

## ***Renvoi*: Not for the Avoidance of Doubt**

The doctrine of *renvoi* made its way into English law as a device for mitigating the rigidity of the English conflict rule for the formal validity of wills<sup>1</sup>, notably in the case of *Collier v Rivaz*<sup>2</sup>. While the enactment of the Wills Act 1861 rendered this mitigation no longer necessary, the doctrine continued to be developed and extended far beyond its original context. It has been applied to cases of intrinsic validity of wills and cases of intestacy, but it has also been raised in cases of formal validity of marriage<sup>3</sup> as well as moveable property. It had in the past proved a convenient tool by the Courts for coming up with desirable outcomes, but its place in 21<sup>st</sup> century English Private International Law has been received with more scrutiny than a warm welcome by the English Courts. Application of this doctrine also tends to undermine the concept of party autonomy, which is one of the principles underlying the whole of private law<sup>4</sup>, and has been gaining priority in international civil and commercial matters in the past few decades<sup>5</sup>.

A number of European Union ('EU') Regulations and UK legislations have expressly excluded *renvoi* from certain areas of law such as tort and contract<sup>6</sup>, and while recent English case law<sup>7</sup> seemed to suggest that the doctrine would be let to die a natural death, *renvoi* seems to still have relevance in commonwealth countries. In 2005, the Australian High Court in *Neilson v Overseas Projects Corporation of Victoria Ltd*<sup>8</sup> seems to have revived academic discussions on the subject matter, although English Courts appear undeterred. This paper attempts to convince that the doctrine of *renvoi* has become obsolete today, despite some academic discussions to the contrary, and its application should be formally abolished except restrictedly in

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<sup>1</sup> Lord Collins of Mapesbury, Adrian Briggs, Andrew Dickson, Jonathan Harris et al, *Dicey, Morris & Collins: The Conflict of Laws* 15<sup>th</sup> ed, 2012, p 85

<sup>2</sup> (1841) 2 Carr. 855

<sup>3</sup> *Taczanowska v Taczanowski* [1957] P 301, *Re Askew* [1930] 2 Ch 259

<sup>4</sup> C.M.V. Clarkson & Jonathan Hill, *The Conflict of Laws*, 2011, p 9

<sup>5</sup> Gisela Röhl, 'Choice of Law by the Parties' in Jürgen Basedow, Klaus Hopt & Rein Zimmermann (eds), *Max Planck Encyclopedia of European Private Law*, Oxford University Press, 2012

<sup>6</sup> Regulation (EC) 593/2008 ('Rome I'), art 15; Regulation (EC) 864/2007 (Rome II), art 24; Arbitration Act 1996, s 46(2)

<sup>7</sup> *Macmillan Inc v Bishopsgate Investment Trust Plc (No.3)* [1995] 3 All E.R. 747; *The Islamic Republic of Iran v Berend* [2007] EWHC 132 (QB), hereafter '*Iran v Berend*'; *Blue Sky One Ltd & Ors v Mahan Air & Anor* [2010] EWHC 631 (Comm)

<sup>8</sup> [2005] HCA 54, hereafter '*Neilson*'

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