp v Iraqi Airways Co* [2003] EWHC 31 (Comm), [2003] 1 Lloyd's Rep. 448); *Central Bank of Yemen v Cardinal Finance Investment Corp* [2001] Lloyd's Rep. Bank. 1; *Svenska Petroleum Exploration AB v Government of the Republic of Lithuania (No.2)* [2006] EWCA Civ 1529, [2008] Q.B. 886; *Koo Golden East Mongolia v Bank of Nova Scotia* [2007] EWCA Civ 1529, [2008] Q.B. 717; *Orascom Telecom Holding SAE v Republic of Chad* [2008] EWHC 1841 (Comm), [2008] 2 Lloyd's Rep. 396; *Servaas Inc v Rafidain Bank* [2011] EWCA Civ 1256, [2012] 1 All E.R. (Comm) 527, affirmed [2012] UKSC 40, [2013] 1 A.C. 595; *NML Capital v Argentina* [2011] UKSC 31, [2011] 2 A.C. 495; *La Generale des Carrieres et des Mines v FG Hemisphere Associates LLC* [2012] UKPC 27, [2013] 1 All E.R. 753; see also *Littrell v Government of the United States (No.2)* [1995] 1 W.L.R. 82; *Holland v Lampen Wolfe* [2001] 1 W.L.R. 1573; *PT Garuda Indonesia Ltd v Australian Competition and Consumer Commission* [2011] FCAFC 52, (2011) 277 A.L.J. 67, affirmed [2012] HCA 33, (2012) 290 A.L.J. 681. See *Staker* (1995) 66 B.Y.I.L. 496; *Fox* (1996) 112 L.Q.R. 186.
29. *Alcom Ltd v Republic of Columbia* [1984] A.C. 580. See also *AIC Ltd v Federal Government of Nigeria* [2003] EWHC 1357 (QB); *Servaas Inc v Rafidain Bank*, above.
30.  *LR Avionics Technologies Ltd v Federal Republic of Nigeria* [2016] EWHC 1761 (Comm), [2016] 4 W.L.R. 120.
31. 1978 Act s.3(1)(b), though note the limitation, s.3(2). See *J.H. Rayner (Mincing Lane) Ltd v Dept of Trade and Industry* [1989] Ch. 72, 194–195, 222, 252, affirmed without reference to the point, [1990] 2 A.C. 418.
32.  s.4. This section does not apply to proceedings concerning the employment of the members of a mission within the meaning of the Convention scheduled to the Diplomatic Privileges Act 1964 or of the members of a consular post within the meaning of the Convention scheduled to the Consular Relations Act 1968 s.16(1)(a). See *Sengupta v Republic of India* [1983] I.C.R. 221; *United Arab Emirates v Abdelghafar* [1995] I.C.R. 65; *Arab Republic of Egypt v Gamal-Eldin* [1996] I.C.R. 13; *Ahmed v Government of the Kingdom of Saudi Arabia* [1996] I.C.R. 25; *Malaysian Industrial Development Authority v Jeyasingham* [1998] I.C.R. 307; *Government of the Kingdom of Saudi Arabia v Nasser* Unreported November 14, 2000 CA; *Garnett* (1997) 46



*Airways Co (No.2)* [2001] 1 W.L.R. 429; *Kuwait Airways Corp v Iraqi Airways Co* [2003] EWHC 31, (Comm), [2003] 1 Lloyd's Rep. 448); *Crescent Oil and Shipping Services Ltd v Importang UEE* [1997] 3 All E.R. 428; *ABCI v De Banque Franco Tunisienne* [2003] EWCA Civ 205, [2003] 2 Lloyd's Rep. 146; *Wilhelm Finance Inc v Ente Administrador del Astillero Rio Santiago* [2009] EWHC 1074 (Comm), [2009] 1 C.L.C. 867; *NML Capital Ltd v Argentina* [2011] UKSC 31, [2011] 2 A.C. 495; *Mashate v Kaguta* [2011] EWHC 3111 (QB). And see *Soleh Boneh International Ltd v Government of the Republic of Uganda* [1993] 2 Lloyd's Rep. 208, 213; *Norsk Hydro ASA v State Property Fund of Ukraine* [2002] EWHC 2120 (Comm), [2009] Bus. L.R. 558; *Mid East Sales Ltd v United Engineering and Trading Co (PUT)* [2014] EWHC 1457 (Comm), [2014] 2 All E.R. (Comm) 623; *Embassy of Brazil v de Castro Cerqueira* [2014] 1 W.L.R. 3718 (EAT); *PCL v Y Regional Government of X* [2015] EWHC 68 (Comm), [2015] 1 Lloyd's Rep. 483; *Gold Reserve Inc v Bolivarian Republic of Venezuela* [2016] EWHC 153 (Comm), [2016] 1 W.L.R. 2829.

44. s.15.

45. ss.18–19.

46. ¶s.21(a). On the importance of the certificate, see *R. (on the application of Alamieyeseigha) v Crown Prosecution Service* [2005] EWHC 2704 (Admin); *R. (on the application of HRH Sultan of Pahang) v Secretary of State for the Home Department* [2011] EWCA Civ 616; *Khurts Bat v The Investigating Judge of the German Federal Court* [2011] EWHC 2029 (Admin); *British Arab Commercial Bank Plc v National Transitional Council of the State of Libya* [2011] EWHC 2274 (Comm); *Democratic Republic of the Congo v FG Hemisphere Associates LLC* [2011] HKFCA 747 (Hong Kong Court of Final Appeal); *Apex Global Management Ltd v Fi Call Ltd* [2013] EWCA Civ 642, [2014] 1 W.L.R. 492. *Khurts Bat v Investigating Judge of the German Federal Court* [2011] EWHC 2029 (Admin) is reported at [2013] Q.B. 349

47. See Dicey, Morris and Collins on the Conflict of Laws, 15th edn (2012), paras 5-043—5-053.

48. The position of the Crown generally is discussed in Ch.11.

49. e.g. *Secretary of State in Council of India v Kamachee Boye Sahaba* (1859) 13 Moo. P.C. 22, 75; *Salaman v Secretary of State of India* [1906] 1 K.B. 613.

50. ¶e.g. *Buron v Denman* (1848) 2 Exch. 167; *Nissan v Att-Gen* [1970] A.C. 179; *Rahmatullah v Ministry of Defence* [2017] UKSC 1, [2017] 2 W.L.R. 287 at [310]–[376].

51. ¶*Rahmatullah v Ministry of Defence* [2017] UKSC 1, [2017] 2 W.L.R. 287 at [69]–[70] (Baroness Hale), [81] (Lord Sumption).

52. ¶*Duke of Brunswick v King of Hanover* (1844) 6 Beav. 1, 57–58, (1848) 2 H.L.C. 1, 21–22, 26–27; *Carr v Francis Times* [1902] A.C. 179–180; *Johnstone v Pedlar* [1921] 2 A.C. 262, 291; *Empresa Exportadora de Acuzar v Industria Azacurera Nacional SA* [1983] 2 Lloyd's Rep. 171, 194; *Belhaj v Straw* [2014] EWCA Civ 1394, [2015] 2 W.L.R. 1105 at [54]–[55], [127]–[133]; [2017] UKSC 3, [2017] 2 W.L.R. 456.

53. ¶*Belhaj v Straw* [2014] EWCA Civ 1394, [2015] 2 W.L.R. 1105 at [127]–[133]; [2017] UKSC 3, [2017] 2 W.L.R. 456 at [165] (Lord Neuberger), [237] (Lord Sumption); *High Commissioner for Pakistan in the United Kingdom v Prince Mukkaram Jah* [2016] EWHC 1465 (Ch) at [84]–[87]. cf. *Yukos Capital Sarl v OJSC Rosneft Oil Co (No.2)* [2012] EWCA Civ 855, [2013] 3 W.L.R. 1329 at [66].

54. ¶*Buttes Gas and Oil Co v Hammer (No.3)* [1982] A.C. 888, 931; and see *J.H. Rayner (Mincing Lane) Ltd v Dept of Trade and Industry* [1990] 2 A.C. 418; *Arab Monetary Fund v Hashim (No.3)* [1991] 2 A.C. 114; *Kuwait Airways Corp v Iraqi Airways Co* [1995] 1 W.L.R. 1147 (for further proceedings, see *Kuwait Airways Corp v Iraqi Airways Co (No.2)* [2001] 1 W.L.R. 430; *Kuwait Airways Corp v Iraqi Airways Co* [2003] EWHC 31 (Comm), [2003] 1 Lloyd's Rep. 448);



*Arab Monetary Fund v Hashim* [1993] 1 Lloyd's Rep. 543, 572, affirmed on this point [1996] 1 Lloyd's Rep. 589; *Philipp Brothers v Republic of Sierra Leone* [1995] 1 Lloyd's Rep. 289; *Westland Helicopters Ltd v Arab Organisation for Industrialisation* [1995] Q.B. 282; *R. v Home Secretary Ex p. Launder (No.2)* [1998] Q.B. 994; *R. v Home Secretary Ex p. Johnson* [1999] Q.B. 1174; *Azov Shipping Co v Baltic Shipping Co* [1999] 2 Lloyd's Rep. 159; *Skrine & Co v Euromoney Publications Plc* [2002] I.L.Pr. 281, affirmed on other grounds, [2001] EWCA Civ 1479, [2002] E.M.L.R. 278; *Kuwait Airways Corp v Iraqi Airways Co (Nos 4 and 5)* [2002] UKHL 19, [2002] 2 A.C. 883; *R. (on the application of Abassi) v Secretary of State for Foreign and Commonwealth Affairs* [2002] EWCA Civ 1598, [2003] U.K.H.R.R. 76; *Republic of Ecuador v Occidental Exploration and Production Co* [2005] EWCA Civ 116, [2006] Q.B. 70; *AY Bank Ltd v Bosnia and Herzegovina* [2006] EWHC 830 (Ch), [2006] 2 All E.R. (Comm) 463; *Tajik Aluminium Plant v Ermatov* [2006] EWHC 2374 (Comm). See also *R. v Christian* [2006] UKPC 47, [2007] 2 W.L.R. 120; *R. (on the application of Al Rawi) v Secretary of State for Foreign Affairs* [2006] EWHC 972 (Admin); *Mbasogo v Logo Ltd* [2006] EWCA Civ 1370, [2007] Q.B. 846; *Tasarruf Mevduati Sigorta Fonu v Demirel* [2006] EWHC 3354 (Ch), [2007] 1 Lloyd's Rep. 223; affirmed on other grounds [2007] EWCA Civ 799, [2007] 1 W.L.R. 2508; *Total E & P Soudan SA v Edmonds* [2007] EWCA Civ 50, [2007] C.P. Rep. 20; *Korea National Insurance Corp v Allianz Global Corporate and Speciality AG* [2008] EWCA Civ 1355, [2008] 2 C.L.C. 837; *Empresa Nacional de Telecomunicaciones SA v Deutsche Bank AG* [2009] EWHC 2570 (Comm), [2010] 1 All E.R. (Comm) 649; *Republic of Serbia v Imagesat International NV* [2009] EWHC 2853 (Comm), [2010] 1 Lloyd's Rep. 324; *Al Jedda v Secretary of State for Defence* [2010] EWCA Civ 758, [2011] 2 W.L.R. 225; *BT Bank v Ablyazov* [2011] EWHC 202 (Comm); *Berezovsky v Abramovich* [2011] EWCA Civ 153, [2011] 1 C.L.C. 359; *Carey Group Plc v AIB Group (UK) Plc* [2011] EWHC 567 (Ch), [2011] 2 All E.R. (Comm) 461; *Masri v Consolidated Contractors International Co SAL* [2011] EWHC 1024 (Comm) at [243] et seq.; *Yukos Capital Sarl v OJSC Rosneft Oil Co* [2011] EWHC 1461 (Comm), [2011] 2 Lloyd's Rep. 443 (generally affirmed by the Court of Appeal, [2012] EWCA Civ 855, [2014] Q.B. 458); *Lucasfilm Ltd v Ainsworth* [2011] UKSC 39, [2012] 1 A.C. 208; *Rahmatullah v Secretary of State for Defence* [2012] UKSC 48, [2012] 3 W.L.R. 1087; *Altima Holdings and Investment Ltd v Kyrgyz Mobil Tel Ltd* [2011] UKPC 7, [2012] 1 W.L.R. 1804; *Yukos Capital Sarl v OJSC Rosneft Oil Co (No.2)* [2012] EWCA Civ 855, [2013] 3 W.L.R. 1329; *Democratic Republic of the Congo v FG Hemisphere Associates LLC* [2011] HKFCA 747 (Hong Kong Final Court of Appeal); *Chugai Pharmaceutical Co Ltd v UCB Pharma SA* [2017] EWHC 1216 (Pat), [2017] Bus. L.R. 1455. See generally McGoldrick (2010) 59 I.C.L.Q. 981.

55.

❗ [2017] UKSC 3, [2017] 2 W.L.R. 456 at [11(iii)], [35]–[45] (Lord Mance), [120]–[124] (Lord Neuberger), [234] (Lord Sumption). It was doubted that there is a fourth rule that the doctrine may be invoked where a ruling would embarrass the United Kingdom in its international dealings: at [11(iv)] (Lord Mance), [148]–[149] (Lord Neuberger), [240]–[241] (Lord Sumption). See *Law Debenture Trust Corp Plc v Ukraine* [2017] EWHC 655 (Comm) at [275]–[295].

56.

❗ *AAA v Unilever Plc* [2017] EWHC 371 (QB), [35]–[62]





57.

❗ *Kuwait Airways Corp v Iraqi Airways Co (Nos 4 and 5)* [2002] UKHL 19, [2002] 2 A.C. 883; *Republic of Ecuador v Occidental Exploration and Production Co* [2005] EWCA Civ 116; *AY Bank v Bosnia and Herzegovina* [2006] EWHC 830 (Comm), [2006] 2 All E.R. (Comm) 463; *Belhaj v Straw* [2014] EWCA Civ 1394, [2015] 2 W.L.R. 1105 at [54]–[55], [81]–[93]; [2017] UKSC 3, [2017] 2 W.L.R. 456 at [11(v)], [85]–[107] (Lord Mance), [153]–[162] (Lord Neuberger), [249]–[280] (Lord Sumption); *Mohammed v Secretary of State for Defence* [2015] EWCA Civ 843. See also *Habib v Commonwealth of Australia* (2010) 183 FCR 62 (Fed Ct Aust.); Collins (2002) 51 I.C.L.Q. 485.

58.


*Kuwait Airways Corp v Iraqi Airways Co (Nos 4 and 5)* [2002] UKHL 19; *Empresa Nacional de Telecomunicaciones SA v Deutsche Bank AG* [2009] EWHC 2579 (Comm), [2010] 1 All E.R. (Comm) 649; *Yukos Capital Sarl v OJSC Rosneft Oil Co* [2011] EWHC 1461 (Comm), [2011] 2 Lloyd's Rep. 443 (generally affirmed by the Court of Appeal, [2012] EWCA Civ 855, [2014] Q.B. 458). See also *Republic of Ecuador v Occidental Exploration and Production Co* [2005] EWCA Civ 116.


59. **!** *Kuwait Airways Corp v Iraqi Airways Co (Nos 4 and 5)* [2002] UKHL 19; *Belhaj v Straw* [2014] EWCA Civ 1394, [2015] 2 W.L.R. 1105 at [54]–[55], [81]–[93]; [2017] UKSC 3, [2017] 2 W.L.R. 456 at [11(v)], [85]–[107] (Lord Mance), [153]–[162] (Lord Neuberger), [249]–[280] (Lord Sumption); *Law Debenture Trust Corp Plc v Ukraine* [2017] EWHC 655 (Comm), [296]–[308].
60. **!** *R. v Bow Street Metropolitan Stipendiary Magistrate Ex p. Pinochet Ugarte (No.3)* [2000] 1 A.C. 61, 90; *High Commissioner for Pakistan in the United Kingdom v Prince Mukkaram Jah* [2016] EWHC 1465 (Ch) at [89]–[90].
61. The 1964 Act has been amended, mainly in minor respects, by the Diplomatic and other Privileges Act 1971, the State Immunity Act 1978, the Diplomatic and Consular Premises Act 1987 and the Arms Control and Disarmament (Privileges and Immunities) Act 1988.
62. **!** State Immunity Act 1978 s.14; *Bank of Credit and Commerce International (Overseas) Ltd v Price Waterhouse* [1997] 4 All E.R. 108. On the immunity of a former head of state in the context of criminal liability, see *R. v Bow Street Metropolitan Stipendiary Magistrate Ex p. Pinochet Ugarte (No.3)* [2000] 1 A.C. 147; and see *R. (on the application of HRH Sultan of Pahang) v Secretary of State for the Home Department* [2011] EWCA Civ 616, *Harb v Aziz* [2014] EWHC 1807 (Ch), [2014] 1 W.L.R. 4437, affirmed [2015] EWCA Civ 481. On heads of state, see generally, *Aziz v Aziz* [2007] EWCA Civ 712, [2008] 2 All E.R. 501; Watts (1994) 224 Recueil des Cours, III, 9. *Harb v Aziz* [2015] EWCA Civ 481 is reported at [2016] Ch. 308. See also *Al Attiya v Al Thani* [2016] EWHC 212 (QB) (civil claim against former prime minister of Qatar).
63. State Immunity Act 1978 s.20; *Bank of Credit and Commerce International (Overseas) Ltd v Price Waterhouse* [1997] 4 All E.R. 108; *R. v Bow Street Metropolitan Stipendiary Magistrate Ex p. Pinochet Ugarte (No.3)* [2000] 1 A.C. 147. And see *Khurts Bat v Investigating Judge of the German Federal Court* [2011] EWHC 2029 (Admin), [2013] Q.B. 349. The immunities extend to members of the family of the foreign sovereign or other head of a recognised state who form part of his household and to his private servants: 1978 Act s.20(1). On the meaning of members of the family of a head of state “forming part of his household”, see *Apex Global Management Ltd v Fi Call Ltd* [2013] EWCA Civ 642, [2014] 1 W.L.R. 492.
64. Diplomatic Privileges Act 1964 s.8(4) and Sch.2.
65. *Empson v Smith* [1966] 1 Q.B. 426; *Omerri v Uganda High Commission* [1973] I.T.R. 14; cf. *Sengupta v Republic of India* [1983] I.C.R. 221, 226.
66. **!** Diplomatic Privileges Act 1964 Sch.1 art.1. As a matter of customary international law and the common law, a receiving State is obliged to secure, for the duration of a special or ad hoc mission, personal inviolability and immunity from criminal jurisdiction for the members of the mission accepted as such by the receiving State: see *Khurts Bat v Investigating Judge of the German Federal Court* [2011] EWHC 2029 (Admin), [2013] Q.B. 349; *R. (on the application of the Freedom and Justice Party) v Secretary of State for Foreign and Commonwealth Affairs* [2016] EWHC 2010 (Admin) at [116]–[120].
67. Including a divorce petition: *Shaw v Shaw* [1979] Fam. 62. For the position in relation to proceedings under the Child Abduction and Custody Act 1985, see *P v P (Diplomatic Immunity: Jurisdiction)* [1998] 1 F.L.R. 1026. See also *Abusabib v Taddese* [2013] I.C.R. 603 (employment claims).
68. *Alcom Ltd v Republic of Colombia* [1984] A.C. 580.
69. *Intpro Properties (UK) Ltd v Sauvel* [1983] Q.B. 1019, 1032–1033.
70. **!** Vienna Convention art.31. See *Wokuri v Kassam* [2012] EWHC 105 (Ch); *Reyes v Al-Malki* [2017] UKSC 61.

71. Vienna Convention art.37(1).
72.  *R. (on the application of the Freedom and Justice Party) v Secretary of State for Foreign and Commonwealth Affairs* [2016] EWHC 2010 (Admin).
73. Vienna Convention art.22.
74. Vienna Convention art.30; cf. *Agbor v Metropolitan Police Commissioner* [1969] 1 W.L.R. 703.
75. *Intpro Properties (UK) Ltd v Sauvel* [1983] Q.B. 1019, 1033–1034.
76. *Westminster City Council v Government of the Islamic Republic of Iran* [1986] 1 W.L.R. 979, 984–985.
77. Vienna Convention art.37(2), (3). See *Government of the Kingdom of Saudi Arabia v Nasser, Unreported November 14, 2000 CA*; *Re B (A Child) (Care Proceedings: Diplomatic Immunity)* [2002] EWHC 1751 (Fam), [2003] Fam. 16.
78.  Vienna Convention art.39(1) and s.2(2). The immunity applies while the diplomat was in post: *Reyes v Al-Malki* [2017] UKSC 61, [18]–[19], [48]–[49], [55].
79.  *R. v Secretary of State for the Home Department Ex p. Bagga* [1991] 1 Q.B. 485 in which the Court of Appeal, albeit in an immigration context, doubted the correctness of *R. v Governor of Pentonville Prison Ex p. Teja* [1971] 2 Q.B. 274; *R. v Lambeth Justices Ex p. Yusufu* [1985] Crim. L.R. 510 and *R. v Governor of Pentonville Prison Ex p. Osman (No.2)* [1989] C.O.D. 446 which appear to suggest that such notification and acceptance is necessary. *Ex p. Bagga* was followed by the Court of Appeal in the context of the State Immunity Act 1978 s.16(1) in *Ahmed v Government of the Kingdom of Saudi Arabia* [1996] I.C.R. 25. See Dicey, Morris and Collins on the Conflict of Laws, 14th edn (2006), para.10-070; *Jimenez v Inland Revenue Commissioners* [2004] S.T.C. 371; see also *Wokuri v Kassam* [2012] EWHC 105 (Ch). See also *Al Attiya v Al Thani* [2016] EWHC 212 (QB) at [48], [81].
80. *Ghosh v D'Rozario* [1963] 1 Q.B. 106.
81. *Re Regina and Palacios* (1984) 45 O.R. (2d) 269.
82. Vienna Convention art.39(2); *Propend Finance Pty Ltd v Sing, The Times, May 2, 1997*, 111 Int. L.R. 611. cf. *Musurus Bey v Gadban* [1894] 2 Q.B. 352; *Zoernsch v Waldock* [1964] 1 W.L.R. 675; *Wokuri v Kassam* [2012] EWHC 105 (Ch). See also *R. v Bow Street Magistrate Ex p. Pinochet Ugarte (No.3)* [2000] 1 A.C. 147, 255–257, 270; *Abusabib v Taddese* [2013] I.C.R. 603.
83. *Shaw v Shaw* [1979] Fam. 62.
84. Vienna Convention art.39(3).
85. *Musurus Bey v Gadban* [1894] 2 Q.B. 352.
86.  Diplomatic Privileges Act 1964 s.4; and see *Engelke v Musmann* [1928] A.C. 433; *R. v Governor of Pentonville Prison Ex p. Teja* [1971] 2 Q.B. 274; *Khurts Bat v Investigating Judge of the German Federal Court* [2011] EWHC 2029 (Admin), [2013] Q.B. 349. cf. *Re P (Children Act: Diplomatic Immunity)* [1998] 1 F.L.R. 625, 626; *Apex Global Management Ltd v Fi Call Ltd* [2013] EWCA Civ 642, [2014] 1 W.L.R. 492. *Al Attiya v Al Thani* [2016] EWHC 212 (QB) at [37], [59], [83]; *R. (on the application of the Freedom and Justice Party) v Secretary of State for Foreign and Commonwealth Affairs* [2016] EWHC 2010 (Admin) at [174].
87. See British Nationality Act 1981 s.51(3).

- [88.](#) Vienna Convention art.38(1) and s.2(2) of the Act.
- [89.](#) Vienna Convention art.38(2) and s.2(2) of the Act.
- [90.](#) s.2(6).
- [91.](#) Vienna Convention art.37 and s.2(2).
- [92.](#) As amended by the Diplomatic and Other Privileges Act 1971 and the Diplomatic and Consular Premises Act 1987.
- [93.](#) Consular Relations Act 1968 Sch.I art.1.
- [94.](#) Sch.I art.1.
- [95.](#) Vienna Convention art.43.
- [96.](#) Vienna Convention art.57.
- [97.](#) s.12 as substituted by the Diplomatic and other Privileges Act 1971 s.4(1) and Sch.
- [98.](#) As amended by the Diplomatic and other Privileges Act 1971 and International Organisations Act 2005.
- [99.](#) Including winding up: *Re International Tin Council* [1989] Ch. 309. For further litigation involving the Tin Council and its immunities under the 1968 Act, see *J.H. Rayner (Mincing Lane) Ltd v Dept of Trade and Industry* [1989] Ch. 72; affirmed [1990] 2 A.C. 418; *Standard Chartered Bank v International Tin Council* [1987] 1 W.L.R. 641; *Shearson Lehman Bros Inc v Maclaine, Watson & Co Ltd* [1988] 1 W.L.R. 16, HL; *Maclaine, Watson & Co Ltd v International Tin Council* [1989] Ch. 253; *Maclaine, Watson & Co Ltd v International Tin Council (No.2)* [1989] Ch. 286. In *Mukoro v European Bank for Reconstruction and Development* [1994] I.C.R. 897 it was held that immunity extended to proceedings in an industrial tribunal under the Race Relations Act 1976 by an individual whose application for a post with the organisation had been rejected. The making of an Order in Council in relation to an organisation may lead to the conclusion that that organisation is thereby clothed with such legal personality as to be capable of entering into valid contracts: *J.H. Rayner (Mincing Lane) Ltd v Dept of Trade and Industry* [1990] 2 A.C. 415. See Reinisch, *Privileges and Immunities of International Organizations in Domestic Courts* (2013).
- [100.](#) International Organisations Act 1981 s.1(1), (2)(b) and Sch.1 Pt I para.1. The immunities conferred by s.1 may be extended to include representatives at conferences of the organisation in the United Kingdom: s.5A. On the compatibility of this immunity with art.6 of the European Convention on Human Rights, see *Entico Corp Ltd v UNESCO* [2008] EWHC 531 (Comm), [2008] 1 Lloyd's Rep. 673; *Waite and Kennedy v Germany* (2000) 30 E.H.R.R. 261 (European Court of Human Rights).
- [101.](#) s.1(2)(c), (3), and Sch.1 Pt II para.9.
- [102.](#) s.1(4) and Sch.1 Pt IV para.20.
- [103.](#) s.1(4) and Sch.1 Pt IV para.23.
- [104.](#) s.1(2)(d) and Sch.1 Pt III para.14.
- [105.](#) s.1(4) and Sch.1 Pt IV para.21.
- [106.](#) s.1(4) and Sch.1 Pt IV para.23(4).
- [107.](#) s.1(6)(b). This is subject to s.4 of the International Organisations Act 1981.



- [108.](#) s.2(1).
- [109.](#) s.4. In *Arab Monetary Fund v Hashim (No.3)* [1991] 2 A.C. 114 (see F.A. Mann (1991) 107 L.Q.R. 357; Marston (1991) C.L.J. 218) it was held that an international organisation of which the United Kingdom was not a member and which had been given legal personality under the law of the United Arab Emirates, where its headquarters were situated, had capacity to sue in England even though no legal capacity had been conferred upon it by English law. Attribution of legal personality by the law of the Emirates created a corporation capable of being recognised in England. Although the organisation was not entitled to immunity under the English Acts, it has been held that it may be entitled to immunity, in respect of official acts, under customary international law, that such immunity may be recognised by the English courts and, further, that the immunity may extend to senior officials of the organisation: *Arab Monetary Fund v Hashim* [1993] 1 Lloyd's Rep. 543, 573–574. As to waiver of this immunity, see below, para.12-020.
- [110.](#) s.4A (added to the 1968 Act by s.2 of the International Organisations Act 1981) and representatives at conferences organised by them in the United Kingdom: s.5A.
- [111.](#) s.5.
- [112.](#) s.6.
- [113.](#) s.1, as amended by the Diplomatic Privileges Act 1964 s.8(4) and Sch.2.
- [114.](#) See Halsbury's Laws of England, 5th edn, Vol.61, paras 307–313. As to the Immunity of the International Maritime Organisation, see SI 2002/1826.
- [115.](#) 1968 Act s.12(5).
- [116.](#) See, e.g. Commonwealth Secretariat Act 1966 s.1(2) and Sch., as amended by International Organisations Act 2005 ss.1–3. Although immunity is conferred on the Commonwealth Secretariat (as to which, see *Jananyagam v Commonwealth Secretariat* [2007] WL 919439 (EAT)), that immunity does not extend to the Commonwealth Secretariat Arbitration Tribunal, decisions of which may be reviewed under the Arbitration Act 1996: see *Mohsin v Commonwealth Secretariat* [2002] EWHC 377 (Comm). The International Organisations Act 2005 also includes provisions relating to the Organisation for Security and Co-operation in Europe (s.4), the International Criminal Court (s.6; see also International Criminal Court Act 2001 s.1(3) and Sch.1 para.1(2)), the European Court of Human Rights (s.7), and the International Tribunal for the Law of the Sea (s.8). See also Arbitration (International Investment Disputes) Act 1966 s.4 and Sch.; International Monetary Fund Act 1979 s.5(1); Multilateral Investment Guarantee Agency Act 1988 s.3; International Development Act 2002 s.12.
- [117.](#) The privileges and immunities of the EU and its officials are provided by art.343 of the Treaty on the Functioning of the European Union (TFEU). The EU cannot claim sovereign immunity: *JH Rayner (Mincing Lane) Ltd v Dept of Trade and Industry* [1989] Ch. 72, 196–203, 252–253 CA, affirmed on other grounds, [1990] 2 A.C. 418.
- [118.](#) See Halsbury's Laws of England, 5th edn, Vol.61, paras 307–313. See also *J.H. Rayner (Mincing Lane) Ltd v Dept of Trade and Industry* [1989] Ch. 72, 203–205.
- [119.](#)  *Duke of Brunswick v King of Hanover* (1844) 6 Beav. 1, 37, 38; *Sultan of Johore v Bendahar* [1952] A.C. 318. By contrast, the principle of non-justiciability under the “act of state” doctrine is not capable of being waived by a State, because it is a matter going to the Court's substantive jurisdiction, whereas sovereign immunity is no more than a procedural bar to the Court's jurisdiction: *R. v Bow Street Metropolitan Stipendiary Magistrate Ex p. Pinochet Ugarte (No.3)* [2000] 1 A.C. 61, 90; *High Commissioner for Pakistan in the United Kingdom v Prince Mukkaram Jah* [2016] EWHC 1465 (Ch), at [89]–[90].
- [120.](#) *Taylor v Best* (1854) 14 C.B. 487; *Re Suarez* [1918] 1 Ch. 176; *Dickinson v Del Solar* [1930] 1 K.B. 376; *R. v A.B.* [1941] 1 K.B. 454.

- [121.](#) *Re Republic of Bolivia Exploration Syndicate Ltd* [1914] 1 Ch. 139; *Baccus S.R.L. v Servicio Nacional del Trigo* [1957] 1 Q.B. 438; *R. v Madan* [1961] 2 Q.B. 1.
- [122.](#) *Mighell v Sultan of Johore* [1894] 1 Q.B. 149, 159, 161, 162–164; *Duff Development Co v Government of Kelantan* [1924] A.C. 797; *Kahan v Pakistan Federation* [1951] 2 K.B. 1003; *The Philippine Admiral* [1974] 2 Lloyd's Rep. 568, 586–587, affirmed [1977] A.C. 373.
- [123.](#) *Kahan v Pakistan Federation* [1951] 2 K.B. 1003; *Baccus S.R.L. v Servicio Nacional del Trigo* [1957] 1 Q.B. 438.
- [124.](#) *Duff Development Co v Government of Kelantan* [1924] A.C. 797.
- [125.](#) [1924] A.C. 797. See above, n.3.
- [126.](#) *R. v Madan* [1961] 2 Q.B. 1.
- [127.](#) *Fayed v Al Tajir* [1988] Q.B. 712.
- [128.](#)  State Immunity Act 1978 s.13(2); *Alcom Ltd v Republic of Colombia* [1983] A.C. 580; *NML Capital Ltd v Argentina* [2011] UKSC 31, [2011] 2 A.C. 495. Where a state has agreed in writing to submit a dispute which has arisen or which may arise, to arbitration, the state cannot then claim immunity as respects proceedings in the courts of the United Kingdom which relate to the arbitration, unless there is a contrary provision in the agreement or the arbitration agreement is between States: State Immunity Act 1978 s.9: see *Ministry of Trade of the Republic of Iraq v Tsavliris Salvage (International) Ltd* [2008] EWHC 612 (Comm), [2008] 2 Lloyd's Rep. 90. Section 9 extends to proceedings for permission to enforce an arbitration award under Arbitration Act 1996 s.101, but probably does not extend to enforcement of an award against property of a state: s.13(2)(b). See also *Svenska Petroleum Exploration AB v Government of the Republic of Lithuania (No.2)* [2005] EWHC 2437 (Comm), [2006] 1 Lloyd's Rep.181; affirmed [2006] EWCA Civ 1529, [2007] Q.B. 886; *Orascom Telecom Holding SAE v Republic of Chad* [2008] EWHC 1841 (Comm), [2008] 2 Lloyd's Rep. 396; *ETI Eurotelecom International NV v Republic of Bolivia* [2008] EWCA Civ 880, [2008] 1 W.L.R. 665; *Servaas Inc v Rafidain Bank* [2011] EWCA Civ 1256, [2012] 1 All E.R. (Comm) 527, affirmed [2012] UKSC 40, [2013] 1 A.C. 595 (but property of a state which originates in a commercial transaction is immune from execution if the state has chosen the property to be used for sovereign purposes rather than commercial purposes; see s.13(4) of the Act); *NML Capital Ltd v Argentina* [2011] UKSC 31, [2011] 2 A.C. 495; *The High Commissioner for Pakistan in the United Kingdom v National Westminster Bank Plc* [2015] EWHC 55 (Ch) at [72]–[76]; *Gold Reserve Inc v Bolivarian Republic of Venezuela* [2016] EWHC 153 (Comm), [2016] 1 W.L.R. 2829; *LR Avionics Technologies Ltd v Federal Republic of Nigeria* [2016] EWHC 1761 (Comm), [2016] 4 W.L.R. 120 at [20]–[23]. See Dicey, Morris and Collins on the Conflict of Laws, 15th edn (2012), para.10-051.
- [129.](#) s.2. This section is a complete statement of the circumstances in which a state submits for the purposes of the Act: *Svenska Petroleum Exploration AB v Government of the Republic of Lithuania (No.2)* [2005] EWHC 2437 (Comm), [2006] 1 Lloyd's Rep. 181; affirmed [2006] EWCA Civ 1529, [2007] Q.B. 886; *NML Capital Ltd v Argentina* [2011] UKSC 31, [2011] 2 A.C. 495.
- [130.](#) s.2(2). See *A Co Ltd v Republic of X* [1990] 2 Lloyd's Rep. 520; *Ahmed v Government of the Kingdom of Saudi Arabia* [1996] I.C.R. 25 (meaning of "written agreement"); *Propend Finance Pty Ltd v Sing*, *The Times*, May 2, 1997; 111 Int. L.R. 611; *Mills v Embassy of the United States of America*, Unreported May 9, 2000 CA; *Sabah Shipyard (Pakistan) Ltd v The Islamic Republic of Pakistan* [2002] EWCA Civ 1643, [2003] 2 Lloyd's Rep. 571; *Donegal International Ltd v Zambia* [2007] EWHC 197 (Comm), [2007] 1 Lloyd's Rep. 397; *Orascom Telecom Holding SAE v Republic of Chad* [2008] EWHC 1841 (Comm), [2008] 2 Lloyd's Rep. 396; *NML Capital Ltd v Argentina* [2011] UKSC 31, [2011] 2 A.C. 495; *London Steamship Owners Mutual Insurance Association Ltd v Spain* [2013] EWHC 3188 (Comm), [2014] 1 Lloyd's Rep. 309, affirmed [2015] EWCA Civ 333, [2015] 2 Lloyd's Rep. 33; and see *Thai-Liao Lignite (Thailand) Co Ltd v Laos* [2013] EWHC 2466 (Comm), [2013] 2 All E.R. (Comm) 883; *The High Commissioner for Pakistan in the United Kingdom v National Westminster Bank Plc* [2015] EWHC 55 (Ch) at



[72]–[76].

131. s.2(3)(a).

132. s.2(3)(b), (5). See *Kuwait Airways Corp v Iraqi Airways Co* [1995] 1 Lloyd's Rep. 25 CA, reversed, in part, on other grounds, [1995] 1 W.L.R. 1147 HL (for further proceedings, see *Kuwait Airways Corp v Iraqi Airways Co (No.2)* [2001] 1 W.L.R. 429; *Kuwait Airways Corp v Iraqi Airways Co* [2003] EWHC 31 (Comm), [2003] 1 Lloyd's Rep. 448); *London Branch of the Nigerian Universities Commission v Bastians* [1995] I.C.R. 358; *Arab Republic of Egypt v Gamal-Eldin* [1996] I.C.R. 13; *Malaysian Industrial Development Authority v Jeyasingham* [1998] I.C.R. 307; *Aziz v Republic of Yemen* [2005] EWCA Civ 745, [2005] I.C.R. 1391.

133. s.2(3), (4).

134. *Svenska Petroleum Exploration AB v Republic of Lithuania (No.2)* [2005] EWHC 2437 (Comm), [2006] 1 Lloyd's Rep. 181; affirmed [2006] EWCA Civ 1529, [2007] Q.B. 886; *NML Capital Ltd v Argentina* [2011] UKSC 31, [2011] 2 A.C. 495.

135. s.2(2).

136. s.2(6). See *Propend Finance Pty Ltd v Sing*, *The Times*, May 2, 1997, 111 Int. L.R. 611; cf. *Sultan of Johore v Bendahar* [1952] A.C. 318 (appeal); *High Commissioner for India v Ghosh* [1960] 1 Q.B. 134 (counterclaim).

137. s.2(7). See *Ahmed v Government of the Kingdom of Saudi Arabia* [1996] I.C.R. 25; *Arab Republic of Egypt v Gamal-Eldin* [1996] I.C.R. 13; *Propend Finance Pty Ltd v Sing*, *The Times*, May 2, 1997, 111 Int. L.R. 611; *Malaysian Industrial Development Authority v Jeyasingham* [1998] I.C.R. 307; cf. *Donegal International Ltd v Zambia* [2007] EWHC 197 (Comm), [2007] 1 Lloyd's Rep. 397 (authority of Minister). On the method of waiver or submission, see *Fayed v Al Tajir* [1988] Q.B. 712, 733, 736–737.

138. s.2(7). See *Ahmed v Government of the Kingdom of Saudi Arabia* [1996] I.C.R. 25.

139. *The High Commissioner for Pakistan in the United Kingdom v National Westminster Bank Plc* [2015] EWHC 55 (Ch) at [74].

140. s.13(3); cf. *Re Suarez* [1917] 2 Ch. 131; *Duff Development Co v Government of Kelantan* [1923] 1 Ch. 385, [1924] A.C. 797, 810, 821, 830. See also *Mitchell v Ibrahim Al-Dahli* [2005] EWCA Civ 720 (undertaking by foreign state not to appeal costs order made against it does not imply waiver of immunity should enforcement of the costs order be sought).

141. Sch.1 art.32.

142. Sch.1 art.45.

143. s.2(3); see *Propend Finance Pty Ltd v Sing*, *The Times*, May 2, 1997, 111 Int. L.R. 611; 1968 Act s.1(5).

144. *Mighell v Sultan of Johore* [1894] 1 Q.B. 149; *Duff Development Co v Government of Kelantan* [1924] A.C. 797; *Kahan v Pakistan Federation* [1951] 2 K.B. 1003.

145. See Dicey, Morris and Collins on the Conflict of Laws, 14th edn (2006), para.10-074; Cohn (1958) 34 B.Y.I.L. 360; F.A. Mann (1991) 107 L.Q.R. 362.

146. *A Co Ltd v Republic of X* [1990] 2 Lloyd's Rep. 520, cogently criticised by F.A. Mann (1991) 107 L.Q.R. 362.

147. F.A. Mann (1991) 107 L.Q.R. 362.

148. Which waiver must also be given by an undertaking or consent given to the court when it is

asked to exercise jurisdiction: *A Co Ltd v Republic of X* [1990] 2 Lloyd's Rep. 520.

[149.](#) See, e.g. *Standard Chartered Bank v International Tin Council* [1987] 1 W.L.R. 641. A senior official of an international organisation which is entitled to immunity under customary international law (see above, para.12-018 n.95) may also be entitled to immunity, as a matter of customary international law, from legal process in respect of official acts, but since the immunity is granted to the official for the benefit of the organisation, rather than for the individual official, then the immunity may be waived by the organisation, and, if it is so waived, there is no further bar to proceedings against the official: *Arab Monetary Fund v Hashim* [1993] 1 Lloyd's Rep. 543, 574.

[150.](#) s.1(2) and Sch. para.8.

[151.](#) Sch.1 arts 20, 21.

**Chitty on Contracts 32nd Ed.**  
**Consolidated Mainwork Incorporating Second Supplement**  
**Volume I - General Principles**  
**Part 3 - Capacity of Parties**  
**Chapter 12 - Political Immunity and Incapacity**  
**Section 2. - Alien Enemies <sup>152</sup>**

**Who is an alien enemy**

**12-024**

At common law, the term "*alien enemy*" means any person irrespective of nationality who voluntarily <sup>153</sup> resides or who carries on business in any enemy or enemy-occupied country during a war in which the United Kingdom is engaged. <sup>154</sup> As will be seen, <sup>155</sup> an enemy subject who resides or carries on business in the United Kingdom or in a neutral or allied country is nearly always treated as an alien friend. Hence the test of enemy character at common law is a territorial and not a national one. It is an objective test and depends on facts, not on the prejudices, passions or patriotism of the individual concerned. <sup>156</sup> So during the Second World War a company incorporated in Holland and having its principal place of business in Rotterdam was held to be an alien enemy after the German occupation of Holland. <sup>157</sup>

**Companies**

**12-025**

A company registered in an enemy or enemy-occupied country is an alien enemy, <sup>158</sup> unless the control of its affairs is shifted to a country not occupied by the enemy. <sup>159</sup> But a company registered in the United Kingdom and carrying on business here may acquire enemy character by reason of the hostile residence or activities of its agents or other persons in de facto control of its affairs. <sup>160</sup> Thus where during the First World War all the shares except one in an English company were held by Germans resident in Germany, and all its directors were Germans so resident, the company was treated as an alien enemy. <sup>161</sup> In that case it was said that a company registered in the United Kingdom but carrying on business in an enemy country is to be regarded as an alien enemy. <sup>162</sup> But that proposition is too widely stated, for the contrary has since been held. <sup>163</sup>

**Trading with the Enemy Act 1939**

**12-026**

The Trading with the Enemy Act 1939 <sup>164</sup> contains a statutory definition of an "enemy". But this definition is limited to the purposes of the Act and does not affect the common law rule with regard to the separate question of an alien enemy's capacity to sue, <sup>165</sup> with which alone this section is concerned.

**Alien enemy as claimant**

**12-027**

An alien enemy cannot sue in the Queen's courts or take up the position of an *actor* in British litigation

<sup>166</sup> save under royal licence. <sup>167</sup> The fact that the action was commenced before the outbreak of war does not enable an alien enemy to continue his action during the war, <sup>168</sup> nor can he appeal against a judgment given against him before the war. <sup>169</sup> He cannot appear as claimant in an interpleader issue. <sup>170</sup> The royal licence necessary to cure the claimant's incapacity to sue may be either express, <sup>171</sup> or inferred from the fact of his presence here with the knowledge and tacit approval of the Crown, e.g. if he registered under the Aliens Restriction Act 1914 and orders made thereunder. <sup>172</sup> Such a licence can be revoked, <sup>173</sup> but it is not revoked merely by the internment of the alien, <sup>174</sup> at any rate if the internment was an act of general policy adopted for the safety of the realm and was not due to a hostile act or attitude on the alien's part. The effect of a licence is to place the alien enemy under the protection of the Crown, with the result that in all respects except perhaps one <sup>175</sup> he is treated as an alien friend for procedural purposes.

## 12-028

The rule which debars an alien enemy from suing is an ancient rule of the common law which is based on public policy. <sup>176</sup> It is immaterial that Emergency Regulations made under the Trading with the Enemy Act 1939 would prevent the claimant from transmitting abroad the sum recovered until the end of the war, because he might more easily raise a loan from neutral sources on the security of a judgment debt than he could on the security of a simple contract debt, and so help to furnish the enemy country with the sinews of war. <sup>177</sup>

### Exceptions

## 12-029

There are two or possibly three exceptions to the rule that proceedings may not be brought by an alien enemy without a licence:

(1)

In *Rodriguez v Speyer Bros* <sup>178</sup> it was held by a bare majority of the House of Lords (against powerful dissent by Lords Atkinson and Sumner) that an alien enemy could be joined as co-plaintiff in an action by a firm of partners of which he was formerly a member to recover a pre-war debt due to the firm, on the somewhat specious grounds that the rule should not be applied if to do so would inflict hardship not on the enemy but on British or neutral partners. <sup>179</sup> Lord Wright has said that this decision must be limited to its special facts. <sup>180</sup>

(2)

An alien enemy can be heard without a licence in the Prize Court if his claim is based on an international treaty or convention, but not otherwise. <sup>181</sup>

(3)

There is ancient authority for the proposition that an alien enemy can sue *en autre droit*, e.g. as executor or administrator of a deceased person. <sup>182</sup> It is, however, an open question whether this authority would be followed at the present day. <sup>183</sup>

### Alien enemy as defendant

## 12-030

There is no rule of common law which prevents an alien enemy from being sued if service or

substituted service can be effected. <sup>184</sup> There may be difficulties about service, <sup>185</sup> but in time of war it is usual for the rules as to substituted service to be relaxed under statutory authority. <sup>186</sup> If he is sued, an alien enemy can appear and be heard in his defence and may take all such steps as may be deemed necessary for the proper presentation of his defence, and may appeal against any judgment given against him, for to hold otherwise would be contrary to natural justice. <sup>187</sup> He may plead a set-off, but he may not counterclaim, <sup>188</sup> nor take third party proceedings, <sup>189</sup> nor execute a judgment for costs during the war, <sup>190</sup> because in doing any of these things he would become an *actor*. He may be made bankrupt <sup>191</sup> and may prove in the bankruptcy of another, <sup>192</sup> but if his proof is rejected he may not take proceedings or challenge the trustee's decision, for in doing so he would become an *actor*. <sup>193</sup>

## Limitation of actions

### 12-031

The Limitation (Enemies and War Prisoners) Act 1945 <sup>194</sup> suspended the running of any period of limitation for the bringing of any action in which any person who would have been a necessary party was an enemy or was detained in enemy territory until he ceased to be so and for 12 months thereafter.

## Illegal contracts with alien enemies

### 12-032

The rule which has been considered in this section, that an alien enemy has no *persona standi in judicio*, must be carefully distinguished from the rule that contracts involving trading or other intercourse with the enemy are illegal at common law as well as by statute. The two rules are often confused, but they differ fundamentally in that the former merely creates a procedural incapacity which lasts only so long as the war lasts, while the latter destroys the cause of action once and for all. <sup>195</sup> The latter rule has nothing to do with capacity, and is therefore considered elsewhere in this work. <sup>196</sup>

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<sup>152.</sup> The leading authorities on the procedural incapacity of alien enemies are the judgment of the full Court of Appeal in *Porter v Freudenberg* [1915] 1 K.B. 857; the dissenting judgment of Lord Sumner in *Rodriguez v Speyer Brothers* [1919] A.C. 59; and the judgment of Lord Wright in *Sovfracht (V/O) v Van Udens Scheepvaart en Agentuur Maatschappij (NV Gebr)* [1943] A.C. 203. See also McNair, *Legal Effects of War*, 4th edn (1966), Ch.3. The principles discussed in this section only apply when a technical state of war exists. See *Amin v Brown* [2005] EWHC 1670 (Ch), [2006] I.L.Pr. 5 where it was held that the procedural incapacity of an alien enemy only came into existence if a technical state of war existed between the United Kingdom and the relevant country and that there was no warrant for extending the disability to modern armed conflict which did not involve war in this sense. Accordingly, an Iraqi citizen resident in Iraq was entitled to proceed in the English court as claimant since the court was satisfied, on the basis of Ministerial statements, that Her Majesty's government's position was that there was not, and had not been, a state of war between the United Kingdom and Iraq. See also *Janson v Driefontaine Consolidated Mines* [1902] A.C. 484. Although the existence of hostilities is not uncommon, it is rare for a technical state of war to exist today: see *Amin v Brown* [2005] EWHC 1670, [2006] I.L.Pr. 5 at [28].

<sup>153.</sup> e.g. not as a prisoner of war: *Vandyke v Adams* [1942] Ch. 155, a case under the Trading with the Enemy Act 1939. Contrast *Scotland v South African Territories Ltd* (1917) 33 T.L.R. 255.

<sup>154.</sup> *Porter v Freudenberg* [1915] 1 K.B. 857; *Sovfracht (V/O) v Van Udens* [1943] A.C. 203; cf. *The Hoop* (1799) 1 C.Rob. 196; *McConnell v Hector* (1802) 3 Bros & P. 113; *O'Mealey v Wilson* (1808) 1 Camp. 482; *Roberts v Hardy* (1815) 3 M. & S. 533; *Janson v Driefontein Consolidated*

- Mines* [1902] A.C. 484, 505; *Amin v Brown* [2005] EWHC 1670 at [28].
155. Below, para.12-027.
156. *Sovfracht (V/O) v Van Udens* [1943] A.C. 203, 219.
157. *Sovfracht (V/O) v Van Udens* [1943] A.C. 203. Contrast *The Pamia* [1943] 1 All E.R. 269, where a Belgian company moved its head office from Antwerp to Pittsburgh shortly after the German occupation of Belgium and so was held not to be an alien enemy.
158. *Janson v Driefontein Consolidated Mines* [1902] A.C. 484; *Sovfracht (V/O) v Van Udens* [1943] A.C. 203.
159. *The Pamia* [1943] 1 All E.R. 269.
160. *Daimler Co Ltd v Continental Tyre and Rubber Co Ltd* [1916] 2 A.C. 307, 344. But it does not cease to be an English company and is therefore not immune from the Trading with the Enemy Act 1939: *Kuenigl v Donnersmarck* [1955] 1 Q.B. 515.
161. *Daimler Co Ltd v Continental Tyre and Rubber Co Ltd* [1916] 2 A.C. 307.
162. *Daimler Co Ltd v Continental Tyre and Rubber Co Ltd* [1916] 2 A.C. 307, 346.
163. *Re Hicks* [1917] 1 K.B. 48.
164. s.2, as amended by the Emergency Laws (Miscellaneous Provisions) Act 1953 s.2 and Sch.II para.3.
165. *Sovfracht (V/O) v Van Udens* [1943] A.C. 203, 219, approving the view of the Court of Appeal on this point.
166. *Porter v Freudenberg* [1915] 1 K.B. 857; *Sovfracht (V/O) v Van Udens* [1943] A.C. 203, 209.
167. *Wells v Williams* (1697) 1 Ld. Raym. 282; *The Hoop* (1799) 1 C.Rob. 196, 201.
168. See McNair at pp.84–86; *Le Bret v Papillon* (1804) 4 East 502; *Alcenius v Nigren* (1854) 1 E. & B. 217. See also *Geiringer v Swiss Bank Corp* [1940] 1 All E.R. 406; *Eichengruen v Mond* [1940] Ch. 785.
169. *Porter v Freudenberg* [1915] 1 K.B. 857, 884.
170. *Geiringer v Swiss Bank Corp* [1940] 1 All E.R. 406.
171. See, e.g. *Fibrosa v Fairbairn* [1943] A.C. 32, 35, 39–40, and comments thereon in *Sovfracht v Van Udens* [1943] A.C. 203, 208; *The Brighton* [1951] 2 Lloyd's Rep. 65.
172. *Princess Thurn and Taxis v Moffitt* [1915] 1 Ch. 58, approved in *Porter v Freudenberg* [1915] 1 K.B. 857, 874; *Vokl v Rotuna Hospital* [1914] 2 I.R. 549; cf. *Re Mary, Duchess of Sutherland* (1915) 31 T.L.R. 248, 394 (enemy national resident in a neutral country may sue). The Aliens Restriction Act 1914 was repealed by the Immigration Act 1971 s.34(1), Sch.6.
173. *Netz v Ede* [1946] Ch. 224.
174. *Schaffenius v Goldberg* [1916] 1 K.B. 284; cf. *Sparenburgh v Bannatyne* (1797) 1 Bos. & P. 163, where an enemy prisoner of war was allowed to sue.
175. He may be unable to apply for a writ of habeas corpus: *The Three Spanish Sailors* (1779) 2 W.Bl. 1324; *Ex p. Liebmann* [1916] 1 K.B. 268; *R. v Bottrill* [1947] K.B. 41; but see Sharpe, *The Law of Habeas Corpus* (1976), pp.112–114.



- [176.](#) *Porter v Freudenberg* [1915] 1 K.B. 857, 880; *Rodriguez v Speyer Bros* [1919] A.C. 59, 66, 124; *Sovfracht (V/O) v Van Udens* [1943] A.C. 203, 213; *Amin v Brown* [2005] EWHC 1670 (Ch), [2006] I.L.Pr. 67. See also *Wells v Williams* (1697) 1 Ld Raym. 282; *The Hoop* (1799) 1 C. Rob. 196, 201–202; *Antoine v Morshead* (1815) 6 Taunt. 237.
- [177.](#) *Rodriguez v Speyer Bros* [1919] A.C. 59, 114; *Sovfracht (V/O) v Van Udens* [1943] A.C. 203, 212, 236, 252; *Amin v Brown* [2005] EWHC 1670 (Ch), [2006] I.L.Pr. 5.
- [178.](#) *Rodriguez v Speyer Bros* [1919] A.C. 59.
- [179.](#) [1919] A.C. 59, 71.
- [180.](#) *Sovfracht (V/O) v Van Udens* [1943] A.C. 203, 233; cf. McNair at p.83, n.4: “The House of Lords have in the *Sovfracht* case substantially repaired the damage done by the majority speeches in *Rodriguez v Speyer Brothers*.”
- [181.](#) *The Möwe* [1915] P. 1; *The Glenroy* [1943] P. 109.
- [182.](#) *Brocks v Phillips* (1599) Cro. Eliz. 683; *Richfield v Udell* (1667) Carter 191; *Villa v Dimock* (1694) Skin. 370.
- [183.](#) See *Rodriguez v Speyer Bros* [1919] A.C. 59, 70, 102, 118, 137; and see McNair at p.86.
- [184.](#) *Robinson & Co v Continental Insurance Co of Mannheim* [1915] 1 K.B. 155; *Porter v Freudenberg* [1915] 1 K.B. 857, 880 et seq.
- [185.](#) These were discussed in *Porter v Freudenberg* [1915] 1 K.B. 857, 886–890, and *Churchill & Co v Lonberg* [1914] 3 All E.R. 137.
- [186.](#) See, e.g. Legal Proceedings against Alien Enemies Act 1915 (repealed in 1927); RSC O.9 r.14(b) (added in 1941 and repealed in 1964).
- [187.](#) *Porter v Freudenberg* [1915] 1 K.B. 857, 883–884.
- [188.](#) *Re Stahlwerk Becker A/G's Patent* [1917] 2 Ch. 272, 276.
- [189.](#) *Halsey v Lowenfeld* [1916] 2 K.B. 707.
- [190.](#) *Robinson & Co v Continental Insurance Co of Mannheim* [1915] 1 K.B. 155, 162.
- [191.](#) *Re Hilckes* [1917] 1 K.B. 48.
- [192.](#) *Ex p. Boussmaker* (1806) 13 Ves. 71.
- [193.](#) *Re Wilson and Wilson Ex p. Marum* (1915) 84 L.J.K.B. 1893.
- [194.](#) As amended. See *The Atlantic Scout* [1950] P. 266; Franks, *Limitation of Actions* (1959), Appendix II. For limitation generally, see below, Ch.29.
- [195.](#) See *Schmitz v Van der Veen & Co* (1915) 84 L.J.K.B. 861, 864; *Rodriguez v Speyer Bros* [1919] A.C. 59, 122.
- [196.](#) See below, paras 16-044 et seq.