

November 2005

UNITED KINGDOM

Introduction

1. There are two main sources of law which are relevant in examining UK law and practice on State immunity: legislation and the common law. The common law consists of the uncodified principles of the legal system, which are interpreted and developed through the decisions of the courts. The rules of customary international law form part of the common law.

2. The rule of *stare decisis*, or binding precedent, is strictly applied in relation to both the common law and to the interpretation of statutes. Thus a decision of a court on a point of law (or precedent) will generally be binding in future cases, unless such future cases can be distinguished in some way, or a hierarchically superior court overrules the precedent.

3. The hierarchy of the English courts is as follows:

- The Court of first instance in substantial cases is the *High Court* - the High Court is divided into three Divisions,:

- (a) the *Queen's Bench Division* (which deals mainly with the law of civil obligations including contract and tort),

- (b) the *Chancery Division* (which deals essentially with property matters, including issues of company law) and

- (c) the *Family Division* (which deals with matters of family law);

- Appeals from the High Court are generally made to the *Court of Appeal*;

- A further appeal may be made to the highest court, the *House of Lords*.

4. There are certain specialist tribunals in the English legal system, the most relevant for present purposes being in the field of employment law. Complaints in most employment cases will be made to a specialist Employment Tribunal at first instance. A decision of an Employment Tribunal may be appealed to the Employment Appeal Tribunal (EAT). The EAT is made up of a panel of two lay persons presided over by a High Court Judge. A further appeal from the EAT may be permitted to the Court of Appeal.

5. Legislation in the UK takes two forms:

Primary legislation which consists of Acts of Parliament, which pass through full processes of debate and scrutiny in Parliament; and

Secondary legislation consisting of statutory instruments, made by virtue of an enabling power in primary legislation and passed in Parliament under summary procedures. Secondary legislation is thus most often used to provide detailed regulations within the framework of a piece of primary legislation.

6. By virtue of the constitutional principle of the supremacy of Parliament, in case of conflict between a rule of common law and an Act of Parliament, the latter will be applied.

7. Treaties do not automatically form part of domestic law upon ratification, but rather require to be incorporated by legislation.

The State Immunity Act 1978

8. The State Immunity Act 1978 is based upon the European Convention on State Immunity, though it does not replicate the terms of the Convention exactly. The Act is also intended to be compatible with the 1926 Brussels Convention on the Immunity of State-owned Ships. The Act came into force on 22 November 1978, and establishes a firm foundation for the restrictive doctrine of State immunity in UK law, and consolidates the incremental steps in this direction that had been made in the common law.

9. The Act sets out a general rule of immunity for foreign States in section 1, and then in sections 2-11 sets out a number of specific exceptions to immunity in respect of various private law activities. Sections 12 and 13 deal with procedural privileges, including immunities from execution. Section 14 deals with the definition of the State and the degree to which separate entities of the State are entitled to immunity. Section 15 allows for some fine-tuning of immunities in the case of particular States. Thus it enables secondary legislation to be made, either to reduce the level of immunities granted to a State, where that State would grant a reduced level of immunity to the United Kingdom (on the principle of reciprocity), or to extend immunities to particular States where this is required under a treaty. Section 16 excludes certain matters from the scope of the Act (see below), and section 17 deals with interpretation of particular terms in this part of the Act.

10. The remaining parts of the Act deal with slightly different questions. Sections 18 and 19 deal with recognition of judgments against the UK in accordance with the European Convention scheme. Section 20 deals with the immunities of foreign Heads of State (and provides that they enjoy a similar level of immunities to the head of a diplomatic mission). Finally section 21 deals with the provision of evidence by means of a conclusive certificate of the Executive on certain questions (see below).

11. There has been limited secondary legislation made by virtue of the enabling powers contained in the Act. Statutory Instruments have been passed to extend the provisions of the Act to the UK's Overseas Territories; to grant immunity to the Austrian Provinces and the German Länder.

12. There is a growing body of caselaw under the State Immunity Act (a recent Lexis search under the terms "State Immunity Act" yielded about 130 results). A sample of this caselaw is attached as indicative of the main trends and areas of controversy. Particular themes are:

- the definition of a commercial transaction;
- the characterisation of acts of sovereign authority;
- the relationship of immunity from jurisdiction and immunity from execution;
- the extent of immunity from execution;
- the extent of procedural privileges;
- the scope of jurisdictional immunity in employment cases;
- the relationship of diplomatic immunities and State immunity;
- the persons entitled to claim State immunity; and
- the question of immunity in relation to breaches of international law.

13. Related to this last issue is, of course, the landmark decision of the House of Lords in the *Pinochet* case ([2000] AC 151). However that decision has not been included for present purposes, given that its focus was on the immunities of a former Head of State in relation to criminal proceedings.

The common law

14. Until the entry into force of the State Immunity Act the common law was the sole source of law on State immunity applied by the English courts. Even now, since the State Immunity Act excludes certain matters from its scope (section 16), those residual matters continue to be governed by the common law. These include the matters of direct taxation, the activities of visiting forces, and criminal proceedings.

15. Traditionally the courts adhered strictly to absolute immunity. However the mid-1970's saw the courts move towards restrictive immunity, first in relation to actions *in rem* against State-owned trading ships and subsequently in relation to actions *in personam* in respect of commercial transactions of foreign States.

16. The major turning point came in 1977, in the case of *Trendtex Trading Corporation v. Central Bank of Nigeria*, when the Court of Appeal found that the common law should reflect the restrictive doctrine of immunity that had emerged in customary international law. That finding was subsequently approved by the House of Lords in the case of *1° Congreso del Partido*, in which it was found that certainly as far back as 1975 the restrictive rule of immunity was part of customary international law. There is little doubt that today the common law adopts the restrictive doctrine.

17. The most recent common law cases have involved the immunities a foreign State in respect of acts of its visiting forces in the UK (matters excluded from the scope of the State Immunity Act by virtue of section 16(2)). In these cases the courts have applied the distinction between acts *iure imperii* and acts *iure gestionis*. In doing so they have accepted that in principle the characterisation of an act ought to be made by reference to its nature rather than its purpose. However the courts have also stressed the importance of considering the act in its context.

LIST OF MATERIALS IN RESPECT OF THE UNITED KINGDOM

1. Legislation

The following legislative acts are attached

A. Primary Legislation:

- State Immunity Act 1978 *;
- Diplomatic Privileges Act 1964 *;

B. Secondary Legislation:

- (1) The State Immunity (Federal States) Order 1979 (SI No 457/1979) – by which the Austrian Provinces enjoy immunity *;
- (2) The State Immunity (Federal States) Order 1993 (SI No 2809/1993) – by which the German Länder enjoy immunity *;

2. Executive Acts or Statements

The Executive plays a limited role in decisions on State immunity, this being a matter for the Courts. However upon request by the court or by both parties to a dispute, the Executive will provide a certificate on certain matters which are exclusively within its own knowledge or appreciation. Thus under section 21 of the State Immunity Act, provision is made that a certificate of the Secretary of State for Foreign and Commonwealth Affairs shall be conclusive on the following questions:

- (a) whether any country is a State for the purposes of the Act, or similarly whether a territory is a constituent territory of federal State, or whether a person or persons is to be regarded as the Head or the government of a State;
- (b) whether a State is a party to the 1926 Brussels Convention;
- (c) whether a State is a party to the European Convention on State Immunity;
- (d) whether a document has been served or received in accordance with section 12 of the Act (which provides for the service of the document instituting proceedings and/or any judgment via the Foreign and Commonwealth Office on the Ministry of Foreign Affairs of the respondent State).

Such certificates are made on a case by case basis. No examples are attached.

3. Decisions of National Courts and Tribunals

Copies of the decisions cited below are provided from relevant law reports, those reports commence with a “headnote” summarising the facts and legal points decided, and this is followed by the full texts of the judgments.

A. Decisions under the State Immunity Act

GB/1. *Intpro Properties (UK) Ltd v. Sauvel* (CA), 29.3.83, [1983] 2 WLR 908, 64 ILR 384 *

GB/2. *Alcom Ltd v. Republic of Colombia*, HL, 12.4.84, [1984] 2 All ER 6 *

GB/3. *Maclaine Watson and co. Ltd v. Department of Trade and Industry and others*, CA, 27.4.88, [1988] 3 WLR 1033, 80 ILR 49 *

GB/4. *A. Co. Ltd v. Republic of X*, QBD (Commercial Court), 21.12.89, 87 ILR 412

GB/5. *Re Rafidain Bank*, Ch D (Companies Court), 9.7.91, 101 ILR 332 *

GB/6. *Ahmed v. Government of the Kingdom of Saudi Arabia*, CA, 6.7.95, [1996] 2 All ER 248 *

GB/7. *Kuwait Airways Corp. v. Iraqi Airways Corp.*, HL, 24.7.95, [1995] 1 WLR 1147, 103 ILR 340 *

GB/8. *Al-Adsani v. Government of Kuwait*, CA, 12.3.96, 107 ILR 536 *

GB/9. *Propend Finance pty and others v. Sing and others*, CA, 17.4.97, 111 ILR 611 *

GB/10. *An International Bank plc v. Republic of Zambia*, QBD (Commercial Court), 23.5.97, 118 ILR 602 *

GB/11. *Banca Carige SpA Cassa di Risparmio di Genova e Imperia v. Banco Nacional de Cuba*, Ch.D, 11.4.01, [2001] 3 All ER 923 *

B. Decisions at common law:

GB/12. *Trendtex Ltd v. Central Bank of Nigeria*, CA, 13.1.77, [1977] 2 WLR 979, 64 ILR 111 *

GB/13. *Sengupta v. Republic of India*, EAT, 17.11.82, 64 ILR 352 *

GB/14. *1° Congreso del Partido*, HL, 16.7.81, [1981] 3 WLR 328 *

GB/15. *R. v. Inland Revenue Commissioners, ex parte Camacq Corp and another*, CA, 3.8.89, [1990] 1 WLR 191 *

GB/16. *Littrell v. USA (No.2)*, CA, 12.11.93, [1995] 1 WLR 82 *

GB/17. *Holland v. Lampen-Wolfe*, HL, 20.07.00, [2000] 3 All ER 833 *

UK Treaty Practice

UK is party to the European Convention on State Immunity, the declarations made at the time of ratification are attached. The UK is also a party to the 1926 Brussels Convention for the Unification of certain Rules concerning the Immunity of State-owned Ships, and the UK reservation on ratification is attached.

(a)	Registration no.	GB/1
(b)	Date	29 March 1983
(c)	Authority	Court of Appeal
(d)	Parties	<i>Intpro Properties (UK) Ltd v. Sauvel and others</i>
(e)	Points of law	<p>1) A State is not immune from the jurisdiction of the UK courts in proceedings relating to the possession or use of immovable property (section 6(1) State Immunity Act), unless the property in question is used for the purposes of a diplomatic mission (section 16(1)(b) State Immunity Act);</p> <p>2) An apartment leased by a foreign State for use as the private residence of one of its diplomatic agents in the UK (other than the head of the diplomatic mission), is not “property used for the purposes of a diplomatic mission”. A foreign State is therefore not immune in proceedings relating to the lease of such property;</p>
(f)	Classification	0.b.1, 1.b
(g)	Source	[1983] 2 WLR 908; 64 ILR 384
(h)	Additional information	

(a)	Registration no.	GB/2
(b)	Date	12 April 1984
(c)	Authority	House of Lords
(d)	Parties	<i>Alcom Ltd v. Republic of Colombia</i>
(e)	Points of law	<ol style="list-style-type: none"> 1) Under customary international law the bank account of a diplomatic mission used for defraying the expenses of running the mission, enjoys immunity from execution in the receiving State; 2) The State Immunity Act should be construed so far as possible to accord with the requirements of customary international law; 3) The bank account of a foreign embassy in the UK used for the day to day running of that embassy is used both for the supply of goods and services and for sovereign purposes. Since the account is indivisible, it is not property "in use or intended for use for commercial purposes" within section 13(4) of the State Immunity Act, and is therefore immune from measures of execution; 4) If an embassy bank account is earmarked by the foreign State solely for commercial transactions, it will not be immune from measures of execution. However it is for the judgment creditor to prove this, and a certificate from the head of the diplomatic mission that the account is not in use or intended for use for commercial purposes is sufficient evidence of that fact, unless the contrary is proved.
(f)	Classification	0.b1, 0.b.3, 2.b
(g)	Source	[1984] 2 All ER 6
(h)	Additional information	

(a)	Registration no.	GB/3
(b)	Date	27 April 1988
(c)	Authority	Court of Appeal
(d)	Parties	Maclaine Watson and Co Ltd v. Department of Trade and Industry Maclaine Watson and Co Ltd v International Tin Council
(e)	Points of law	<ol style="list-style-type: none"> 1) The issue of immunity must be determined as a preliminary issue, before the substantive action can proceed; 2) The contracts of the International Tin Council in question were commercial transactions; if the plaintiffs had been able to establish either a primary or a secondary liability for the obligations of the ITC on the part of the member States they would not enjoy immunity; 3) The EEC was not entitled to State immunity.
(f)	Classification	0.b, 0.b.1, 0.b.3, 1.b
(g)	Source	
(h)	Additional information	<p>NB. Extracts only of the case are attached, since the issues of State immunity were secondary to those of the status and nature of the International Tin Council, and the question of the possible liability of the member States for its debts.</p> <p>The decision of the Court of Appeal was appealed to the House of Lords which gave its judgment on 26 October 1989 ([1989] 3 All ER 523). However the judgment of the House of Lords does not deal explicitly with the question of State immunity, but rather the questions of status of the ITC and the liability of its member States for its debts.</p>

(a)	Registration no.	GB/4
(b)	Date	21 December 1989
(c)	Authority	High Court, Queen's Bench Division
(d)	Parties	<i>A Co. Ltd v. Republic of X</i>
(e)	Points of law	A contractual waiver of State immunity from jurisdiction and enforcement, will not be sufficient to waive the inviolability and immunity of either the premises and/or property of a diplomatic mission, or the private residence and/or property of a diplomatic agent, enjoyed under, respectively, Articles 22 and 30 of the Vienna Convention on Diplomatic Relations.
(f)	Classification	0.b.1, 2.b
(g)	Source	[1990] 2 Lloyds Rep.520, 87 ILR 412
(h)	Additional information	

(a)	Registration no.	GB/5
(b)	Date	9 July 1991
(c)	Authority	High Court, Chancery Division
(d)	Parties	<i>Re Rafidain Bank</i>
(e)	Points of law	In the context of the liquidation of a commercial company owned by a foreign State, monies owed by the company to that foreign State are not protected by State immunity and can not therefore be paid out by the liquidators in preference to other creditors (section 6(3) State Immunity Act).
(f)	Classification	0.b.1, 1.c
(g)	Source	101 ILR 332
(h)	Additional information	

(a)	Registration no.	GB/6
(b)	Date	6 July 1995
(c)	Authority	Court of Appeal
(d)	Parties	Ahmed v. Government of the Kingdom of Saudi Arabia
(e)	Points of law	<ol style="list-style-type: none"> 1) A foreign State enjoys immunity from the UK courts in respect of proceedings arising out of employment contracts of all members of its diplomatic mission, including locally engaged members of the technical and administrative staff; 2) The requirement that a waiver of immunity must be by way of prior written agreement, must be an express and complete agreement to submit to the jurisdiction, made by the head of the diplomatic mission or some other person endowed with the authority of the sending State.
(f)	Classification	0.b.3, 1.b
(g)	Source	[1996] 2 All ER 248
(h)	Additional information	

(a)	Registration no.	GB/7
(b)	Date	24 July 1995
(c)	Authority	House of Lords
(d)	Parties	Kuwait Airways Corp. v. Iraqi Airways Co.
(e)	Points of law	<ol style="list-style-type: none"> 1) Service of proceedings on a foreign State must be done through the Foreign and Commonwealth Office on the Ministry of Foreign Affairs of that State; 2) The seizure and removal of property by a State-owned entity of a foreign State on the orders of that foreign State, in the context of an armed invasion of another State, was an act in the exercise of sovereign authority; 3) The subsequent retention and use of that property by the State-owned entity, following a formal legislative act vesting the property in the entity, were not acts in the exercise of sovereign authority.
(f)	Classification	0.a, 0.b, 1,1.b
(g)	Source	[1995] 1 WLR 1147, 103 ILR 340
(h)	Additional information	

(a)	Registration no.	GB/8
(b)	Date	12 March 1996
(c)	Authority	Court of Appeal
(d)	Parties	<i>Al-Adsani v. Government of Kuwait</i>
(e)	Points of law	<p>A foreign State enjoys immunity in the UK in relation to proceedings in respect of torture committed outside the UK. The exception to immunity in respect of acts occasioning personal injury or death, applies only when they are caused by acts or omissions in the UK (section 5, State Immunity Act).</p> <p>There is no general exception to immunity in respect of acts of torture or other violations of international law.</p>
(f)	Classification	0.a, 1.b
(g)	Source	107 ILR 536
(h)	Additional information	

(a)	Registration no.	GB/9
(b)	Date	17 April 1997
(c)	Authority	Court of Appeal
(d)	Parties	Propend Finance Pty Ltd v. Sing and others
(e)	Points of law	An official of a foreign State enjoys immunity in respect of his official acts on behalf of that State, to the extent that that State would itself enjoy immunity in respect of those acts if the proceedings had been brought against it.
(f)	Classification	0.a, 1.b
(g)	Source	111 ILR 611
(h)	Additional information	

(a)	Registration no.	GB/10
(b)	Date	23 May 1997
(c)	Authority	High Court, Queen's Bench Division, (Commercial Court)
(d)	Parties	An International Bank v. Republic of Zambia
(e)	Points of law	Submission to jurisdiction and waiver of the privileges of a State in relation to service of proceedings, do not imply a waiver of immunities/ procedural privileges in relation to service of a default judgment against a foreign State and execution.
(f)	Classification	0.b, 0.b.1, 0.b.3, 1.b, 2
(g)	Source	118 ILR 602
(h)	Additional information	

(a)	Registration no.	GB/11
(b)	Date	11 April 2001
(c)	Authority	High Court, Chancery Division (Companies Court)
(d)	Parties	Banca Carige SpA Cassa Di Risparmio Geneva E Imperia v. Banco Nacional De Cuba and another
(e)	Points of law	The immunity from enforcement proceedings of a central bank (section 14(4) State Immunity Act), is a relevant factor for a Court to consider when deciding whether to exercise a discretion allowing proceedings to be served outside the jurisdiction
(f)	Classification	0.b.3, 2.a
(g)	Source	[2001] 3 All ER 923
(h)	Additional information	

(a)	Registration no.	GB/12
(b)	Date	13 January 1977
(c)	Authority	Court of Appeal
(d)	Parties	Trendtex Trading Corporation v. Central Bank of Nigeria
(e)	Points of law	<ol style="list-style-type: none"> 1) The restrictive doctrine of State immunity as recognised in customary international law is part of the common law; 2) The question as to whether a separate legal entity of a foreign State is entitled to immunity depends upon the degree of control exercised by the State over that entity and the functions which the entity performed; 3) (By majority) The Central Bank of Nigeria was not an emanation of the State entitled to claim immunity; 4) Since the Bank was not immune its funds were not immune from seizure or injunction.
(f)	Classification	0.b.1, 0.b.3, 1.b, 2.b
(g)	Source	[1977] 2 WLR 356, 64 ILR 111
(h)	Additional information	

(a)	Registration no.	GB/13
(b)	Date	17 November 1982
(c)	Authority	<i>Employment Appeal Tribunal</i>
(d)	Parties	Sengupta v. Republic India
(e)	Points of law	<p>1) In a case to which the State Immunity Act did not apply it was necessary to apply the common law of State immunity, which incorporated the distinction made in customary international law between acts <i>iure imperii</i> and acts <i>iure gestionis</i>;</p> <p>2) In determining whether a contract of employment was an act <i>iure imperii</i> or <i>iure gestionis</i>, it was necessary not only to look at the nature of the a contract, but to ask the following questions :</p> <p>(a) Was the contract of a kind which a private individual could enter into?</p> <p>(b) Did the performance of the contract involve participation of both parties in the public functions of the foreign State, or was it purely collateral to such functions?</p> <p>(c) What was the nature of the breach of contract or other act of the foreign State giving rise to the proceedings?</p> <p>(d) Will the investigation of the claim by the Tribunal involve investigation into the public or sovereign acts of the foreign State?</p> <p>3) The plaintiff's employment as a clerical officer in the diplomatic mission of a foreign State would involve his participation in the public acts of a foreign sovereign. His dismissal concerned the performance of a public function i.e. the running of diplomatic mission. An investigation into the fairness of that dismissal would involve the Court in an investigation of, and interference with, a</p>

		public function of a foreign sovereign.
(f)	Classification	0.b.2, 1.b
(g)	Source	64 ILR 352
(h)	Additional information	

(a)	Registration no.	GB/14
(b)	Date	16 July 1981
(c)	Authority	House of Lords
(d)	Parties	1° Congreso Del Partido
(e)	Points of law	<ol style="list-style-type: none"> 1) The restrictive doctrine of State immunity in customary international law forms part of the common law. A foreign State can not therefore claim State immunity in respect of acts <i>iure gestionis</i>; 2) In characterising an act as <i>iure imperii</i> or <i>iure gestionis</i>, a court should in general consider the nature, rather than the purpose or motive, of the act in question. However the Court must consider the whole context against which the claim against the foreign State is made; 3) (By majority) The breaches by the defendant State, as owner of the ships, of its obligations towards the owners of the two cargoes in this case, were acts <i>iure gestionis</i>, notwithstanding their political motivation.
(f)	Classification	0.b, 0.b.3, 1.b
(g)	Source	[1981] 3 WLR 328
(h)	Additional information	

(a)	Registration no.	GB/15
(b)	Date	3 August 1989
(c)	Authority	Court of Appeal
(d)	Parties	R. v. Inland Revenue Commissioners ex parte Camacq Corporation
(e)	Points of law	<ol style="list-style-type: none"> 1) Questions of the application of direct taxation to foreign sovereigns, fall outside the scope of the State Immunity Act (section 16(5)); 2) The Inland Revenue is entitled to refuse to pay the whole of a tax credit to a foreign sovereign, where it was clear that the transaction in question was artificially arranged to take advantage of the UK tax rules; there is no binding rule that the IR had to give consent to payment of the amount of the tax credit direct to a foreign State.
(f)	Classification	O.c, 1.c
(g)	Source	[1990] 1 WLR 191
(h)	Additional information	

(a)	Registration no.	GB/16
(b)	Date	12 November 1993
(c)	Authority	Court of Appeal
(d)	Parties	Littrell v. USA (No.2)
(e)	Points of law	<ol style="list-style-type: none"> 1) The State Immunity Act does not apply to acts of the armed forces of a foreign State whilst present in the UK. The issue of whether a foreign State enjoyed immunity in respect of a claim arising out of the standard of medical treatment of one of its servicemen stationed at one of its bases within the UK was determined under the common law of sovereign immunity, which incorporates customary international law in this respect; 2) In applying the distinction between acts <i>iure imperii</i> and <i>iure gestionis</i>, the court should consider the nature of the act, rather than its purpose, but the nature of the act must be appreciated in its context; 3) The context included the location of the act, the identity of the persons involved and the kind of act it was; 4) The terms of the relationship between a foreign State and its own servicemen, and in particular the standard of medical care which that foreign State affords its servicemen, is a matter within its own sovereign authority.
(f)	Classification	0.a, 1.b
(g)	Source	[1994] 4 All ER 203, 100 ILR 438
(h)	Additional information	

(a)	Registration no.	GB/17
(b)	Date	20 July 2000
(c)	Authority	House of Lords
(d)	Parties	<i>Holland v. Lampen-Wolfe</i>
(e)	Points of law	<ol style="list-style-type: none"> 1) A contract with a civilian of the sending State to teach members of a military base of that State on the territory of the UK, is a matter which is excluded from the State Immunity Act, which does not apply to “anything done by or in relation to the armed forces of a State whilst present in the UK” (s.16(2)). It is therefore governed by the common law of State immunity; 2) In determining whether it was an act <i>iure imperii</i> or <i>iure gestionis</i>, the defendant’s assessment of the plaintiff’s provision of educational services to members of the base had to be viewed in its context, including taking account the persons involved and the place in which the acts took place; 3) The impugned assessment of the plaintiff’s teaching related to the standard of education which the sending State afforded to its own servicemen. It was therefore a matter within its own sovereign authority; 4) In recognising the immunity of the sending State in this case, there was no violation of Article 6 of the European Convention on Human Rights. Article 6 provides procedural guarantees in relation to due process, but does not in itself provide a basis of jurisdiction where this is not permitted under international law.
(f)	Classification	0.a, 1.b
(g)	Source	[2000] 3 All ER 833
(h)	Additional information	

