

## Editorial

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### Brexit – the view from Cyprus

Brexit is a challenge wrapped inside an enigma for jurists, who yield the ultimate “political instrument” in this saga. A proper legal analysis must entail a considerable degree of speculation about short and long term, political developments, socio-economic trends and behavioural patterns. Viewed from a small island country intricately connected with Britain and English law, the challenge is more serious – and the enigma harder.

In comparative-law terms, Cyprus is a mixed jurisdiction: a British colony until 1960, with Greek language, culture and identity somewhat offsetting the legal system’s colonial foundations (3% of the island, hosting British military bases and a handful of Greek Cypriot villages, is claimed as Sovereign Area of the Crown: EU law has never applied there). But to effectively understand Cyprus law one has to begin thinking in common-law terms. English law still holds sway over the sources, methods and concepts in core fields, including procedural law, obligations, commercial and company law, wills and estates, and criminal law. Colonial-era codifications, and subsequent transplants, act as gateway for present-day English law, notably in contract and commercial law.

This dominance of English law is explained by its plasticity, adaptability and aptitude for commercial transactions; the symbolic capital invested in English law and legal education by the legal elites, pre- and post-independence; and the fact that there were simply no strong motivation or expertise to alter a legal regime working satisfactorily.

Rapid economic transformation into an internationalized service economy has added to this. English law has been operating as a guarantor of legal certainty and transparency (where needs are different, as with regard to international trusts, there are always ready legal borrowings from other common-law jurisdictions). In the past several years, modern English contract and civil litigation law have been relied upon by innovative lawyers

to combat unconscionable banking practices and to expand the scope of relief granted by Cyprus courts in international commercial cases. Like the UK, Cyprus has a binary system of private international law: EU and English common law, competing in doctrinal but symbiotic in business (and operational) terms. When it came to integrating EU private law norms into the existing legal-economic system, Cyprus could rely on, and occasionally hide behind, English doctrine.

Brexit will change things. In the short term, the UK will stick with existing EU instruments on consumer and private international law. English commercial law and dispute resolution have benefited from EU-driven economic growth and enhanced cross-border enforcement, but were not created by EU law. The international status of English law depends on its “soft power” – readily available reference material, learning institutions, professional networks. The gravest danger would therefore be if the UK turned so inwards that the City, top universities and the elite bar fell into steep decline. Unlikely as that may be, the continuing influence and present vitality of English law should no longer be taken for granted and could wane over time.

The real long-term danger is the dissipating UK influence in the further development of European law. Whatever one may feel about the British, they did contribute a touch of learned pragmatism in EU legislative initiatives – and their implementation. The challenge, and opportunity, for Cyprus, along with like-minded Member States, is to fill in part of that void. To do so, we will have to shed our post-colonial mentality; constructively come to terms with our legal culture; think of our place within the European legal tradition; elaborate and advance a vision about the role of the common law in a post-Brexit Europe.

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