

2014 — Choice and Control [Part 1]

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2014 has been a busy year for the family courts with significant reforms in procedure and a plethora of reported decisions. Considering this year's developments in review, the two words that come to mind again and again are 'choice', and 'control', which are the focus of this two part blog.

Fighting for jurisdiction One of the most fundamental choices that parties can make is where to litigate, and this can have substantial ramifications on financial outcome. If there is disagreement as to which court has, or should have, jurisdiction, it can be a complicated, time consuming and expensive issue to resolve. 2014 has provided various examples of the lengths parties are prepared to go to in order to establish that the court of their choice has jurisdiction. – In *Sekhri v Rey* [2014] EWCA 119 the parties spent hundreds of thousands of pounds to determine their domicile in order to establish whether the English court had jurisdiction. – In *Chai v Peng* [2014] EWHC 3519 there are ongoing concurrent proceedings in the competing jurisdictions of Malaysia and England. The Judge in that case (Bodey J) described the situation as a "nightmare" and the parties' combined costs of £2.72 million certainly support that assertion. Nonetheless, the proceedings continue in both jurisdictions as each party has chosen to continue to pursue them in parallel. – In *Tan v Choy* [2014] EWCA 251 there were also competing jurisdictions in Malaysia and England, and the Court of Appeal had to determine the issue of habitual residence in order to establish jurisdiction. Unfortunately, the court did not take the opportunity to clarify the position as to exactly when, and for how long, a person has to be habitually resident in England before the court will have jurisdiction. The situation is supposed to be more straightforward when the competing jurisdictions are both Member States for the purposes of EU Regulations, and the question of which court is the proper forum is determined in accordance with those Regulations. One of the essential principles underlying the Regulations is to avoid concurrent proceedings: generally speaking, the first court seised has jurisdiction. However, there have also been various examples this year where the interpretation of the EU Regulations has been anything but straightforward. – In *S v S* [2014] EWHC 3613, Mostyn J described the state of affairs where there are concurrent proceedings in England and France as "little short of scandalous". He has referred to the CJEU the question of when jurisdiction is established, so that the competing court should decline jurisdiction. – However, in *Ville De Bauge v China* [2014] EWHC 3975 the situation seemed clearer: the husband had issued separation proceedings in Italy that, whilst not divorce proceedings, were a necessary precursor to divorce. As those proceedings were continuing, and since jurisdiction had been established in Italy, the English court was compelled to dismiss the petition. More forthright decisions on this subject should reduce this type of litigation in the future. The EU Commission has issued a Consultation Paper regarding the Regulations, which may give rise to proposals for reform next year.

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