



Crossing borders in the 21st century

By Richard Royle

If the size of the 14th edition of Dicey, Morris and Collins' *Conflict of Laws* is anything to go by, then the past decade has spawned considerable developments in private international law. Developments so considerable that the book is now 401 pages longer than its previous edition published in 2000: 401 more pages, 1.3 more kilograms, and 158 more dollars. That's a lot of progress. And for an area of law deemed by Cardozo J to be 'the most baffling subjects of legal science,'¹ it's a lot of progress to digest.

Much of this progress is no doubt attributable to this so-called 21st century era of globalisation. Rapid developments in trade, travel and technology – particularly over the past decade – are challenging the importance of territorial boundaries. And as these boundaries become more crossable, civil litigation cases involving a foreign element become more habitual.

Traditional principles of jurisdiction, choice of law and enforcement of foreign judgments and arbitral awards were formulated under the international Westphalian regime, where the State derived its prescriptive authority from its territory. So in this age of connectivity where borders are increasingly transparent, such principles require rethinking and reformulation.

Whether it is on the road, beneath the ground, in the sea, up in the air, or somewhere in cyberspace, cases enlivening principles of private international law have been propelled to the forefront of international jurisprudence.

Scholars like Dean Prosser would probably shudder at this rising trend.

In 1953, Prosser proclaimed: 'The realm of the conflict of laws is a dismal swamp, filled with quaking quagmires, and inhabited by learned but eccentric professors who theorize about mysterious matters in a strange and incomprehensible jargon.'²

Now, more than 50 years on, these quagmires are still quaking. When is a forum 'manifestly more closely connected',³ than the forum of the tort? Is there a right to travel to die without interference? Can a judgment be enforced against a foreign medical team or hospital? What role does public international law play in civil litigation cases?

But rather than such quagmires being bogged in a 'dismal swamp', I think the growing willingness of legal practitioners to engage with and try to make sense of these issues reflects the true dynamism of conflict of laws today.

This edition of *Precedent* should provide true insight into this dynamism. The articles are not convoluted musings of us 'eccentric professors', but rather careful, practical analyses of issues which are putting conventional rules of jurisdiction, choice of law and enforcement of foreign judgments to the test.

So although this edition of *Precedent* falls just shy of 401 pages, it is a welcome contribution to this increasingly vibrant body of law. ■

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Notes: 1 Benjamin Cardozo, *The paradoxes of legal science*, (1928) at 67. 2 W D Prosser, 'Interstate Publication' (1953) 51 *Michigan Law Review* 959, at p971. 3 Article 4(2), *Regulation No. 864/2007 on the Law Applicable to Non-Contractual Obligations* (Rome II).