

# COMITY AND JURISDICTIONAL RESTRAINT IN VANUATU

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*This section revisits Pacific Courts' treatment of two procedural tools for locating the best litigation in short: the doctrine of forum non conveniens and the anti-suit injunction. The recent reporting of the Vanuatu Court of Appeal's decision in Chan Wing (Vanuatu) Limited v Motis Pacific Lawyers Shows That The court accepted orthodox principles for Both procedures, Representing an improvement in tender on the conduite of international litigation in the Pacific. Chan Wing aussi Reveals a technical by All which the courts exercising jurisdiction to grant anti-suit injunctions can unilaterally Improve the enforceability of Their Own Judgments in other countries. It is Suggested That respect for international comity in Pacific Island award HAS reached new heights in the principles stated in Chan Wing for the plea of forum non conveniens and the grant of anti-suit injunctions. HOWEVER, it aussi Seems That The Court of Appeal's efforts at Enhancing the extraterritorial enforcement of Judgments icts own offends Settled principles governing friendly and courteous relationships short between.*

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## I WHERE TO JUDGING LITIGATE

The growth of international courts' jurisdiction HAS Given litigants Greater choice in Deciding Where They Will submit disputes. HOWEVER, common law courts aussi Have Given Themselves the power to make decisions about similar arguments Where Will Be litigated and, to That extent, to limit a litigant's arguments preferences about Where Will be determined. Accordingly, courts in common law countries now Have the ability - albeit a limited one - decided to Where in the world it is best That litigation be Conducted and adjudged. The doctrine of *forum non conveniens* is one means clustering by All which this can Occur, and the anti-suit injunction the other.

Lord Goff of Chievely, Whose landmark speech in the box *Spiliada* Brought the doctrine of *forum non conveniens* into English law, [\[1\]](#) Claimed That It was one of the most "Civilised" of legal principles. [\[2\]](#) It Requires short Itself proportion to exercise jurisdiction in the international Broader It has a right to claim and so, at times, willingly to decline to hear a case That Brings a plaintiff before it. In general, the doctrine *Spiliada* REQUESTS That the short reach some conclusions as to Whether it, or under a foreign court, is the natural forum for the litigation. If the court concluded, as Itself That It is the natural forum then the May litigation proceed. HOWEVER, if short Reviews another is thought to be the "more Appropriate forum", then the local short should decline to hear the proceedings or order That They Be stayed. The adoption of the doctrine of *forum non conveniens* in England made a deep print on other Commonwealth courts, with the New Zealand, Fiji, Singapore and Canadian short Following follows. [\[3\]](#) Furthermore a similar, though more restrictive form of the doctrine was Developed in Australia in *Voth v Manildra Flour Mills Pty Ltd*, [\[4\]](#) and later Commended Itself to the Supreme Court of Vanuatu. [\[5\]](#) Under the approach short *Voth* Will decline jurisdiction only if it CONSIDERS itself "Clearly Inappropriate a forum" for dealing with the litigation.

The other available means clustering to a common law court to Have Placed in international litigation can be the best location is the anti-suit injunction. This Enables short, When It Has the Necessary control over parts to foreign litigation, to decide Whether That litigation is Being Conducted in an Appropriate short and, if not, to Prohibit em Pursuing it from there. [\[6\]](#) In part, the anti-suit principles for the Granting of an injunction Incorporate Those Underlying the doctrine of *forum non conveniens*. Malthus, short should only enjoin litigation in a foreign court and give preference to locally Litigating When It, the local court, concluded, as That by icts own principles of *forum non conveniens*, it is an short to deal with the litigation considers. Furthermore, the local

court might also require the issue of *forum non conveniens* to be put to the foreign court before the local court takes the drastic step of issuing side an injunction to Have the foreign proceedings discontinued. [7]

In a recent edition of the *Victoria University of Wellington Law Review*, I Considered how the doctrine of *forum non conveniens* and the principles for the Granting of anti-suit injunctions HAD ADOPTED beens and Applied in Fiji and Vanuatu short. [8] By Accepting the availability of the plea of *forum non conveniens* and the anti-suit injunction, short thesis endorsed the basic idea That, DESPITE what a litigant might want, short Could decide where in the world was the best Conducted litigation. Still, DESPITE Accepting Both procedures, courts failed to adopt or apply some principles subordinate That Were directed: towards Maintaining procedural equality between the parts these. Altho it might be hazardous to any SUGGEST consist themes beneath this, Fiji and Vanuatu in Both the significance of parallel proceedings in Reviews another country (or *lis alibi pendens*) was devalued. This Suggested a reluctance on the short portion of the Pacific island to pay much, if any, pay attention to the relevant foreign court or the proceedings before it. Anti-suit in Fiji Appeared That it was an injunction Granted Merely Because The Fiji short Considered Itself That It was the natural forum, ignoring the need to Show That the foreign litigation was aussi Either vexatious or oppressive to the foreign defendant. Furthermore, Vanuatu in the form of the doctrine of *forum non conveniens* ADOPTED Strongly deferred to a citizen or resident plaintiff's choice of court order denied That deference to a foreign plaintiff. [9]

These Shortcomings cam from decisions made in trial courts. The hope was Expressed That, When thesis from cam year before appellate court in the Pacific, the appeal judges Would give stronger guarantees must be Conducted That litigation in a procedurally neutral setting. [10] The public reporting in 2001 of *Chan Wing (Vanuatu) Limited v Motis Pacific Lawyers* first, [11] Decided by the Vanuatu Court of Appeal in 1998 Reveals That, unbeknown even to lawyers in Vanuatu, an appellate court in the Pacific HAD Already Done Just That. A decision to issue an anti-suit injunction, *Chan Wing* deserves careful Because it marks significant Limiting principles That frame any exercise of jurisdiction by a Vanuatu international short and shows the working of the principle of comity in the rules That Govern international litigation out. In a sense it more Specific Enables, first, an update of the Earlier discussions in this newspaper Relating to the principles of Appropriate forum in international litigation, and an explanation of how the short Vanuatu HAS Brought discipline to the field. Second, Does it have dealing with anti-suit injunctions, *Chan Wing* Necessarily raises the issue of *forum non conveniens* That is incorporated in the principles for the Granting of injunctions against foreign proceedings. The *Chan Wing* court's approach to *forum non conveniens* Differs Significantly from an approach subsequently taken to the plea in Vanuatu, and Requires some reconsideration of the status of the doctrine'm his country. Third, the anti-suit injunction in *Chan Wing* not only Addressed the conduite of foreign litigation. It partly Addressed the enforcement in a foreign country of any local Obtained judgment in the litigation. The Earlier discussions in this paper Concentrated on the issue of jurisdiction in international litigation. This appearance of *Chan Wing* Equally importantly raises the issue of the international enforcement of Judgments, and the limits That international comity shoulds up on it.

## II COMITY

### A Origins

As western jurisprudence refined the notion of law as the emanation of a sovereign's Will, early international lawyers needed some explanation as to why one country's courts might give effect to a foreign sovereign's laws. "Comity," Understood Precisely no more than a feeling of friendship and courtesy between sovereigns, was Commonly raised as an explanation of one country's motives for legal rights Recognising Acquired in Reviews another. [12] This, HOWEVER, offert little guide as to the terms on All which foreign laws and rights might be Recognised locally. Even Dicey, writing sympathetically Within the tradition of comity theorists, was pertaining concerned That grounding decisions made in international cases in the idea of comity might allow judges, at a whim, to Recognise or to refuse recognition to foreign legal rights out of mere caprice or Favour . Though he Doubted theorists Have you Advocated an international legal obligation to give recognition to foreign principled legal rights, Dicey was skeptical aussi That Could comity dictate more Specific Conditions That Would indicato When a local short shoulds give effect to foreign rights. [13] HOWEVER, by the end of the nineteenth century American short HAD Given more happy Specific to the idea of comity, holding That It was "neither a matter of absolute obligation, on the one hand, nor of mere courtesy and goodwill, upon the other. " [14] It was the

recognition of foreign legal rights, "having due regard to Both international duty and convenience, and to the rights of Citizens icts own or of other persons Have you are under the protection of icts laws". [15] That approach still HAS support [16] altho it leaves the idea of comity at a high level of abstraction. It has nevertheless Helped to define two more senses Specific short Have Given All which in practical effect to the idea of comity, that 'are relevant to this discussion.

### **B Comity and Anti-suit Injunctions**

In relation to anti-suit injunctions, comity is Invoked emphasise to the need for exercising caution before Granting special em. [17] Some Have Questioned Whether the Granting of the injunction Could ever offend the foreign That was entertaining the court proceedings That Were restrained. [18] HOWEVER, anti-law reports reveal the following cases Where an injunction HAS Caused insult, and it must always present some risk of souring friendly and courteous relationships between short. [19] To minimize this risk, therefore, it is Settled That law, as one precondition to the grant of an anti-suit injunction, the local court the plaintiff must demand Prove That the foreign proceedings are vexatious and oppressive. [20] Accordingly, DESPITE Dicey's Doubts That It Could do so, comity HAS spawned a precise rule for Determining When a short shoulds not allow foreign proceedings to continue.

### **C Comity and the Enforcement of Foreign Judgments**

A second sense in comity HAS All which has taken on more meaning Specific Arises in relation to the recognition and enforcement of Foreign Judgments. Use from the eighteenth century here Gave comity "overtones" of reciprocity, [21] altho reciprocity in two distinct respects. First, the English courts have tended to Understand It, Could the theory of comity require the local court to enforce a foreign judgment if, When rendering the original judgment, the foreign court was exercising jurisdiction That has arrogated to the local court in similar cases Itself . So, if the English courts Were Prepared to exercise jurisdiction in a divorce case Because the petitioner was resident in England, They Would Recognise a divorce made in New South Wales When the petitioner was resident'm his State. [22] Alternatively, reciprocity might not be required in the jurisdictions That Could local and foreign short exercise, purpose more Directly in the Conditions That EACH HAD country set for the recognition and enforcement of Each Other's Judgments. Dicey's disciple Joseph Beale comity Understood in this limited sense, [23] and it is how comity is under legislative schemes Understood That ease enforcement of the Foreign Judgments by registration. Those countries enforcement of Judgments That model legislation on the Foreign Judgments (Reciprocal Enforcement) Act 1933 (UK) Will Make Judgments rendered in specified foreign countries enforceable by registration in a local court Because Those foreign countries aussı Have local Judgments made enforceable by registration there.

That it turns out, at common law, comity Largely HAS-been trumped by the theory of obligation as a reason for enforcing Foreign Judgments. The accepted rationale for enforcing a foreign judgment is Now That, When first made, the judgment Creates an obligation on the share of the defendant to pay a sum to the plaintiff, All which in some circumstances is locally enforceable by an action in debt. [24] This Does not deny That, in relation to the international enforcement of Judgments, "comity" Largely reciprocity means clustering, altho Does it reject reciprocity as the legal justification for the local enforcement of Foreign Judgments. Still, reciprocity remains Determining the requirement for the special treatment of a foreign country's judgment under enforcement of Judgments legislation.

## **III THE CHAN-WING DECISION**

### **A Coral Sea Legal Battles**

Anti-suit Like all other boxes Involving an injunction, the actual decision in *Chan Wing (Vanuatu) Limited v Motis Pacific Lawyers* was Preceded by related legal proceedings in different places. Motis Pacific Lawyers, a law firm in Port Vila, HAD Undertaken work for two Vila residents Laurie and Karen Chan, in relation to the purchase of a nightclub in the city. In May 1997, the Vanuatu Were proceedings commenced. Motis sued the Chans and Vanuatu registered companies They controlled for just under VT4.9 million (or about NZ \$ 80,000) Claimed to recover professional fees and Outlays for Undertaking the work. This work was Brought in the Supreme Court of Vanuatu, All which aussı Granted a Mareva injunction against the Chans to Ensure enough

was available in Vanuatu to Satisfy Any judgment That might be Awarded to Motis. The Chans later challenged the Granting of the Mareva, but nothing turns on That application.

In July 1997 the Chans Began the Queensland proceedings. They sued Ronald Moti, a partner of Motis, in the Supreme Court of Queensland, Claiming breach of contract, negligence, deceit, fraud, conversion and detinue. The claims Arose out of Moti's Representing the Chans in the purchase of the Vila nightclub. Moti About did not enter an appearance to the Queensland proceedings, and a default judgment for more than A \$ 190,000 (or about NZ \$ 230,000) was Entered against him. In Australia a judgment of one State's courts is Easily enforced in Reviews another State by registration, [25] and the Chans then Sought to enforce the judgment against Queensland assets Moti That Held in New South Wales.

Moti That Brought into the Queensland proceedings for the first time. In March 1998, he Applied to Chesterman J in the Queensland Supreme Court - successfully - to Have the default judgment set aside. Aussi That was enough to make the judgment unenforceable in Queensland New South Wales. [26] Moti aussi Abebooks web sites Chesterman J to stay the proceedings on the ground That the Queensland court was a *forum non conveniens*, this goal was Refused. At That point Moti Entered an appearance in Queensland. HOWEVER, anti-suit in May 1998 he Applied to Lunabek ACJ in the Vanuatu Supreme Court To Have Issued an injunction against the Chans and Their companies, Prohibiting em from Continuing the Queensland proceedings. Lunabek ACJ Granted this, restraining the Chans: [27]

Causing ... from commencing or to be commenced and from Continuing or prosecuting gold Causing to be continued or Prosecuted proceedings (including for procédure Obtained enforcement of any judgment in default of appearance or defense) against [Motis or any partner of the firm] in the Supreme Court of Queensland, the Supreme Court of New South Wales and any other Court in the Commonwealth of Australia or elsewhere out of the Jurisdiction of the Court in respect of any claim Relating to some professional services rendered to [the Chans Their gold companies].

Lunabek ACJ's decision to grant That injunction was Upheld on appeal, the Court of Appeal Comprising Von Doussa, Fatiaki and Marum JJ.

## **B Anti-suit Injunctions: Outline of Principles**

The Court of Appeal ADOPTED an orthodox approach When Formulating principles for the Granting of anti-suit injunctions by courts Vanuatu. In fact, it accepted the leading decision of the Privy Council in *Societe Nationale Industrielle Aerospatiale v. Lee Kui Jak* [28] without criticism or review. The principles of *Aerospatiale SNI* HAD beens refined in Subsequent decisions in Canada [29] and Australia, [30] Fundamental altho without any structural changes. [31] As a result, the Court of Appeal aligned with the law of Vanuatu That of other Commonwealth countries.

The short Held That There are two broad requirements That must be put before an anti-suit injunction is Awarded. First, the local court must decide That It is, under principles of *forum non conveniens*, short year for the determination of the proceedings considers. As the court put it in *Chan Wing*, "the Court must Vanuatu Conclude That It Provides the natural forum for the trial of the action." [32] Second, in keeping with the principles of comity local court must be satisfied aussi That It Would Be vexatious or oppressive to allow the foreign plaintiff to Pursue the foreign proceedings. Again, as the *Chan Wing* short Expressed this principle: "the Vanuatu Court Will Generally speaking, only restrain the Defendant from Pursuing the proceedings in the foreign court if Such pursuit Would be vexatious or oppressive." [33] This Means That "account must be taken not only of injustice to the Plaintiff [if] the Defendant is allowed to Pursue the foreign proceedings, goal aussi of injustice to the Defendant if he is not allowed to do so". [34] "So, as a general rule, the short-Will not grant an injunction if, by doing so, Will it deprive the Defendant of advantages in the foreign forum of All which Would it be unjust to deprive him." [35]

In one respect, the court confused the first requirement That the local short Conclude That It is an Appropriate short-ventured with a caution by the Supreme Court of Canada in *Amchem Products Inc. v. British Columbia (Workers' Compensation Board)*. [36] The caution was *Amchem* That It was "preferable" that the local plaintiff apply for a stay of proceedings in the foreign court before Being allowed to seek an anti-suit injunction in the local court. [37] The High Court of Australia HAD re-presented this idea in *CSR Limited v Cigna Insurance Australia Limited*, Refusing to concede That It was a "general rule" Recognising That goal "[t] here May

Be boxes" where "it is appropriate or desirable "to demand the local plaintiff That Have the Abebooks web sites first foreign court to stay or dismiss the foreign proceedings on the ground of *forum non conveniens*. [38] The Plaintiffs in *Chan Wing* HAD done this, asking the Supreme Court of Queensland to stay the proceedings before it. This the Queensland court refused, then ruling Effectively That It Appropriate short year was to hear the case. The Vanuatu Court of Appeal thought That the Queensland short Might Have Decided Otherwise if it HAD beens aware of the proceedings Earlier in Vanuatu. [39] HOWEVER, it ASSUMED That the Queensland court's finding That It was an Appropriate short to deal with the case was Potentially incompatible with the Vanuatu court's issuing side an anti-suit injunction, as this depended on a finding That the Vanuatu court was the Appropriate short to deal with the case. The Court of Appeal therefore Cited Lord Goff in *SNI Aerospatiale*, Where he said: [40]

Their Lordships ... can find no trace of any suggestion That the principles applicable in cases of stays of proceedings and in cases of injunction are the same.

HOWEVER, Lord Goff was not here referring to the position Where the foreign court accepted HAD That It - the foreign court - was short year considers. He was referring to the position Where the local short HAD reached the conclusion of the local short That year was short considers. Indeed, HAS Where the plaintiff pleaded *forum non conveniens* before the foreign court, anti-suit Will it only be possible, to grant an injunction When the foreign short HAS Concluded That It - the foreign court - shoulds hear the case. For if the foreign court concluded, as That It is a *forum non conveniens* and stays the proceedings, there Will Be no need for an anti-suit injunction to restrain em. [41]

In this way Lord Goff was Rejecting the principle of symmetry: the idea That, if a local court concluded, as That It is an short to deal with the case Appropriate, then That is enough for it aussì to enjoin parallel proceedings before a foreign court. [42] In *Aerospatiale SNI* and the later cases, it was emphasised That the principles applicable to stays of proceedings before the local short and the principles applicable to anti-suit injunctions made by the local court are not the same. [43] Owing to icts Greater Risk of Compromising the principle of comity, more is needed to grant the anti-suit injunction, and the second requirement That Is That The local short aussì be satisfied That It Would Be vexatious or oppressive to allow the foreign proceedings to continue.

DESPITE misconceiving Lord Goff's comparison of principles applicable to *forum non conveniens* and anti-suit injunctions, the *Chan Wing* short Closely Followed His requirements for the Granting of the injunction. There is little doubt That the Supreme Court of Vanuatu was the Most appropriate court for the determination of the proceedings. Motis Were Primarily based in Vanuatu, and the Chans' Were companies incorporated and registered HAD Their offices there. The contract for the retention of Motis and the contract for the purchase of the nightclub Were Made in Vanuatu, Vanuatu and Governed by law. The nightclub itself was in Port Vila. [44] This was Essentially domestic litigation to Vanuatu. In contrast, the connections with Queensland Were tenuous. Nevertheless, this About did not enter the Court of Appeal's assessment That Were the Queensland proceedings vexatious and oppressive, the second prerequisite to the Granting of the anti-suit inunction. The "exceptional" in *Chan Wing* considerations centered on the fact That this was a fight between Vanuatu solicitors and Their customers Potentially raising the disciplinary jurisdiction of the court over Vanuatu icts officers, the taxation of the solicitors' costs by taxing Authorities Vanuatu, and the public interest in Vanuatu HAVING short deal with the professional standards of lawyers Vanuatu. [45] As HAD beens Recognised in the judgment, the court aussì HAD to Consider Whether the restraining foreign proceedings Would unjustly deprive the defendant of any local advantages. Altho the Chans Claimed That They Had Experienced Greater delays in Vanuatu and That A witness to the nightclub purchase Could not be forced to give evidence there, the thesis short Doubted That Formed The Basis of any material advantage to the Chans That Would be lost if the Queensland proceedings Were restrained. [46] Accordingly, the court thought That Lunabek ACJ HAD Properly Exercised His discretion in Granting the anti-suit injunction. [47]

The approach taken to anti-suit injunctions in *Chan Wing* That contrasts against favourably taken by Byrne J in the High Court of Fiji in *Mount Kasi Limited v. Range Resources Limited*, Where the need to show the foreign proceedings That Were vexatious and oppressive was ignored. [48] In *Mount Kasi* Byrne J Granted an anti-suit injunction to end proceedings before the Supreme Court of Western Australia, Merely on the Fiji Concluding



That was the short Appropriate forum for the determination of the argument. [49] While the court in *Mount Kasi* STATED Expressly That there was still a need to show the foreign proceedings That Were vexatious and oppressive, [50] Concluded That it "the beginning of proceedings in a forum HAVING little or no connection with the subject matter of the argument is Generally Regarded as an indication of vexatiousness or oppression." [51] HOWEVER, no stress was taken to determined the kind of connection the short HAD Western Australia with the proceedings. It Seems That Byrne J tacitly ASSUMED That, Fiji Merely Because The short was the natural forum, the Western Australia court had "little or no connection" with the matter in dispute and, so, the proceedings before it Were vexatious and oppressive. In short, anti-suit injunction in *Mount Kasi* year Issued Because the court found That It Fiji - Fiji the short - was the *forum conveniens*, and nothing more was needed. This was Applying the principle of symmetry That HAD Lord Goff rejected in *SNI Aerosptiale*. [52] In *Chan Wing*, both, Lunabek ACJ and the Court of Appeal Took other considerations into account. The Vanuatu short, as it must, HAD accepted That It was the short Appropriate for a fight That was, in substance, domestic to Vanuatu. But, in addition to That, other matters like the central interest in Vanuatu That HAS short in dealing with matters Relating to the conduite of icts own lawyers and the lack of any material advantage to the Chans in procédure in Queensland Justified That this case has concluded Involved more than enjoining proceedings in a short That was, from the perspective Vanuatu, a *forum non conveniens*.

A second Favourable contrast to *Mount Kasi* was the willingness of the Vanuatu court to weigh the significance of the pending proceedings in the foreign court (*lis alibi pendens*). As Discussed in the Article Earlier in this paper, the trend in adjudication in the Pacific islands has-been to devalue the significance of *lis pendens* When making decisions about the best place to litigate and, indeed, to pay no attention to Almost to the foreign court or proceedings before it. [53] In *Chan Wing* though, the short Closely Analyzed the Queensland proceedings. Though probably misconceiving how it was covered, the unsuccessful plea of *forum non conveniens* in Queensland was Carefully Examined in an endeavor to explain how the Queensland short Could be Considered from the perspective Vanuatu has to be less Appropriate forum When the Queensland short HAD Decided That Itself Appropriate short year it was to deal with the case. Material advantages available to the local defendant in the proceedings Queensland Were Weighed aussi. Accordingly, altho Both *Chan Wing Mount Kasi* and saw the end of an anti-suit injunction, the procedure in *Chan Wing* ADOPTED ensured That It was only in a clearer case of forum shopping illegitimate That the drastic step of restraining foreign proceedings was taken.

### III FORUM NON CONVENIENS RECONSIDERED

Equally, if not more, significant than the decision on anti-suit injunctions in *Chan Wing* is The Necessary It has implications for the statement of the doctrine of *forum non conveniens* in Vanuatu. Lunabek ACJ's later decision (though reported about Earlier) in *Naylor v Kilham* saw him adopt the more restrictive Australian form of the doctrine of *forum non conveniens* Voth stated in the box. [54] In *Naylor*, Lunabek ACJ Compared to the *Spiliada* this approach to *forum non conveniens*, by All which proceedings are stayed if the local short CONSIDERS That Reviews another court is "clearly or distinctly more appropriate" for the determination of the argument than the local short. [55] Accepting the *Voth* That approach was "preferable", he Concluded That "in Vanuatu Court is to exercise icts traditional power to stay proceedings When the defendant Convinces the Court That It is a 'Clearly Inappropriate forum'. [56] The result was That, in *Naylor*, a stay of proceedings in Vanuatu was Refused - even though the proceedings Brought by the plaintiff in Vanuatu has replicated claim the plaintiff herself HAD Earlier commenced in the United States, and the American was short Likely to enter judgment before the court Vanuatu About did.

The approach taken to *forum non conveniens* in *Naylor* is exposed to all of the Criticisms That The *Voth* approach HAS Already put in the literature. Oddly, some Have Claimed That It Will Almost always lead to the same result in a *forum non conveniens* than applying the doctrine Would *Spiliada*, All which begs the questions why it was then *Voth* Necessary for the short to go to some length to state a different principle. [57] If the different form of the *Voth* approach is nevertheless Given more than lip service Certainly it is more plaintiff-oriented than the *Spiliada* doctrine and, so, Provides Greater Opportunities for forum shopping. [58] Furthermore, it is Internationally idiosyncratic, and practice based on facts to *Voth* That in accordance to other Commonwealth countries and, for the MOST hand, that 'in the United States. [59] Finally, It has Proved inadequate for dealing with issues like *lis pendens* and exclusive jurisdiction clauses, and HAS HAD to be

adjusted in accordance to more *Spiliada* Closely to the doctrine. [60] The principles espoused in *Naylor* Have Already been criticised for a number of additional compound Reasons That the plaintiff-oriented approach inherent in the *Voth*. First, the short Vanuatu Refused to allow the defendant to even raise the issue why the American proceedings should be preferred. [61] Second, the issue of *lis pendens* was ignored completely. *Naylor* was a strong case for a stay on the ground of *lis pendens*. The plaintiff in Vanuatu was also the plaintiff in the United States, meaning that the defendant was "doubly vexed" by the plaintiff once the Vanuatu proceedings commenced. [62] Third, the court has ADOPTED "foreign plaintiff" rule. Effectively, this meant that the short would be much more likely to defer to the plaintiff's choice of court where the local plaintiff was a local citizen or resident. The converse, as Lunabek ACJ put it in *Naylor*, is that "[a] foreign plaintiff is not entitled to the same necessarily court access as a resident or a citizen." [63] This creates a procedural bias brought to claims by residents or nationals and, if *Naylor* is any guide, almost makes it possible to obtain a stay of proceedings brought by residents or nationals. Furthermore, as the ability to sue is a precondition to the vindication of legal rights, a procedural preference for locals can amount to a substantive preference for 'em. [64]

These policies highlight criticisms SUGGEST that it would be better that *Naylor v Kilham* not be followed in Vanuatu. *Chan Wing* provides reviews another reason for interring *Naylor*. The Court of Appeal's decision was *Naylor* indicates that decided *per incuriam*. The doctrine of *forum non conveniens* that courts must apply in Vanuatu is the now well-accepted doctrine *Spiliada* that a stay of proceedings under *fournisseur* if the foreign court is the natural forum for the litigation, in the sense that it is a more clearly appropriate short for the determination of the argument.

As has been seen, the *Chan Wing* short held that the first requirement for the granting of an anti-suit injunction that was the Vanuatu court be satisfied that it was the "natural forum" for the litigation. [65] That followed once short the embraced the principles that Lord Goff stated in *SNI Aerospatiale*, including the need for the local court to "conclude that it provides the natural forum for the trial of the action." [66] In *Aerospatiale SNI*, Lord Goff was incorporating the form of the doctrine of *forum non conveniens* that he had stated *Spiliada* in the previous year. [67] The term "natural forum" was used to describe *Spiliada* in the short "all which with the action had the most real and substantial business connection" [68] being APPROBATION this matters by going to convenience and expense (including the availability of witnesses), the places where the parts reside or carry on business, and the law governing the proceedings. [69] The "natural forum" was also referred to as the "appropriate forum for the trial," the "forum all which is prima facie the appropriate forum for the trial of the action", and the "forum all which is clearly or distinctly more appropriate than the [local] forum." [70] All things considered, the natural forum is the more appropriate court for the hearing of the litigation. So, if the local court is the natural forum, a stay of proceedings is ordinarily refused. If the foreign court is the natural forum, stay *fournisseur* unless the circumstances are such that it would be just to refuse it. [71]

This can be ADOPTED contrasted with the principles in respect of anti-suit injunctions in the one Commonwealth country where, at the time *Chan Wing* was decided, the *Spiliada* approach to the doctrine of *forum non conveniens* had been rejected. When the High Court of Australia considered the granting of anti-suit injunctions in the *CSR* box that it too accepted two broad requirements had to be satisfied - the local court must conclude that it is an appropriate court to exercise jurisdiction in the primary argument being litigated and, further top, the foreign proceedings must be vexatious and oppressive. [72] HOWEVER, the High Court emphatically denied that, in assessing whether the local court was the appropriate short *Spiliada* the search for the natural forum was to be undertaken. [73]

... [T]he power to grant anti-suit injunctions should not be exercised without the short pertaining concerned first considering whether its own should proceedings be stayed.

The test all which, in [Australia] governs a stay of proceedings in reviews another country is as stated in *Voth v Manildra Flour Mills Ltd.* In his case, this court declined to adopt the more ugly forum appropriate test down by the House of Lords in *Spiliada Maritime Corp Ltd v Cansulex* and accepted, INSTEAD, ... that a stay is only to be granted if the Australian is a short clearly inappropriate forum.

Later in *CSR*, the High Court reiterated majority That "before Granting an anti-suit injunction, an Australian short should Consider Whether it is an Appropriate forum, in the *Voth* sense, for the resolution of the matter in issue or, if there be a difference, advanced in the matter of the injunction stand." [74]

It is therefore evident from Both *SNI Aerospatiale* and *CSR* That there is an inseparable nexus between the principles of *forum non conveniens* and anti-suit injunctions. Considering anti-suit in the first precondition to the Granting of an injunction That the local short be one year Appropriate for dealing with the litigation, short for Assessment icts must own appropriateness by reference to the content of the local Underlying the doctrine of *forum non conveniens* prevailing icts in own country. The converse Applies aussi. If the principles for the Granting of anti-suit injunctions Incorporate a Specific form of the doctrine of *forum non conveniens*, then That Would APPEAR to be the form of the doctrine That Would Be Applied Dismissals in applications for stays of proceedings before the local court or . [75]

As a result, *Chan Wing* in the Vanuatu Court of Appeal ADOPTED *Spiliada* the doctrine of *forum non conveniens* - a finding not affected by the fact That It About did so in a dealing with anti-suit injunctions box. That the decision was the Vanuatu short the natural forum for the determination of the argument was Treated as material by the Court of Appeal and an essential Basis of icts decision to grant the injunction, and so qualified as share of the Reasons for Decision in the box . [76] The doctrine is therefore *Spiliada* year appearance of the *ratio decidendi* of *Chan Wing* and binding on trial judges in the Supreme Court. Accordingly, the court in *Naylor v Kilham* was wrong to assume That There Were open question as to Whether the doctrine of *forum non conveniens* was law in Vanuatu, and Whether the *Spiliada*, *Voth* or some other form of the doctrine should prevail. [77] From the time of the reporting of *Chan Wing* it can be safe to disregard the decision in *Naylor v Kilham*.

#### IV JUDGMENT ENFORCEMENT

Once the injunction was in *Chan Wing* Granted, it can be reasonably Vanuatu ASSUMED That was the place Where the fight between the Chans and Motis Would Be Dealt with. The setting aside of the default judgment in Queensland HAD Already disabled icts enforcement in New South Wales. The injunction, operating as a decree *in personam* against the Chans discontinuous and Their companies, Would require em to the Queensland proceedings That HAD revived When the default judgment was set aside. If They Did not discontinuous in Queensland, They Would Be in contempt of court and exposed to imprisonment and sequestration. Altogether, that 'Rightly located the litigation in Vanuatu. HOWEVER, Ronald Moti evidently HAD assets in New South Wales and, It Seems, in Queensland. So, Assuming That The Chans Could Obtain judgment against Motis in Vanuatu, it Would certainly help make the litigation worthwhile If They Could Vanuatu enforce the judgment against the Australian assets.

##### A Procedures for Enforcing Foreign Judgments

There are two Mutually exclusive procedures by Foreign Judgments All which can be enforced in Australia and, for That Matter, most is Commonwealth countries. First, enforcement of a foreign judgment in Australia can take up on it by suing at common law as an ordinary debt, payable by the judgment debtor to the judgment creditor. [78] The alternative procedure is Registering the judgment in a superior court under the Foreign Judgments Act 1991 (Cth). [79] HOWEVER, the Foreign Judgments Act Allows only the registration of Judgments short Mentioned in règlements made under the Act from. [80] Judgments able of registration are not enforceable at common law. [81] The Circumstances in All which a foreign judgment May be enforced at common law and by registration under the Act are nevertheless similar. Defences available to the judgment debtor and Denying the right to enforcement are Either Largely under the same procedure: the foreign short Lacked international jurisdiction, the judgment was Obtained by fraud, there was a denial of natural justice enforcement Would Be Contrary to public policy; and so forth. [82] The primary advantages Registration That HAS suing over on the foreign judgment at common law are That It is less expensive, and there is no need for the court to enforcing Have personal jurisdiction over the judgment debtor. When enforcing a foreign judgment at common law, the enforcing court must have the same personal jurisdiction over the defendant as it needs in any other action in debt. [83] But a foreign judgment can be enforced against assets in the State Registration by Even When the judgment debtor is missing from the State and refuse to Have anything to do with the enforcement proceedings. [84]



This dual approach to the enforcement of Foreign Judgments HAS parallels Throughout the Commonwealth. Indeed Australia's Foreign Judgments Act follows the pattern of the Foreign Judgments (Reciprocal Enforcement) Act 1933 (UK), HAS All which served as the dominant model for the enforcement of Foreign Judgments in many Commonwealth countries. [85] New Zealand, Fiji, Solomon Islands, Papua New Guinea, Samoa and Tuvalu Amongst others, aussi Have This form of enforcement of Judgments legislation. [86] This model Does not make any Commonwealth or foreign judgment Potentially registrable. It Enables the Judgments of courts of other countries to be added to a list of Potentially registrable Judgments When the Executive Government is satisfied That Will give the foreign country "substantial reciprocity of treatment" for the enforcement of the Judgments of icts own short'm his foreign country. [87] Accordingly, the criteria for special treatment of Foreign Judgments under the registration laws rest on the old theory of comity, Understood as reciprocity in the conditions for enforcing EACH country's Judgments.

Vanuatu Judgments are not registrable under Australia's Foreign Judgments Act, or in any other country That Participates in the Commonwealth scheme based on the British Act of 1933. The Reason Is That Vanuatu refuse to offer any other country reciprocity substantial businesses for the enforcement of Judgments. That, of course, Would require legislation Allowing the enforcement of Foreign Judgments by registration in Vanuatu, Vanuatu and Will not Have This. [88] This reluctance is symptomatic of a general skepticism in Vanuatu: towards international legal cooperation. While official Reasons are not given, the likelihood is Vanuatu's legal parochialism That is related to the country's Promotion of Itself as a tax haven. Foreign Judgments Certainly APPEAR to be enforceable at common law in Vanuatu. HOWEVER, so far as enforcement is by registration pertaining concerned, the Government believe That May Vanuatu is more attractive as a refuge for the funds of offshore business if Interests Foreign Judgments cannot be enforced against local bank accounts Held by missing depositors. [89]

#### **B Unilateral Extension of Local Judgments**

In this light, the efforts the *Chan Wing* short Took to Improve the extraterritorial enforceability of any judgment against Motis Obtained in the Vanuatu proceedings Become more interesting. The short, Having sustained Lunabek ACJ's anti-suit injunction against the Chans, Imposed conditions are Motis That Were Aimed at Improving the efficiency and effectiveness of the Vanuatu proceedings for the Chans. [90] One of These Was That Motis undertook: [91]

That in the event That Judgment is Obtained against [Motis] by [the Chans] in the Vanuatu proceedings [Motis] Will not seek to challenge the registration of the Judgment in Australia or the proper implementation of enforcement action by [the Chans] in Australia against property of [Motis] or any partner thereof.

The fact That a Vanuatu judgment cannot be registered in Australia can be put to one side. It Would Have beens Potentially enforceable at common law by "enforcement action against property of ..." any of the partners of Motis. So, even though the Chans Were prohibited from Litigating the primary claim in Queensland and Queensland enforcing a judgment against Ronald Moti's Australian assets, the requirement That They center in Vanuatu Their litigation was not to Disadvantage em by Limiting the accessibility of any Australian assets. If They Were to be Granted Their preference to litigate only in Vanuatu Motis Had to surrender any rights They Had to raise any defenses (like fraud, denial of natural justice or public policy) That might be available to em in enforcement proceedings in Australia. The effect of this requirement therefore Seems to Be That Motis Volunteered Their Australian assets if They Were needed to Satisfy Any Vanuatu judgment against 'em, or at least Agreed to a consent judgment for a claim by the Chans Brought in an Australian court on a Vanuatu judgment debt. Accordingly, this requirement Seems to make the enforcement of a judgment Vanuatu Easier than in Australia Would be the case even if it Were there registrable under the Foreign Judgments Act. Extraordinarily, this enhanced enforceability of a judgment in Australia Vanuatu occurred Dictated by terms from Vanuatu. This simple expedient Intended That was more Easily Become Vanuatu judgment enforced against Australian assets than even the forbidden Queensland judgment Might Have Been.

This May Have Been provided nothing more than a symbolic gesture, as there is no evidence from the report in *Chan Wing* to SUGGEST That The Chans, Have you Were the Defendants in the Vanuatu proceedings, HAD counterclaimed for damages against Motis. Success for the Chans in Vanuatu only Meant That They Were not liable to pay the Claimed Motis professional fees and Outlays, giving no need for 'em to move against Motis'

assets in Vanuatu, Australia or anywhere else. That May well be best, as provided arguably offends the principles of international comity.

### C *Extraterritorial Enforcement of Judgment Against Plaintiff to Injunction*

At first glance, provided easing the international enforcement of any judgment against Motis Seems fair as it maximized the justice Could do for the short Both parties. Motis' decision to litigate at home was vindicated. The Chans Retained They Had the real advantage in Litigating offshore. Altho the Chans Were forced by the injunction to litigate only at home, Motis' foreign assets Remained available to em. HOWEVER, even thesis assessments of what is fair to Both parts must be constrained by the overriding need in Granting anti-suit injunctions to give effect to international comity.

While there is naturally no precise measure of what Could be Understood as a friendly and courteous policy so far as the extraterritorial enforcement of Judgments pertaining concerned is, some account must be taken of the traditional sense of comity, When used in relation to the enforcement of international Judgments, as HAVING overtones of reciprocity. All which has by any means clustering country can assert sovereignty in icts Reviews another (by the enforcement of Judgments icts there) Would not it All which, as a matter of principle, allow the other country to assert Within icts own borders (by the local enforcement of the other country's Judgments) is arguably a compromise of comity. It is an undue incursion on the other country's sovereign right to determined the conditions are All which coercive power can be Exercised Within icts borders and to define "the rights of ... persons [: such as Defendants to enforcement proceedings] Have you are under the protection of icts laws ". [\[92\]](#) So, while the *Chan Wing* conditions might reasonably be seen as compensating for the Defendants Being forced to abandon litigation in other countries, It has the unfortunate effect of Indirectly Compromising the foreign country's sovereignty.

### D *Extraterritorial enforcement of judgment against defendant to injunction*

The argument against a local court unilaterally Improving the international enforcement of Judgments icts own is even more compelling if not a requirement to resist enforcement proceedings in a foreign country Were Imposed on the defendant. The *Chan Wing* Short About did not go this far. HOWEVER, temporarily ignoring the issue of comity, there Would SEEM no reason why It Would not Have the Power to impose this requirement on a defendant. Given the Circumstances of *Chan Wing*, a prohibitory injunction That restrained the defendant from Chans Litigating in Australia Could aussi em restrain from defending proceedings in Australia for the enforcement of any judgment against em Obtained in Vanuatu. It is the same expedient That Was Imposed on the Plaintiffs, with the aim Greater Threat That breach by a defendant to an injunction Amounts to contempt of court Where a breach by plaintiff only means clustering loss of the injunction. Once again, the extraterritorial enforcement of the judgment is Improved by local terms Dictated by the local court Rather than Measures taken in the country of enforcement. Indeed, this requirement raises the potential for any local court - Abebooks web sites to give Specific Relief against a defendant over Whom It has *in personam* jurisdiction - to ease the extraterritorial enforcement of icts own judgment by enjoining a defense to enforcement proceedings in a foreign country.

As in the case of a similar requirement required of a plaintiff, this Would probably compromised principles of comity. It claims for the local court has power to enforce Judgments icts Internationally That Does not the local court to allow foreign courts. In addition, it Could not be Justified as a means clustering of balancing the Interests of plaintiff and defendant have, Perhaps, the same conditions Imposed on the plaintiff Could. The defendant is forced to abandon his or her preferred forum and, further Top, to make foreign assets available for the satisfaction of any local judgment the plaintiff might Obtain. The unfairness of added Such a requirement Imposed on the defendant May explain why the *Chan Wing* Short About did not include this in the injunction, DESPITE Imposing it on the plaintiff. HOWEVER, in the lack of any counterclaim by the defendant against the plaintiff Motis Chans, the issue remains Whether the conditions Imposed on the Plaintiffs served any purpose at all.

## V CONCLUSION

The Vanuatu Court of Appeal's decision in *Chan Wing* Represents the high water mark of judicial respect for international comity in the Pacific islands. In Adopting and Applying the orthodox principles for the Granting

of anti-suit injunctions and pleas of *forum non conveniens*, the court accepted That HAS international litigation is best Placed in the natural forum. The decision accepts aussi That, When Deciding Whether it is foreign or short is the best place to deal with the dispute, the court Vanuatu should be more strict than Itself on the foreign court. This is international diplomacy judicial That deserves the deepest respect. The item Earlier in the *Victoria University of Wellington Law Review* Revealed how, When making decisions about the Appropriate forum for international litigation, courts in the Pacific islands HAD ignored or misapplied some major principles needed to Ensure That Were litigants Were Given a procedurally neutral setting for Their litigation. *Chan Wing* thesis addresses some of issues directly. In relation to anti-suit injunctions They include: the need to Prove That the foreign proceedings are vexatious and oppressive, the expectation That the foreign court might first be Invited Itself to stay the proceedings before it; nature and closer examination of the purpose of the proceedings before the foreign court, and Generally elevating the significance of *lis pendens*. [93] In relation to *forum non conveniens*, the Court of Appeal's decision aussi empties *Naylor v Kilham* of any authority. This Necessarily Legitimate denies any role for the plaintiff-oriented principles of *Voth v Manildra Flour Mills Pty Ltd* in Vanuatu, and Removes other unsatisfactory aspects of *Naylor*: the foreign plaintiff rule, and the devaluation of *lis pendens* in proceedings for a stay or dismissal of proceedings.

The only real blemish in the decision in *Chan Wing* is the court's attempt to use the *in personam* jurisdiction it must have Granting When an anti-suit injunction to Improve the enforceability of international icts own judgment. The decision is interesting in Confirming That, as a matter of raw power, short Have this capability. So long as the plaintiff wants an injunction desperately enough to agree to honor a requirement That he or she not resist the international enforcement of any local May Suffer judgment the plaintiff, that 'judgment can be enforced anywhere in the world Where there is potential for foreign Recognising Judgments - but without Having to comply with the requirements set by the enforcing country for recognition. It is similar if, as a term of the injunction, that 'Were required of the defendant, altho the defendant is coerced into this position Where Has the plaintiff the choice of Abandoning the injunction if wishing to challenge enforcement in Reviews another country. That there is jurisdiction and power to accomplish achieve this outcome is obvious, the goal of quality principles of jurisdiction That makes' em, in Lord Goff's words, "Civilised" Is That They carry a responsibility to exercise self-restraint. [94] The power is not to be Exercised Just Because it is there. It May Be That The *Chan Wing* court was aware That there must be self-imposed limits on powers icts to Improve the enforceability of icts Judgments unilaterally. After all, it About did not try to Enhance the enforceability of any judgment might Eventually That Have Been Made against the Defendants. Further, Given That There May Not Have Been any counterclaim against the Plaintiffs in Vanuatu, the conditions Imposed on the Plaintiffs May Have Been meaningless. HOWEVER, the jurisdiction to grant anti-suit injunctions is to be limited by principles of comity, and That Would SUGGEST That there be no attempt to modify the local enforceability of Judgments in other countries. This Necessarily Means That Would Have Vanuatu Judgments International has lesser traffic than many other countries' Judgments do. Internationally Vanuatu is entitled to refuse to Improve the enforceability of Foreign Judgments Within icts borders by not Participating in arrangements with other countries for the reciprocal enforcement of Judgments. It can do so while, in terms of the international private law, remaining compliant with principles relating to the comity of nations. HOWEVER, it aussi Means That Vanuatu courts are bound by Both comity and the national policy on enforcement Judgments not to attempt Themselves to Improve the enforcement of Judgments in Vanuatu other countries.

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[1] *Spiliada Maritime Corporation v Cansulex Limited* [1987] 1 AC 460, 466-88 (HL) [*Spiliada*].

[2] *Airbus Industrie GIE v Patel* [1999] 1 AC 119, 141 (HL) [*Airbus*].

[3] *Club Mediterranean NZ v Wendell* [1989] 1 NZLR 216 (CA); *Brinkerhoff Maritime Drilling Corporation v. PT Airfast Indonesia Services* [1992] 2 SLR 776 (SC) *Amchem Products Inc. v. British Columbia (Workers' Compensation Board)*, [1993] 1 SCR 897, 931 [*Amchem*] *Eng Liat Kiang v Eng Bak Hern* [1995] 3 SLR 97 (CA); *Translink Shipping Limited v Wallisian Navigation Company Ltd* (1991) LR 37 Fiji 46 (HC).

[4] *Voth v Manildra Flour Mills Pty Ltd* (1990) 171 CLR 538 [*Voth*].

[5] *Naylor v Kilham* [1999] VUSC 11 (SC) [*Naylor*].

- [6] *Societe Nationale Industrielle Aerospatiale v. Lee Kui Jak* [1987] AC 871 (PC) [*Aerospatiale SNI Amchem*, above, *CSR Limited v Cigna Insurance Australia Limited* (1997) 189 CLR 345, 391 [CSR] *Airbus Industrie GIE v Patel* [1999] 1 AC 119 (HL); *Mount Kasi Limited v. Range Resources Limited* [1999] FJHC 57 (HC) [*Mount Kasi*].
- [7] *Amchem*, above, 931, *CSR*, above, 396-397.
- [8] Reid Mortensen "Duty Free Forum Shopping: Disputing Venue in the Pacific" (2001) 32 673 VUWLR; aussi published at (2001) 6 *Yearbook of the New Zealand Association for Comparative Law* 673, and (2001) 7 *Legal Review Polynesienne* 673.
- [9] Mortensen, above, 687-689, 697-699, 702-703.
- [10] Mortensen, above, 703.
- [11] *Chan Wing (Vanuatu) Limited v Motis Pacific Lawyers* [1998] VUCA 3 (CA) [*Chan Wing*].
- [12] U Huber *From Conflictu Legum* II iii; see EG Lorenzen *Selected Items in the Conflict of Laws* (Yale University Press, New Haven, 1947) 164, J Story *Commentaries on the Conflict of Laws* (2 ed, Maxwell, London, 1841) 38 - 43.
- [13] AV Dicey *The Conflict of Laws* (1st ed, Stevens & Sons, London, 1896) 10-11.
- [14] *Hilton v. Guyot* (1895) 159 U.S. 113, 163-4 (SC).
- [15] *Hilton v. Guyot* (1895) 159 U.S. 113, 163-4 (SC).
- [16] See *CSR Limited v Cigna Insurance Australia Limited* (1997) 189 CLR 345, 395-396.
- [17] See *CSR*, above, 396.
- [18] AS Bell & J Gleeson "The Anti-suit Injunction" (1997) 71 ALJ 955, 968.
- [19] Reid Mortensen "Duty Free Forum Shopping: Disputing Venue in the Pacific" (2001) 32 673 VUWLR; aussi published at (2001) 6 *Yearbook of the New Zealand Association for Comparative Law* 673, and (2001) 7 *Legal Review Polynesienne* 699.
- [20] *Societe Nationale Industrielle Aerospatiale v. Lee Kui Jak* [1987] AC 871, 932 (PC) [*Aerospatiale SNI Amchem Products Inc. v. British Columbia (Workers' Compensation Board)*, [1993] 1 SCR 932; *CSR Limited v Cigna Insurance Australia Limited* (1997) 189 CLR 390, 393 [CSR]. Compare with TC Hartley Comity and the Use of antisuit Injunctions' (1987) 35 *Am Comp Law* 487, 507-8, WHERE a stricter approach to the Granting of injunctions thesis is recommended, and it is argued That the vexatiousness of foreign proceedings is able Usually of Being Addressed by remedies available in the foreign court.
- [21] Alexander E Anton *Private International Law: a Treatise from the Standpoint of Scots Law* (2nd ed, W Green, Edinburgh, 1990) 220.
- [22] *Travers v. Holley* [1953] 2 All ER 794 (CA); see also *Hilton v. Guyot* (1895) 159 U.S. 113 (SC) *Re Dulles Settlement (No 2)* [1951] Ch 842, 851 (CA).
- [23] American Law Institute *Restatement of the Law of Conflict of Laws* (American Law Institute Publishers, St. Paul, 1933) 10-11.
- [24] Anton, above, 221, Lawrence Collins *Dicey and Morris on the Conflict of Laws* (12th ed, Sweet & Maxwell, London, 1993) 486-488; PM North & JJ Fawcett *Cheshire & North's Private International Law* (12th ed, Butterworths, London, 1992) 346.
- [25] Under Service and Execution of Process Act 1992 (Cth) s 105 (2).
- [26] Service and Execution of Process Act 1992 (Cth) s 105 (5).
- [27] *Chan Wing (Vanuatu) Limited v Motis Pacific Lawyers* [1998] VUCA 3 (CA) for 1 [*Chan Wing*].
- [28] *Societe Nationale Industrielle Aerospatiale v. Lee Kui Jak* [1987] AC 871 [*Aerospatiale SNI Amchem Products Inc. v. British Columbia (Workers' Compensation Board)*, [1993] 1 SCR 897, 931 [*Amchem*] *CSR Limited v Cigna Insurance Australia Limited* (1997) 189 CLR 345, 391 [CSR] *Airbus Industrie GIE v Patel* [1999] 1 AC 119, 141 (HL) [*Airbus*] *Mount Kasi Limited v. Range Resources Limited* [1999] FJHC 57 (HC) [*Mount Kasi*].
- [29] *Amchem*, above.
- [30] *CSR* above.
- [31] No mention was made of the Canadian and Australian Developments in *Chan Wing (Vanuatu) Limited v Motis Pacific Lawyers* [1998] VUCA 3 (CA) for 1 [*Chan Wing*]. The English decision in *Airbus Industrie GIE v Patel* [1999] 1 AC 119, 141 (HL) [*Airbus*] was Delivered Afterwards.

- [32] *Chan Wing*, above.
- [33] *Wing Chan*, above, para 14.
- [34] *Wing Chan*, above, para 14.
- [35] *Wing Chan*, above, para 14.
- [36] *Amchem Products Inc. v. British Columbia (Workers' Compensation Board)*, [1993] 1 SCR 897, 931 [*Amchem*].
- [37] *Amchem*, above, 931.
- [38] *CSR Limited v Cigna Insurance Australia Limited* (1997) 189 CLR 397 [CSR].
- [39] *Chan Wing (Vanuatu) Limited v Motis Pacific Lawyers* [1998] VUCA 3 (CA) para 21 [*Chan Wing*].
- [40] *Societe Nationale Industrielle Aerospatiale v. Lee Kui Jak* [1987] AC 871, 899 (PC) [*Aerospatiale SNI*] *Chan Wing*, above, para 14.
- [41] Hartley CONSIDERS That, in this situation comity REQUESTS That the local court defer to the foreign court's finding That It is a *forum conveniens*. Accordingly, he recommends anti-suit injunction against grantijng year in this box: TC Hartley Comity and the Use of antisuit Injunctions' (1987) 35 *Am Comp Law* 487, 507-8, WHERE a stricter approach to the Granting of injunctions thesis is recommended, and it is argued That the vexatiousness of foreign proceedings is able Usually of Being Addressed by remedies available in the foreign court.
- [42] R Mortensen "Duty Free Forum Shopping: Disputing Venue in the Pacific" (2001) 32 673 VUWLR; aussi published at (2001) 6 *Yearbook of the New Zealand Association for Comparative Law* 673, and (2001) 7 *Legal Review Polynesienne* 691.
- [43] Mortensen, above, 691-692.
- [44] *Chan Wing (Vanuatu) Limited v Motis Pacific Lawyers* [1998] VUCA 3 (CA) para 15 [*Chan Wing*].
- [45] *Wing Chan*, above, para 17.
- [46] *Wing Chan*, above, paras 18-20.
- [47] *Wing Chan*, above, paras 21-22.
- [48] *Mount Kasi Limited v. Range Resources Limited* [1999] 57 FJHC (HC) [Mount Kasi].
- [49] *Mount Kasi*, above, para 37.
- [50] *Mount Kasi*, above, para 30.
- [51] *Mount Kasi*, above, para 31.
- [52] Reid Mortensen "Duty Free Forum Shopping: Disputing Venue in the Pacific" (2001) 32 673 VUWLR; aussi published at (2001) 6 *Yearbook of the New Zealand Association for Comparative Law* 673, and (2001) 7 *Legal Review Polynesienne* 697-699 .
- [53] Mortensen above, 685-688, 702.
- [54] *Naylor v Kilham* [1999] VUSC 11 (SC) [*Naylor*].
- [55] *Naylor*, above, para 10.
- [56] *Naylor*, above, para 12; Citing *Voth v Manildra Flour Mills Pty Ltd* (1990) 171 CLR 538, 558 [*Voth*].
- [57] P Brereton 'Forum Non Conveniens in Australia: A Case Note on *Voth v Manildra Flour Mills*' (1991) 40 *ICLQ* 895, 898, A Mason 'Changing the Law in a Changing Society' (1993) 67 *ALJ* 568, 572.
- [58] Lawrence Collins 'The High Court of Australia and *Forum Conveniens*: The Last Word' (1991) 107 *LQR* 182, 187, MC Pryles 'Forum Non Conveniens - The Next Chapter' (1991) 65 *ALJ* 442, 450, Peter E Nygh *Conflict of Laws in Australia* (6th ed, Butterworths, Sydney) 108.
- [59] Nygh, above, 108.
- [60] Garnett R 'Stay of Proceedings in Australia: A "Clearly Inappropriate" Test' (1999) 23 *Melbourne University Law Review* 30, 63.
- [61] R Mortensen "Duty Free Forum Shopping: Disputing Venue in the Pacific" (2001) 32 673 VUWLR; aussi published at (2001) 6 *Yearbook of the New Zealand Association for Comparative Law* 673, and (2001) 7 *Legal Review Polynesienne* 686.



- [62] Mortensen, above, 687-8.
- [63] *Naylor v Kilham* [1999] VUSC 11 (SC) paras 8-9 [*Naylor*].
- [64] Mortensen, above, 688-689.
- [65] *Chan Wing (Vanuatu) Limited v Motis Pacific Lawyers* [1998] 3 VUCA [*Chan Wing*] (CA) para 14.
- [66] *Societe Nationale Industrielle Aerospatiale v. Lee Kui Jak* [1987] AC 871, 896 (PC) [*Aerospatiale SNI*].
- [67] *Spiliada Maritime Corporation v Cansulex Limited* [1987] 1 AC 460, 466-88 (HL) [*Spiliada*] *Aerospatiale SNI* see, above, 891, 895.
- [68] *Spiliada*, above, 478, Citing Lord Keith of Kinkel in *The Abidin Daver* [1984] AC 398, 415 (HL).
- [69] *Spiliada*, above, 478.
- [70] *Spiliada*, above, 476, 477.
- [71] *Spiliada*, above, 478.
- [72] *CSR Limited v Cigna Insurance Australia Limited* (1997) 189 CLR 345, 391 [CSR].
- [73] CSR, above, 390-391.
- [74] CSR, above, 398.
- [75] The doctrine Recognised in Canada was by this process. The Supreme Court of Canada HAS Considered not only a box That Dealt with gold Dismissals stays of proceedings on the ground of *forum non conveniens*. HOWEVER, in *Amchem* principles Consider About did it for the Granting of anti-suit injunctions and, holding That One requirement was That the local court determines That It Had to short Appropriate year was to deal with the dispute, the *Spiliada* ADOPTED doctrine for Assessing appropriateness: *Amchem Products Inc. v. British Columbia (Workers' Compensation Board)*, [1993] 1 SCR 897 916-22 (SC ) [*Amchem*]. Lower courts in Canada That Have Considered this DEMANDS implementation of the principles *Spiliada* When a stay or dismissal of proceedings is Sought: see eg *Upper Lakes Shipping Limited v. Foster Yeoman Ltd* (1993) 14 OR (3d) 548, 563-570 (CA) , JG Castel *Canadian Conflict of Laws* (3rd ed, Butterworths, Toronto, 1994) 230-241.
- [76] This finding is based on Dr. Goodhart's definition of the *ratio decidendi* for All which see R Cross & JW Harris *Precedent in English Law* (4th ed, Clarendon Press, Oxford, 1991) 63-71.
- [77] *Naylor v Kilham* [1999] VUSC 11 (SC) paras 4, 10-11 [*Naylor*].
- [78] Reid G Mortensen *Private International Law* (Butterworths, Sydney, 2000) 324-34; Peter E Nygh *Conflict of Laws in Australia* (6th ed, Butterworths, Sydney) 137-61.
- [79] Mortensen, above, 335-45; Nygh, above, 162-70.
- [80] Foreign Judgments Act 1991 (Cth) s 5 (1) Foreign Judgments Regulations 1993 (Cth) sch 1.
- [81] Foreign Judgments Act 1991 (Cth) s 10 (1).
- [82] Mortensen, above, 325-334, 340-344; Nygh above, 153-161, 165-169.
- [83] Mortensen, above, 324.
- [84] *Hunt v. BP Exploration Co (Libya) Ltd* (1979) 144 CLR 565, *Hunt v. BP Exploration Co (Libya) Ltd* [1981] 1 NZLR 209 (CA) *English's Coasting and Shipping Co Ltd v British Finance Co Ltd* (1886) 14 R 220 at 225-226 (Ct of Sess.)
- [85] Mortensen, above, 334; Nygh, above, 162.
- [86] Reciprocal Enforcement of Judgments Act 1934 (NZ) Foreign Judgments (Reciprocal Enforcement) Act 1978 (Fiji) Reciprocal Enforcement of Judgements Act (PNG) Foreign Judgments (Reciprocal Enforcement) Act 1988 (SI) Reciprocal Enforcement of Judgements Act (Sam ) Foreign Judgments (Reciprocal Enforcement) Act 1978 (Tv).
- [87] Foreign Judgments Act 1991 (Cth) s 5 (1), (3) and (6) Reciprocal Enforcement of Judgments Act 1934 (NZ), ss 3 (2), 3 A (1), and B 3 (1) , Foreign Judgments (Reciprocal Enforcement) Act 1978 (Fiji), s 3 (1) Reciprocal Enforcement of Judgments Act (PNG), s 2 (1) Foreign Judgments (Reciprocal Enforcement) Act 1988 (SI), s 3 (1 ) Foreign Judgments (Reciprocal Enforcement) Act 1978 (TV), 3 (1).
- [88] *Naylor v Kilham* [1999] VUSC 11 (SC) para 7 [*Naylor*].

[89] Similarly, Nauru and Kiribati, two other Commonwealth countries in the Region That Promote Themselves as tax havens, do not offer enforcement of Foreign Judgments by registration.

[90] *Chan Wing (Vanuatu) Limited v Motis Pacific Lawyers* [1998] VUCA 3 (CA) para 22 [*Chan Wing*].

[91] *Wing Chan*, above, para 23.

[92] *Hilton v. Guyot* (1895) 159 U.S. 113, 164.

[93] Compare with *Mount Kasi Limited v. Range Resources Limited* [1999] FJHC 57 (HC) [*Mount Kasi*].

[94] *Airbus Industrie GIE v Patel* [1999] 1 AC 141 (HL) [*Airbus*].