

Robert Tantular v HM Attorney General

Jurisdiction:	Jersey
Judge:	Williams JA
Judgment Date:	12 November 2020
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Text

[2020] JCA 234

COURT OF APPEAL

Before:

Lord Anderson of Ipswich; President

Sir Wyn Williams; and Sir William Bailhache

Between
Robert Tantular
Appellant
and
Her Majesty's Attorney General
Respondent

Advocate M. L. Preston for the Appellant

HM Attorney General **in person**

Authorities

Proceeds of Crime (Jersey Law) 1999

In the matter of the Saisies Judiciaires of Robert Tantular [\[2020\] JRC 058](#).

Doraville Properties Corporation v Attorney General [\[2017\] \(1\) JLR 64](#)

In the matter of the Realisable Property of Tantular and Ors v AG [2014] (2) JLR 25

Tantular v AG [2014] JRC 243

In the matter of the Realisable Property of Tantular (No. 2) AG v BOS Trust Company and Ors [2015] (1) JLR 97.

Bennion on Statutory Intention (6th Ed).

[*Saad v Secretary of State for the Home Department* \[2001\] EWCA Civ 2008.](#)

R (Al-Skeini) v The Secretary of State for Defence [\[2008\] 1 AC 153](#)

Masri v Consolidated Contractors International (UK) Limited (No.4) [\[2010\] 1 AC 90](#)

Cox v Ergo Versicherung [\[2014\] AC 1379](#)

Bilta (UK) Ltd v Nazir (No. 2) [\[2016\] AC 1](#)

King v Director of the Serious Fraud Office [\[2009\] 1 WLR 718](#)

Royal Court of Guernsey in *King v HM Procureur* 2011–12 GLR 285

Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law 1999

Criminal Justice (Proceeds of Crime) (Enforcement of Overseas Confiscation Orders) Ordinance 1999 (“the Guernsey Modified Law”)

In the matter of the representation of Kaplan [\[2009\] JLR 88](#)

In Re Rosalind [\[2015\] \(2\) JLR 29](#)

Doraville v Attorney General [\[2017\] \(1\) JLR 64](#)

Baroque Trust Company Ltd. and others v The Viscount [\[2004\] JRC066](#)

DPP v Scarlett [1999] 1 WLR 515

R (KBR Inc) v Director of Serious Fraud Office [\[2018\] EWHC 2368 \(Admin\)](#)

Brassard v Smith [\[1925\] AC 371](#)

[Macmillan Inc v Bishopsgate Investment Trust PLC and others \(No.3\) \[1996\] 1 WLR 387](#)

Court of Appeal — re Saisies Judiciaires.

Williams JA

Introduction

- 1 This is the Judgment of the Court to which we have all contributed.
- 2 The principal issue which arises in this appeal is whether the Royal Court of Jersey is empowered to grant a *saisie judiciaire* which has the effect of prohibiting a specified person from dealing with “*realisable property held by that person*” which is situated outside the geographical confines of Jersey. The parties are agreed that this issue must be determined in accordance with the proper interpretation of Article 16 of the Proceeds of Crime (Jersey Law) 1999 as modified by the Proceeds of Crime (Enforcement of Confiscation Orders) (Jersey) Regulations 2008 (hereinafter referred to as “the Modified Law”). The Appellant argues that the Modified Law does not empower the Royal Court to prohibit a specified person from dealing with realisable property held by that person which is situated outside Jersey; Commissioner Clyde-Smith, sitting in the Royal Court was wrong so to conclude, he submits. The Respondent contends that the Modified Law does permit such a prohibition, essentially for the reasons the Commissioner articulated in his decision of 8 April 2020 (*In the matter of the Saisies Judiciaires of Robert Tantular* [\[2020\] JRC 058](#)).
- 3 It is common ground that permission to appeal is necessary for this appeal to proceed. The test for granting permission is that which is articulated in *Doraville Properties Corporation v Attorney General* [\[2017\] \(1\) JLR 64](#). We are satisfied that this proposed appeal raises an important question of law upon which further argument and a decision of the Court of Appeal would be to the public advantage and, accordingly, we grant permission to appeal against the decision of the Royal Court.
- 4 Although the issue for our determination turns upon a pure question of law, the Appellant and the Respondent have been engaged in litigation over many years. In these circumstances it seems to us to be desirable to sketch out the main features of the litigation and some of the background facts. In that way, the reader may have a better understanding of the context in which the legal issue for determination has arisen.

Relevant History

- 5 The Appellant has been prosecuted and convicted of serious criminal offences in Indonesia in two sets of proceedings. At all material times during his period of offending he held a very senior position in an Indonesian bank called *PT Bank Century Tbk*.

- 6 The Appellant was first convicted of offences before the Central Jakarta District Court on 10 September 2009 in proceedings which have been referred to as Proceedings 1631. Subsequently, the Appellant appealed against his convictions to the Supreme Court of Indonesia, but his appeal was dismissed. The essence of the allegations made against the Appellant was that he had orchestrated a money laundering scheme in the years 2006 and 2007 which had resulted in the collapse of the bank. The seriousness of his conduct is illustrated by the sentences imposed upon him: the Appellant was sentenced to a total of nine years' imprisonment and a fine which, in sterling, exceeded £5 million.
- 7 The investigation of the Appellant did not end with his convictions in September 2009. He was next investigated in relation to activities which began in 2003 relating to the marketing of a high-interest investment scheme in a company of which the Appellant was a shareholder. Ultimately, this investigation led to further criminal proceedings, known as Proceedings 210. On 18 May 2015, the Central Jakarta District Court convicted the Appellant of fraud and money laundering. On 21 August 2015, the Jakarta High Court affirmed those convictions and, additionally, found the Appellant guilty of further offences of fraud and money laundering. The Appellant's appeal to the Supreme Court of Indonesia against these convictions was dismissed. In respect of his convictions in Proceedings 210, the Appellant was sentenced to one year's imprisonment consecutive to that imposed in Proceedings 1631 and fined a further substantial sum.
- 8 The Indonesian authorities maintain that confiscation orders have also been made against the Appellant in both Proceedings 1631 and Proceedings 210 (although whether that is so has not yet been determined definitively in Jersey by the Royal Court). They wish to enforce these orders and the principal target for confiscation is a flat situated at Cuscaden Residences, 20 Cuscaden Road, Singapore (hereinafter referred to as "the Property"). These premises have a value, so it is thought, of many millions of pounds sterling.
- 9 What is the relationship between the Appellant and the Property?
- 10 On 17 June 2004, the Appellant, as settlor, and ING Trust Company (Jersey) Limited, as trustee, constituted a discretionary trust known as the Jasmine Investment Trust ("Jasmine"). Jasmine still subsists, although, over time, the identity of the trustee has changed. The current trustee is H1 Trust Company Limited. In the remainder of this judgment, the expression "the Trustee" will be used not just to describe the current trustee, but all predecessor trustees. Jasmine is governed by the law of Jersey. Its class of potential beneficiaries is the Appellant and members of his family.
- 11 On 19 August 2004, the company known as Jonzelle Limited ("Jonzelle") was incorporated in the British Virgin Islands. The shares in Jonzelle are registered in the name of the Trustee.
- 12 In September 2005, Jonzelle purchased the Property. The purchase price of SGD7.1m was

obtained from two sources. 80% came from funds obtained by a loan from the United Overseas Bank, Singapore. The remaining 20% was provided from funds held in Jasmine.

- 13 The funds loaned by United Overseas Bank were secured by a mortgage over the property which is governed by the law of Singapore. The evidence before us suggests that this loan was repaid in June 2008 and that on 9 June 2008 a substantial credit facility was afforded to Jonzelle by another bank, Credit Suisse AG (“the Bank”), which, in due course, was secured by another mortgage governed by the law of Singapore. We assume (although it matters not) that this credit facility was used to discharge the debt to United Overseas Bank.
- 14 It is common ground that Jonzelle failed to comply with its obligations to the Bank and that, in consequence, the Bank has obtained orders for possession and sale of the Property in proceedings which it has brought in Singapore. The Appellant and his family have, so we understand, sought to resist the making of such orders in Singapore, not surprisingly since the Property is the home of the Appellant and some members of his family, but have been unsuccessful in their endeavours. As we understand it, the current position is that the property is for sale, but that there is, as yet, no concluded sale.
- 15 We turn next to describe the history of this litigation.
- 16 On 6 August 2013, the Respondent applied to the Royal Court for a *saisie judiciaire* in respect of the “*realisable property of Robert Tantular*”. The application for the *saisie* was brought at the request of the Indonesian Authorities with the aim of assisting in the enforcement of the confiscation order which, so it was said, had been made in Proceedings 1631.
- 17 On 9 August 2013, the Bailiff granted the order sought. We set out at paragraph 29 below the provisions of the *saisie* which are to be scrutinised in this appeal. At this stage, it suffices that we record that the *saisie* prohibited any dealing with the Property notwithstanding that it was located outside Jersey.
- 18 Following the making of the *saisie*, the Appellant (and the other parties to the proceedings apart from the Viscount) sought its discharge and/or variation. Hearings took place before the Bailiff (on occasions sitting with Jurats) and, ultimately, by Act of Court dated 21 August 2014, the *saisie judiciaire* was varied. The nature of the variations sought and granted, the arguments deployed by the parties at that stage and the reasons for the Royal Court's willingness to vary the terms of the *saisie* can be found in the reported decision of the Bailiff sitting with Jurats Fisher and Olsen at *In the matter of the Realisable Property of R. Tantular and Ors v AG* [2014] (2) JLR 25 and the unreported decision of the Bailiff and Jurats Clapham and Milner under the reference *Tantular v AG* [2014] JRC 243. It is worth noting that it formed no part of the Appellant's arguments at that stage that the Royal Court had no power to make a *saisie* which had the effect of prohibiting dealing with realisable property situated outside Jersey. The contest at that stage was about whether the Appellant had a

beneficial interest in the Property and whether it had been financed partly through gifts made either directly or indirectly by the Appellant.

- 19 By application dated 28 August 2014, the First Respondent applied for a second *saisie*, this time in the context of supporting the enforcement of the confiscation order made in Proceedings 210. On 3 September 2014, the Bailiff granted the application. This order, too, was the subject of challenge by the Trustee, the Appellant and other members of the Appellant's family. By Act of Court dated 17 December 2014, the Bailiff upheld the making of the *saisie*. The arguments deployed by the parties and the reasons for the Bailiff's conclusion are to be found in the reported decision at *In the matter of the Realisable Property of Tantular (No. 2) AG v BOS Trust Company (Jersey) Limited and Ors* [2015] (1) JLR 97. On this occasion the battleground had been whether the application for the *saisie* constituted an abuse of process of the court. It was not argued on behalf of the Appellant or any other party that the Royal Court had no power to prohibit dealing with property outside Jersey.
- 20 We can skip over the history of the litigation between 2015 and 2019.
- 21 By a representation dated 10 July 2019, the Respondent sought various orders from the Royal Court which were predicated upon the contention that the Court should register the confiscation orders made in Indonesia. Registration is permissible pursuant to Article 39 of the Modified Law – as to which see the section of this judgment immediately below.
- 22 The Appellant's response was his own representation dated 19 September 2019 in which he sought the discharge and/variation of both *saisies* on the basis that article 16 of the Modified Law did not empower the Royal Court to make orders prohibiting specified persons from dealing with realisable property held by them when that property was located outside Jersey. So far as we are aware, the representation of 19 September 2019 constitutes the first occasion in the history of the litigation upon which the Appellant has sought a ruling from the courts upon the point which is now before us for determination.
- 23 The Royal Court dismissed the Appellant's application for discharge/variation of the two *saisies*. We explain below, so far as necessary, the nature of the variations sought by the Appellant in the event that the Court was not minded to grant discharges.

The Relevant provisions of the Modified Law

- 24 Article 1 defines the word “*property*” as meaning “*all property, whether movable or immovable, or vested or contingent, and whether situated in Jersey or elsewhere*”. By the same Article the phrase “*realisable property*” is given the meaning attributed to it by Article 2(1) and (2).

25 Article 2 provides:-

“(1) In this Law, “realisable property” means –

(a) in relation to an external confiscation order in respect of specified property, the property that is specified in the order;

(b) In any other case –

(i) any property held by the defendant ,

(ii) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Law, and

(iii) any property to which the defendant is beneficially entitled .

(2) However, property is not realisable property if –

(a) a confiscation order;

(b) an order under Article 9 of the Proceeds of Crime (Cash Seizure) (Jersey) Law 2008;

(c) an order under Article 29 of the Misuse of Drugs (Jersey) Law 1978; or

(d) an order under Article 27 of the Terrorism (Jersey) Law 2002, is in force in respect of a property.”

26 Articles 15 and 16 are the provisions of the Modified Law which are concerned with *saisies judiciaires*. They provide:-

“15 Cases in which saisies judiciaires may be made:

(1) The powers conferred on the court by Article 16 are exercisable where—

(a) proceedings have been instituted in a country or territory outside Jersey and have not been concluded, and —

(i) an external confiscation order has been made in the proceedings, or

(ii) it appears to the Court that there are reasonable grounds for believing that such an order will be made in the proceedings; or

(b) it appears to the court that proceedings are to be instituted against the defendant in a country or territory outside Jersey, and that there are reasonable grounds for believing that an

external confiscation order will be made in the proceedings .

(2) Where the Court has made an order under Article 16 by virtue of paragraph (1)(b), the Court shall discharge the order if the proceedings have not been instituted within such time as the Court considers reasonable .

16 Saisies judiciaires

(1) The Court may, subject to such conditions and exceptions as may be specified in it, make an order (in this Part referred to as a saisie judiciaire) on an application made by or on behalf of the Attorney General on behalf of the government of a country or territory outside Jersey .

(2) An application for a saisie judiciaire may be made ex parte to the Bailiff in chambers .

(3) A saisie judiciaire shall provide for notice to be given to any person affected by the order .

(4) Subject to paragraph (5) on the making of a saisie judiciaire –

(a) all the realisable property held by the defendant in Jersey shall vest in the Viscount .

(b) any specified person may be prohibited from dealing with any realisable property held by that person whether the property is described in the order or not;

(c) any specified person may be prohibited from dealing with any realisable property transferred to the person after the making of the order ,

and the Viscount shall have the duty to take possession of and, in accordance with the Court's directions, to manage or otherwise deal with any such realisable property; and any specified person having possession of any realisable property may be required to give possession of it to the Viscount .

(5) Any property vesting in the Viscount pursuant to paragraph (4)(a) shall so vest subject to all hypothecs and security interests with which such property was burdened prior to the vesting .

(6) A saisie judiciaire –

(a) may be discharged or varied in relation to any property; and

(b) shall be discharged when the proceedings in relation to

which it was made are concluded .

(7) to (11) ...”

27 During the course of argument, reference was also made to Articles 17 and 39. Article 17 provides:

“17 Realisation of Property

(1) Where —

(a) an external confiscation order has been registered under Article 39; and

(b) the Court has made a saisie judiciaire ,

the Court may, on an application made by or on behalf of the Attorney General, empower the Viscount to realise, in such manner as it may direct, any realisable property vested in the Viscount or in the Viscount's possession pursuant to a saisie judiciaire under Article 16 .

(2) The Court shall not in respect of any property exercise its power under paragraph (1) unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the Court.”

The relevant provisions of Article 39 are as follows:

“39. Registration of external confiscation orders

(1) On the application of the Attorney General, the Court may register an external confiscation order if —

(a) the Court is satisfied that at the time of registration the order is in force and is not subject to appeal;

(b) it is satisfied, where the person against whom the order is made did not appear in the proceedings, that the person received notice of the proceedings in sufficient time to enable the person to defend them; and

(c) it is of the opinion that enforcing the order in Jersey would not be contrary to the interests of justice .

(2) ...

(3)”

The terms of the saisies judiciaires in this case

28 The two *saisies* made in this case are, so far as material, identical in their wording. Accordingly, what follows is based upon the *saisie* made on 9 August 2013.

29 The order begins with a recital that the provisions of Article 15 of the Modified Law are met. There follows what may be termed the operative part of the order. Its terms are as follows:

As indicated, the present trustee is H1 Trust Company Limited.

“(1) that pursuant to paragraph (1) of Article 16 of the 1999 law, as modified and included in the 2008 Regulations, a Saisie judiciaire be granted in respect of the realisable property situate in Jersey of Robert Tantular (hereinafter referred to as “Tantular”) (whether movable or immovable, vested or contingent) which, without prejudice to the generality of the foregoing, is known to include assets held by BOS Trust Company (Jersey) Ltd, 3rd Floor, Forum House, Grenville Street, St. Helier (“BOS”), as Trustee of the Jasmine Investment Trust and its underlying companies; which, without prejudice to the generality of the foregoing, includes:-

(i) movable property including securities, investment stocks, shares (including bearer shares), promissory notes, bonds, funds or currency in whatever form held within the Jasmine Investment Trust and its underlying companies;

(ii) balances standing to the credit of accounts held in the name of the Jasmine Investment Trust and its underlying companies;

(iii) the benefit of any loans made by BOS as Trustee of the Jasmine Investment Trust or by the directors of its underlying companies; and

(iv) immovable property held by the companies underlying the Jasmine Investment Trust;

(2) that, save to the extent envisaged by paragraph (4) below, BOS be prohibited from dealing with any realisable property of Tantular at present held by it or transferred to it after the making of the present Order;

(3) that thereafter, in view of the statutory duties placed upon him by paragraph (4) of Article 16 of the modified 1999 Law, the Viscount be directed to take possession of all realisable property situate in Jersey of Tantular and to manage or otherwise deal with the same in accordance with the Court's directions;

(4) that BOS be permitted to manage or otherwise deal with the assets of the Jasmine Investment Trust under the direction of the Viscount;

(5) that the Viscount be permitted to obtain such professional advice and to employ such services as are reasonably necessary to comply with any Order made pursuant hereto and to deal with all matters arising in relation to it and to meet and discharge all disbursements, costs, fees and charges so arising from the said realisable property; and

(6) ...”

- 30 It is worth nothing that Clause (1) grants the *saisie* in respect of “the realisable property situate in Jersey of Robert Tantular...”. In contrast, the prohibition imposed upon the Trustee against dealing with any realisable property of the Appellant is not limited geographically (clause 2). The prohibition at clause 2 also provides that it applies to any property held by the Trustee at the time of making of the order or transferred to the Trustee after the making of the order.

The hearing before and the judgment of the Royal Court

- 31 It was common ground before the Royal Court that the Appellant did not/does not own (either legally or beneficially) any property situated in Jersey. Further, the Respondent acknowledged that the principal target of the confiscation orders made in Indonesia was the Property.
- 32 As we have said, the Property is owned by Jonzelle. The appropriate Share Register identifies the shareholder of Jonzelle as Helm Management Limited, which is a Jersey incorporated company which shares the same address as the Trustee. The Trustee is a wholly owned subsidiary of Helm Trust Company Ltd which, it seems clear, has a connection with Helm Management Limited.
- 33 Helm Management Limited has executed a document specifying that it holds the shares in Jonzelle as “...nominee of and as trustees on trust [The Trustee] of the Jasmine Investment Trust (*hereinafter called the owner*)”. In that same document, Helm Management Limited provided a number of undertakings which include an undertaking to exercise its rights as shareholder at the direction of “*the Owner*”. The share certificates of Jonzelle were at all material times kept at the office of Helm Management Limited in Jersey. The directors of Jonzelle are officers and employees of the Trustee and they are also resident in Jersey.
- 34 There is no dispute but that this type of arrangement or trust structure is often to be found in Jersey. In his judgment, Commissioner Clyde-Smith proceeded on the basis that the Trustee owns and controls Jonzelle, and no argument to suggest otherwise was addressed before him. Further, the contrary has not been suggested before us. As we have said, the hearing below also proceeded on the basis that the principal target of the confiscation orders made in Indonesia was the Property. Although the Trustee held a sum of money on behalf of Jasmine in a bank account in Jersey, this was, in the scheme of things,

insignificant.

- 35 We do not propose to rehearse the details of the argument which Advocate Preston deployed before the Royal Court in support of his contention that the *saisies* should be discharged or varied. We say that, principally, because he employed identical (or at least very similar) arguments before us in support of this appeal. Stripped to its essentials, however, the case presented by Advocate Preston to the Royal Court was that the *saisies* should be discharged because (a) the Appellant did not hold any realisable property in Jersey and (b) the Court had no power to prohibit the Trustee from dealing with realisable property held by the Trustee because (save for the small amount of cash) the Trustee did not hold any realisable property in Jersey.
- 36 The Respondent accepted that the Appellant did not hold realisable property in Jersey. However, he argued before the Royal Court that it had the power to prohibit the Trustee from dealing with realisable property held by the Trustee wherever such property was located. In short, the Respondent contended that the Royal Court had power to impose the prohibition upon dealing with realisable property which he sought because such a prohibition fell squarely within the terms of Article 16(4)(b) of the Modified Law.
- 37 Commissioner Clyde-Smith accepted the interpretation of Article 16(4)(b) which had been urged upon him by the Respondent. His detailed reasoning in support of his conclusion is to be found at paragraphs 30 to 78 of his judgment. However, it seems to us that the core of his reasoning is to be found at paragraphs 41 to 43 which are as follows (emphasis in original):

*“41. The definition of ‘property’ is broad and unambiguous, namely all property ‘... **whether situated in Jersey or elsewhere**...’. It is significant that it is only Article 16(4)(a) that restricts this wide definition of property to realisable property held by the Defendant ‘in Jersey’ which ‘shall vest in the Viscount’ presumably because it is only property within this jurisdiction that the Modified Law could purport to directly vest in the Viscount. Sub-paragraphs (b) and (c) of Article 16(4) have no such geographical restriction, and as a matter of ordinary reading the wide definition of **‘property’** must apply to them.*

*42. The prohibition in Article 16(4)(b) and (c) relates to what the **‘specified person may do with property situated in Jersey or elsewhere’**. A *saisie judiciaire* can therefore effectively freeze any property without geographical limits where the Court, through the **‘specified person’** prohibits that person from dealing with it. The Court in this case has personal jurisdiction over the Trustees, Directors and Shareholders in the structure, and can, therefore, prohibit them from dealing with any property within that structure without geographical limits. The Court routinely exercises its Trust Law jurisdiction over Trustees in relation to property held within trust structures in this way.*

43. Under the last paragraph of Article 16(4), the Viscount has the duty to take possession of and, in accordance with the Court's directions, to manage the

realisable property and any specified person having possession of any realisable property may be required to give possession of it to the Viscount. In this case, [the Trustee] is now holding the Trust assets to the order of the Viscount.”

38 We should also record that there was a debate before the Royal Court as to whether or not the share certificates in Jonzelle were, as a matter of law, situated in Jersey. Advocate Preston argued that they were not, but that their location was the British Virgin Islands. The Respondent did not agree – arguing that the location of the shares was Jersey – and the Royal Court was, to a degree at least, sympathetic with the argument advanced by the Respondent. That said, this issue was peripheral before the Royal Court given the interpretation of Article 16(4)(b) which it adopted.

The Parties' Contentions before us

39 In this section of our judgment we summarise the main arguments which were addressed to us. We make it clear that the written contentions filed on both behalf of both parties were very detailed and that we mean no disrespect to the learning displayed by Advocate Preston and the Respondent by our short summary of their main points. We have taken account of all that they have argued both orally and in writing.

40 On behalf of the Appellant, Advocate Preston contends that the Court's interpretation of Article 16 should be informed by the following general principles of statutory interpretation. First, the Court is not concerned with the literal interpretation of a statute. Rather, its task is to interpret the legal meaning of the provision under consideration. Legislative intention is always the ultimate guide to legal meaning and this varies from Act to Act and may even vary within an Act – see *Bennion on Statutory Intention (6th Ed)* p. 438. Second, legislation is presumed to be confined in its reach to the territory of the legislature and is presumed not to have extra-territorial reach. Advocate Preston submits that this is an important presumption which gives effect to the long-standing principle of the common law that no jurisdiction is entitled to bring extra-territorial enforcement action unless and only unless such action has been allowed by the relevant foreign state and that is clear from the treaty or treaties into which the relevant state has agreed to be bound. The ultimate question is one of *interpretation of the statute in question*. Third, domestic law should conform to public international law. Advocate Preston relies upon the following passage from the Third Edition of *Bennion on Statutory Interpretation* which was cited with approval by the Court of Appeal of England and Wales in [Saad v Secretary of State for the Home Department \[2001\] EWCA Civ 2008](#):

“It is a principle of legal policy that the municipal law (that is the law of the individual state) should conform to public international law. The Court, when considering, in relation to the facts of the instant case, which of the opposing constructions of the enactment would give effect to the legislative intention should presume that the legislature intended to observe this principle.”

- 41 In his written contentions, Advocate Preston develops detailed argument in support of his formulation of the second and third principles set out above. In particular, he relies upon a number of cases in England and Wales at the highest level for the proposition that legislation is presumed to be confined in its reach to the territory of the legislature and is presumed not to have extra-territorial reach – see, in particular, *R (Al-Skeini) v The Secretary of State for Defence* [2008] 1 AC 153, *Masri v Consolidated Contractors International (UK) Limited (No.4)* [2010] 1 AC 90, *Cox v Ergo Versicherung* [2014] AC 1379 and *Bilta (UK) Ltd v Nazir (No. 2)* [2016] AC 1. For reasons which will become apparent we do not need to analyse the detail of the arguments which Advocate Preston advanced.
- 42 Advocate Preston's written contentions also analyse the effect of three international treaties to which the United Kingdom has acceded and extended to Jersey. They are *The Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, *The Criminal Law Convention on Corruption* and *The Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime* – usually referred to, respectively, as *The Vienna Convention*, *The Corruption Convention* and *The Strasbourg Convention*. Advocate Preston contends that the obligations on contracting parties to each of those Conventions make it clear that territorial limits are to be observed by the parties. In consequence, contends Advocate Preston, the Modified Law should be similarly interpreted, since that would be consistent with the principle that the law of an individual state should conform to public international law.
- 43 Advocate Preston also invites us to attach significant weight, when determining the meaning to be attributed to Article 16 of the Modified Law, to the decision of the House of Lords in *King v Director of the Serious Fraud Office* [2009] 1 WLR 718 and the decision of the Royal Court of Guernsey in *King v HM Procureur* 2011–12 GLR 285. These decisions require some elaboration in this judgment. We begin with the decision of the House of Lords.
- 44 Mr. King was a British national who was also a long-term resident of South Africa. In or about 2006 he was charged with a number of offences allegedly committed in that country, which included offences of fraud, money laundering and racketeering. In 2006, the South African prosecuting authority made a request for assistance to the UK Government in obtaining restraint and disclosure orders in respect of property belonging to Mr. King and to specified companies of which he was alleged to be the alter ego. Pursuant to Article 6(2)(iii) of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005, the request for assistance was referred to the Director of the Serious Fraud Office, who applied to the Crown Court, without notice to Mr. King, for both such orders under Article 8(1)(iv) of the Order. The Judge at the Crown Court granted the orders in respect of all property held by Mr. King and the specified companies, including property held outside England and Wales. He rejected a subsequent application by Mr. King to discharge the orders, holding that the Crown Court had power to restrain assets outside the jurisdiction. Mr. King successfully appealed to the Court of Appeal against the orders made by the Judge in the Crown Court and the Director's appeal to the House of Lords against the decision of the Court of Appeal failed.

- 45 It was common ground between the parties that the power of the Crown Court to make a restraint order was derived from the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005, which was made under Sections 444 and 459(2) of the [Proceeds of Crime Act 2002](#) (“[POCA](#)”). [Section 447 of POCA](#) defined Property as “*Property is all property wherever situated*”. The Judge at the Crown Court concluded that it was open to him to make an order restraining property out of the jurisdiction of England and Wales, essentially by virtue of that wide definition of the word property which, he concluded, should be read into the 2005 Order.
- 46 In his speech in the House of Lords (with which the other Lords agreed), Lord Phillips stressed the need to focus upon the terms of the 2005 Order itself rather than the definition of the word property contained within [POCA](#). He was of that view because, in his view, the relevant provisions of the Order (which we need not quote in this judgment) constituted a clear and coherent scheme in their own right which could be interpreted without reference to the enabling legislation. Properly interpreted, the powers conferred by the relevant parts of the Order (Part V) could only be exercised in relation to property situated or located in England and Wales – indeed, by contrast with the language in the Jersey (and Guernsey) legislative provisions, section 7 of the 2005 Order expressly provided that the exercise of the court's powers was conditional upon relevant property being identified in England and Wales. In essence, therefore, the view of the House was that the relevant statutory provisions to be interpreted (Part V of the Order) did not have an extra-territorial reach and it may be that the *ratio* of this case is, thus, narrowly confined. However, during the course of his speech, at paragraphs 31 and 32 Lord Phillips referred, with approval, to submissions which had been made on behalf of Mr. King as to the reasons why the legislature could be taken to have set its face against the statutory provisions having extra-territorial effect. Advocate Preston contends that such reasoning is equally cogent in the context of this case. Paragraphs 31 and 32 are to the following effect:-

“31. Mr. Perry submitted that there was good reason why the scope of the Order should be restricted to property within the jurisdiction. If a country wishes assistance from other countries in preserving or recovering property that is related to criminal activity, it makes sense for its request to each of those other countries to be restricted to the provision of assistance in relation to property located within its own jurisdiction. If each country were requested to take steps to procure the preservation or recovery of property on a worldwide basis, this would lead to a confusing, and possibly conflicting, overlap of international requests for assistance. Not only would such multiplication of activity be confusing, it would involve significant and unnecessary multiplication of effort and expense.

32. There is obvious force in these submissions. Mr. Perry buttressed them by reliance upon the well-established canon of construction that requires clear language if an Act is to be given extra-territorial effect.”

- 47 At or about the same time as assistance from the authorities in England and Wales was

being sought as described above, so assistance was also being sought from the authorities in Guernsey in respect of Mr. King's alleged wrong-doing in South Africa. Specifically, HM Procureur was asked to obtain orders from the Royal Court restraining Mr. King and his named “*alter ego entities*” (which included Guernsey trusts controlling Mr. King's investments in overseas companies) from “*dealing with “his realisable property in Guernsey”*” and requiring the alter ego entities to produce full details of all their assets which Mr. King had power to dispose of or deal with as his own “*wherever located*”. This required the Royal Court to consider the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law 1999 as modified by the Criminal Justice (Proceeds of Crime) (Enforcement of Overseas Confiscation Orders) Ordinance 1999 (“*the Guernsey Modified Law*”). Critically, in our view, by the time the Royal Court of Guernsey came to consider these provisions the decision in *King* in the House of Lords had been published.

- 48 We do not propose to set out in detail the salient parts of the Guernsey Modified Law. They are, in the main, to be found in Part 1 (sections 2 to 37). It suffices that we say that they are similar to but not identical with the Jersey Modified Law. However, it is worth noting that the definition of the term “*realisable property*” within the Guernsey Modified law is for all purposes relevant to this case identical to the definition of such property in the Jersey Modified Law. Further, Section 50 of the Guernsey Modified Law contains a definition of the word “*property*” which is similar although not identical to its Jersey equivalent. By section 50(2) the Law is expressed to apply to “*property whether situated in the Bailiwick or elsewhere*”.
- 49 Following full and detailed argument on behalf of Mr. King and from HM Procureur the Royal Court (Southwell, Lieutenant Bailiff) held that the scheme for restraint in Part I of the Guernsey Modified Law was directed only to property located in Guernsey and enforcement in respect of such property. The wording of Part 1 taken as a whole was consistent with its application being confined to property within the geographical confines of Guernsey. In the words of the Lieutenant Bailiff at paragraph 12 of his judgment, “The definition in s. 50 does not override that natural meaning, and does not apply in the context of Part I” and “***The points mentioned by Lord Phillips in his speech (..at paragraphs 31 and 32) apply with equal force in respect of the Guernsey courts' powers***”. He acknowledged that the statutory scheme in England and Wales was differently worded to the statutory scheme operating in Guernsey “although it has one feature similar to the scheme in Guernsey – the wide definition of “property” in an omnibus interpretation section” but in his judgment the interpretation of the word property (“***as in the English courts***”) should give way to the context in and wording of Part I of the Guernsey Modified Law.
- 50 Set in the context of these arguments about important principles of construction and sound policy considerations, Advocate Preston contends, in effect, that the courts in Jersey should read Article 16(4)(b) as if the words “*in Jersey*” were inserted immediately following the words “*any realisable property held by that person*”. To hold otherwise, suggests, Advocate, Preston, risks Jersey becoming, if not the world's policeman, something akin thereto.

51 We should make it clear that Advocate Preston, supports that contention not just by

reference to the principles of construction set out above and the policy arguments accepted by the House of Lords and the Royal Court of Guernsey in *King* but, also, by reference to the Modified Law itself. He points out that the definition of property contained within Article 1 (which defines property as including property located both outside and inside Jersey) is the meaning to be given to the words “*unless the context otherwise requires*”. Advocate Preston contends that the sound policy reasons identified by Lord Phillips in *King*, together with the principles of construction, which we have set out above, clearly support the contention that the statutory context requires that the reach of Article 16 should be confined to realisable property within Jersey both within sub-paragraph (b) as well as sub-paragraph (a).

- 52 The Respondent disagrees. He contends that the words of Article 16(4)(a) and (b) should be given their ordinary and natural meaning. It is clear and obvious, contends the Respondent, that sub-paragraph (a) vests in the Viscount all realisable property held by a defendant which is located in Jersey whereas sub-paragraph (b) prohibits specified persons from dealing with realisable property held by them wherever it is located. The distinction drawn by the statutory words between property held by the Defendant in Jersey and property held by specified persons, wherever it is located, is entirely justified and justifiable.
- 53 The Respondent acknowledges that statutory provisions are presumed to be confined in their reach to the territory of the legislature, but points out that the presumption is rebuttable. He contends that the words of Article 16 when read as a whole and in conjunction with the definition of the word property within Article 1 lead, inexorably, to the conclusion that Article 16(4)(b) is intended to apply extra-territorially. No other explanation for the wording used in each sub-paragraph is tenable, he contends. If the legislature had intended to confine the power exercisable by virtue of sub-paragraph (b) to property situated in Jersey it could very easily have said so.
- 54 The Respondent points to the fact, too, that the interpretation of Article 16(4)(a) and (b) for which he contends has been the view, consistently, of the Royal Court of Jersey since the Modified Law was enacted. In support of this contention the Respondent relies upon a trilogy of cases, beginning with *In the matter of the representation of Kaplan* [\[2009\] JLR 88](#).
- 55 In *Kaplan*, the Representor had been charged in the United States with offences which included illegal gambling and conspiracy to conduct an illegal internet gambling business. He was a beneficiary and the settlor of two Jersey trusts. The trust structure was similar to, although a more complicated version of, the trust structure in this case. In summary, the Jersey trustees held, through two wholly owned Jersey subsidiaries, a series of companies and other bodies which held property in Switzerland and Costa Rica. Upon an *ex parte* application by the Attorney General, at the request of the United States, the Royal Court granted a *saisie* over the Representor's realisable property, pursuant to Article 16 of the Modified Law. Subsequently, the Representor sought to discharge the *saisie* on a number of grounds, including on the ground that he had no realisable property in Jersey as the trust

assets were not situated in Jersey. The Royal Court refused to discharge the *saisie*, holding that realisable property as defined in the Modified Law could include property held outside Jersey. The relevant passages from the judgment are these:-

“18. Counsel for the Attorney General contended that, in interpreting the 1999 Law, the Court should not adopt a restrictive approach. The argument is relevant to a number of the contentions advanced by Counsel for Mr. Kaplan and it is convenient to deal with it as a preliminary matter. Mr. Belhomme relied upon a decision of this Court in *In Re Batalla-Esquivel* (2). That was a case where the Attorney General obtained a *saisie judiciaire* on behalf of the Attorney General of the United States. The Representor claimed that the property subject to the *saisie judiciaire* was not the property of the defendant but was settled under a valid trust in which the defendant had no interest. He sought to discharge the *saisies judiciaires* on the ground, inter alia, that the Court had no jurisdiction to make the order where the foreign proceedings were in rem. The Court rejected that submission, quoting a passage from the Judgment in *In Re Illinois Dist. CT* (5), **stated** [2001] JLR 16, at para. 10):

‘It is true that this is not directly in point, but the passage does nonetheless serve to emphasise (a) that the whole purpose of the legislation is to curb the menace of drug trafficking; and (b) that in furtherance of that end it is undesirable for the Court to adopt a restrictive view.’

19. Counsel for Mr. Kaplan did not argue that Mr. Belhomme's submissions on this point were incorrect. We agree that the Court should try to give effect to the purpose of the legislation. A passage from Maxwell on the Interpretation of Statutes (12th Ed) at 201 (1969), cited by Mr. Belhomme in *Batalla-Esquivel*, seems equally relevant in this case:

‘Where possible, a construction should be adopted which will facilitate the smooth working of the scheme of legislation established by the Act, which will avoid producing or prolonging artificiality in the law and which will not produce anomalous results.’

Clearly, the words of the statute must be given their proper meaning.

Nonetheless, the language implied should, having regard to the purposes of the 1999 Law, be construed in such a way as to accommodate the widely different procedures in other jurisdictions designed to penalise the concealing or laundering of proceeds of serious crime. ...”

Between paragraphs 29 and 48 of the judgment, the Court considered in detail the issue of whether or not Mr. Kaplan had realisable property within Jersey and provided a number of reasons for its conclusion that he did. Having quoted Articles 16(4), the definition of realisable property within Article 2(1) and the definition of property within Article 1 between paragraphs 29 to 31 the Court continued:

“32. It is clear from these definitions that ‘realisable property’ embraces property held outside the island. It is also clear that Article 16(4) vests in the Viscount, following a saisie judiciaire, only realisable property held by the defendant in Jersey. Mr. Dessain for the Viscount contended, and we agree, that the effect of Art. 16 is to empower the Viscount to require any specified person to repatriate to Jersey any realisable property situated outside the jurisdiction. In practice, such a specified person would no doubt be in the jurisdiction of this Court. Counsel for the Viscount also submitted, and again we agree, that the Court has an inherent jurisdiction to compel a defendant to disclose his assets, as the English Court of Appeal found to be an incident of a restraint order under the [Criminal Justice Act 1988](#) in *Re O (Restraint Order: Disclosure of Assets)* (8)

...

...

47. Counsel for Mr. Kaplan submitted that the property was not situate in Jersey and was not therefore caught by the saisie judiciaire. We reject that submission. The trust property was and continues to be held by Basel through two companies, Basel One Limited and Basil Two Limited, which are registered and controlled in Jersey. The fact that the underlying assets are outside the jurisdiction is, for these purposes at least, immaterial .

48. We accordingly reject the submission that there is no realisable property of the defendant in Jersey.”

The Respondent contends that the decisions of the Royal Court in *In Re Rosalind* [\[2015\] \(2\) JLR 29](#) and *Doraville v Attorney General* [\[2017\] \(1\) JLR 64](#) have the same effect.

Discussion

- 56 We accept the contention made by the Respondent (also accepted by the Royal Court – see paragraphs 41 and 42 of the judgment of Commissioner Clyde-Smith quoted at paragraph 37 above) that the obvious and natural meaning of Article 16(4)(a) is that the power conferred thereby can be exercised only in respect of property which is located in Jersey whereas the obvious and natural meaning of the power conferred by Article 16(4)(b) contains no such geographical limitation. In our judgment the applicability of Article 16(4)(b) to realisable property outside Jersey is clearly established, too, on a literal interpretation of the Modified Law, and, in particular, the definition of “property” in Article 1(1) as extending to property “*whether situated in Jersey or elsewhere*”. Had Article 16(4)(b) and/or for that matter Article 16(c) been intended not to have extraterritorial effect, they could and no doubt would have been expressly limited, as was Article 16(4)(a), to property held in Jersey. Article 39, which was also relied upon by the Appellant in support of his general contention that the words of the Modified Law read as a whole supports his interpretation of Article 16(4)(b), takes the matter no further: the reference in that Article to “*enforcing the order in Jersey*” is to be read not as circumscribing the location of assets against which enforcement

is possible, but simply as a reference to Jersey as the place where the decision to enforce any external confiscation order will be made under the Modified Law.

- 57 As we have recorded above (paragraphs 39 to 50) the Appellant contends that we should depart from the natural and obvious interpretation of Article 16 of the Modified Law for a number of reasons. Arguments were addressed, in particular, to Jersey's international obligations, the approach of the common law to extraterritorial jurisdiction, the canon of construction that legislation is presumed not to be extraterritorial in reach and the approach to international confiscation in the United Kingdom and in Guernsey.
- 58 Before turning to those points, we first address the suggestion, which underlies much of the Appellant's case, that for Article 16(4)(b) and (c) to have extraterritorial effect would cause "*confusion, multiplication of effort and expense*", have "*far-reaching resource implications*" and cast Jersey in the costly and unwanted role of "*world's policeman*". The Respondent may be right to say that these consequences have not in practice been observed in the period of more than 20 years in which the 1999 Law has been in force. Indeed no such consequences followed notwithstanding the ruling of the Royal Court in *Kaplan* to the effect that "*realisable property*" in Article 16 extends to property outside the jurisdiction. It is also the case that the precise nature of all the powers and duties in Articles 16 and 17 do not arise for determination in these proceedings. Nonetheless, we comment briefly on our understanding of Articles 16 and 17 of the Modified Law, on the assumption that they have extraterritorial effect, because of their relevance to the Appellant's submission that they would be unworkable if realisable property outside Jersey, held by or transferred to a specified person, could be the subject of prohibition on the making of a *saisie*.
- 59 The purpose of a *saisie* under Article 16 is to permit interim orders to be made pending registration of an external confiscation order. By Article 16(4)(a), property held by the defendant in Jersey vests by operation of law in the Viscount, subject to the interests specified in Article 16(5). With vesting, subject to the directions of the court, come obligations to take possession of and manage that realisable property. Articles 16(4)(b) and (c), by contrast, enable prohibitions against specified persons on a discretionary basis. They offer the court the equivalent of a Mareva jurisdiction, which may take effect worldwide in the sense that a specified person can be prohibited from doing certain things outside the jurisdiction. Such prohibitions are unlikely to be issued against non-Jersey residents because of the difficulty of enforcement, but no territorial limitation by residence of specified persons (any more than by location of their assets) is expressed in the Modified Law.
- 60 The flexibility of the jurisdiction under Article 16(4)(b) and (c) appears from the various cases in which its exercise has been considered: compare, for example, *Baroque Trust Company Ltd. and others v The Viscount* [2004] JRC066, in which a *saisie* took effect over the whole of a trust and corporate structure and its underlying assets with the present case in which all the assets within the trust structure were initially the subject of a *saisie* but subsequently, upon the Appellant's application to the Royal Court, some of the assets held in the trust structure were released. It allows the Court, pending registration of an external

confiscation order, to make interim orders the effect of which is to ensure that the assets of a criminal or suspected criminal are retained pending a resolution of the issues relating to confiscation; such orders, without doubt, provide significant assistance in helping to protect Jersey's reputation in financial matters.

- 61 That flexibility is particularly evident, and potentially advantageous, where tainted gifts are concerned. A tracing exercise is not required: applying the definition in Article 2(1)(a)(ii), any property held by the donee may be kept available to satisfy the confiscation order. The extraterritorial nature of the jurisdiction may also be of practical value. Were it territorially limited as the Appellant claims, a tainted gift to an otherwise impecunious defendant's sister living in Jersey could escape prohibition by the simple device of placing it in her Guernsey or UK bank account. The Mareva-type jurisdiction may be further supported by the Court's inherent powers in relation to its orders, for example to order the disclosure and provenance of assets and, if the specified person does not bring them back voluntarily, to order their repatriation to Jersey for safekeeping: see, by analogy, the judgment of the English Court of Appeal in *DPP v Scarlett* [1999] 1 WLR 515 at 521G–523B. Once such assets are physically in Jersey, Article 17 empowers the Court to authorise the Viscount to realise such property; the Court has assets within its jurisdiction and can make orders “*in such manner as it may direct*” so as to enable realisation to take place.
- 62 We do not doubt that there will be cases in which an order extending to realisable property abroad could have resource implications and may be complex or difficult to enforce. It is important, however, to emphasise that such difficulties do not arise by automatic operation of the Modified Law. The Court has a discretion in all cases. Specified persons who are subject to a prohibition under Article 16(4)(b) or (c) may, but do not have to be, subject to an order to transfer possession of their property to the Viscount: that is the import of the final clause of Article 16(4). If problematic consequences are envisaged, such an order may be refused or (as was the case in *Kaplan*, where there was a risk of conflicting orders between the Swiss and Jersey courts), discharged. The Viscount's duty to take possession of realisable property situated outside the Island, like her duty to manage or otherwise deal with such property, arises *only* in circumstances where the Court has directed a specified person to give possession of it to her. One would not normally expect the Court to make such an order without hearing from the Viscount, or being satisfied by the Attorney General that the Viscount has no objection to such an order being made. This links to the provisions in Article 17 of the Modified Law that realisation of property is only possible where there has been a *saisie judiciaire* and property has either vested in the Viscount or been transferred to her possession pursuant to Article 16.
- 63 The Modified Law thus provides for a high degree of flexibility. In relation to assets located outside Jersey, interim orders affecting such assets will only be made on the application of the Attorney General or the Viscount and pursuant to the order of the Court. In the particular context of Jersey, with its extensive trusts industry, we see the logic of that legal scheme. It seems to us to provide an answer to the Applicant's suggestion that to acknowledge the application of Article 16(4)(b) and (c) to assets situated outside Jersey would involve the Island's authorities in undue effort or expense, or require them to act as the world's

policeman.

- 64 In the light of these considerations we would take a great deal of persuading that that the ordinary and natural meaning of the words of Article 16(4)(b), when set in their statutory context, should give way to a more restrictive interpretation as suggested by the Appellant.
- 65 Further, we are satisfied that the arguments relied upon by the Appellant, as we have summarised them at paragraphs 39 to 51, above do not avail him. The principles of construction relied upon by the Appellant as set out in paragraph 39 above do not require a departure from the natural and obvious meaning of the words used in Article 16. In our judgment, the legislative intent is clear from the words used. We accept that a statutory provision which purports to confer extra-territorial powers upon a domestic court requires clear and unambiguous words to justify the conclusion that it is intended to have extra-territorial reach but in our judgment Article 16(4)(a) to (c) contain such words. The presumption that the statutory provisions enacted by a legislature are not intended to be extra-territorial in their reach is capable of being rebutted; most obviously, as here, by clear and unambiguous statutory drafting. We see no conflict between the Jersey domestic law relating to *saisies* and the international obligations to which Jersey subscribes, notwithstanding Advocate Preston's review of those obligations. The fact that a domestic law, properly construed, confers wider powers upon the courts of Jersey than is required strictly by virtue of treaty obligations entered into by Jersey does not mean that the domestic law is in conflict with the treaty obligations or lacks conformity with international law. No doubt, a conflict would arise if the domestic law had an effect which ran contrary to treaty obligations which were prescriptive. However, Advocate Preston has failed to identify any prescriptive provision of an international treaty entered into by Jersey which conflicts with the provisions relating to *saisies* in Article 16. We do not accept that the power of the Royal Court to prohibit dealing with "*realisable property*" wherever it is located (which we consider has been conferred upon it by Article 16(4)(b)) can be said to conflict with any international treaty to which Jersey is a party; nor does the existence of such a power lead to a lack of conformity with international law.
- 66 We acknowledge that the courts of England and Wales and Guernsey may, at first blush, have taken a somewhat different approach in their interpretation of similar legislation to that which is under consideration in this case. However, upon closer analysis of the decision of the House of Lords in *King*, we do not believe this is so. Lord Phillips emphasised that the ultimate question to be determined turned upon the proper interpretation of the particular statutory words used by the legislature: in that case, the 2005 Order from which the power to make a restraint order derived. It is not clear from the judgment of the Royal Court of Guernsey that the distinguishable language of the 2005 Order as compared with the Guernsey legislation was taken into account. The House of Lords and the Royal Court of Guernsey also took into consideration policy considerations which were thought relevant at the time they made their decisions. We have done the same. It is worth remembering that the litigation involving Mr. King was unfolding a number of years ago and there are signs that the policy considerations which weighed heavily in *King* (paragraphs 31 and 32 of Lord Phillips' speech) might be afforded less weight now – see the decision of the Divisional

Court in *R (KBR Inc) v Director of Serious Fraud Office* [\[2018\] EWHC 2368 \(Admin\)](#). This decision is said to be under appeal to the UK Supreme Court and for that reason the Respondent has eschewed reliance upon it. Nonetheless, we cannot help but observe that the Divisional Court was at pains to point out that there was a very strong public interest in upholding the reach of the statutory provisions which were said to be extra-territorial, which may signal a shift in emphasis from the approach in King.

- 67 We stress, however, that we do not reach our conclusion in this case in reliance upon *KBR*. Our conclusion has been reached on the basis of an analysis of the statutory words of the Modified Law taking account of the principles of construction which we have discussed together with the statutory context and policy considerations which we have identified as being applicable. We are persuaded that the views as to the ambit of Article 16 first expressed in *Re Kaplan* are correct and that Commissioner Clyde-Smith was correct to follow the same approach in his decision at first instance in this case. It follows that we have reached the conclusion that this appeal must be dismissed.
- 68 That being so we do not consider it necessary to address, definitively, an alternative argument which lurks in the background in this case to the effect that since the share certificates in Jonzelle are located in Jersey the realisable property which is the subject of the *saisies* is located in Jersey. This was always a peripheral point in the case and this issue was dealt with very briefly in the oral contentions of Advocate Preston and the Respondent. That said, we do see some force in the contention of Advocate Preston that, in law, the shares in Jonzelle are to be treated as being located in the British Virgin Islands – see *Brassard v Smith* [\[1925\] AC 371](#) and [Macmillan Inc v Bishopsgate Investment Trust PLC and others \(No.3\) \[1996\] 1 WLR 387](#).