

# **Cheeky Like the *Kea*: A New (Zealand) Approach to Anti-Suit Injunctions**

Campbell Kidd

A dissertation submitted in partial fulfilment of the requirements of the degree of Bachelor of  
Laws (Honours) at the University of Otago – Ōtākou Whakaihu Waka

10 October 2025

## *Acknowledgements*

To Associate Professor Maria Hook, thank you for your kindness, feedback and time. Your guidance has pushed me to get the most out of this piece.

To my flatmates, thank you for a wonderful two years. Particularly, Will, Sam and May, with whom I have spent copious hours in the law library.

To my family, thank you for reminding me that I can do this.

To Charlotte, thank you for your encouragement, support and late-night thickshake runs.

## ***Table of Contents***

Acknowledgements.....	1
Table of Contents .....	2
I. Introduction: The Court of Appeal in <i>Kea Flies Against the Wind</i> .....	3
A. Traditional Principles.....	5
B. A Divergence: <i>Wikeley v Kea Investments Ltd</i> .....	7
II. The Problems with an Exhaustion of Remedies Requirement for Anti-Suit Injunctions...9	
A. Synthesising the Court’s Reasoning: Prudential Exhaustion.....	10
B. International Law Reasoning Lacks Relevance to Anti-Suit Injunctions .....	11
C. Acting as an Appellate Court of a Foreign Jurisdiction.....	13
D. Relegation through Wastage of Resources.....	17
III. The Important Role of Forum Non Conveniens .....	19
A. Natural Forum as a Necessary Condition to Exercise Jurisdiction.....	21
B. Natural Forum as an Insufficient Condition to Exercise Jurisdiction.....	24
C. Separating the Natural Forum and Comity Analyses.....	25
IV. Fraud & “Sufficient Interest”.....	26
A. Of Comity and Connection .....	27
1. General Principles of Comity and Connection .....	27
2. Application to Anti-Suit Relief: “Sufficient Interest”.....	31
3. Cheeky Enough for <i>Kea</i> ? .....	33
B. Anti-Enforcement vs Anti-Suit Injunctions: A Distinction Lacking Principle .....	36
V. Looking Forward: <i>Kea Flies On</i> .....	39
Bibliography .....	42

## ***I. Introduction: The Court of Appeal in Kea Flies Against the Wind***

An anti-suit injunction (ASI) restrains the enjoined from commencing or continuing proceedings in a foreign court.<sup>1</sup> While the Earl of Clarendon in circa 1665 considered that the mere existence of ASIs would be “dangerous”, their use in England is now widespread.<sup>2</sup> However, it was only recently that the first opportunity arose for a New Zealand appellate court to engage with ASIs. This paper examines the Court of Appeal’s reasoning in *Wikeley v Kea Investments Ltd (Kea)* and explores the impacts it may have on New Zealand law.<sup>3</sup>

For the Court in *Kea*, the determinative factor was comity.<sup>4</sup> Comity, in this context,<sup>5</sup> means the respect given to foreign courts and the legitimate exercise of their adjudicatory authority.<sup>6</sup> While ASIs were once innocuously viewed as acting solely on the conscience of the enjoined,<sup>7</sup> it is now accepted that ASIs interfere with the adjudicatory authority of foreign courts.<sup>8</sup> Accordingly, comity acts as a strong force against granting an ASI. However, as Professor Briggs has observed, “the result of cases... can leave the impression that little more than lip-service was paid to such concerns...”.<sup>9</sup> Professor Dickinson has gone as far as to say the law on ASIs is in a “most unsatisfactory state”.<sup>10</sup> To this end, the Court of Appeal’s focus on comity is a breath of fresh air.

To provide context, the first part of this paper explores the principles underpinning ASIs in England. These principles have traditionally been followed by New Zealand courts.

---

<sup>1</sup> Lord Collins and Johnathan Harris (eds) *Dicey, Morris & Collins on the Conflicts of Laws* (16th ed, Sweet & Maxwell, London, 2022) [*Dicey*] at [12R–12I]. Breach of an ASI is contempt of court, which is potentially punishable by imprisonment, see *Crypto Open Patent Alliance v Wright* [2024] EWHC 3316 (Ch) at [11]–[16].

<sup>2</sup> *Love v Baker* (1665) 1 Ch Cas 67.

<sup>3</sup> *Wikeley v Kea Investments Ltd* [2024] NZCA 609, [2024] 3 NZLR 901 [*Kea* (CA Judgment)].

<sup>4</sup> See *Wikeley v Kea Investments Ltd* [2024] NZCA 686, (2024) 26 PRNZ 667 at [8]: “...[the] injunctions were discharged, essentially on the basis of comity...”.

<sup>5</sup> Comity is a flexible concept which manifests in many forms, see *Dicey*, above n 1, at [12–127].

<sup>6</sup> *Société Nationale Industrielle Aerospatiale v Lee Kui Jak* [1987] AC 871 (PC) [*SNI Aerospatiale*] at 892; and *Airbus Industrie GIE v Patel* [1999] 1 AC 119 (HL) at 133.

<sup>7</sup> See, for example, *Bushby v Munday* (1821) 5 Madd 297 at 307.

<sup>8</sup> See, for example, *British Airways Board v Laker Airways Ltd* [1985] AC 58 (HL) at 95; *SNI Aerospatiale*, above n 6, at 892; and *Airbus*, above n 6, at 138. Courts have typically not responded kindly to ASIs ordered in respect of their proceedings, see, for example, *Tonicstar Ltd v American Home Insurance Co* [2004] EWHC 1234 (Comm), [2005] Lloyd’s Rep IR 32; and Case 3 VA 11/ 95 *Re the Enforcement of an English Anti-suit Injunction* [1997] 1 L Pr 320.

<sup>9</sup> Adrian Briggs *Private International Law in English Courts* (2nd ed, Oxford University Publishing, Oxford, 2023) at 297.

<sup>10</sup> Andrew Dickinson “Taming Anti-suit Injunctions” in Andrew Dickinson and Edwin Peel (eds) *A Conflict of Laws Companion: Essays in Honour of Adrian Briggs* (Oxford University Press, Oxford, 2021) 77 at 109.

Throughout the rest of this paper, the significance of the Court of Appeal's decision in *Kea* is illustrated through the departures made from these principles.

The second part turns to the Court's ratio and dicta in *Kea*. Four areas discussed by the Court are explored. Firstly, the Court's decision fundamentally turned on the issue that without exhausting remedies in a foreign court, a New Zealand court should generally not order an ASI as to comply with comity.<sup>11</sup> It is argued that if the only factor preventing a court from ordering an ASI is that the applicant has not exhausted their remedies in the foreign court, requiring deference to the foreign court is performative. Any subsequent decision made by the foreign court will only be respected if it arrives at the same conclusion as the domestic court. To this end, the domestic court is acting as if it were an appellate court for the foreign jurisdiction. This result is in direct opposition with comity.

Secondly, the Court questioned the relevance of forum non conveniens in the ASI inquiry.<sup>12</sup> It is argued that the Court's reasoning is best understood as a restatement of the orthodox position that it is a necessary but not sufficient requirement for an ASI that the domestic court is the natural forum. If an ASI is sought on the basis that the domestic court should be hearing the claim, it is important that the domestic court actually is the appropriate forum to determine the underlying dispute. Alternatively, if the ASI is sought because the claim in the foreign court should not exist at all, it remains important that the domestic court, rather than a court of a third country, is best placed to order an ASI. Nevertheless, the Court correctly emphasised that natural forum is not a sufficient condition for an ASI and that analysis of comity must be undertaken separately.

Thirdly, the Court doubted that an ASI based on fraud, as applied for in *Kea*, was consistent with comity.<sup>13</sup> The Court reasoned that the foreign court, where a fraudulent judgment was obtained, could and should address the fraud on its own. It is argued that whether a court should exercise its jurisdiction to restrain a party with an ASI requires a more careful assessment whether the order is consistent with comity. This jurisdictional inquiry, known as "sufficient interest", requires consideration of, inter alia, the court's connection to the dispute or interest in preventing a party from committing wrongdoing to determine whether an ASI is consistent with comity. On the facts of *Kea*, it is argued that this requirement is met as (a) the New Zealand Court has a strong interest in preventing a New Zealand company, as trustee for a New Zealand

---

<sup>11</sup> *Kea* (CA Judgment), above n 3, at [186].

<sup>12</sup> At [174].

<sup>13</sup> At [187]–[190].

trust, from perpetuating a cross-border fraud and (b) ordering an ASI is consistent with comity as it serves as a warning of fraud to the foreign court.

Finally, the Court placed greater weight on comity. This was done on the basis that anti-enforcement injunctions (**AEI**), an ex-post variant of an ASI which restrains the injunctioned from seeking to enforce a foreign judgment, face greater comity concerns than ASIs.<sup>14</sup> This paper argues that there is little justification as to why interfering with a foreign judgment is a greater interference than interfering with the adjudicatory authority of a foreign court. The sole difference between ASIs and AEIs is when the applicant applies for them. Consequently, any additional comity concerns in AEI applications arise only from delay.

Ultimately, this paper concludes that the Court's emphasis on comity is a welcome addition to the jurisprudence. However, the reasoning goes too far and the focus on comity becomes performative. Accordingly, this paper argues that the AEIs discharged by the Court ought to be reinstated.

#### *A. Traditional Principles*

Originating in the English courts of equity,<sup>15</sup> ASIs have traditionally been classified in two broad categories:<sup>16</sup>

- (1) Equitable ASIs. In this category the domestic court is typically required to be the natural forum for the dispute.<sup>17</sup> Additionally, the conduct of the defendant must be “vexatious or oppressive”.<sup>18</sup> Vexation and oppression have not been defined exhaustively.<sup>19</sup> However, the essence of these terms is that the foreign legal system is used without a genuine purpose in obtaining one's legal entitlement, or to prevent another from obtaining their legal entitlement.<sup>20</sup> The domestic forum must also have “sufficient interest” in the dispute, which requires an assessment of comity.<sup>21</sup> Beyond these

---

<sup>14</sup> *Kea* (CA Judgment), above n 3, at [180]–[181] and [187].

<sup>15</sup> For a full summary of the origins of ASIs, see Dickinson, above n 10, at 88–92.

<sup>16</sup> Adrian Briggs *Civil Jurisdiction and Judgments* (7th ed, Informa Law, London, 2021) at [28.05]; and Thomas Raphael *The Anti-Suit Injunction* (1st ed, Oxford University Press, Oxford, 2008) at [4.18]; but see Dickinson, above n 10, at 84–86, 96–104 and 109(4).

<sup>17</sup> *Airbus*, above n 6, at 133. See further Section III.

<sup>18</sup> *SNI Aerospatiale*, above n 6, at 896.

<sup>19</sup> *Deutsche Bank AG and another v Highland Crusader Offshore Partners LP* [2009] EWCA Civ 725, [2010] 1 WLR 1023 at [50(3)] per Toulson LJ.

<sup>20</sup> Briggs, above n 9, at 303; and Dickinson, above n 10, at 100.

<sup>21</sup> *Airbus*, above n 6, at 138; and Richard Fentiman *International Commercial Litigation* (2nd ed, Oxford University Press, Oxford, 2015) at [16.34].

requirements, the court has discretion as to whether to order an ASI, where the underlying question is whether the “ends of justice” require it.<sup>22</sup>

- (2) Contractual ASIs. This category includes both jurisdiction and arbitration agreements. In these cases, comity has been viewed as being of little importance as the injunction is merely holding the parties to their contractual bargain.<sup>23</sup> Consequently, unless there are “strong reasons” as to why the party should be allowed to sue in the non-contractual forum, such as the injunction claimant’s conduct,<sup>24</sup> the ASI will be granted.<sup>25</sup>

While being unsurprisingly sparse, the New Zealand case law has traditionally stuck to these English formulations.<sup>26</sup> This adherence to the English principles makes the decision, and departure, in *Kea* one of significance.<sup>27</sup>

The first New Zealand case to consider ASIs was *Jonmer Inc v Maltexo Ltd*.<sup>28</sup> In *Jonmer* the Court affirmed that New Zealand courts had the power to order ASIs.<sup>29</sup> Adopting the English authorities the Court stated that there were “two major steps which must be taken by a Court contemplating exercising this jurisdiction”.<sup>30</sup> Firstly, that New Zealand must be the natural forum and secondly, whether the foreign proceeding is vexatious or oppressive.<sup>31</sup> Additionally, the “ends of justice” must be considered.<sup>32</sup> The case itself concerned a claim brought in Texas on a particular issue in a wider set of litigation. Applying the traditional principles, the Court held there was no juridical or personal advantage in bringing the claim in Texas and accordingly ordered an ASI.<sup>33</sup> These principles were recently reiterated in *Lu v Industrial and Commercial Bank of China (NZ) Ltd*.<sup>34</sup> While acknowledging the rarity of the order in New Zealand,<sup>35</sup> the

---

<sup>22</sup> *SNI Aerospaziale*, above n 6, at 892 and 895–896.

<sup>23</sup> *Aggeliki Charis Compania Maritima SA v Pagnan SpA* [1995] 1 Lloyd’s Rep 87 [*The Angelic Grace*] at 96 per Millett LJ as cited in *Enka Insaat ve Sanayi AS v OOO Insurance Company Chubb* [2020] UKSC 38, [2020] 1 WLR 4117 at [180]–[181]; and see further *OT Africa Line Ltd v Magic Sportswear Corporation and others* [2005] EWCA Civ 710, [2006] 1 All ER (Comm) 32 at [32].

<sup>24</sup> For further examples, see Raphael, above n 16, at ch 8.

<sup>25</sup> *Donohue v Armco Inc* [2001] UKHL 64, [2002] 1 All ER 749 at [24] per Lord Bingham, [45] per Lord Hobhouse and [53] per Lord Scott.

<sup>26</sup> Maria Hook and Jack Wass *The Conflict of Laws in New Zealand* (LexisNexis, Wellington, 2020) at [2.421].

<sup>27</sup> Compare Hook and Wass, above n 26, at [2.421].

<sup>28</sup> *Jonmer Inc v Maltexo Ltd* (1996) 10 PRNZ 119 (HC).

<sup>29</sup> At 120.

<sup>30</sup> At 120.

<sup>31</sup> At 120.

<sup>32</sup> At 120.

<sup>33</sup> At 122–123.

<sup>34</sup> *Lu v Industrial and Commercial Bank of China (NZ) Ltd* [2020] NZHC 402 at [103].

<sup>35</sup> At [100].

Court observed that “the legal principles, which derive largely from a number of leading United Kingdom decisions, are reasonably well-settled”.<sup>36</sup>

The final affirmation of New Zealand’s adherence to English orthodoxy was *Maritime Mutual Insurance Association (NZ) Ltd v Silica Sandport Inc.*<sup>37</sup> The case is a quintessential example of a contractual ASI. Silica brought proceedings in Guyana in violation of an arbitration agreement.<sup>38</sup> The Court, unsurprisingly,<sup>39</sup> adopted the English rhetoric that comity plays a smaller role in contractual cases as the Court is merely enforcing the parties’ contractual bargain.<sup>40</sup> Accordingly, the Court applied the traditional test of whether there were “strong reasons” to refuse an ASI.<sup>41</sup> The Court concluded there was not, and ordered an ASI.<sup>42</sup>

*B. A Divergence: Wikeley v Kea Investments Ltd*

The first opportunity the Court of Appeal had to examine ASIs was in *Kea*. *Kea* concerned a complicated alleged global fraud involving various players over an extended period. A summary of the facts is as follows.

In 2018, an English Court found that Mr Watson had fraudulently induced Kea Investments Ltd (**Kea**) to enter an investment project and that Mr Dickson, as a director of Kea, had breached his fiduciary duties owed to the company.<sup>43</sup> Subsequently, in 2022, Kea was informed of a statutory demand in the British Virgin Islands seeking to enforce a USD 123,750,000 default judgment (plus interest and costs) from Kentucky against Kea obtained by Wikeley Family Trustee Ltd (**WFTL**),<sup>44</sup> a New Zealand company, which was the trustee of the Wikeley Family Trust (**WFT**), a New Zealand trust.<sup>45</sup> The judgment was obtained because of an alleged default by Kea on a 2012 coal investment contract between Mr Wikeley (for WFTL) and Mr Dickson (for Kea), witnessed by Mr Watson.<sup>46</sup> Kea later learned that its agent in the British

---

<sup>36</sup> *Lu*, above n 34, at [100].

<sup>37</sup> *Maritime Mutual Insurance Association (NZ) Limited v Silica Sandport Inc* [2023] NZHC 793.

<sup>38</sup> At [1].

<sup>39</sup> Maria Hook “An anti-suit injunction to compel compliance with an arbitration agreement: MMIA v Silica Sandport” (26 April 2023) *The Conflict of Laws in New Zealand: News and Comment* <<https://blogs.otago.ac.nz/conflicts/>>.

<sup>40</sup> *Maritime Mutual*, above n 37, at [38].

<sup>41</sup> *QBE Europe SA/NV v Generali Espana de Seguros Y Reaseguros* [2022] EWHC 2062 (Comm) at [10]–[11] as cited in *Maritime Mutual*, above n 37, at [38].

<sup>42</sup> At [44]–[48].

<sup>43</sup> *Glenn v Watson* [2018] EWHC 2016 (Ch) as cited in *Kea Investments Ltd v Wikeley Family Trustee Ltd (In Int Liq)* [2023] NZHC 3260 [*Kea* (Formal Proof Judgment)] at [9]–[19].

<sup>44</sup> *Wikeley Family Trustee Ltd v Kea Investments Ltd* 21-CI-02508 (2022) Ky Cir LEXIS 12 (USA) (31 January 2022).

<sup>45</sup> *Kea* (Formal Proof Judgment), above n 43, at [25].

<sup>46</sup> At [30]. Mr Watson and Mr Wikeley are long-time associates, see at [21].

Virgins Islands had been served with the initial claim in Kentucky but had failed to notify Kea of the proceedings.<sup>47</sup> On that basis, Kea’s application to set aside the default judgment in Kentucky was rejected as the proceeding had been “properly served”.<sup>48</sup>

Kea then turned to the New Zealand courts, alleging that the default judgment was obtained based on a fraudulent contract and requested an AEI.<sup>49</sup> On a wide range of evidence, the High Court accepted that the contract was fraudulent and that a claim for unlawful means conspiracy was made out.<sup>50</sup> In determining whether to issue an AEI, the Court adopted the analysis from *Lu*,<sup>51</sup> and noted extra caution was needed for AEIs due to their ex-post nature.<sup>52</sup> Applying this test, the Court accepted that seeking to enforce a fraudulently procured default judgment would be vexatious or oppressive and accordingly ordered interim AEIs against Mr Wikeley, WFTL and Mr Watson.<sup>53</sup> These were later made permanent on a formal proof hearing.<sup>54</sup> Additionally the AEIs were extended to Mr Wikeley’s American companies, which were incorporated following the interim injunction in an attempt to move the default judgment outside the New Zealand jurisdiction. WFTL was also placed in interim liquidation to prevent similar attempts from being made.<sup>55</sup> Mr Wikeley appealed both the findings of fact and the issuance of the AEIs. In a mixed result, the Court of Appeal upheld the High Court’s finding that the Kentucky default judgment was procured by fraud but discharged the permanent AEIs.<sup>56</sup> The Court, relying heavily on the work of Professor Dickinson, held that despite the fraudulent conduct, AEIs would be contrary to the principles of comity.<sup>57</sup> The thorough examination of comity, one not often seen in the English case law, invites a closer analysis of the decision.

---

<sup>47</sup> *Kea* (Formal Proof Judgment), above n 43, at [27].

<sup>48</sup> At [47]–[48].

<sup>49</sup> *Kea Investments Ltd v Wikeley Family Trustee Ltd* [2022] NZHC 2881 [*Kea* (Interim Injunction Judgment)] at [28]–[29].

<sup>50</sup> At [54]; and *Kea* (Formal Proof Judgment), above n 43, at [81]–[116].

<sup>51</sup> *Lu*, above n 34, at [103] as cited in *Kea* (Interim Injunction Judgment), above n 49, at [40].

<sup>52</sup> At [42].

<sup>53</sup> At [64].

<sup>54</sup> *Kea* (Formal Proof Judgment), above n 43, at [53]–[65] and [128].

<sup>55</sup> At [58].

<sup>56</sup> *Kea* (CA Judgment), above n 3, at [134]–[146] and [195]; and see also at [196]–[199] where the Court left the interim liquidators of WFTL in place, meaning that Mr Wikeley and his co-conspirators remained isolated from the default judgment.

<sup>57</sup> At [164], [176]–[177] and [186].

## ***II. The Problems with an Exhaustion of Remedies Requirement for Anti-Suit Injunctions***

Following the work of Professor Dickinson, the Court of Appeal in *Kea* framed its reasoning around “[the] need to confront, head on, the appropriateness, in comity terms...”, the effects of an AEI.<sup>58</sup> With this in mind, the Court’s decision ultimately turned on *Kea* failing to exhaust its remedies in Kentucky.<sup>59</sup> In doing so, the Court commented that absent this exhaustion “...we consider that comity requires the New Zealand courts to keep their powder dry”.<sup>60</sup> This development is the first of the divergences from the traditional United Kingdom case law undertaken by the Court of Appeal. As Professor Briggs has observed, there are hundreds of cases in which courts have imposed ASIs before the foreign court has even had the chance to determine its own jurisdiction.<sup>61</sup>

The following analysis illustrates that a strict requirement to exhaust remedies in a foreign court is not only inconsistent with, but runs contrary to, comity in the ASI context. Firstly, the authorities relied upon by the Court of Appeal draw on the international law doctrine of exhaustion of remedies, which unlike ASIs, deals directly with the international plane. When the reasoning behind the customary international law doctrine is applied by analogy to an ASI, it incorrectly suggests that the foreign court has committed a wrong. Secondly, and more fundamentally, once the New Zealand court has made a finding on the substantive basis for an ASI and determined that an ASI is appropriate, an exhaustion of remedies requirement functionally makes the New Zealand court sit as if it were an appellate court for the foreign jurisdiction. This is because any future decision of the foreign court will only be accepted if it is the same as the New Zealand courts. This implied superiority of the New Zealand court is exacerbated when considering the greater waste of resources that an exhaustion requirement produces. However, this discussion does not suggest that a New Zealand court should never defer to a foreign court in determining a dispute between the parties, nor does it suggest that a New Zealand court should never adjudicate on a matter a foreign court is also adjudicating on.<sup>62</sup>

---

<sup>58</sup> *Kea* (CA Judgment), above n 3, at [167]. The Court happily titled a section of the judgment “Comity”.

<sup>59</sup> At [194]; and see also at [183] and [186].

<sup>60</sup> At [194].

<sup>61</sup> Adrian Briggs “Private International Law” (2003) 74 BYIL 511 at 533.

<sup>62</sup> See also Sections III(A) and IV(A)(2).

### A. Synthesising the Court's Reasoning: Prudential Exhaustion

The Court of Appeal viewed the need for Kea to exhaust its remedies as being “akin to the doctrine of ‘prudential exhaustion’...” in United States cases.<sup>63</sup> Two decisions are cited by the Court as examples of where this measure has been adopted to uphold international comity.<sup>64</sup> The common feature of these cases is that they directly regard matters of public international law.<sup>65</sup> Consequently, the respective courts were willing to analogise with the public international law doctrine of exhaustion of remedies. While ASIs engage the public international law sphere by interfering with the foreign court, they do so indirectly.<sup>66</sup> These differing methods of engagement raise the question of whether the rationale for the customary international law rule aligns with the need for comity in the ASI context. Ultimately, this question is answered in the negative.

The first decision cited is *Sarei v Rio Tinto plc*.<sup>67</sup> *Sarei* concerned a claim under the Alien Tort Statute (ATS). The ATS confers jurisdiction on United States courts for “any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States”.<sup>68</sup> In essence, the ATS allows claimants redress in the United States for certain international wrongs. The 9th Circuit Court of Appeals held that in some ATS cases exhaustion would be required.<sup>69</sup> In determining why an exhaustion requirement may be necessary, the Court mostly relied on a footnote from *Sosa v Alvarez-Machain*.<sup>70</sup> In *Sosa*, the Supreme Court of the United States suggested that it may consider such a requirement in future.<sup>71</sup> Although strictly obiter, the Supreme Court’s reasoning is coloured by the public international law context.<sup>72</sup> The Court’s contemplation of an exhaustion requirement comes after noting that the ATS’ statutory text “is not meant to be the only principle limiting the availability of relief in the federal courts for violations of customary international law...”.<sup>73</sup>

The concern alluded to by the Supreme Court, and picked up on by the Court in *Sarei*, is that by hearing claims based on alleged violations of public international law, a domestic court is

---

<sup>63</sup> *Kea* (CA Judgment), above n 3, at [194] fn 186.

<sup>64</sup> At [194] fn 186.

<sup>65</sup> See *Doe v Exxon Mobil Corp* 69 F Supp 3d 75 (DC Cir 2014) at 89 fn 3.

<sup>66</sup> *British Airways*, above n 8, at 95; *SNI Aerospatiale*, above n 6, at 892; and *Airbus*, above n 6, at 138.

<sup>67</sup> *Sarei v Rio Tinto plc* 550 F 3d 822 (9th Cir 2008) (en banc).

<sup>68</sup> 28 USC § 1350.

<sup>69</sup> *Sarei*, above n 67, at 830–832.

<sup>70</sup> *Sosa v Alvarez-Machain* 542 US 692 (2004).

<sup>71</sup> At 733 fn 21 as cited in *Sarei*, above n 67, at 827.

<sup>72</sup> The claim was disposed of as the cause of action advanced did not fit within the “violations of international law” contemplated by the ATS, see *Sosa*, above n 70, at 738.

<sup>73</sup> At 733 fn 21.

acting as a de facto international tribunal.<sup>74</sup> However, as the Court in *Sarei* reasoned, unlike an international tribunal, a domestic court does not necessarily have the consent of a foreign nation to exercise its jurisdiction.<sup>75</sup> To this end, the Court concluded that the need for an exhaustion requirement was augmented where there is a lack of a “nexus” between the United States and the dispute in question.<sup>76</sup>

The second case cited is *Fischer v Magyar Államvasutak Zrt.*<sup>77</sup> *Fischer* is the second instalment of litigation regarding a claim under the Foreign Sovereign Immunities Act (FSIA),<sup>78</sup> a comprehensive code of the law on state immunity in the United States.<sup>79</sup> The basic structure of the FSIA is that a foreign state is exempt from claims brought against it in United States courts unless an exception applies.<sup>80</sup> *Fischer* concerns the expropriation exception, where state immunity does not exist if there are “rights in property taken in violation of international law...”<sup>81</sup> Akin to *Sarei*, the Court’s conclusion to impose prudential exhaustion was based on “the [FSIA] provision’s reliance on international law norms...”<sup>82</sup> Further to this, the Court specifically characterised the exhaustion requirement as invoking the customary international law rule itself.<sup>83</sup>

#### *B. International Law Reasoning Lacks Relevance to Anti-Suit Injunctions*

The customary international law rule itself is not directly applicable to the ASI context as ASIs are ordered by domestic courts. The District of Columbia Court of Appeals, in rejecting *Fischer*, reasoned that the customary international law rule only applies to international tribunals as they are not bound by res judicata.<sup>84</sup> Conversely, in domestic courts the decision of the foreign court cannot be reviewed on the merits and is binding unless there are

---

<sup>74</sup> Compare Chittharanjan Felix Amerasinghe *Local Remedies in International Law* (Cambridge University Press, Cambridge, 2004) at 63.

<sup>75</sup> *Sarei*, above n 67, at 830.

<sup>76</sup> At 831.

<sup>77</sup> *Fischer v Magyar Államvasutak Zrt* 777 F 3d 847 (7th Cir 2015).

<sup>78</sup> See *Abelesz v Magyar Nemzeti Bank* 692 F 3d 661 (7th Cir 2012).

<sup>79</sup> *Turkiye Halk Bankasi AS v United States* 598 US 264 (2023) at 272.

<sup>80</sup> 28 USC § 1604.

<sup>81</sup> 28 USC § 1605(a)(3).

<sup>82</sup> *Fischer*, above n 77, at 854.

<sup>83</sup> At 859.

<sup>84</sup> The most recent example being *de Csepel v Republic of Hungary* 27 F 4th 736 (DC Cir 2022) at 753.

fundamental procedural flaws in the foreign decision-making process.<sup>85</sup> The same point arises in New Zealand, as there is a similar regime for enforcing foreign judgments.<sup>86</sup>

Even where the principles behind the customary international law rule are applied by analogy, akin to *Sarei*, there is a mismatch between the international law and ASI contexts. Namely, that applying the rationale of the international law rule to the ASI context insinuates that a foreign court will commit a wrong unless it reaches the outcome the New Zealand court thinks is just. This insinuation is inconsistent with comity's role in ASIs. Comity requires a level of respect for the adjudicatory authority of the foreign court, as the normal assumption is that all courts are equally well placed to determine what justice is between the parties.<sup>87</sup> As Toulson LJ stated in *Deutsche Bank AG v Highland Crusader Offshore Partners LP*.<sup>88</sup>

...the principle of comity requires the court to recognise that, in deciding questions of weight to be attached to different factors, different judges operating under different legal systems with different legal policies may legitimately arrive at different answers, without occasioning a breach of customary international law or manifest injustice, and that in such circumstances it is not for an English court to arrogate to itself the decision how a foreign court should determine the matter.

Underpinning this insinuation are the different roles of the foreign state in the ASI and exhaustion of remedies contexts. In the public international law context, the exhaustion of remedies doctrine directly implicates the foreign state as having allegedly committed wrongdoing. The customary international law doctrine provides that before a state can exercise its right of diplomatic protection against another state and espouse one of its national's claims in an international tribunal, the national must generally exhaust all local remedies in the foreign state.<sup>89</sup> The purpose of the customary international law doctrine is to recognise state sovereignty by providing the state an opportunity to settle a dispute that it is a defendant to through its own mechanisms.<sup>90</sup> Despite the requirement on the individual to seek recourse through the foreign state's courts, the doctrine is not directed at the individual. For example,

---

<sup>85</sup> *Simon v Republic of Hungary* 911 F 3d 1172 (DC Cir 2018) at 1180 (vacated on different grounds in *Republic of Hungary v Simon* 592 US 207 (2021)); and see further Vivian Grosswald Curran "'Nazi Stolen Art' Uses and Misuses of the Foreign State Immunities Act" (2023) 32 *Transnat'l L & Contemp Probs* 197 at 214.

<sup>86</sup> Hook and Wass, above n 26, at [5.225].

<sup>87</sup> *Barclays Bank Plc v Homan* [1992] BCC 757 (Ch) at 762 per Hoffman J; and *Deutsche Bank*, above n 19, at [56].

<sup>88</sup> *Deutsche Bank*, above n 19, at [50(5)].

<sup>89</sup> *Interhandel (Switzerland v United States of America) (Preliminary Objections)* [1959] ICJ Rep 6 at 27.

<sup>90</sup> Amerasinghe, above n 74, at 62.

the limits of the doctrine are designed in a way to promote the state's interest in delivering justice domestically.<sup>91</sup>

Conversely, the foreign state, or in this context the foreign court whose jurisdiction is conferred upon it by the state, is only indirectly implicated by an ASI.<sup>92</sup> ASIs are directed in personam. This means that ASIs functionally say that the defendant has committed a wrong by bringing the proceedings, *not* that the foreign court has committed a wrong in hearing them.<sup>93</sup> This reasoning holds true irrespective of whether the foreign court has assumed jurisdiction. To put it in public international law terms, the foreign court is not a party to the domestic proceedings. Ultimately, ASIs are not intended to suggest wrongdoing on the foreign court's behalf. However, by applying the principles behind the international law doctrine, they would do so.

### C. Acting as an Appellate Court of a Foreign Jurisdiction

While the principles behind the international law doctrine do not align with comity in the ASI context, the result of applying an exhaustion of remedies requirement to ASIs, irrespective of the legal basis, illustrates that an exhaustion requirement is inconsistent with comity. If all that is preventing a New Zealand court from ordering an ASI is a failure to exhaust remedies in the foreign court, the New Zealand court would ultimately be reviewing the decision of the foreign court if relief is sought following exhaustion. Consequently, the ASI application in the domestic court is essentially an appeal of the foreign Court's decision and provides the ASI applicant "two bites at the cherry".<sup>94</sup> This comity concern only grows where the appeal rights in the foreign jurisdiction have been exhausted as more foreign decisions are being reviewed. The same problem also arises irrespective of whether a judgment is on the merits, or merely on a preliminary matter, such as jurisdiction. Leggatt LJ summarised this argument in *Aggeliki Charis Compania Maritima SA v Pagnan SpA*, stating:<sup>95</sup>

I can think of nothing more patronising than for the English Court to adopt the attitude if the Italian Court declines jurisdiction, that would meet with the approval of the English Court, whereas if the

---

<sup>91</sup> Amerasinghe, above n 74, at 63.

<sup>92</sup> *British Airways*, above n 8, at 95; *SNI Aerospatiale*, above n 6, at 892; and *Airbus*, above n 6, at 138.

<sup>93</sup> *SNI Aerospatiale*, above n 6, at 892.

<sup>94</sup> Adrian Briggs *The Conflict of Laws* (5th ed, Oxford University Press, Oxford, 2024) at 102; and *Ecobank Transnational Incorporated v Tanoh* [2015] EWCA Civ 1309, [2015] 1 WLR 2231 at [130].

<sup>95</sup> *The Angelic Grace*, above n 23, at 95 per Leggatt LJ (emphasis added); and see also *Essar Shipping Ltd v Bank of China Ltd* [2015] EWHC 3266 (Comm), [2016] 1 Lloyd's Rep 427 at [45]–[50]. While *The Angelic Grace* was a contractual ASI case, the principle remains applicable as the foreign court's adjudicatory authority does not depend on the parties' contract, see Dickinson, above n 10, at 84–86 as cited in *Kea* (CA Judgment), above n 3, at [177] fn 158. For a non-contractual case, see *Glencore International AG v Metro Trading International Inc* [2001] All ER (D) 107 (Nov) (QB) at [42] as cited in Thomas Rapheal *The Anti-Suit Injunction* (2nd ed, Oxford University Press, Oxford, 2019) at [5.44].

Italian Court assumed jurisdiction, the English Court would then consider whether at that stage to intervene by injunction. That would be not only invidious but *the reverse of comity*.

Ultimately, the role that exhaustion of remedies plays in the international law sphere is different from the role comity plays in the ASI context.<sup>96</sup> Exhaustion of remedies seeks to uphold the equal standing of sovereign nations under international law whereas in the ASI context comity is intended to recognise the adjudicatory authority of the foreign court.<sup>97</sup> The core disconnect is that the resulting deference of the two principles is based on conflicting attitudes to the foreign court's reasoning. To illustrate this, *Kea* can be contrasted with ASI cases in which courts have recognised the importance of deferring to the foreign court. While the deference in *Kea* is predicated on the foreign court coming to the "right" decision, the latter cases consider the foreign court's perspective, one that may end up being persuasive in the domestic court. This approach is consistent with comity's recognition that courts are equally placed to determine justice between the parties.<sup>98</sup> Two examples are illustrative.

Firstly, the seminal judgment on ASIs in Canada, *Amchem Products Inc v British Columbia (Workers' Compensation Board)*.<sup>99</sup> In *Amchem*, the Supreme Court of Canada stated that it is "preferable" to allow the foreign court to determine whether it was the natural forum before issuing an ASI.<sup>100</sup> The Court concluded that if it is reasonable for the foreign court to conclude, on an analogous approach to the principles of forum non conveniens, that there was no more appropriate forum, an ASI should not be issued.<sup>101</sup> The reason for this preference is that foreign courts are generally best placed to determine whether proceedings before them should continue or be stayed.<sup>102</sup> Accordingly, the domestic court should not arrogate this decision to itself except in "exceptional cases".<sup>103</sup> These cases are where comity is not a strong countervailing force as the core assumption of comity, that the foreign court is seeking the common interest

---

<sup>96</sup> Compare Berk Demirkol *Judicial Acts and Investment Treaty Arbitration* (Cambridge University Press, Cambridge, 2017) at 79 fn 12.

<sup>97</sup> Amerasinghe, above n 74, at 62; and *Deutsche Bank*, above n 19, at [50(5)].

<sup>98</sup> *Barclays*, above n 87, at 762.

<sup>99</sup> *Amchem Products Inc v British Columbia (Workers' Compensation Board)* [1993] 1 SCR 897.

<sup>100</sup> At [51].

<sup>101</sup> At [53].

<sup>102</sup> *Barclays*, above n 87, at 762; *Royal Bank of Canada v Cooperatieve Centrale Raiffeisen-Boerenleenbank BA* [2003] EWHC 2913, [2003] All ER (D) 42 (Dec) at [29(vi)]; *Deutsche Bank*, above n 19, at [56]; *Stichting Shell Pensioenfond v Krys and another* [2014] UKPC 41, [2015] AC 616 at [42]; and *UBS AG New York v Fairfield Sentry Ltd (in liquidation)* [2019] UKPC 20, [2019] 4 LRC 412 at [19].

<sup>103</sup> *Barclays*, above n 87, at 762; *Royal Bank of Canada*, above n 102, at [29(vi)]; *Deutsche Bank*, above n 19, at [56]; *Stichting Shell*, above n 102, at [42]; and *UBS*, above n 102, at [19].

of administering justice, has been rebutted.<sup>104</sup> Additionally, it may only become clear that comity is reduced in force if the foreign court has reached a conclusion.<sup>105</sup>

The second example is *Magomedov and others v PJSC Transneft and others*.<sup>106</sup> The case concerned an anti-anti-suit injunction (AASI), an injunction preventing the injuncted from seeking or enforcing an ASI in a foreign court.<sup>107</sup> This was sought to respond to an ASI imposed by a Russian Court intended to prevent the English court from determining jurisdiction.<sup>108</sup> In essentially the reverse position of *Amchem*, the Court concluded that in appropriate cases a foreign court should give the domestic court an opportunity to determine whether it was the natural forum before issuing an ASI.<sup>109</sup> Core to the Court's reasoning in ordering an AASI was that the Russian Court's ASI was imposed to prevent the English Court from determining whether it was the natural forum.<sup>110</sup> Taking this reasoning further, the Russian Court's ASI was not imposed because the existence of the English proceedings had rebutted the presumption at the core of comity. As the presumption was not rebutted, the Russian Court ordering an ASI before the English Court had had the chance to determine its own jurisdiction could not be justified.<sup>111</sup> Accordingly, an AASI, hitherto the English Court made its determination on whether it was the natural forum, was justified.

The point to be drawn from these cases is that the deference given by the domestic court is in respect of the adjudicatory authority of the foreign court. If there is genuine disagreement between the different jurisdictions, the domestic court will not arrogate to itself the authority to decide.<sup>112</sup> However, as discussed, this approach does not *require* that the foreign court has

---

<sup>104</sup> *Ecobank*, above n 94, at [132]; Timothy Endicott "Comity among Authorities" (2015) 68 CLP 1; and compare Rapheal (2nd ed), above n 95, at [5.45]. Hence, in both Canadian Federal and State Courts, it has been held that the "preference" is not a strict requirement, see, for example, *Seismotech Safety Systems Inc v Forootan* 2021 FC 773 at [82]; *Pan v Zhao* 2024 ONSC 1328 at [29]; *Axion Ventures Inc v Bonner* 2024 BCSC 45 at [26]–[32]; and see also Paul D Guy and Scott McGrath "To Seek a Stay or Not to Seek a Stay" (21 December 2011) WeirFoulds LLP <[www.weirfoulds.com](http://www.weirfoulds.com)>.

<sup>105</sup> This was not the case in *Stichting Shell*, above n 102, at [42]; and *Midland Bank plc v Laker Airways Ltd* [1986] QB 689 (CA) at 704 but likely was in *Kemsley v Barclays Bank plc and others* [2013] EWHC 1274 (Ch), [2013] All ER (D) 169 (May) at [45]–[46]; and *Dawnus Sierra Leone Limited v Timis Mining Corporation Limited* [2016] EWHC 236 (TCC), [2016] All ER (D) 123 (Feb) at [66]. See further Rapheal (2nd ed), above n 95, at [5.46].

<sup>106</sup> *Magomedov and others v PJSC Transneft and others* [2024] EWHC 1176 (Comm), [2024] 4 WLR 48.

<sup>107</sup> See Raphael (2nd ed), above n 95, at [5.59].

<sup>108</sup> *Magomedov*, above n 106, at [71]–[72].

<sup>109</sup> At [90]–[92].

<sup>110</sup> At [92].

<sup>111</sup> Compare *SAS Institute Inc v World Programming Ltd* [2020] EWCA Civ 599, [2020] All ER (D) 102 (May) at [111]–[112]: "...comity is a two way street requiring *mutual* respect between courts in different states" (emphasis added).

<sup>112</sup> *Amchem*, above n 99, at [53].

the opportunity to reach a decision.<sup>113</sup> Nor, as a necessary corollary, does this approach necessitate that a foreign judgment must be followed in all cases that a foreign court has employed similar principles to those a domestic court would use.<sup>114</sup> In some cases,<sup>115</sup> only one result will be acceptable and any deference to the foreign court would be performative.<sup>116</sup>

The approach of the Court of Appeal in *Kea* is substantively different. The deference given to the foreign court is based on an attitude that the foreign court will remedy the defect the New Zealand court sees in the foreign court's judgment, epitomising the concern that a domestic court is effectively sitting as an appellate court for the foreign jurisdiction. This is reflected in the orders made in *Kea*. While the Court purported to recognise the adjudicatory authority of the foreign court by discharging the injunctions, the Court upheld the finding, and declarations thereof, that the default judgment was in some part procured by fraud.<sup>117</sup> This signals that the Court had made up its mind on what the result on what justice between the parties should be. By extension, the Court suggested that if the Kentucky court disagrees with its findings and comes to the "wrong decision", it would step in and issue an AEI.<sup>118</sup> The Court even went as far as to say an AEI "might well" be issued on the facts if remedies in Kentucky were exhausted.<sup>119</sup>

The key difference between the approach in *Amchem* and *Magomedov*, and that in *Kea*, is that *Kea* is concerned with the substantive outcome that the foreign court reaches. Only if the foreign court reaches the same decision as the New Zealand court will its adjudicatory authority be recognised.<sup>120</sup> After all, the underlying reason why the Court was happy to defer to the Kentucky Courts to remedy the situation was that it viewed *Kea*'s appeal to be compelling on the merits under Kentucky law.<sup>121</sup> Fundamentally, an approach to deference based solely on the

---

<sup>113</sup> See *Barclays*, above n 87, at 762; *Deutsche Bank*, above n 19, at [56]; and Rapheal (2nd ed), above n 95, at [5.45].

<sup>114</sup> See Rapheal (2nd ed), above n 95, at [5.46]; and see also *Salgaocar v Jitendra* [2019] SGCA 42, [2019] 2 SLR 372 at [99]–[105].

<sup>115</sup> See further Section IV(A)(2).

<sup>116</sup> *The Angelic Grace*, above n 23, at 95 per Leggatt LJ.

<sup>117</sup> *Kea* (CA Judgment), above n 3, at [211(d)].

<sup>118</sup> The Court's characterisation of needing to "keep their powder dry" until remedies have been exhausted in Kentucky echoes a similar sentiment, see *Kea* (CA Judgment), above n 3, at [194].

<sup>119</sup> At [183].

<sup>120</sup> Compare the Eastern District of Kentucky Bankruptcy Court's characterisation of the New Zealand injunctions. *Re Wikeley Family Trustee Ltd (in liq) (foreign debtor)* Bankr ED Ky Lexington 23–50420, 15 May 2024 at 14: "Issuance of the New Zealand High Court Injunction, as extended, did not run afoul of any fundamental principle of the law and policies of the United States". This comes despite the Court expressly noting that it was not relying on the New Zealand Court's findings of fact.

<sup>121</sup> *Kea* (CA Judgment), above n 3, at [184].

foreign court reaching the same outcome as the domestic court does not align with comity's recognition that different legal systems can legitimately arrive at different decisions.<sup>122</sup>

However, it does not follow that a domestic court should not adjudicate on a matter that a foreign court is also adjudicating on except for in "exceptional cases". It is entirely possible that a domestic court and foreign court both view that they are the appropriate forum for a dispute.<sup>123</sup> While parallel proceedings are undesirable, they can be managed and, more importantly, they do not interfere with the adjudicatory authority of the foreign court.<sup>124</sup> Additionally, an entirely deferential approach could lead to the arbitrary position where the decisive factor is whichever country's court has an earlier trial date.<sup>125</sup> It is the further step of ordering an ASI that requires a more thorough analysis of comity, as is explored further in section IV.<sup>126</sup>

#### *D. Relegation through Wastage of Resources*

The comity concerns arising from an exhaustion requirement are exacerbated by the potential waste of resources in the foreign court. The longer the delay in bringing an application for an ASI, the greater the force of comity weighs against relief.<sup>127</sup> Ordering relief frustrates the proceedings that have gone before and renders the resources used wasted. A requirement to exhaust remedies in a foreign court only increases the potential waste as more proceedings are required to take place. If a New Zealand court intends to disregard the waste, an exhaustion requirement would further relegate the foreign court by implying that the resources used in the New Zealand proceedings are more important than those used overseas. Alternatively, where the wastage in the foreign court is considered and weighs against ordering an ASI, there is greater incentive for forum shopping.<sup>128</sup> In this case, ASI applicants are effectively put in a

---

<sup>122</sup> *Deutsche Bank*, above n 19, at [50(5)]; and see *Barclays*, above n 87, at 762.

<sup>123</sup> *Deutsche Bank*, above n 19, at [50(5)–(6)] and [63]; and *Airbus*, above n 6, at 132–133.

<sup>124</sup> See, for example, *Golubovich v Golubovich* [2010] EWCA Civ 810, [2011] Fam 88 at [95]–[96]; *Kemsley*, above n 105, at [41]–[42] and [47] as cited in *Stichting Shell*, above n 102, at [40]; and *AXA Corporate Solutions Assurance SA v Weir Services Australia Pty Ltd* [2016] EWHC 904 (Comm), [2016] Lloyd's Rep IR 578 at [44]–[51].

<sup>125</sup> *Salgaocar*, above n 114, at [103]; and *Deutsche Bank*, above n 19, at [118].

<sup>126</sup> Section IV(A)(2).

<sup>127</sup> *Ecobank*, above n 94, at [132]–[137] as cited in Dickinson, above n 10, at 84; and see further Section IV(B).

<sup>128</sup> Forum shopping is where a party chooses a forum for some juridical advantage such as the application of a particular domestic law, see Andrew S Bell *Forum Shopping and Venue in Transnational Litigation* (Oxford University Press, Oxford, 2003).

“Catch-22”, as they are required to expend resources overseas which then may weigh against the New Zealand court ordering an ASI.<sup>129</sup>

In *Kea*, the issue of wastage is evident. The Court of Appeal considered that an AEI “might well” be issued on the facts if *Kea*’s remedies were exhausted.<sup>130</sup> *Kea* had adduced expert evidence that there was a “real danger” that the default judgment would not be corrected on appeal.<sup>131</sup> An exhaustion requirement could condemn *Kea* to further appeals and more costs. Consequently, if *Kea* had to come back to the New Zealand courts later, the effects of comity would loom even larger.

Ultimately, a strict requirement to defer to the foreign court is not reconcilable with comity. While such a requirement purportedly recognises the adjudicatory authority of the foreign court, it merely perpetuates the “judicial lack of confidence [in foreign courts]... that was the undoing of the whole [ASI] industry” by implicitly asserting the superiority of New Zealand courts.<sup>132</sup> This concern is exacerbated when considering that any ASI or AEI would come at the cost of a greater wastage of a foreign judiciary’s resources.

---

<sup>129</sup> Compare *Kea* (CA Judgment), above n 3, at [194] where the Court of Appeal characterised *Kea*’s use of the New Zealand forum as opportunistic.

<sup>130</sup> *Kea* (CA Judgment), above n 3, at [183].

<sup>131</sup> At [184]; and see further Section IV(A)(3).

<sup>132</sup> Briggs, above n 61, at 533. Professor Briggs’ statement regards the European Court of Justice’s decision rejecting the availability of ASIs between European Union member states, see Case C-159/02 *Turner v Grovit* [2004] ECR I-3565.

### III. *The Important Role of Forum Non Conveniens*

Consider a case where multiple jurisdictions could resolve the dispute between the parties. A, a Ruritanian company, alleges that its contractor X, a New Zealand citizen engaged under a contract governed by Ruritanian law, had defrauded them by inflating invoices.<sup>133</sup> Assuming that the claim can be heard by both courts, the question then becomes whether a New Zealand or a Ruritania court *should* hear the claim. Forum non conveniens is the inquiry which resolves this question.<sup>134</sup>

The first step in this inquiry is determining the “natural forum”. This is the forum with the “most real and substantial” connection to the dispute.<sup>135</sup> In its simplest form, this step focuses on the connections between the litigation and the domestic court.<sup>136</sup> Relevant factors in this step of the analysis include, inter alia, where the conduct occurred, the location of the parties and the applicable law.<sup>137</sup> Considering the above example, it is arguable that New Zealand is the natural forum as that is where the false invoices were produced. It is also arguable that as the loss was incurred in Ruritania and the applicable law of the contract is Ruritanian, Ruritania is the natural forum.

If New Zealand is not the natural forum, the second step provides that New Zealand may be the appropriate forum if “there are circumstances by reason of which justice requires” that the New Zealand court should nevertheless exercise jurisdiction.<sup>138</sup> Assuming for our purposes there is no legitimate juridical or personal advantage in the New Zealand courts, nothing in this example would engage this step.<sup>139</sup> At the conclusion of the forum non conveniens inquiry the proceedings either continue, if New Zealand is the appropriate forum, or, if not, are stayed.<sup>140</sup>

While forum non conveniens and ASIs both often seek to determine which forum should hear a claim, they are not two sides of the same coin and are governed by different principles.<sup>141</sup> Namely, comity plays a much larger role in the ASI inquiry due to the indirect interference with

---

<sup>133</sup> Loosely based on *Americhip Inc v Dean* [2015] NZHC 700, [2015] 3 NZLR 498.

<sup>134</sup> Hook and Wass, above n 26, at [2.250].

<sup>135</sup> *Spiliada Maritime Corp v Cansulex Ltd* [1987] AC 460 (HL) [*The Spiliada*] at 478.

<sup>136</sup> *Four Seasons Holdings Incorporated v Brownlie* [2017] UKSC 80, [2018] 1 WLR 192 at [31] per Lord Sumption.

<sup>137</sup> Hook and Wass, above n 26, at [2.263].

<sup>138</sup> *The Spiliada*, above n 135, at 478; and see further Hook and Wass, above n 26, at [2.291]–[2.304].

<sup>139</sup> *The Spiliada*, above n 135, at 482.

<sup>140</sup> Hook and Wass, above n 26, at [2.370].

<sup>141</sup> *Allstate Life Insurance Co v Australia & New Zealand Banking Group Ltd (No 2)* (1996) 64 FCR 44 at 52; and *CSR Ltd v Cigna Insurance Australia Ltd* (1997) 189 CLR 345 at 390.

the foreign court.<sup>142</sup> Nevertheless, the orthodox position in ASIs has been that it is a general requirement for a domestic court to be the natural forum before it should issue an ASI.<sup>143</sup> On this issue, the Court of Appeal in *Kea* adopted the analysis of Professor Dickinson, and questioned:<sup>144</sup>

...whether there is any value in borrowing the concept of the ‘natural forum’ or the principle of forum conveniens more generally from the set of rules governing questions of personal jurisdiction in order to answer a question concerning the legitimacy of judicial interference with the affairs of a foreign sovereign State.

The subsequent analysis illustrates the Court’s reasoning is best understood as a restatement of the orthodox position. The Court’s hesitancy with the natural forum inquiry in the ASI context arises from the tendency in the case law to conflate the natural forum and comity analyses, leading to cases where comity is not given sufficient weight.<sup>145</sup> To this end, the Court’s passage emphasises the need for courts to separate the two analyses in determining whether to issue an ASI, a task which the Court itself undertakes.

It is necessary to separate the natural forum and comity analyses as natural forum is usually a necessary but *not* sufficient condition for whether a court should exercise jurisdiction to issue an ASI.<sup>146</sup> In cases where an ASI is sought on the basis that the domestic court should be hearing the dispute, a determination that the domestic court should be hearing the dispute under a natural forum analysis is necessary. This is not the case in *Kea*; the Court’s findings of fraud meant that there should have never been a claim against *Kea* for breach of contract. By extension, no court of any country ever needed to hear the claim. However, it remains important that New Zealand, rather than a third country, is the natural forum to issue an ASI. While a necessary condition, comity mandates that New Zealand being the natural forum cannot be a sufficient condition. This is because it is not for a court to arrogate to itself the decision on which court should hear the claim.

---

<sup>142</sup> Section III(B).

<sup>143</sup> *Airbus*, above n 6, at 138. Notably, Lord Goff left aside ASIs based on a breach of jurisdiction agreement, see further *UniCredit Bank GmbH v RusChemAlliance LLC* [2024] UKSC 30, [2024] 3 WLR 659 at [73]–[75].

<sup>144</sup> Dickinson, above n 10, at 87 (footnotes excluded) as cited in *Kea* (CA Judgment), above n 3, at [174].

<sup>145</sup> Richard Fentiman “Comity and Anti-Suit Injunctions” (1998) 57 CLJ 467 at 468.

<sup>146</sup> *Glencore International AG v Exter Shipping Limited and others* [2002] EWCA Civ 528, [2002] 2 All ER (Comm) 1 at [42]; *Deutsche Bank*, above n 19, at [50(4)]; and Trevor Hartley “*Soci t  Nationale Industrielle A rospatiale v Lee Kui Jak* (1987)” in William Day and Louise Merret (eds) *Landmark Cases in Private International Law* (Hart Publishing, Oxford, 2023) 273 at 281. In *Airbus*, above n 6, at 140 Lord Goff noted there may be some “extreme” cases where natural forum would be not be a necessary requirement as “the conduct of the [foreign] state is such as to deprive it of the respect normally required by comity”, see further *Magomedov*, above n 106, at [94]–[103].

### A. Natural Forum as a Necessary Condition to Exercise Jurisdiction

There are two situations where a domestic court is asked to issue an ASI:<sup>147</sup>

- (1) Where a party is asking the domestic court to hear the dispute instead of the foreign court; and
- (2) Where a party does not intend to undertake domestic proceedings and is simply trying to prevent the foreign proceedings from going ahead.

In the first category, it is important that the domestic court is the appropriate forum to hear the substantive claim before ordering an ASI giving effect to that exact purpose. This holds true even though the mere existence of proceedings on the same dispute in another jurisdiction is itself not sufficient for an ASI.<sup>148</sup> As Rix LJ proclaimed in *Glencore International AG v Exter Shipping Ltd*:<sup>149</sup>

...an injunction must be necessary to protect the applicant's legitimate interest in English proceedings; he must be a party to litigation in this country at which the unconscionable conduct of the party to be restrained is directed, and so there must be a clear need to protect existing English proceedings.

In the second category of cases, there is no need to assess whether the domestic court is the appropriate forum to determine a claim that has been brought in the foreign court. However, the domestic court still needs to be the natural forum to issue an ASI, as opposed to the courts of a third country.<sup>150</sup> To ignore such a requirement would turn the domestic court into an “international [police officer]”.<sup>151</sup>

This concern in the second category of cases is best brought to light by the House of Lords’ decision in *Airbus Industrie GIE v Patel*.<sup>152</sup> In *Airbus*, following a plane crash in India, heirs

---

<sup>147</sup> This reflects the taxonomy of “alternative forum” and “single forum” cases originating in *British Airways*, above n 8, at 80 per Lord Diplock. While some case law suggests that comity plays a different role in each category, this has rightly been criticised as the distinction focuses on the availability of a cause of action in the foreign court rather than the court’s ability to resolve the dispute between the parties, see, for example, Adrian Briggs “Anti-suit Injunctions in a Complex World” in Francis Rose (ed) *Lex Mercatoria: Essays in International Commercial Law in Honour of Francis Reynolds* (LLP, London, 2000) 219 at 240–242; *Dicey*, above n 1, at [12–136]–[12–137]; and Dickinson, above n 10, at 86.

<sup>148</sup> *Dicey*, above n 1, at [12–132].

<sup>149</sup> *Glencore*, above n 146, at [42] (footnotes omitted); and see also *Turner v Grovit* [2001] UKHL 65, [2002] 1 WLR 107 at [27] per Lord Hobhouse. This statement is best interpreted as being limited to cases where there are concurrent proceedings instead of a general statement of law, see *Dicey*, above n 1, at [12–135].

<sup>150</sup> *Shell International Petroleum Co Ltd v Coral Oil Co Ltd* [1999] 2 Lloyd’s Rep 606 (QB) at 610(4); and compare Richard Fentiman “Enforcing foreign arbitration agreements” (2025) 84 CLJ 47 at 47–48.

<sup>151</sup> *Airbus*, above n 6, at 131.

<sup>152</sup> *Airbus*, above n 6; and see further Edwin Peel “Anti-suit injunctions - the House of Lords declines to act as international policeman” (1998) 114 LQR 543.

of British passengers brought proceedings against the airplane manufacturer in Texas.<sup>153</sup> Airbus successfully obtained a declaration from an Indian court that the passengers were only entitled to bring proceedings in India.<sup>154</sup> However, as the passengers were not amenable to the Indian jurisdiction, the Indian judgment could not be enforced against them.<sup>155</sup> Accordingly, Airbus sought an ASI from the English courts. Lord Goff ultimately held that as India was the natural forum for the substantive dispute, it was not for the English courts to issue an ASI.<sup>156</sup>

While *Airbus* falls within the first category of claims as there was an ongoing dispute that England was not the natural forum for, the case elucidates a wider point. The Court's underlying concern was that an English court should not be able to issue an ASI merely because there was misconduct in commencing foreign proceedings. If a court of a third country is better placed to order an ASI, it is not the role of the English court to intervene, even if the third country's court is powerless to do so itself.<sup>157</sup> If the court did have the power order an ASI then the court would become an "international [police officer]".<sup>158</sup> As Lord Goff recognised, this concern is not limited only to cases where there is an ongoing dispute. Accordingly, the requirement that the domestic court needs to be the natural forum of *the substantive dispute* was framed as a "general rule" that was "not [to] be interpreted too rigidly".<sup>159</sup>

This wider relevance of this concern can be seen in cases where the natural forum of the substantive dispute is undetermined. Two examples illustrate this point. Firstly, in *Shell International Petroleum Co Ltd v Coral Oil Co Ltd*, the Court was unable to determine whether England or Lebanon was the natural forum for the substantive claim but had "little doubt" that England was the natural forum for determining whether to issue an ASI.<sup>160</sup> Secondly, in *Magomedov*, the Court had not yet delivered judgment on whether England was the natural forum for the substantive dispute.<sup>161</sup> However, the Court granted an AASI, stating that England

---

<sup>153</sup> *Airbus*, above n 6, at 127.

<sup>154</sup> At 127–128.

<sup>155</sup> At 128.

<sup>156</sup> At 141.

<sup>157</sup> Compare Peel, above n 152, at 544–545.

<sup>158</sup> *Airbus*, above n 6, at 131. In contrast, English courts have been called international police officers in the context of ASIs issued in violation of arbitration agreements, where the natural forum requirement has been eschewed, see Ugljesa Grusic "UK Supreme Court Confirms the Role of English Courts as the World's Arbitral Policemen" (23 September 2024) The European Association of Private International Law <<https://eapil.org/>>; and *UniCredit*, above n 143, at [73]–[75].

<sup>159</sup> *Airbus*, above n 6, at 140.

<sup>160</sup> *Shell*, above n 150, at 610(4); see also *SAS Institute*, above n 111, at [109]–[110]; *Owners of the Ship "Al Khattiya" v Owners and/or Demise Charterers of the Ship "Jag Laadki"* [2018] EWHC 389 (Admlty), [2018] 2 Lloyd's Rep 243 at [110]; and Raphael (2nd ed), above n 95, at [5.22] fn 65.

<sup>161</sup> *Magomedov*, above n 106, at [71]–[74].

did not need to be the natural forum *of the substantive dispute* to issue an AASI.<sup>162</sup> The decisive factor in the Court’s reasoning was that the foreign ASI was intended to prevent the English Court from determining whether it was the natural forum of the substantive dispute.<sup>163</sup> While the Court did not adopt the specific language,<sup>164</sup> this reasoning implies that England was the natural forum to issue an AASI. In essence, it was undetermined whether England was the natural forum of the substantive dispute, however, the *potential* for England to be the natural forum of the substantive dispute meant that England was the natural forum *to issue an AASI*.

This underlying concern further applies to the second category of cases, where the question of which court is the natural forum for the substantive dispute does not arise. In these cases, the ASI applicant is fundamentally arguing that the foreign proceedings should not have been brought in the first instance. Accordingly, the question of natural forum can only arise in respect of which court should hear the claim for an ASI. This is the situation in *Kea*. The finding accepted by the Court of Appeal, that Mr Wikeley had committed an international conspiracy by enforcing a fraudulent contract, boils down to the position that the litigation should have never existed in the first instance.<sup>165</sup> Nevertheless, in both the High Court and Court of Appeal the Court considered the issue of whether New Zealand was the natural forum to hear the tortious conspiracy claim and by extension the natural forum to give relief, in the form of an AEI, in respect of that claim.<sup>166</sup> On the issue, the Court of Appeal upheld the decision of the High Court that New Zealand was the natural forum.<sup>167</sup> The Courts reasoned that New Zealand law governed the conspiracy claim,<sup>168</sup> the key witnesses had long-standing ties to New Zealand,<sup>169</sup> and that a New Zealand court had a “greater interest in regulating the conduct of WFTL, a New Zealand company acting as trustee of a New Zealand trust”.<sup>170</sup>

---

<sup>162</sup> *Magomedov*, above n 106, at [90].

<sup>163</sup> At [90]–[92].

<sup>164</sup> As counsel submitted; the Court, respectfully, incorrectly took a too narrow reading of the academic source cited in support of this exact wording, see Rapheal (2nd ed), above n 95, at [5.61]–[5.62] as cited in *Magomedov*, above n 106, at [79]–[81].

<sup>165</sup> *Kea* (CA Judgment), above n 3, at [211(d)]; and *Kea* (Interim Injunction Judgment), above n 49, at [68]. This finding is not to be revisited in the Supreme Court, see *Kea Investments Ltd v Wikeley* [2025] NZSC 75, [2025] NZCCLR 522; and *Wikeley v Kea Investments Ltd* [2025] NZSC 76.

<sup>166</sup> *Kea* (CA Judgment), above n 3, at [147]–[161]; and *Kea Investments Ltd v Wikeley Family Trustee Ltd* [2023] NZHC 466 [*Kea* (Jurisdiction Judgment)] at [75]–[88]. The natural forum inquiry was also relevant in the Australian proceedings brought in aid of the New Zealand proceedings, as Mr Wikeley was in Australia, under the Trans-Tasman Proceedings Act 2010 (Cth), see *Kea Investments Ltd v Wikeley (No 2)* [2023] QSC 215, (2023) 381 FLR 372 at [154]–[230]; aff’d *Wikeley v Kea Investments Ltd* [2024] QCA 201.

<sup>167</sup> *Kea* (Jurisdiction Judgment), above n 166, at [88]; aff’d *Kea* (CA Judgment), above n 3, at [161].

<sup>168</sup> At [81]; aff’d at [158].

<sup>169</sup> At [85]; aff’d at [160].

<sup>170</sup> At [84]. The Courts also noted that it was doubtful whether Kentucky was even an available forum for *Kea*’s tortious conspiracy claim as the expert evidence suggested that the Kentucky courts may not have jurisdiction

The necessity of the natural forum requirement in a case such as *Kea* can be further seen by exploring an alternative factual matrix. Consider the case where all the natural parties were based in, and the non-natural incorporated or settled in, the British Virgin Islands (where *Kea* was incorporated). In such a situation, there is no reason for a New Zealand court, rather than a British Virgin Island court, to issue an AEI. To do so only constitutes a New Zealand court interfering in a dispute it has no interest in. The fact that the substantive dispute in the foreign court should not exist in any forum does not change the overall calculus.

*B. Natural Forum as an Insufficient Condition to Exercise Jurisdiction*

As seen in *Kea*, the natural forum inquiry places relevance on factors of litigation convenience, such as the parties' location and the applicable law.<sup>171</sup> The Court in *Kea* expressed concerns about how these factors are of little relevance in determining whether to interfere with the adjudicatory authority of a foreign court.<sup>172</sup> This criticism is well founded. As recognised in the leading English judgment on ASIs, *Soci t  Nationale Industrielle Aerospatiale v Lee Kui Jak (SNI Aerospatiale)*, it is part of why the domestic court being the natural forum is not sufficient to order an ASI.<sup>173</sup>

In *SNI Aerospatiale* Lord Goff had the difficult task of clawing back the bounds of the jurisdiction to issue ASIs.<sup>174</sup> This came after a previous House of Lords decision had held that the principles governing ASIs and forum non conveniens were symmetrical. As such, ASIs could be granted if the English court considered itself to be the natural forum for a dispute and there was no legitimate personal or juridical advantage that could be gained from the foreign proceedings.<sup>175</sup> Lord Goff correctly identified that this decision was inconsistent with comity, which requires English courts to recognise that foreign courts can legitimately arrive at different decisions on which forum should exercise jurisdiction to hear the claim. His Lordship reasoned that by issuing an ASI based on a “[simple] differing of opinion”, the English court would unjustifiably “arrogate to itself” the power to resolve the jurisdictional question to the domestic court.<sup>176</sup> Accordingly, his Lordship held that there must be a sufficient legal basis to

---

over Mr Wikeley, Mr Watson or WFTL, see *Kea* (Jurisdiction Judgment) above n 166, at [83]; aff'd *Kea* (CA Judgment), above n 3, at [156].

<sup>171</sup> Section III(A).

<sup>172</sup> *Kea* (CA Judgment), above n 3, at [174] fn 151.

<sup>173</sup> *SNI Aerospatiale*, above n 6. See also *Dicey*, above n 148, at [12–134].

<sup>174</sup> At 895.

<sup>175</sup> *Castanho v Brown & Root (UK) Ltd* [1981] AC 557 (HL) at 574–575 as cited in *SNI Aerospatiale*, above n 6, at 895.

<sup>176</sup> At 895; and see further Thomas Raphael “Do as you would be done by? System-transcendent justification and anti-suit injunctions” [2016] LMCLQ 256 at 260–261.

order relief in addition to the domestic court being the natural forum, such as “vexation or oppression”.<sup>177</sup> His Lordship later clarified in *Airbus* that to ensure adherence to comity, the court must also have “sufficient interest” to order an ASI.<sup>178</sup> This inquiry, which assesses the court’s power to adjudicate on the matter before it, is discussed further in section IV.<sup>179</sup>

### *C. Separating the Natural Forum and Comity Analyses*

As natural forum is not a sufficient condition, it should not be treated as one and conflated with the comity analysis. Accordingly, the natural forum and comity analyses should be separate to ensure the latter is given sufficient weight. In the comity inquiry, as the Court of Appeal in *Kea* correctly identifies:<sup>180</sup>

...the focus should be on the matters relied on to support and oppose the injunction, not on the suitability of New Zealand as a forum for the injunction defendant’s substantive claims.

The central conclusion is therefore that the Court of Appeal’s comment cannot be read as a categorical rejection of the natural forum inquiry in the ASI context. It is an affirmation of the orthodox position that the inquiry is a necessary but not sufficient condition. Indeed, the Court of Appeal in *Kea* considered whether New Zealand was the natural forum to issue an AEI.<sup>181</sup> This conclusion accords with the analysis of Professor Dickinson that the Court adopted, where he recognises that:<sup>182</sup>

[o]f course, the court may act only if it has personal jurisdiction over the defendant, and the principle of forum conveniens will often be relevant to that question.

Ultimately, the Court of Appeal adheres to its own advice. The question of whether the Court should exercise its jurisdiction to issue an ASI is well separated from the natural forum analysis, with an entire section of the judgment being dedicated to the issue.<sup>183</sup> The next question then is whether fraud can meet the concerns of comity.

---

<sup>177</sup> *SNI Aerospatiale*, above n 6, at 896.

<sup>178</sup> *Airbus*, above n 6, at 138.

<sup>179</sup> Section IV(A)(2).

<sup>180</sup> *Kea* (CA Judgment), above n 3, at [174]; and see *CSR*, above n 141, at 397 as cited in Dickinson, above n 10, at 87.

<sup>181</sup> At [147]–[161].

<sup>182</sup> Dickinson, above n 10, at 87 fn 90.

<sup>183</sup> *Kea* (CA Judgment), above n 3, at [162]–[195].

#### IV. *Fraud & “Sufficient Interest”*

Lord Bingham once proclaimed that “fraud is a thing apart”.<sup>184</sup> While there is no overarching civil claim of fraud, conduct described as fraudulent typically involves some form of deliberate falsehood and many common law causes of action have developed to combat this publicly condemned behaviour.<sup>185</sup> The internationalisation of global economies and development of new technologies have led to a rise in cross-border fraud,<sup>186</sup> and private international law is an important tool in stemming its growth.<sup>187</sup> However, where cross-border fraud involves defrauding a foreign court, the question of comity looms large.

This concern underpinned the Court of Appeal’s reasoning in *Kea*. Fraud was evidently a sufficient basis to order relief, as the Court upheld the High Court’s award of damages for overseas legal costs and left the interim liquidators of WFTL in place.<sup>188</sup> However, the Court was unconvinced that fraud, on its own, could meet the countervailing comity considerations necessary to warrant exercising its discretion to issue an AEI.<sup>189</sup> The Court had two objections. Firstly, whether a fraud has occurred is a matter that the Kentucky Court can, and should, determine on its own.<sup>190</sup> Secondly, as fraud typically becomes known once a judgment has been delivered,<sup>191</sup> the anti-enforcement nature of injunctions based on fraud was more concerning in comity terms as it interfered with a final judgment instead of the adjudicatory authority of the foreign court.<sup>192</sup>

This section addresses those concerns and argues that an AEI should have been ordered, based on two propositions. Firstly, fraud committed in a foreign court can be a sufficient basis for an injunction. While comity remains a counteracting force, it does not prevent a domestic court from acting to prevent international fraud in all cases. More broadly, whether a New Zealand

---

<sup>184</sup> *HIH Casualty and General Insurance Ltd v Chase Manhattan Bank* [2003] UKHL 6, [2003] 1 All ER (Comm) 349 at [16] per Lord Bingham as cited in *Kea Investments Ltd v Wikeley* [2025] NZHC 2387 [*Kea* (Beneficiaries Injunction Judgment)] at [57].

<sup>185</sup> Stephen Todd “Deliberate Falsehoods” in Stephen Todd (ed) *Todd on Torts* (9th ed, Thompson Reuters, Wellington, 2023) at [14.1].

<sup>186</sup> See, for example, Mark Button and others “Policing cross-border fraud ‘Above and below the surface’: mapping actions and developing a more effective global response” (2025) 83 CL&SC 5.

<sup>187</sup> Compare *Crédit Suisse Fides Trust SA v Cuoghi* [1998] QB 818 (CA) at 827 per Millett LJ.

<sup>188</sup> *Kea* (CA Judgment), above n 3, at [196]–[197] and [202]–[203]. This was without the need to use the title of “vexatious or oppressive”, compare Dickinson, above n 10, at 101.

<sup>189</sup> At [191].

<sup>190</sup> At [191].

<sup>191</sup> Accordingly, any anti-suit relief given ordered in response to fraud will typically be an AEI, see *Ellerman Lines Ltd v Read* [1928] 2 KB 144 (CA); *Bank St Petersburg OJSC v Arkhangelsky* [2014] EWCA Civ 593, [2014] 1 WLR 4360; *Commercial Bank of Dubai PSC and others v Al Sari and others* [2025] EWHC 1810 (Comm); and *Federal Government of Nigeria and another v Williams* [2025] EWHC 2217 (Comm).

<sup>192</sup> *Kea* (CA Judgment), above n 3, at [187].

court has “sufficient interest” necessary to order an ASI is a matter which requires consideration of, inter alia, the court’s connection to the dispute, or its role in preventing wrongdoing by the injunction defendant, and the countervailing force of comity.<sup>193</sup> Secondly, AEIs and ASIs are, as a matter of substance, the same order. Additional comity concerns are solely a result of further waste of resources, which can be overcome on the facts of *Kea*.

#### *A. Of Comity and Connection*

The Court of Appeal’s primary objection was that the issues pertaining to whether a fraud had occurred should be heard by the Kentucky Court.<sup>194</sup> Particularly, the Court felt:<sup>195</sup>

...compelled to ask, if the relevant issues are assumed to be:

- (a) is the Coal Agreement an authentic or a fabricated document;
- (b) if authentic, was it entered into in breach of fiduciary duty by Mr Dickinson;
- (c) if so, is knowledge of that attributable to Mr Wikeley; and
- (d) was it, in any event, intended to be a binding agreement;

why it should be considered vexatious or oppressive for these issues to be addressed in a United States court with all of the advanced legislative and common law apparatus available to it to do justice between the parties?

The following analysis demonstrates that in cases of international fraud, the relevant factors in determining whether a domestic court can adjudicate and issue relief are comity and connection. On this basis, the answer to the Court’s question is found in the substance of *Kea*’s claim. Namely, the Court has a strong interest in preventing WFTL, a New Zealand company under the enforcement jurisdiction of the New Zealand courts, from fraudulently procuring a judgment with worldwide effects. To this end, and consistently with comity, an AEI acts as a warning about the presence of fraud to the Kentucky courts.

#### *1. General Principles of Comity and Connection*

Consider a dispute between two siblings, both living in New Zealand, about ownership of their family land in Ireland. Both siblings are subject to the in personam jurisdiction of the New

---

<sup>193</sup> While Professor Dickinson treats “sufficient interest” as a facet of whether an ASI is “convenient”, as New Zealand does not have legislation comparable to the Senior Courts Act 1981 (UK), s 37(1) “sufficient interest” is used to describe the same overarching inquiry, see Dickinson, above n 10, at 86–87.

<sup>194</sup> *Kea* (CA Judgment), above n 3, at [194].

<sup>195</sup> At [191].

Zealand court as they are present in New Zealand. However, there is a second question to decide whether the court has jurisdiction over the dispute, one based upon comity and connection.<sup>196</sup> While taking various forms,<sup>197</sup> the inquiry evaluates the court's power to decide the matter before it, rather than whether it has personal jurisdiction over the parties.<sup>198</sup> In the present example, a New Zealand court generally will not adjudicate claims concerning foreign land.<sup>199</sup> This limitation on the court's power to adjudicate is underpinned by connection and comity.<sup>200</sup> Generally, the more connected the dispute is to the foreign forum, the heavier the weight of comity, and by extension, the stronger the connection between the dispute and the domestic forum is required.<sup>201</sup> Cases of international fraud are no exception. In these cases, courts have grappled with the balancing exercise between comity and connection in shaping the limits of their powers. This is evident in cases regarding freezing orders in support of foreign proceedings, the defence of fraud to the enforcement of foreign judgments and adjudicating abuse of process claims regarding a foreign court.

A *Mareva* injunction,<sup>202</sup> now known as a “freezing order”, prevents the injuncted from “removing any assets located in or outside New Zealand or from disposing of, dealing with, or diminishing the value of, those assets”.<sup>203</sup> The purpose of these injunctions is to protect enforcement of a judgment by ensuring sufficient assets are present to meet it.<sup>204</sup> No questions of comity typically arise in the case of domestic freezing orders in aid of foreign proceedings. In fact, comity requires “trust and confidence” on the assumption that the foreign court is seeking the common interest of administering justice.<sup>205</sup> To the extent that combatting

---

<sup>196</sup> In contrast, *forum non conveniens* is a question of whether a court should exercise jurisdiction, see Section III.

<sup>197</sup> For example, “subject-matter jurisdiction”, “prescriptive jurisdiction”, “extraterritoriality”, “territorial scope” and “long-arm jurisdiction”. See Maria Hook “The ‘statutist trap’ and subject-matter jurisdiction” (2017) 13 J Priv Int L 435 at 446; and *Soci t  Eram Shipping Co Ltd v Cie Internationale de Navigation* [2003] UKHL 30, [2004] 1 AC 260 at [22]–[23] per Lord Bingham. In the ASI context, “sufficient interest” has been used, see *Airbus*, above n 6, at 138; and *Fentiman*, above n 21, at [16.33]–[16.34].

<sup>198</sup> *MacKinnon v Donaldson Lufkin and Jenrette Securities Corpn* [1986] Ch 482 (Ch) at 493 per Hoffman J.

<sup>199</sup> *British South Africa Co v Companhia de Mo ambique* [1893] AC 602 (HL).

<sup>200</sup> See, for example, *Masri v Consolidated Contractors International Co SAL (No 2)* [2008] EWCA Civ 303, [2009] QB 450 at [35] per Lawrence Collins LJ; *Lucasfilm Ltd v Ainsworth* [2011] UKSC 39, [2012] 1 AC 208 at [56]; James Crawford *Brownlie's Principles of Public International Law* (9th ed, Oxford University Press, Oxford, 2019) at ch 21; and Alberto Costi (ed) *Public International Law: A New Zealand Perspective* (LexisNexis, Auckland, 2020) at 362.

<sup>201</sup> See *Masri (No 2)*, above n 200, at [31]–[36] and [59]–[60]; *Deutsche Bank*, above n 19, at [50(5)]; and *Airbus*, above n 6, at 138.

<sup>202</sup> Initially named after *Mareva Compania Naviera SA v International Bulkcarriers SA* [1975] 2 Lloyd's Rep 509 (CA).

<sup>203</sup> High Court Rules 2016, r 32.2(2).

<sup>204</sup> *Broad Idea International Ltd v Convoy Collateral Ltd* [2021] UKPC 24, [2023] AC 389 at [86] per Lord Leggatt with whom Lord Briggs, Lord Sales and Lord Hamblen agreed.

<sup>205</sup> Adrian Briggs “The Principle of Comity in Private International Law” (2012) 354 *Recueil des Cours* 65 at 91; and *Ecobank*, above n 94, at [132].

international fraud is an accepted common interest in administering justice,<sup>206</sup> ordering domestic freezing orders in support of foreign proceedings can be seen as an act of comity.<sup>207</sup> Accordingly, in cases where a domestic court is supporting a foreign court in combatting cross border fraud, there is a wide scope for a domestic court to offer relief. The “real connecting link between the subject matter of the order sought and the territorial jurisdiction of the [domestic] court”<sup>208</sup> needed to make an order is met either where the prospective judgment debtor has assets in the domestic forum or the prospective judgment debtor is present in the domestic forum.<sup>209</sup> Additionally, the law has departed from the traditional position that a potential substantive domestic cause of action was required for a freezing order to be ordered in support of foreign proceedings.<sup>210</sup>

The defence of fraud to the enforcement of foreign judgments is another instance where a domestic court is involved in combatting international fraud. While courts go through the ritual incantation of the principle that foreign judgments are not to be impeached on their merits,<sup>211</sup> they are willing to depart from this principle in cases of fraud.<sup>212</sup> The connection to the domestic forum is evident. The judgment creditor is often asking the court to exercise its enforcement jurisdiction.<sup>213</sup> This strong connection to the domestic forum,<sup>214</sup> combined with the specific policy of preventing fraud, outweighs the general goal of finality of litigation.<sup>215</sup> Although some comity concerns have been raised about the mechanics of the rule, namely that

---

<sup>206</sup> See, for example, Lawrence Collins “Fraudulent Conduct in International Law” (1989) 42 CLP 255.

<sup>207</sup> See *Mercedes-Benz AG v Leiduck* [1996] AC 284 (PC) at 305–306 per Lord Nicholls; and Lawrence Collins “The Siskina again: an opportunity missed” (1996) 112 LQR 8 at 8.

<sup>208</sup> High Court Rules, r 32.5(3)(c); and Case C-391/95 *Van Uden Maritime BV v Firma Deco-Line* [1998] ECR I-7091 at [48].

<sup>209</sup> Hook and Wass, above n 26, at [3.182]; and *Dicey*, above n 1, at [10–048].

<sup>210</sup> High Court Rules, pt 32; and *Broad Idea*, above n 204, at [90] overturning *Siskina (Cargo Owners) v Distos Cia Naviera SA* [1979] AC 210 (HL) at 256. This has left the law in the United Kingdom “essentially the same” as in New Zealand, see *Huang v Huang* [2024] NZCA 5, [2024] 2 NZLR 376 at [75]. The position is the same in Australia, see *Patrick Stevedores Operations No 2 Pty Ltd v Maritime Union of Australia* [1998] HCA 30, (1998) 195 CLR 1; and *PT Bayan Resources TBK v BCBC Singapore Pte Ltd* [2015] HCA 36, (2015) 258 CLR 1.

<sup>211</sup> *Godard v Gray* (1870) LR 6 QB 139 (QB) at 150.

<sup>212</sup> *Abouloff v Oppenheimer & Co* (1882) 10 QBD 295 (CA).

<sup>213</sup> See *Société Eram*, above n 197, at [26] per Lord Bingham; and *Taurus Petroleum Ltd v State Oil Company of the Ministry of Oil, Republic of Iraq* [2017] UKSC 64, [2018] AC 690 at [29].

<sup>214</sup> *Société Eram*, above n 197, at [54] per Lord Hoffman; and *SAS Institute*, above n 111, at [64]–[65].

<sup>215</sup> See *Commissioner of Inland Revenue v Redcliffe Forestry Venture Ltd* [2012] NZSC 94, [2013] 1 NZLR 804 at [34]; and Briggs, above n 16, at [34.28].

there is no requirement for fresh evidence,<sup>216</sup> there has never been any suggestion that the defence should not exist.<sup>217</sup>

Courts also engage with international fraud in tortious claims alleging abuse of process or malicious prosecution in a foreign court. Malicious prosecution is where a party uses the legal process maliciously in bringing proceedings without reasonable cause.<sup>218</sup> Abuse of process differs as it requires the defendant to have an ulterior purpose outside the scope of their legal claim.<sup>219</sup> In substance, both causes of action when regarding foreign legal proceedings require a court to determine whether there has been a misuse of the foreign legal process. While not all cases implicate fraud, these torts can be used as alternatives to other traditional “fraud” causes of action such as deceit or conspiracy.<sup>220</sup> Relevantly, abuse of process was initially pleaded in *Kea* as an alternative to unlawful means conspiracy on the basis that WFTL used the Kentucky forum to seek an ulterior motive in the form of fraudulent financial and informational gain.<sup>221</sup>

Whether a court can adjudicate on these torts further tests the limits of comity and connection. Given that the courts’ processes complement their constitutional role, a role bestowed upon the courts by their sovereign,<sup>222</sup> comity weighs heavily against a foreign court adjudicating on them.<sup>223</sup> Hence, in some cases, courts have viewed the comity constraints as being too significant to ever allow a domestic court to adjudicate on a foreign court’s processes under these torts. In *W Nagel (a firm) v Pluczenik and others* the court observed (in obiter) that the court could not determine abuse of process claims regarding foreign proceedings.<sup>224</sup> Comity concerns underpinned this conclusion, as evident by the Court’s observation that “it is not for this court to police or to second guess the use of courts of or law in foreign jurisdictions”.<sup>225</sup> A

---

<sup>216</sup> *Altimo Holdings and Investment Ltd v Kyrgyz Mobil Tel Ltd* [2011] UKPC 7, [2012] 1 WLR 1804 at [115]–[116]; and JG Collier “Fraud still unravels foreign judgments” (1992) 51 CLJ 441. Limitations have been put on this rule in recognition of the comity concerns. For example, if the allegation of fraud has been unsuccessfully raised in a subsequent proceeding in the foreign court, an issue estoppel can arise, see *House of Spring Gardens Ltd v Waite (No 2)* [1991] 1 QB 241 (CA).

<sup>217</sup> See Hook and Wass, above n 26, at [5.223]; and Briggs, above n 94, at 142.

<sup>218</sup> Andru Isac “Abuse of Legal Procedure” in Stephen Todd (ed) *Todd on Torts* (9th ed, Thompson Reuters, Wellington, 2023) at [17.1]; and Jenny Steele “Malicious Prosecution and Malicious Abuse of Process” in Andrew Tettenborn (ed) *Clerk & Lindsell on Torts* (24th ed, Sweet & Maxwell, 2023) at [15–13].

<sup>219</sup> Isac, above n 218, at [17.5.2]; and Steele, above n 218, at [15–69].

<sup>220</sup> Compare Todd, above n 185, at [14.1].

<sup>221</sup> *Kea* (Interim Injunction Judgment), above n 49, at [50]–[62].

<sup>222</sup> Briggs, above n 205, at 91; and compare *R (on the application of UNISON) v Lord Chancellor* [2017] UKSC 51, [2020] AC 869 at [68].

<sup>223</sup> Compare *Société Eram*, above n 15, at [54] per Lord Hoffman; and Briggs, above n 205, at 149.

<sup>224</sup> *W Nagel (a firm) v Pluczenik and others* [2022] EWHC 1714 (Comm) at [96].

<sup>225</sup> At [97]. It has been suggested that these observations led to *Kea* dropping its abuse of process claim, see Maria Hook “A first for the NZ conflict of laws: court grants an (interim) anti-enforcement injunction” (March 13, 2023) *The Conflict of Laws in New Zealand: News and Comment* <<https://blogs.otago.ac.nz/conflicts/>>.

similar sentiment was echoed in New Zealand, where the High Court in *Mao v Buddle Findlay* commented that “claims about the appropriateness or otherwise of legal steps taken in China are matters to be determined before the Chinese courts”.<sup>226</sup>

However, these seemingly comprehensive statements go too far. Comity places “trust and confidence” in foreign courts, but this does not correspond to blind deference.<sup>227</sup> A domestic court can adjudicate consistently with comity where there is sufficient connection.<sup>228</sup> Whether a court has sufficient connection is ultimately a contextual assessment of the various connecting factors.<sup>229</sup> An important example is the engagement of the enforcement jurisdiction, either through the presence of the fraudulent party or as the situs of the property subject to the foreign proceedings. This provides connection to the domestic sovereign’s power, in the exercise of their enforcement jurisdiction.<sup>230</sup> This strong connection, in combination with the specific policy of preventing fraud is sufficient to overcome comity concerns. However, the enforcement jurisdiction is not the only factor,<sup>231</sup> further considerations include, inter alia, the practical effectiveness of an order, the strength of the case and the relative connection of the fora to the dispute beyond the foreign court being the locus of the fraud.<sup>232</sup> The core conclusion is that whether a court can hear a claim regarding the use of a foreign court for fraudulent ends requires an evaluation between the connection of the domestic forum to the dispute and the principles of comity.

## 2. *Application to Anti-Suit Relief: “Sufficient Interest”*

The wider scope of AEI’s means that applying the principles of comity and connection to the AEI context requires careful examination. An AEI can affect the enforceability of a judgment worldwide whereas, for example, a court’s refusal to enforce a judgment based on fraud only takes effect within New Zealand.<sup>233</sup> Fundamentally, the difference between the respective orders is the strength of comity. An AEI interferes with the foreign court’s constitutional role

---

<sup>226</sup> *Mao v Buddle Findlay* [2022] NZHC 521 at [51].

<sup>227</sup> Briggs, above n 205, at 91.

<sup>228</sup> See *Patel v Minerva Services Delaware, Inc and others* [2024] EWHC 172 (Ch), [2024] All ER (D) 38 (Feb) at [35]–[41] where the Court was unwilling to strike out claims for malicious prosecution and abuse of process regarding foreign proceedings as it was arguable that the torts could extend to foreign proceedings.

<sup>229</sup> See Hook, above n 197, at 449–450.

<sup>230</sup> See *Soci t  Eram*, above n 197, at [26] per Lord Bingham and [59] per Lord Hoffman; *SAS Institute*, above n 111, at [64]–[65] and [111]–[112]; and Hook and Wass, above n 26, at [2.17].

<sup>231</sup> Hook, above n 197, at 444–445.

<sup>232</sup> See *Commerce Commission v Viagogo AG* [2019] NZCA 472, [2019] 3 NZLR 559 at [91]; and compare *Ludgater Holdings Ltd v Gerling Australia Insurance Co Pty Ltd* [2010] NZSC 49, [2010] 3 NZLR 713 at [29].

<sup>233</sup> Briggs, above n 94, at 144.

of applying laws and determining disputes, a role bestowed upon them by its sovereign.<sup>234</sup> The interference means that comity concerns strongly weigh against anti-suit relief, as under international law neither a domestic court nor a domestic sovereign generally should interfere with the authority of a foreign sovereign.<sup>235</sup> In *Kea*, the Court of Appeal went as far as to say that an AEI would only be possible if comity was undermined.<sup>236</sup> However, whether a court has “sufficient interest”, the term used in the anti-suit relief context to describe this limitation on the court’s power, to order an AEI is a wider inquiry.<sup>237</sup> Comity must be considered against the strength of the connection between the domestic forum and the need for restraint.<sup>238</sup> Ultimately, no bright line can be drawn, however the strength of the connection must be significant.<sup>239</sup>

Nevertheless, the connection required to have “sufficient interest” does not need to be as strong if the force of comity has diminished.<sup>240</sup> This is where the assumption at the core of comity, that the foreign court is seeking the common interest of administering justice, has been rebutted.<sup>241</sup> The Court in *Kea* viewed that this presumption would only be rebutted if remedies in Kentucky had been exhausted, in which case an AEI could be grounded “in principles of natural justice and fair hearing rights”.<sup>242</sup> However, as discussed in section II, a strict requirement to defer is itself contrary to comity. Requiring deference where there is a successful fraud claim to which the court has significant connection is merely performative and does not align with the respect comity embodies. The Court is functionally stating to the foreign court that its adjudicatory authority will only be respected if they reach the same decision.<sup>243</sup> Adding to the performative nature in *Kea* is that WFTL could not mount a meaningful defence to any appeal in Kentucky. WFTL’s directors have lost control of the company to interim liquidators

---

<sup>234</sup> *Soci t  Eram*, above n 197, at [54] per Lord Hoffman; Briggs, above n 205, at 91; Dickinson, above n 10, at 83; Raphael, above n 16, at [1.12]; and *UNISON*, above n 222, at [68].

<sup>235</sup> *Soci t  Eram*, above n 197, at [54] per Lord Hoffman and [79] per Lord Millett citing *R v Jameson* [1896] 2 QB 425 at 430.

<sup>236</sup> *Kea* (CA Judgment), above n 3, at [176] (footnotes omitted): “...cogent evidence will be required that the foreign court has acted or is likely to act in excess of its jurisdiction under international law, in violation of the requirements of natural justice, otherwise in a manner manifestly incompatible with New Zealand’s fundamental policies, or that its proceedings are likely significantly and irreversibly to interfere with the administration of justice in New Zealand”.

<sup>237</sup> *Airbus*, above n 6, at 138; and Fentiman, above n 21, at [16.33]–[16.34].

<sup>238</sup> As determined by the factors discussed in Section IV(A)(1). See also Hannah L Buxbaum and Ralf Michaels “Anti-enforcement injunctions” (2024) 56 NYU JIPL 101 at 113–116; and Andreas Giannakopoulos “Anti-suit injunctions untethered” (2025) 141 LQR 196 at 200.

<sup>239</sup> See, for example, *SAS Institute*, above n 111; *Magomedov*, above n 106; and *Midland Bank*, above n 105.

<sup>240</sup> See Dickinson, above n 10, at 84.

<sup>241</sup> *Ecobank*, above n 94, at [132]; and Endicott, above n 104.

<sup>242</sup> *Kea* (CA Judgment), above n 3, at [183].

<sup>243</sup> Section II(C).

meaning that they could not control any future litigation.<sup>244</sup> A more fitting classification within Professor Dickinson’s “convenient collection”<sup>245</sup> for the purposes of evaluating the countervailing consideration of comity is that fraud is a matter of New Zealand’s fundamental policies.<sup>246</sup> To this end, if there is “positive and cogent evidence”, the standard required by comity before a court will pass judgment on a foreign legal system, that the foreign court will not act the presumption at the core of comity can be rebutted.<sup>247</sup>

### 3. *Cheeky Enough for Kea?*

On the facts of *Kea*, the question of connection focuses on restraining the enforcement of the default judgment, in the form of an AEI, not the fraud itself.<sup>248</sup> While restraint requires determination of the fraud claim, the purpose of the claim is ultimately the AEI, of which there is a strong connection to New Zealand because of the New Zealand court’s supervisory role. As noted by the High Court in granting interim injunctions against the beneficiaries of the WFT, WFTL is a company incorporated in New Zealand and is a trustee for a New Zealand trust, both of which are under the supervision of the New Zealand court.<sup>249</sup> To this end, the New Zealand court has a strong interest in monitoring the behaviour of these entities. The Court’s ability to undertake this role, and control the case as a whole, could have swiftly slipped away if the Court had not intervened when the default judgment remained in the New Zealand enforcement jurisdiction. Mr Wikeley sought to avoid the New Zealand jurisdiction and orders by transferring all WFTL’s assets to an American entity, a move that he called “legal 100% just

---

<sup>244</sup> Indeed, the interim liquidators applied to the High Court for directions allowing them to seek the discharge of the default judgment, albeit determination of the issue was adjourned, see *Gibson v Wikeley* [2025] NZHC 2762 at [16].

<sup>245</sup> Dickinson, above n 10, at 84 as cited in *Kea* (CA Judgment), above n 3, at [176] fn 157.

<sup>246</sup> There are various contexts where combatting fraud has been viewed as one of the “judicial or legislative policies of [New Zealand]...”, to adopt the language of Hoffman J in *Barclays*, above n 87, at 762 as cited in Dickinson, above n 10, at 84. See, for example, Hook and Wass, above n 26, at [5.228] and [5.230]; *Emajor v Emajor* [2016] NZHC 2022 at [5]; Arbitration Act 1996, sch 1 art 34(6)(a); *Controller and Auditor-General v Davison* [1996] 2 NZLR 278 (CA) at 287 per Cooke P, 304–306 per Richardson J and 309 per Henry J; *S Pearson & Son Ltd v Dublin Corpn* [1907] AC 351 (HL) at 356; *Jetivia SA v Bilta (UK) Limited (in liquidation)* [2015] UKSC 23, [2016] AC 1 at [86]; *B v C (Secretary of State for Justice intervening)* [2023] EWHC 2524 (Fam), [2024] 4 WLR 3 at [86]; and *Takhar v Gracefield Developments Ltd and others* [2019] UKSC 13, [2020] AC 450 at [68]. Fraud is readily accepted as a matter of public policy in civil law, see, for example, Peter Schlosser “Report on the Convention on the Accession of the Kingdom of Denmark, Ireland, and the United Kingdom to the Brussels Convention” (1979) OJ C 59/71 at [192]; and *Case C-275/92 Customs and Excise Comrs v Schindler* [1994] ECR I-1039. This is not to say that natural justice could not also apply in some cases, for example where no notice is served.

<sup>247</sup> *Kea* (CA Judgment), above n 3, at [176] and [178]; *Altimo Holdings*, above n 216, at [89]–[97] and [101]–[102]; and *The Abidin Daver* [1984] AC 398 (HL) at 411.

<sup>248</sup> The same distinction was drawn in the context of forum non conveniens, see Section III(A); and compare *Kea (No 2)*, above n 166, at [193].

<sup>249</sup> *Kea* (Beneficiaries Injunction Judgment), above n 184, at [57].

naughty”.<sup>250</sup> A similar attempt to isolate the judgment from the New Zealand jurisdiction was later made by his children, the beneficiaries of the WFT.<sup>251</sup> Without the New Zealand Court’s orders, the interim liquidators could not have been appointed and challenged these attempts in the Kentucky Bankruptcy courts.<sup>252</sup> In the alternative that the default judgment had left the control of WFTL, the New Zealand Court’s ability to practically restrain the fraud would have been limited.<sup>253</sup> While a Court could still issue an AEI against a party outside the enforcement jurisdiction, the continued violations by WFTL and Mr Wikeley tend to suggest that it may be disregarded.<sup>254</sup>

This analysis is also consistent with comity. Indeed from the perspective of the Kentucky court, which the Court of Appeal assumed to be interested in combatting fraud, the AEI serves as a warning that there may be an issue;<sup>255</sup> in which instance, as the High Court recognised, it may be appreciated that a New Zealand court prevented the fraud from growing.<sup>256</sup> In the alternative that the Kentucky court does not consider there to be fraud, the force of comity decreases on the basis of the forum’s fundamental policies, merely confirming the necessity for a New Zealand court to act.

Additionally, while strong, the connection to Kentucky in restraining enforcement is lessened, and by extension the relative connection to New Zealand is strengthened, by the nature of the fraud. Namely, the fraud has sought to abuse the rules of private international law. WFTL brought a claim in a jurisdiction unconnected to the parties by using a jurisdiction clause in a fabricated<sup>257</sup> contract to procure a judgment with cross-border effects.<sup>258</sup> No enforcement

---

<sup>250</sup> *Kea* (CA Judgment), above n 3, at [72]; and see also *Kea* (Beneficiaries Injunction Judgment), above n 184, at [35].

<sup>251</sup> *Kea* (Beneficiaries Injunction Judgment), above n 184, at [23]–[35].

<sup>252</sup> WFTL was placed into liquidation due to Mr Wikeley’s continued violations of New Zealand court orders, see *Kea* (Formal Proof Judgment), above n 43, at [58].

<sup>253</sup> *Viagogo*, above n 232, at [91].

<sup>254</sup> See *Kea* (Beneficiaries Injunction Judgment), above n 184, at [34]–[35]; and compare *Viagogo*, above n 232, at [91].

<sup>255</sup> *Kea* (CA Judgment), above n 3, at [191].

<sup>256</sup> See *Kea* (Interim Injunction Judgment), above n 49, at [68]: “If a New Zealand company, as trustee of a New Zealand trust, is abusing the process of the Kentucky Court to perpetuate a fraud, the New Zealand Court’s intervention to restrain that New Zealand company may even be seen as consistent with the requirements of comity”.

<sup>257</sup> “Fabricated” being used in the sense of either inauthentic or knowingly entered in breach of fiduciary duty.

<sup>258</sup> *Kea* (Interim Injunction Judgment), above n 49, at [68]. This is known as “jurisdictional fraud” in the context of the fraud defence to foreign judgments, see Richard Garnett “Fraud and Foreign Judgments: The Defence that Refuses to Die” (2002) 1(2) JICL 161 at 166; and *Gordhan v Kerdemelidis* HC Christchurch CIV-2010-409-2982, 20 December 2011 at [31]. An analogy can also be drawn with the public policy doctrine in choice of law, which has been used by common law courts in substance, although not in form, to prevent evasion of domestic or foreign laws, see William Tetley “Evasion/Fraude á la loi and Avoidance of the Law” (1994) 39 McGill LJ 303 at 313; RH Graveson *Conflict of Laws: Private International Law* (7th ed, Sweet & Maxwell, London, 1974) at 174; *Regazzoni v K C Sethia (1944) Ltd* [1958] AC 301 (HL) at 318–319 as cited in *Katra Holdings Ltd v Standard*

proceedings were brought in Kentucky. Instead, the judgment was leveraged to seek financial information in New York and in an attempt to acquire financial gain from a British Virgin Islands company.<sup>259</sup> This is not a case where the Kentucky forum was permissibly sought to use its procedural and substantive advantages.<sup>260</sup> It is instead a classic case of “vexation” in the sense that there was no legitimate advantage in seeking the claim in the Kentucky courts.<sup>261</sup> Kentucky was seemingly used as a forum disconnected from, and unaware of, the background context of Mr Watson and Kea’s previous dealings.

Even if the strong connection to New Zealand does not mean an AEI is prima facie consistent with comity, the strength of comity has likely decreased. This is because there is a significant prospect that the Kentucky state courts may not reach the finding of fraud. The default judgment is exactly that, an undefended judgment. Kea had no opportunity to plead its case due to negligence from its agents. The expert evidence suggested there was a “real danger” that the default judgment would not be corrected on appeal due to appellate deference.<sup>262</sup> While this has not, yet, eventuated, the focus is on the risk.<sup>263</sup> Additionally, there is evidence the Kentucky Circuit Court is sticking to its findings. Following leave to appeal to the New Zealand Supreme Court being granted, the Fayette Circuit Court made an ex parte order to hand control of WFTL’s United States assets to a “Special Fiduciary” on the basis the receivers were in breach of trust.<sup>264</sup> In doing so, the Kentucky Court implicitly disagreed with the New Zealand courts finding of fraud, noting that the liquidation arose from “... a wrongful and vexatious lawsuit that seeks to nullify the final judgment entered... by this court”.<sup>265</sup> This comment suggests that there is little to be achieved in the Kentucky Circuit Court.<sup>266</sup>

---

*Chartered Bank (Mauritius) Ltd* [2024] UKPC 8, [2024] All ER (D) 43 (Apr) at [39]; and *Controller and Auditor-General*, above n 246, at 287 per Cooke P. Fraude à la loi is well-known in civil law, see, for example, Pierre Mayer and Vincent Heuzé *Droit international privé* (11th ed, LGDJ, Paris, 2014) at [275]–[283]; and Jacob Dolinger “Evolution of Principles for Resolving Conflicts in the Field of Contracts and Torts” (2000) 283 *Recueil des Cours* 187 at 243–245.

<sup>259</sup> *Kea* (Formal Proof Judgment), above n 43, at [25]–[28] and [36]–[50].

<sup>260</sup> *Star Reefers Pool Inc v JFC Group Co Ltd* [2012] EWCA Civ 14, [2012] 1 Lloyd’s Rep 376 at [32] and [36]; and *Navig8 Pte Ltd v Al-Riyadh Co for Vegetable Industry* [2013] EWHC 328 (Comm), [2013] 2 Lloyd’s Rep 104 at [22].

<sup>261</sup> *Owners of the Atlantic Star v Owners of the Bona Spes* [1974] AC 436 (HL) at 477 as cited in Dickinson, above n 10, at 100–101. Professor Dickinson further notes that this definition is an equitable counterpart to the tort of malicious prosecution, see Dickinson, above n 10, at 100 fn 202; and see also Briggs, above n 9, at 303.

<sup>262</sup> *Kea* (CA Judgment), above n 3, at [184].

<sup>263</sup> *Altimo Holdings*, above n 216, at [95].

<sup>264</sup> *Wikeley Family Trustee Ltd v Kea Investments Ltd* Ky Cir Fayette 21-CI-02508, 17 July 2025.

<sup>265</sup> At [1(a)].

<sup>266</sup> Although the Circuit Court’s orders were declared void ab initio by the Eastern District of Kentucky Bankruptcy Court, the Bankruptcy Court does not have the jurisdiction to affect the Circuit Court’s original default judgment, see *Re Wikeley Family Trustee Ltd (in liq) (foreign debtor)* Bankr ED Ky Lexington 23–50420, 30 July 2025; and see also *Kea* (Beneficiaries Injunction Judgment), above n 184, at [56]–[57].

The overall conclusion of this analysis is that it is this author’s opinion that the permanent AEIs should be reinstated.

*B. Anti-Enforcement vs Anti-Suit Injunctions: A Distinction Lacking Principle*

AEIs were once a “relatively rare beast,” and certainly remain less common than ASIs.<sup>267</sup> Nevertheless, the governing principles are the same, with no additional requirement of exceptionality for an AEI.<sup>268</sup> In *Kea*, the Court of Appeal had “particular concerns about the anti-enforcement aspect of the orders...” *Kea* requested.<sup>269</sup> These concerns arise from the Court’s perception that AEIs are a greater infringement on comity. The Court’s reasoning boils down to two main points. Firstly, the worldwide effect of an AEI interferes with courts of a third nation by limiting their adjudicatory authority to decide whether to enforce a foreign judgment.<sup>270</sup> Secondly, interference with a foreign court’s judgment is more egregious in comity terms than interference with a foreign court’s adjudicatory authority.<sup>271</sup>

Ultimately, these additional comity concerns are not normatively justified.<sup>272</sup> Regarding the Court’s first objection, an ASI has the same substantive effect as an AEI.<sup>273</sup> Limiting a foreign court’s adjudicatory authority through an ASI prevents the foreign court from delivering a judgment. By extension, courts of a third country do not have the opportunity to determine whether to enforce the prospective judgment. Merely because the judgment has gone in favour of the injunction defendant to the AEI does not affect this conclusion as foreign judgments can be enforced both positively and negatively, the latter of which is typically in the form of an estoppel.<sup>274</sup> In relation to the latter of the Court’s concerns, it is difficult to explain why interfering with a foreign judgment is more egregious than limiting a foreign court’s adjudicatory authority given the substantive effect is the same.<sup>275</sup> Indeed, in international

---

<sup>267</sup> *Barclays Bank Plc v PJSC Sovcombank* [2024] EWHC 1338 (Comm), [2024] All ER (D) 52 (Jun) at [10]; and *Ecobank*, above n 94, at [118].

<sup>268</sup> *SAS Institute*, above n 111, at [93].

<sup>269</sup> *Kea* (CA Judgment), above n 3, at [180] and [187].

<sup>270</sup> *ED & F Man (Sugar) Ltd v Haryanto (No 2)* [1991] 1 Lloyd’s Rep 429 (CA) at 437; and *Mamidoil-Jetoil Greek Petroleum Co SA v Okta Crude Oil Refinery AD* [2002] EWHC 2210 (Comm), [2003] 1 Lloyd’s Rep 1 at [204] as cited in *Kea* (CA Judgment), above n 3, at [180]–[181].

<sup>271</sup> *ED & F Man*, above n 270, at 437 as cited in *Kea* (CA Judgment), above n 3, at [180(b)].

<sup>272</sup> For the avoidance of doubt, this is not to say comity is irrelevant entirely. It is merely that the comity concerns are the same for both ASIs and AEIs.

<sup>273</sup> Adrian Briggs “Submission to a Russian Court” [2025] LMCLQ 235 at 237.

<sup>274</sup> *Dacey*, above n 1, at [14–034]–[14–036]; and Hook and Wass, above n 26, at [5.201]

<sup>275</sup> Tiong Min Yeo “Foreign Judgments and Contracts: The Anti-enforcement Injunction” in Andrew Dickinson and Edwin Peel (eds) *A Conflict of Laws Companion: Essays in Honour of Adrian Briggs* (Oxford University Press, Oxford, 2021) 251 at 256–257.

commercial arbitration, the opposite proposition has been accepted.<sup>276</sup> Even in the United Kingdom, where the point has been consistently repeated,<sup>277</sup> there is now increasing judicial recognition that an argument in either direction is difficult to ground in principle.<sup>278</sup> Additionally, in cases that a foreign court has delivered judgment on an preliminary matter, such as jurisdiction, it does not prevent an ASI from being ordered.<sup>279</sup>

The underlying conclusion, as Professor Yeo helpfully synthesises, is that ASIs and AEIs are two forms of the same substantive order that occur at different times in the litigation timeline.<sup>280</sup> Consequently, the only factor that exacerbates the comity concerns in the AEI context is that of delay.<sup>281</sup> Surprisingly,<sup>282</sup> the law on delay and comity is well settled. The longer the delay in seeking relief, the more resources have been used in the foreign court which will be made redundant if an AEI is ordered and accordingly the weight of comity increases.<sup>283</sup> Even in cases of contractual ASIs, where the relevance of comity has been pushed aside, delay has still been considered relevant.<sup>284</sup>

The argument of delay was aptly dealt with by the High Court.<sup>285</sup> The Court accepted that Kea had no actual notice of the Kentucky proceedings until after the default judgment was entered due to the negligence of its British Virgin Islands agent.<sup>286</sup> The time at which the ASI/AEI applicant becomes aware of the proceedings is clearly a relevant factor, for “there can be no

---

<sup>276</sup> *ICC Case No 17176 (Final Award)* [2016] 41 YB Comm Arb 86; and see also Maxwell Breana Obesi and Chrispas Nyombi “Enforcement of anti-suit injunctions” (2015) 36 ECLR 513 at 524–525.

<sup>277</sup> See further *Industrial Maritime Carriers (Bahamas) Inc v Sinoca International Inc* [1996] 2 Lloyd’s Rep 585 (QB) at 603; and *Masri v Consolidated Contractors International Co SAL (No 3)* [2008] EWCA Civ 625, [2009] QB 503 at [93].

<sup>278</sup> *Google LLC and another company v Nao Tsargrad Media and other companies* [2025] EWHC 94 (Comm) at [82(ix)]; *Federal Government of Nigeria*, above n 191, at [12]; and see also *Re GTLK Europe Designated Activity Company (in liquidation)* [2025] IEHC 524 at [83].

<sup>279</sup> *AES Ust-Kamenogorsk Hydropower Plant LLP v Ust-Kamenogorsk Hydropower Plant JSC* [2013] UKSC 35, [2013] 1 WLR 1889 as cited in *Ecobank*, above n 94, at [133]; and *Salgaocar*, above n 114, at [99]–[105].

<sup>280</sup> Tiong Min Yeo, above n 275, at 257–258; and see *Ecobank*, above n 94, at [133].

<sup>281</sup> Tiong Min Yeo, above n 275, at 257; see *Re GTLK*, above n 278, at [83]; and compare *Barclays*, above n 267, at [13].

<sup>282</sup> Given the “most unsatisfactory state” of the law on ASIs generally, see Dickinson, above n 10, at 109 as cited in *Kea* (CA Judgment), above n 3, at [164].

<sup>283</sup> *Ecobank*, above n 94, at [133]–[135]; *SAS Institute*, above n 111, at [104]; and see further Dicey, above n 1, at [12–241] fn 581.

<sup>284</sup> *Ecobank*, above n 94, at [120]–[122] and [128]; and *AIG Europe SA & Others v John Wood Group Plc & Others* [2022] EWCA Civ 781, [2023] 1 All ER (Comm) 381 at [9]. From a purely precedential view of the Court of Appeal’s reasoning in *Kea*, it is arguable that distinguishing from *Ellerman Lines*, above n 191, because of a lack of a jurisdiction clause was unprincipled as the delay in *Ellerman Lines* would have prevented a solely contractual AEI from being ordered, see Tiong Min Yeo, above n 275, at 263; and Raphael (2nd ed), above n 95, at [5.70]. In both *Commercial Bank of Dubai*, above n 191, at [176]–[182]; and *Federal Government of Nigeria*, above n 191, at [14] and [20]–[24] the English High Court was happy to follow *Ellerman Lines* and order AEIs based on fraud without a jurisdiction clause.

<sup>285</sup> *Kea* (Interim Injunction Judgment), above n 49, at [72]–[74].

<sup>286</sup> At [73].

delay before the applicant had knowledge”.<sup>287</sup> The Court also accepted that Kea had acted promptly in response to an “unfolding sophisticated fraud” which involved multiple jurisdictions.<sup>288</sup> These conclusions were left undisturbed by the Court of Appeal’s judgment. A further consideration in favour of the High Court’s conclusion is that the greater comity concern is the wasted judicial resources, rather than the length of time.<sup>289</sup> To this end, the Kentucky Judgment was a default one, with lesser resources used given the lack of argument from Kea. Ultimately, there is sufficient evidence to find that Kea had a “reasonable explanation” or “good reason” for the delay and that the weight of comity is not strengthened.<sup>290</sup> It follows that the conclusion reached earlier, that the permanent AEs should be reinstated, remains strong.<sup>291</sup>

---

<sup>287</sup> *FW Aviation (Holdings) 1 Ltd and others v VietJet Aviation Joint Stock Company* [2024] EWHC 3337 (Comm) at [113]; and see also *Qingdao Huiquan Shipping Co v Shanghai Dong He Xin Industry Group Co Ltd* [2018] EWHC 3009 (Comm), [2019] 1 Lloyd’s Rep 520 at [29(3)].

<sup>288</sup> *Kea* (Interim Injunction Judgment), above n 49, at [74].

<sup>289</sup> *A v B* [2020] EWHC 3657 (Comm) at [36].

<sup>290</sup> *Africa Finance Corp and others v Aiteo Eastern E&P Company Ltd* [2022] EWHC 768 (Comm), [2022] All ER (D) 79 (Apr) at [76]; *Ecobank*, above n 94, at [123]; and see also *Google*, above n 278, at [82(x)–(xi)].

<sup>291</sup> Section IV(A)(3).

## **V. Looking Forward: Kea Flies On**

The Court of Appeal's decision in *Kea* is a watershed moment in the conflict of laws in New Zealand. It is the first time that a New Zealand court has truly lifted the in personam veil of ASIs and grappled with the substantive effect that the order has on the adjudicatory authority of a foreign court.<sup>292</sup> The overarching conclusion of this paper is that the Court of Appeal's analysis and engagement with comity in *Kea* is to be encouraged and followed. However, the Court, respectfully, erred in its application of the important principles it shed light on.<sup>293</sup> Consequently, the AEIs discharged by the Court ought to be reinstated.

This paper has built upon the work of Professor Dickinson that the Court relied upon. Primarily, it has sought to clarify the role of comity in both determining the necessary requirements for an ASI and whether those requirements are met. Regarding the former, it has been argued that there is no strict requirement to exhaust remedies in the foreign jurisdiction and that while New Zealand needs to be the natural forum, it is not enough on its own to warrant an ASI. Regarding the latter, it has been argued that whether an ASI is consistent with comity requires consideration of, inter alia, the New Zealand court's connection with the substantive dispute or its role in preventing wrongdoing. The conclusions and underpinning principles discussed can be summarised as follows:

- (1) Comity does not require an ASI applicant to exhaust remedies in a foreign jurisdiction before applying for an ASI.<sup>294</sup> If a failure to exhaust remedies is the only factor preventing an ASI from being ordered, a New Zealand court would simply be reviewing the decision of the foreign court if an ASI is later sought. This result is contrary to comity's recognition that different legal systems can legitimately reach different substantive decisions. However, as comity assumes that courts are equally placed to determine justice between the parties, it will typically require that the New Zealand court refrain from ordering an ASI.<sup>295</sup> On the facts of *Kea*, it has been argued that an AEI can be ordered consistently with comity. Therefore, any deference to the Kentucky Court would be performative as any decision of the Kentucky Court would only be respected if it reached the same conclusion as the New Zealand Court's.

---

<sup>292</sup> See *Kea* (CA Judgment), above n 3, at [167].

<sup>293</sup> Section IV(A)(3).

<sup>294</sup> Section II.

<sup>295</sup> Section II(C).

- (2) To prevent the court from becoming an “international [police officer]”, New Zealand must be the natural forum for the underlying dispute, or the natural forum to issue an ASI instead of a third country.<sup>296</sup> However, comity requires that an ASI cannot be ordered solely because the New Zealand court is the natural forum as doing so would unjustifiably arrogate to the domestic court the question of which court should exercise jurisdiction.<sup>297</sup> Accordingly, the natural forum inquiry should be well separated from whether the court has “sufficient interest”.<sup>298</sup> In *Kea*, the Court held that it was the natural forum for the unlawful means conspiracy claim against WFTL and the co-conspirators. By extension, the New Zealand Court was the natural forum for issuing relief in the form of an AEI. Appropriately, the Court undertook the natural forum analysis entirely separately from its consideration of comity.
- (3) A New Zealand court must have “sufficient interest” to issue an ASI.<sup>299</sup> This requires assessing whether the court has significant connection with the substantive dispute or its role in preventing wrongdoing which results in an ASI being consistent with comity.<sup>300</sup> On the facts of *Kea*, it has been argued that the New Zealand Court’s supervisory role over companies incorporated in the jurisdiction provides a strong interest in monitoring the behaviour of WFTL. Ordering an AEI is also consistent with comity as from the perspective of the Kentucky Court, the order provides a welcome warning that fraud may be present. Nevertheless, if the assumption at the core of comity, that the foreign court is seeking the common interest of administering justice, has been rebutted, the strength of the connection required to issue an ASI is lessened. For example, if the Kentucky Court in *Kea* viewed there to be no fraud. Additionally, whatever claim the court is required to have “sufficient interest” in must itself be a sufficient legal ground to issue relief.<sup>301</sup> In *Kea*, the legal basis relied upon was unlawful means conspiracy, which, as a common law tort, is evidently a sufficient basis for issuing relief. Accordingly, an AEI is justified on the facts of *Kea*.
- (4) Comity plays the same role in ASI and AEI applications.<sup>302</sup> As both orders produce the same result in preventing the injunctioned from relying on the foreign court, any argument

---

<sup>296</sup> Section III(A).

<sup>297</sup> Section III(B).

<sup>298</sup> Section III(C).

<sup>299</sup> Section IV(A).

<sup>300</sup> Sections IV(A)(1)–(2).

<sup>301</sup> Sections III(B) and IV: “Fraud was evidently a sufficient basis to order relief...”. See also *Kea* (CA Judgment), above n 3, at [175] and [190]; and Dickinson, above n 10, at 81–83, 99–104 and 109(4).

<sup>302</sup> Section IV(B).

that one is more intrusive than the other cannot be normatively justified. The only difference is, for the purposes of assessing “sufficient interest”, delay may increase the strength of comity as a countervailing factor. In *Kea*, negligence on behalf of Kea’s agents in the British Virgin Islands meant that Kea had no actual knowledge of the Kentucky proceedings until after the judgment was procured. Additionally, the Court accepted that Kea had responded promptly to a sophisticated cross-border fraud. To this end, delay did not increase the force of comity.

While this paper has focused on the principles relevant to the substantive decision in *Kea*, the decision may have wider implications. The Court’s dicta raise other important issues regarding ASIs that future courts will have to work through. Two examples are notable:

- (1) The Court considered the applicable law to the unlawful conspiracy claim. This indicates that future courts should consider the choice of law for the substantive legal basis of the ASI,<sup>303</sup> and
- (2) The Court expressly noted Professor Dickinson’s objection to comity being minimised in ASI applications based on a breach of a jurisdiction or arbitration clause.<sup>304</sup> While it was unnecessary to resolve the issue, it signals that future courts should engage with submissions on this point.<sup>305</sup>

Although ASIs may be an area of law in a “most unsatisfactory state”, *Kea* has highlighted the foundational role that the sticks of comity have in the nest of ASI jurisprudence.<sup>306</sup> This has provided an opportunity for New Zealand courts to fly in a new direction, one which is ironically, *grounded* in principle.

---

<sup>303</sup> *Kea* (CA Judgment), above n 3, at [158]–[159]; and see also Dickinson, above n 10, at 107–108.

<sup>304</sup> Dickinson, above n 10, at 84–86 as cited in *Kea* (CA Judgment), above n 3, at [177] fn 158; and contrast Lydia Sharpe “Anti-suit injunctions: a renaissance?” [2025] NZLJ 81 at 83.

<sup>305</sup> Further assistance may be drawn from *Toepfer International GmbH v Société Cargill France* [1998] 1 Lloyd’s Rep 379 (CA) at 386; *Sokana Industries Inc v Freyre & Co Inc* [1994] 2 Lloyd’s Rep 57 (QB) at 66; *World Pride Shipping Inc v Daiichi Chuo Kisen Kaisha* [1984] 2 Lloyd’s Rep 489 (QB) at 498; *Apple Corps Ltd v Apple Computer Inc* [1992] RPC 70 (Ch) at 79–80; *Evalis SA v SIAT and others* [2003] EWHC 863 (Comm), [2003] 2 Lloyd’s Rep 377 at [52]–[58]; *Phillip Alexander Securities and Futures Ltd v Bamberger* [1997] 1 L Pr 73 at 93–94 per Waller J and 117 per Leggatt LJ; *Case C-185/07 Allianz SpA v West Tankers Inc* [2009] ECR I-663; and Raphael, above n 176.

<sup>306</sup> Dickinson, above n 10, at 109.

## ***Bibliography***

### ***A. Cases***

#### *1. New Zealand*

*Americhip Inc v Dean* [2015] NZHC 700, [2015] 3 NZLR 498.

*Commerce Commission v Viagogo AG* [2019] NZCA 472, [2019] 3 NZLR 559.

*Commissioner of Inland Revenue v Redcliffe Forestry Venture Ltd* [2012] NZSC 94, [2013] 1 NZLR 804.

*Controller and Auditor-General v Davison* [1996] 2 NZLR 278 (CA).

*Emajor v Emajor* [2016] NZHC 2022.

*Gibson v Wikeley* [2025] NZHC 2762.

*Gordhan v Kerdelmelidis* HC Christchurch CIV-2010-409-2982, 20 December 2011.

*Huang v Huang* [2024] NZCA 5, [2024] 2 NZLR 376.

*Jonmer Inc v Maltexo Ltd* (1996) 10 PRNZ 119 (HC).

*Kea Investments Ltd v Wikeley* [2025] NZHC 2387.

*Kea Investments Ltd v Wikeley* [2025] NZSC 75, [2025] NZCCLR 522.

*Kea Investments Ltd v Wikeley Family Trustee Ltd* [2022] NZHC 2881.

*Kea Investments Ltd v Wikeley Family Trustee Ltd* [2023] NZHC 466.

*Kea Investments Ltd v Wikeley Family Trustee Ltd (In Int Liq)* [2023] NZHC 3260.

*Ludgater Holdings Ltd v Gerling Australia Insurance Co Pty Ltd* [2010] NZSC 49, [2010] 3 NZLR 713.

*Lu v Industrial and Commercial Bank of China (NZ) Ltd* [2020] NZHC 402.

*Mao v Buddle Findlay* [2022] NZHC 521.

*Maritime Mutual Insurance Association (NZ) Limited v Silica Sandport Inc* [2023] NZHC 793.

*Wikeley v Kea Investments Ltd* [2024] NZCA 609, [2024] 3 NZLR 901.

*Wikeley v Kea Investments Ltd* [2024] NZCA 686, (2024) 26 PRNZ 667.

*Wikeley v Kea Investments Ltd* [2025] NZSC 76.

## 2. Australia

*Allstate Life Insurance Co v Australia & New Zealand Banking Group Ltd [No 2]* (1996) 64 FCR 44.

*CSR Ltd v Cigna Insurance Australia Ltd* (1997) 189 CLR 345.

*Kea Investments Ltd v Wikeley (No 2)* [2023] QSC 215, (2023) 381 FLR 372.

*Patrick Stevedores Operations No 2 Pty Ltd v Maritime Union of Australia* [1998] HCA 30, (1998) 195 CLR 1.

*PT Bayan Resources TBK v BCBC Singapore Pte Ltd* [2015] HCA 36, (2015) 258 CLR 1.

*Wikeley v Kea Investments Ltd* [2024] QCA 201.

## 3. British Virgin Islands

*Broad Idea International Ltd v Convoy Collateral Ltd* [2021] UKPC 24, [2023] AC 389.

*Stichting Shell Pensioenfonds v Kryss and another* [2014] UKPC 41, [2015] AC 616.

*UBS AG New York v Fairfield Sentry Ltd (in liquidation)* [2019] UKPC 20, [2019] 4 LRC 412.

## 4. Brunei Darussalam

*Société Nationale Industrielle Aerospatiale v Lee Kui Jak* [1987] AC 871 (PC).

## 5. Canada

*Amchem Products Inc v British Columbia (Workers' Compensation Board)* [1993] 1 SCR 897.

*Axion Ventures Inc v Bonner* 2024 BCSC 45.

*Pan v Zhao* 2024 ONSC 1328.

*Seismotech Safety Systems Inc v Forootan* 2021 FC 773.

## 6. European Union

Case C-185/07 *Allianz SpA v West Tankers Inc* [2009] ECR I-663.

Case C-275/92 *Customs and Excise Comrs v Schindler* [1994] ECR I-1039.

Case 3 VA 11/ 95 *Re the Enforcement of an English Anti-suit Injunction* [1997] I L Pr 320.

Case C-159/02 *Turner v Grovit* [2004] ECR I-3565.

Case C-391/95 *Van Uden Maritime BV v Firma Deco-Line* [1998] ECR I-7091.

7. *Hong Kong*

*Mercedes-Benz AG v Leiduck* [1996] AC 284 (PC).

8. *ICC International Court of Arbitration*

*ICC Case No 17176 (Final Award)* [2016] 41 YB Comm Arb 86.

9. *International Court of Justice*

*Interhandel (Switzerland v United States of America) (Preliminary Objections)* [1959] ICJ Rep 6.

10. *Ireland*

*Re GTLK Europe Designated Activity Company (in liquidation)* [2025] IEHC 524.

11. *Isle of Man*

*Altimo Holdings and Investment Ltd v Kyrgyz Mobil Tel Ltd* [2011] UKPC 7, [2012] 1 WLR 1804.

12. *Mauritius*

*Katra Holdings Ltd v Standard Chartered Bank (Mauritius) Ltd* [2024] UKPC 8, [2024] All ER (D) 43 (Apr).

13. *Singapore*

*Salgaocar v Jitendra* [2019] SGCA 42, [2019] 2 SLR 372.

14. *United Kingdom*

*Abouloff v Oppenheimer & Co* (1882) 10 QBD 295 (CA).

*AES Ust-Kamenogorsk Hydropower Plant LLP v Ust-Kamenogorsk Hydropower Plant JSC* [2013] UKSC 35, [2013] 1 WLR 1889.

*Africa Finance Corp and others v Aiteo Eastern E&P Company Ltd* [2022] EWHC 768 (Comm), [2022] All ER (D) 79 (Apr).

*Aggeliki Charis Compania Maritima SA v Pagnan SpA* [1995] 1 Lloyd's Rep 87.

*AIG Europe SA & Others v John Wood Group Plc & Others* [2022] EWCA Civ 781, [2023] 1 All ER (Comm) 381.

*Airbus Industrie GIE v Patel* [1999] 1 AC 119 (HL).

*Apple Corps Ltd v Apple Computer Inc* [1992] RPC 70 (Ch).

*A v B* [2020] EWHC 3657 (Comm).

*AXA Corporate Solutions Assurance SA v Weir Services Australia Pty Ltd* [2016] EWHC 904 (Comm), [2016] Lloyd's Rep IR 578.

*Bank St Petersburg OJSC v Arkhangelsky* [2014] EWCA Civ 593, [2014] 1 WLR 4360.

*Barclays Bank Plc v Homan* [1992] BCC 757 (Ch).

*Barclays Bank Plc v PJSC Sovcombank* [2024] EWHC 1338 (Comm), [2024] All ER (D) 52 (Jun).

*British Airways Board v Laker Airways Ltd* [1985] AC 58 (HL).

*British South Africa Co v Companhia de Moçambique* [1893] AC 602 (HL).

*Bushby v Munday* (1821) 5 Madd 297.

*B v C (Secretary of State for Justice intervening)* [2023] EWHC 2524 (Fam), [2024] 4 WLR 3.

*Castanho v Brown & Root (UK) Ltd* [1981] AC 557 (HL).

*Commercial Bank of Dubai PSC and others v Al Sari and others* [2025] EWHC 1810 (Comm).

*Crédit Suisse Fides Trust SA v Cuoghi* [1998] QB 818 (CA).

*Crypto Open Patent Alliance v Wright* [2024] EWHC 3316 (Ch).

*Dawnus Sierra Leone Limited v Timis Mining Corporation Limited* [2016] EWHC 236 (TCC), [2016] All ER (D) 123 (Feb).

*Deutsche Bank AG and another v Highland Crusader Offshore Partners LP* [2009] EWCA Civ 725, [2010] 1 WLR 1023.

*Donohue v Armco Inc* [2001] UKHL 64, [2002] 1 All ER 749.

*Ecobank Transnational Incorporated v Tanoh* [2015] EWCA Civ 1309, [2015] 1 WLR 2231.

*ED & F Man (Sugar) Ltd v Haryanto (No 2)* [1991] 1 Lloyd's Rep 429 (CA).

*Ellerman Lines Ltd v Read* [1928] 2 KB 144 (CA).

*Enka Insaat ve Sanayi AS v OOO Insurance Company Chubb* [2020] UKSC 38, [2020] 1 WLR 4117.

*Essar Shipping Ltd v Bank of China Ltd* [2015] EWHC 3266 (Comm), [2016] 1 Lloyd's Rep 427.

*Evalis SA v SIAT and others* [2003] EWHC 863 (Comm), [2003] 2 Lloyd's Rep 377.

*Federal Government of Nigeria and another v Williams* [2025] EWHC 2217 (Comm).

*Four Seasons Holdings Incorporated v Brownlie* [2017] UKSC 80, [2018] 1 WLR 192.

*FW Aviation (Holdings) 1 Ltd and others v VietJet Aviation Joint Stock Company* [2024] EWHC 3337 (Comm).

*Glencore International AG v Exter Shipping Limited and others* [2002] EWCA Civ 528, [2002] 2 All ER (Comm) 1.

*Glencore International AG v Metro Trading International Inc* [2001] All ER (D) 107 (Nov) (QB).

*Glenn v Watson* [2018] EWHC 2016 (Ch).

*Godard v Gray* (1870) LR 6 QB 139 (QB).

*Golubovich v Golubovich* [2010] EWCA Civ 810, [2011] Fam 88.

*Google LLC and another company v Nao Tsargrad Media and other companies* [2025] EWHC 94 (Comm).

*HIH Casualty and General Insurance Ltd v Chase Manhattan Bank* [2003] UKHL 6, [2003] 1 All ER (Comm) 349.

*House of Spring Gardens Ltd v Waite (No 2)* [1991] 1 QB 241 (CA).

*Industrial Maritime Carriers (Bahamas) Inc v Sinoca International Inc* [1996] 2 Lloyd's Rep 585 (QB).

*Jetivia SA v Bilta (UK) Limited (in liquidation)* [2015] UKSC 23, [2016] AC 1.

*Kemsley v Barclays Bank plc and others* [2013] EWHC 1274 (Ch), [2013] All ER (D) 169 (May).

*Love v Baker* (1665) 1 Ch Cas 67.

*Lucasfilm Ltd v Ainsworth* [2011] UKSC 39, [2012] 1 AC 208.

*MacKinnon v Donaldson Lufkin and Jenrette Securities Corpn* [1986] Ch 482 (Ch).

*Magomedov and others v PJSC Transneft and others* [2024] EWHC 1176 (Comm), [2024] 4 WLR 48.

*Mamidoil-Jetoil Greek Petroleum Co SA v Okta Crude Oil Refinery AD* [2002] EWHC 2210 (Comm), [2003] 1 Lloyd's Rep 1.

*Mareva Compania Naviera SA v International Bulkcarriers SA* [1975] 2 Lloyd's Rep 509 (CA).

*Masri v Consolidated Contractors International Co SAL (No 2)* [2008] EWCA Civ 303, [2009] QB 450.

*Masri v Consolidated Contractors International Co SAL (No 3)* [2008] EWCA Civ 625, [2009] QB 503.

*Midland Bank plc v Laker Airways Ltd* [1986] QB 689 (CA).

*Navig8 Pte Ltd v Al-Riyadh Co for Vegetable Industry* [2013] EWHC 328 (Comm), [2013] 2 Lloyd's Rep 104.

*OT Africa Line Ltd v Magic Sportswear Corporation and others* [2005] EWCA Civ 710, [2006] 1 All ER (Comm) 32.

*Owners of the Atlantic Star v Owners of the Bona Spes* [1974] AC 436 (HL).

*Owners of the Ship "Al Khattiya" v Owners and/or Demise Charterers of the Ship "Jag Laadki"* [2018] EWHC 389 (Admlty), [2018] 2 Lloyd's Rep 243.

*Phillip Alexander Securities and Futures Ltd v Bamberger* [1997] 1 L Pr 73.

*QBE Europe SA/NV v Generali Espana de Seguros Y Reaseguros* [2022] EWHC 2062 (Comm).

*Qingdao Huiquan Shipping Co v Shanghai Dong He Xin Industry Group Co Ltd* [2018] EWHC 3009 (Comm), [2019] 1 Lloyd's Rep 520.

*Regazzoni v K C Sethia* (1944) Ltd [1958] AC 301 (HL).

*R (on the application of UNISON) v Lord Chancellor* [2017] UKSC 51, [2020] AC 869.

*Royal Bank of Canada v Cooperatieve Centrale Raiffeisen-Boerenleenbank BA* [2003] EWHC 2913, [2003] All ER (D) 42 (Dec).

*R v Jameson* [1896] 2 QB 425.

*SAS Institute Inc v World Programming Ltd* [2020] EWCA Civ 599, [2020] All ER (D) 102 (May).

*Shell International Petroleum Co Ltd v Coral Oil Co Ltd* [1999] 2 Lloyd's Rep 606 (QB).

*Siskina (Cargo Owners) v Distos Cia Naviera SA* [1979] AC 210 (HL).

*Société Eram Shipping Co Ltd v Cie Internationale de Navigation* [2003] UKHL 30, [2004] 1 AC 260.

*Sokana Industries Inc v Freyre & Co Inc* [1994] 2 Lloyd's Rep 57 (QB).

*S Pearson & Son Ltd v Dublin Corpn* [1907] AC 351 (HL).

*Spiliada Maritime Corp v Cansulex Ltd* [1987] AC 460 (HL).

*Star Reefers Pool Inc v JFC Group Co Ltd* [2012] EWCA Civ 14, [2012] 1 Lloyd's Rep 376.

*Takhar v Gracefield Developments Ltd and others* [2019] UKSC 13, [2020] AC 450.

*Taurus Petroleum Ltd v State Oil Company of the Ministry of Oil, Republic of Iraq* [2017] UKSC 64, [2018] AC 690.

*The Abidin Daver* [1984] AC 398 (HL).

*Toepfer International GmbH v Société Cargill France* [1998] 1 Lloyd's Rep 379 (CA).

*Tonicstar Ltd v American Home Insurance Co* [2004] EWHC 1234 (Comm), [2005] Lloyd's Rep IR 32.

*Turner v Grovit* [2001] UKHL 65, [2002] 1 WLR 107.

*UniCredit Bank GmbH v RusChemAlliance LLC* [2024] UKSC 30, [2024] 3 WLR 659.

*W Nagel (a firm) v Pluczenik and others* [2022] EWHC 1714 (Comm).

*World Pride Shipping Inc v Daiichi Chuo Kisen Kaisha* [1984] 2 Lloyd's Rep 489 (QB).

#### 15. *United States of America*

*Abelesz v Magyar Nemzeti Bank* 692 F 3d 661 (7th Cir 2012).

*de Csepel v Republic of Hungary* 27 F 4th 736 (DC Cir 2022).

*Doe v Exxon Mobil Corp* 69 F Supp 3d 75 (DC Cir 2014).

*Fischer v Magyar Államvasutak Zrt* 777 F 3d 847 (7th Cir 2015).

*Republic of Hungary v Simon* 592 US 207 (2021).

*Re Wikeley Family Trustee Ltd (in liq) (foreign debtor)* Bankr ED Ky Lexington 23–50420.

*Sarei v Rio Tinto plc* 550 F 3d 822 (9th Cir 2008) (en banc).

*Simon v Republic of Hungary* 911 F 3d 1172 (DC Cir 2018).

*Sosa v Alvarez-Machain* 542 US 692 (2004).

*Turkiye Halk Bankasi AS v United States* 598 US 264 (2023).

*Wikeley Family Trustee Ltd v Kea Investments Ltd* Ky Cir Fayette 21-CI-02508.

## **B. Legislation**

### *1. New Zealand*

Arbitration Act 1996.

High Court Rules 2016.

### *2. Australia*

Trans-Tasman Proceedings Act 2010 (Cth).

### *3. United Kingdom*

Senior Courts Act 1981.

### *4. United States*

Alien Tort Statute 28 USC § 1350.

Foreign Sovereign Immunities Act 28 USC §§ 1604-1611.

## **C. Books and Chapters in Books**

Chittharanjan Felix Amerasinghe *Local Remedies in International Law* (Cambridge University Press, Cambridge, 2004).

Andrew S Bell *Forum Shopping and Venue in Transnational Litigation* (Oxford University Press, Oxford, 2003).

Adrian Briggs “Anti-suit Injunctions in a Complex World” in Francis Rose (ed) *Lex Mercatoria: Essays in International Commercial Law in Honour of Francis Reynolds* (LLP, London, 2000) 219.

Adrian Briggs *Civil Jurisdiction and Judgments* (7th ed, Informa Law, London, 2021).

Adrian Briggs *Private International Law in English Courts* (2nd ed, Oxford University Publishing, Oxford, 2023).

Adrian Briggs *The Conflict of Laws* (5th ed, Oxford University Press, Oxford, 2024).

Lord Collins and Johnathan Harris (eds) *Dicey, Morris & Collins on the Conflicts of Laws* (16th ed, Sweet & Maxwell, London, 2022).

Alberto Costi (ed) *Public International Law: A New Zealand Perspective* (LexisNexis, Auckland, 2020).

James Crawford *Brownlie's Principles of Public International Law* (9th ed, Oxford University Press, Oxford, 2019).

Berk Demirkol *Judicial Acts and Investment Treaty Arbitration* (Cambridge University Press, Cambridge, 2017).

Andrew Dickinson “Taming Anti-suit Injunctions” in Andrew Dickinson and Edwin Peel (eds) *A Conflict of Laws Companion: Essays in Honour of Adrian Briggs* (Oxford University Press, Oxford, 2021) 77.

Richard Fentiman *International Commercial Litigation* (2nd ed, Oxford University Press, Oxford, 2015).

RH Graveson *Conflict of Laws: Private International Law* (7th ed, Sweet & Maxwell, London, 1974).

Trevor Hartley “*Société Nationale Industrielle Aérospatiale v Lee Kui Jak* (1987)” in William Day and Louise Merret (eds) *Landmark Cases in Private International Law* (Hart Publishing, Oxford, 2023) 273.

Maria Hook and Jack Wass *The Conflict of Laws in New Zealand* (LexisNexis, Wellington, 2020).

Andru Isac “Abuse of Legal Procedure” in Stephen Todd (ed) *Todd on Torts* (9th ed, Thompson Reuters, Wellington, 2023).

Pierre Mayer and Vincent Heuzé *Droit international privé* (11th ed, LGDJ, Paris, 2014).

Thomas Raphael *The Anti-Suit Injunction* (1st ed, Oxford University Press, Oxford, 2008).

Thomas Rapheal *The Anti-Suit Injunction* (2nd ed, Oxford University Press, Oxford, 2019).

Jenny Steele “Malicious Prosecution and Malicious Abuse of Process” in Andrew Tettenborn (ed) *Clerk & Lindsell on Torts* (24th ed, Sweet & Maxwell, 2023).

Stephen Todd “Deliberate Falsehoods” in Stephen Todd (ed) *Todd on Torts* (9th ed, Thompson Reuters, Wellington, 2023).

Tiong Min Yeo “Foreign Judgments and Contracts: The Anti-enforcement Injunction” in Andrew Dickinson and Edwin Peel (eds) *A Conflict of Laws Companion: Essays in Honour of Adrian Briggs* (Oxford University Press, Oxford, 2021) 251.

#### **D. Journal Articles**

Adrian Briggs “Private International Law” (2003) 74 BYIL 511.

Adrian Briggs “Submission to a Russian Court” [2025] LMCLQ 235.

Adrian Briggs “The Principle of Comity in Private International Law” (2012) 354 *Recueil des Cours* 65.

Mark Button and others “Policing cross-border fraud ‘Above and below the surface’: mapping actions and developing a more effective global response” (2025) 83 CL&SC 5.

Hannah L Buxbaum and Ralf Michaels “Anti-enforcement injunctions” (2024) 56 NYU JIPL 101.

Lawrence Collins “Fraudulent Conduct in International Law” (1989) 42 CLP 255.

Lawrence Collins “The Siskina again: an opportunity missed” (1996) 112 LQR 8.

Vivian Grosswald Curran “‘Nazi Stolen Art’ Uses and Misuses of the Foreign State Immunities Act” (2023) 32 *Transnat’l L & Contemp Probs* 197.

Jacob Dolinger “Evolution of Principles for Resolving Conflicts in the Field of Contracts and Torts” (2000) 283 *Recueil des Cours* 187.

Timothy Endicott “Comity among Authorities” (2015) 68 CLP 1.

Richard Fentiman “Comity and Anti-Suit Injunctions” (1998) 57 CLJ 467.

Richard Fentiman “Enforcing foreign arbitration agreements” (2025) 84 CLJ 47.

Richard Garnett “Fraud and Foreign Judgments: The Defence that Refuses to Die” (2002) 1(2) JICL 161.

Andreas Giannakopoulos “Anti-suit injunctions untethered” (2025) 141 LQR 196.

Maria Hook “The ‘statutist trap’ and subject-matter jurisdiction” (2017) 13 J Priv Int L 435.

Maxwell Breana Obesi and Chrispas Nyombi “Enforcement of anti-suit injunctions” (2015) 36 ECLR 513.

Edwin Peel “Anti-suit injunctions - the House of Lords declines to act as international policeman” (1998) 114 LQR.

Thomas Raphael “Do as you would be done by? System-transcendent justification and anti-suit injunctions” [2016] LMCLQ 256.

Lydia Sharpe “Anti-suit injunctions: a renaissance?” [2025] NZLJ 81.

William Tetley “Evasion/Fraude á la loi and Avoidance of the Law” (1994) 39 McGill LJ 303.

### ***E. Reports***

Peter Schlosser “Report on the Convention on the Accession of the Kingdom of Denmark, Ireland, and the United Kingdom to the Brussels Convention” (1979) OJ C 59/71.

### ***F. Internet Resources***

Ugljesa Grusic “UK Supreme Court Confirms the Role of English Courts as the World’s Arbitral Policemen” (23 September 2024) The European Association of Private International Law <<https://eapil.org/>>.

Paul D Guy and Scott McGrath “To Seek a Stay or Not to Seek a Stay” (21 December 2011) WeirFoulds LLP <[www.weirfoulds.com](http://www.weirfoulds.com)>.

Maria Hook “A first for the NZ conflict of laws: court grants an (interim) anti-enforcement injunction” (March 13, 2023) The Conflict of Laws in New Zealand: News and Comment <<https://blogs.otago.ac.nz/conflicts/>>.

Maria Hook “An anti-suit injunction to compel compliance with an arbitration agreement: MMIA v Silica Sandport” (26 April 2023) *The Conflict of Laws in New Zealand: News and Comment* <<https://blogs.otago.ac.nz/conflicts/>>.