

HISTORICAL SEMINAR MATERIAL

Insolvency and State Sovereignty

Foreign judgments, cross border insolvency and the immovables rule

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Insolvency and State Sovereignty

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Introduction

- The question of **where** and **how** to enforce a judicial decision in a foreign jurisdiction is crucial in cross-border disputes.
- **Recognition** and **enforcement** of foreign insolvency proceedings take on different meanings in different jurisdictions.
- **Several different regimes** apply to the recognition and enforcement of a foreign judgment in England.
- These provide for different rules depending on which foreign jurisdiction rendering the judgment is involved.

General Principles

- “The first and most important thing to understand about foreign judgments is that judgments of foreign courts have **no direct effect** in England, for foreign judges have no authority in England.”

Professor Briggs, *The Conflict of Laws*, 4th edn, p.127

- “The foreign judgment, in the absence of statute, could have **no direct operation** in England and Wales because of the principle of the territoriality of a court’s jurisdiction.”

Owen’s Bank Ltd v Bracco [1992] 2 AC 443, at 457

General Principles

- Dicey, Morris and Collins, *The Conflict of Laws*, 16th edn

- **Rule 45**

“A judgment of a court of a foreign country...has **no direct operation** in England but may

1. Be enforceable by claim or counterclaim at common law or under statute, or
2. Be recognised as a defence to a claim or as conclusive of an issue in a claim”

Unrecognised Foreign Judgments

- The issue of recognition and enforcement of foreign judgments arises frequently in the context of **cross-border insolvencies**.
- Officeholders in England and Wales have to deal with the **realisation of assets abroad** or having to consider the **claims made by overseas entities** to the apparent assets of an insolvency company or individual located in England and Wales.

“The Immovables Rule”:
Kireeva v Bedzhamov

Kireeva v Bedzhamov [2024] UKSC 39

- **Issue**

The effect, if any, of “**the immovables rule**” on the claim of a trustee in bankruptcy appointed in a foreign bankruptcy to immovable property situated in England.

- **Facts**

The case concerned a property in London owned by the Respondent, against whom a bankruptcy order was made by a Russian court. The Appellant was appointed as the equivalent of a trustee in bankruptcy under English law. A worldwide freezing order was made against the Respondent applying to all of his assets including, expressly, his London property. The Appellant sought, from the English courts, recognition of the Russian bankruptcy and her appointment as the Respondent’s bankruptcy trustee in order to take control of the property.

Kireeva v Bedzhamov [2024] UKSC 39

- Dicey, Morris and Collins, *The Conflict of Laws*, 16th edn
- **Rule 139**

“A court of a foreign country has **no jurisdiction** to adjudicate upon the title to, or the right to possession of, **any immovable situated outside that country**”

Kireeva v Bedzhamov [2024] UKSC 39

- The **Supreme Court** recognised the **continued importance** of the immovables rule in English law and its **protection from foreign interference**.
- “...At common law **no recognition will be given** to any provision of foreign law or any order of a foreign court **which purports to affect rights to or interests in land located in England.**”

para

69

Kireeva v Bedzhamov [2024] UKSC 39

Note :

“In the present case, it was **open to the Respondent’s creditors to apply for a bankruptcy order in this country**, where he had his centre of main interests and his domicile for bankruptcy purposes, rather than in Russia.”

para

110

Kireeva v Bedzhamov [2024] UKSC 39

State Sovereignty

“In short, the immovables rule **reflects territorial sovereignty.**”

para 30

“...**particular manifestation of wider principles of the sovereignty, equality and independence of states** in international law.”

para

32

Kireeva v Bedzhamov [2024] UKSC 39

“[N]o country can be expected to allow questions affecting its own land, or the extent and nature of the interests in its own land which should be regarded as immovable, to be determined otherwise than by its own Courts in accordance with its own interests.”

Farwell J in *In re Hoyles* [1911] 1 Ch 179 at 185-

186

“The sovereign of the country where land is situated has absolute control over the land within his or her dominions: he or she alone can bestow effective rights over it; his or her courts alone are, as a rule, entitled to exercise jurisdiction over such land.”

Dicey, Morris and Collins at 24-

070

Kireeva v Bedzhamov [2024] UKSC 39

“Laws extend so far as, but no further than, the sovereignty of the State which puts them into force, nor does any legislator normally intend to enact laws which apply to or cover persons, facts, events or conduct outside the limits of his State’s sovereignty...Jurisdiction involves both the right to exercise it within the limits of the State’s sovereignty and the duty to recognise the same right of other States. Or, to put the same idea in positive and negative form, the State has the right to exercise jurisdiction within the limits of its sovereignty but is not entitled to encroach upon the sovereignty of other States.”

Revisited
Law (1990)

Dr F A Mann, “The Doctrine of International Jurisdiction
After Twenty Years”, *Further Studies in International*

Almeqham v Al-Sanea & Others [2025] EWHC 322

- The High Court applied the Supreme Court's *obiter* comments in *Kireeva*.
- Recognition of a foreign appointed trustee under the Cross-Border Insolvency Regulations ("CBIR") 2006 **does not in and of itself create an exception to the "immovables rule"**.
- Foreign insolvency office holders who wish to be able to take control of a debtor's English immovable property should first **make an application under Article 21 of the CBIR for an order entrusting to them the administration and realisation of those assets**.
- Without such an order, the immovables rule may present an **insurmountable hurdle**.

Servis-Terminal LLC v Drelle [2025] EWCA Civ 62

- **Issue**

Whether an unrecognised foreign judgment was capable of providing the basis for a bankruptcy petition.

- **Facts**

Servis-Terminal LLC (“the Company”), having been declared bankrupt (insolvent) by a Russian court brought proceedings against Drelle (former CEO of the Company) for breach of duty as a director.

The Russian court gave judgment in favour of the Company, who served a statutory demand on Drelle (by now resident in London) and subsequently presented a bankruptcy petition against Drelle which came before ICC Judge Burton.

Servis-Terminal LLC v Drelle [2025] EWCA Civ 62

- **First Instance – High Court**

ICC Judge Burton held that the debt claimed in the petition was not subject to a genuine and substantial dispute and, accordingly, made a bankruptcy order against Mr Drelle.

- **First Appeal – High Court**

Held that the fact that the Russian judgment had not been recognised in this jurisdiction did not prevent it from being the basis of a bankruptcy petition.

Servis-Terminal LLC v Drelle [2025] EWCA Civ 62

- **Grounds of Appeal** Advanced by Drelle

- Ground 1**

- Not having been recognised in this jurisdiction, the judgment could not found a bankruptcy petition.

- Grounds 2, 3 and 4**

- Whether the conclusion that the alleged debt was not the subject of a substantial dispute could be impugned for other reasons

- **Remedy Sought** – Setting Aside of the Judgment

Servis-Terminal LLC v Drelle [2025] EWCA Civ 62

- **Was the Russian Judgment Capable of Providing the Basis for a Bankruptcy Petition?**

1. Defence or “Sword”?
2. What Constitutes a “Debt” Under s267 Insolvency Act 1986?
3. Creditors Ineligible to Petition
4. Exercise of Sovereign Power

- **Outcome**

“Not having been the subject of recognition proceedings, the Russian judgment was **not** capable of providing the basis for a bankruptcy petition and, accordingly, the bankruptcy order which ICC Judge Burton made should be set aside and the petition dismissed.” (*Newey LJ at para 56*)

Servis-Terminal LLC v Drelle [2025] EWCA Civ 62

Defence or “Sword”?

- Dicey, Morris and Collins’ **Rule 51** provides that a foreign judgment **can** be determinative on a point even in the absence of recognition or registration.
- In other words, if a foreign judgment is not impeachable, it is **final and conclusive** and cannot be impeached for any errors of fact or law.

Servis-Terminal LLC v Drelle [2025] EWCA Civ 62

Defence or “Sword”?

- However, the Court of Appeal noted that Rule 51 concerns **defences**.
- Any use of an unrecognised and unregistered judgment as a “**sword**”, including presentation of a bankruptcy petition founded on it, is **objectionable**.
- An unrecognised judgment has “**no direct operation**” in this jurisdiction.

Servis-Terminal LLC v Drelle [2025] EWCA Civ 62

What Constitutes a Debt Under s267 Insolvency Act 1986?

- *Section 267 Insolvency Act 1986*

'Grounds of Creditor's Petition

(1) A creditor's petition must be in respect of one or more **debts** owed by the debtor, and the petitioning creditor or each of the petitioning creditors must be a person to whom the debt or (as the case may be) at least one of the debts is owed...

Servis-Terminal LLC v Drelle [2025] EWCA Civ 62

What Constitutes a Debt Under s267 Insolvency Act 1986?

- *Revenue Rule*
 - The courts of one country will **not** enforce the tax laws of another country (*Government of India v Taylor* [1955] AC 491).
 - No doubt that this **precludes presentation of a bankruptcy petition** in respect of a foreign tax liability.
 - This rule must, therefore, serve to **prevent a foreign tax from being regarded as a “debt”** in respect of which a petition could be presented (notwithstanding the fact that nothing to that effect is expressed in s267(2)(b) IA 1986).

Servis-Terminal LLC v Drelle [2025] EWCA Civ 62

What Constitutes a Debt Under s267 Insolvency Act 1986?

- The “revenue rule” supports the contention that an **unrecognised foreign judgment**, which has no “direct operation” because it arises from an **exercise of sovereign power**, is likewise **not** to be seen as giving rise to a “debt” capable of founding bankruptcy proceedings.
- This gives rise to a **distinction** between judgments that **confirm** the underlying debt and those that **create** the debt.

Servis-Terminal LLC v Drelle [2025] EWCA Civ 62

Creditors Ineligible to Petition

- The fact that a person in whose favour a foreign court has given judgment **could not resort to direct execution** in the absence of recognition or registration would **equally prevent him from “resorting to the bankruptcy court as an alternative means of enforcement”**

Fletcher, *The Law of Insolvency*, 5th edn, para 6-027

Servis-Terminal LLC v Drelle [2025] EWCA Civ 62

Creditors Ineligible to Petition

- If the fact that the foreign judgment has not been recognised means that, in the eyes of English law, there is **no debt which can be pursued**, that surely means that there is **no debt in respect of which a statutory demand can be properly served**.

State Sovereignty:

Servis-Terminal LLC v Drelle

- Servis-Terminal obtained a Russian court judgment against Mr Valeriy Drelle for approximately RUB 2 billion.
- The judgment was final in Russia, but it had not been recognised or enforced in England.
- Servis-Terminal subsequently issued a statutory demand and presented a bankruptcy petition, relying solely on the Russian judgment, but the English Court of Appeal ruled that, because the judgment had not been recognised, it could not form the basis of a bankruptcy petition under English law.

Servis-Terminal LLC v Drelle [2025] EWCA Civ 62

State Sovereignty

- “A particular manifestation of a more fundamental rule, that **an assertion or exercise of the sovereign right of a foreign state will not be enforced by an English court**”

Professor Briggs, referring to the “revenue rule”

Servis-Terminal LLC v Drelle [2025] EWCA Civ 62

- The principle that a foreign judgment “has no direct operation in England” reflects the **common law’s aversion to enforcing a foreign exercise of sovereign power.**
- “If a foreign adjudication and judgment is understood as being an **act of state sovereignty**...it is regarded as completely effective within the territory of the sovereign, and as completely unenforceable outside it”

Professor

Briggs

Servis-Terminal LLC v Drelle [2025] EWCA Civ 62

- **Snowden LJ** made some noteworthy points about sovereignty in his judgment, including:

“...that judgment and order is the **result of the exercise of sovereign power by the judicial organs of the Russian state...**”

“The fundamental principles of state sovereignty mean that **a judgment or order resulting from such exercise of foreign sovereign power has no direct effect in England** and cannot be enforced for the individual benefit of the successful litigant using any of the processes of the English court.”

Drelle Offshore

- CAYMAN –
- Pre-Drelle authority that a foreign judgment may form the basis of a winding-up petition without first being domesticated - *Re Guoan International Limited* [2021] (2) CILR 625. Difference between –
- (i) a foreign award which has not been converted into a local judgment through formal enforcement per *Re China Hospitals Incorporated* [2018] (2) CILR 335, In *China Hospitals*, the Grand Court expressly decided that the foreign award could, without more, be relied upon in a winding-up petition as the basis for the petition debt.
- and (ii) a foreign judgment.

Drelle offshore

- BVI
- *Grand Pacific Holdings v Pacific China Holdings* BVIHCV 2009/389 (*Pacific China*), the BVI Commercial Court examined whether an arbitral award could justify a winding up petition
- . On appeal, the order made in *Grand Pacific* was overturned on the basis that the company had established there was a real question of enforceability, and thus a real or bona fide dispute on substantial grounds on the debt
- Both *Drelle* and *Pacific China* appear to suggest that recognition alone is insufficient – enforcement is the key hurdle.

Drelle Offshore

- *Re SIN Capital (Cayman) Ltd* [2025] CIGC (FSD) 18 where it made an order for the winding-up of the company (unopposed by the company) on the insolvency ground with a statutory demand which in turn was based on an unrecognised arbitration award of the Singapore International Arbitration Centre.
- Judge was satisfied that the company was unable to pay its debts and made a winding up order.

Drelle – Supreme Court

- Leave granted to appeal to Supreme Court 6 October 2025
- 4 Grounds –
- Court erred in law that an unrecognised unimpeachable foreign money judgment does not give rise to a debt on which a statutory demand may be served or a petition brought
- Article 13 of the Model Law on Cross-Border Insolvency non-discrimination against “foreign creditors” in British insolvency proceedings
- The Court erred in law in holding that it is impermissible to present a bankruptcy petition on the basis of an unrecognised foreign judgment at common law

Drelle – Supreme Court

- The Court erred in law in holding that for an unimpeachable foreign money judgment debt to constitute the basis of a statutory demand or a bankruptcy petition or both amounts to that foreign judgment being given “*direct operation*”
- **General criticism levelled at Drelle**
- Commercial impact – extra layer of cost
- Contra to international co-operation
- UK refuge for fraudsters to hide assets

Drelle – Supreme Court

- **Potential legal issues –**
- Distinction execution, enforcement and recognition
- Execution – how orders carried into effect
- Enforcement – execution of judgments / how obligations given compulsory effect
- Recognition – domestic court taking notice of foreign judgment

Beograd Innovation Ltd v Somovidis [2025] EWHC 1182

- Like in *Kireeva*, the Claimant sought recognition and enforcement of a Russian judgment obtained against the Defendant.
- The Defendant was resident in England, and allegedly the ultimate beneficial owner of two substantial properties in the jurisdiction.
- The Defendant applied for an order that the English court decline to exercise their jurisdiction in respect of the claim and/or stay the English proceedings permanently.

Beograd Innovation Ltd v Somovidis [2025] EWHC 1182

- HHJ Pelling KC looked closely at *Kireeva* and highlighted the importance of the following points:
 - “...the common law **does not recognise the Property as being part of the assets that are within the scope of the Respondent’s bankruptcy in Russia.**”
 - “Under the immovables rule, as a matter of English common law, **the trustee in bankruptcy has no interest in or right to the bankrupt’s immovable property in this jurisdiction.**”

Beograd Innovation Ltd v Somovidis [2025] EWHC 1182

- HHJ Pelling KC recognised that, if granted, the effect of such an order would be to make the Defendant **judgment proof** in relation to his immovable assets in this jurisdiction.
- This resulted from the “rule of the common law that **the English court is prevented from granting relief to assist a foreign trustee in her duty under foreign law to get in and realise the bankrupt’s interests in land located in England**”, as per the Supreme Court in *Kireeva*.

Beograd Innovation Ltd v Somovidis [2025] EWHC 1182

- HHJ Pelling KC identified **modified universalism** as the principle that is adopted by English law in support of foreign bankruptcy proceedings.
- However, it was held that where the rule in relation to immovable assets at common law applies, as it did in the case at hand, the choice lies between:
 - permitting a creditor to enforce its judgment if it can against any immovable assets belonging to the judgment debtor located in England and Wales; or
 - treating the judgment debtor as judgment proof to the extent of their immovable assets in England.
- As such, modified universalism is **not engaged** on such facts in respect of **immovable assets**.

Beograd Innovation Ltd v Somovidis [2025] EWHC 1182

- HHJ Pelling KC held that, whilst it may be the case that as a matter of Russian law the Claimant would be precluded from seeking to enforce its judgment other than in the insolvency proceedings in Russia, that is not English law.
- **English law, as per *Kireeva*, does not recognise immovable assets as being part of the assets that are within the scope of the Defendant's bankruptcy in Russia.**
- As such, it was **not** in the interests of justice for the English court to stay the proceedings, so the Defendant's application **failed** and was **dismissed**.

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