Let’s talk turkey

The EU Succession Regulation

The New Year always brings a feeling of the morning after. Having watched governments print money for Christmas, have we now fallen off a fiscal cliff? As Rupert Brooke, who died from a mosquito bite off the Greek island of Skyros, might have said, ‘Are there euros still for tea?’

Remaining true to the quarter of my DNA that is from Saxony, it is the Germanic goose that is cooked for the Frimston family feast. Apparently, it was the Yorkshireman William Strickland who introduced the genus *Meleagris* to Europe from North America in the mid-16th century. However, it was the Norfolk farmer Bernard Matthews who persuaded us all (and his company is still doing so) to eat turkey, all year round.

Scarfe v *Matthews* [2012] EWHC 3071 (Ch) is now widely known as the case heard in London concerning Matthews’ French house, the rights of his children under French law, the interpretation of his will in the light of his intentions and the doctrine of election under the law of England and Wales.

The EU Succession Regulation does not become fully effective until 17 August 2015. If the facts of *Scarfe* v*Matthews* occurred after that date, what would the effect be?

Now that the cruel light of 2013 is shining on the Regulation, some unpleasant uncertainties are showing through. It is cold turkey time.

The original draft regulation contained a specific definition of ‘member state’ under the draft article 1.2 that would have specifically excluded Denmark, Ireland and the UK from that definition. However, the negotiations between the EU Parliament and the Council of Ministers, subject to the overriding veto of the Commission, in the smoke-filled rooms of the opaque EU trilogue negotiating process, removed that definition.

It is clear from Recitals 82 and 83 that the member states of Denmark, Ireland and the UK are not taking part in the adoption of the regulation, and are not bound by it or subject to its application. Does that mean that they are not member states for the purposes of the regulation? It seems clear that the original intention was that they should not be such. However, it is equally clear that Denmark, Ireland and the UK are member states. Any literal reading of the regulation will therefore treat them as such, even though they are not bound by it or subject to its application.

What would be the effect of that?

What would have happened to Matthews’ estate under the regulation? His habitual residence was presumably in England and Wales, but if the UK is a member state, would there have been a *renvoi* back to French law for immovables?

If Denmark, Ireland and the UK are member states, the jurisdiction rule in article 4 would apply and the subsidiary jurisdiction rules of article 10.1 would not apply.

In addition, the *renvoi* rules of article 34 would probably not apply, since Denmark, Ireland and the UK are not third states. Thus habitual residence in Denmark, Ireland and the UK would probably have the effect that, for the purposes of the regulation, there would be no *renvoi* back to the remainder of the EU, and the respective internal law of Denmark, Ireland or the UK would apply.

However, the recognition and enforcement provisions of articles 39 onwards would then be a mockery. In particular, article 41, 'Under no circumstances may a decision given in a member state be reviewed as to its substance', would produce ridiculous results.

In due course, the Court of Justice of the EU would hopefully confirm this, but do we have to wait that long?

Is my goose cooked? Or could we persuade the EU legislature to produce a corrigendum making it clear that Denmark, Ireland and the UK are not within the definition of member states for the purposes of the Succession Regulation?

If not, maybe it is not merely our turkeys that are well and truly stuffed.

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