Michaelmas Term
[2024] UKPC 35
Privy Council Appeal No 0112 of 2023

JUDGMENT

Sheikha Amena Ahmed H A Al-Thani and another (Appellants) *v* Sheikha Aisha Mohammed Ali Abdullah Al Thani and 2 others (Respondents) (Virgin Islands)

From the Court of Appeal of the Eastern Caribbean Supreme Court

before

Lord Hodge
Lord Leggatt
Lord Burrows
Lady Rose
Lord Richards

JUDGMENT GIVEN ON
31 October 2024

Heard on 25 June 2024

Appellants
Stephen Moverley Smith KC
(Instructed by Farrer & Co LLP)

Respondents
Edward Cumming KC
(Instructed by Fladgate LLP)

LORD HODGE:

1. This appeal is concerned with law governing the transmission of shares in a company registered in the British Virgin Islands ("the BVI") on the death of their owner. The question is whether BVI company legislation treats such shares as immovable and therefore subject to the laws of the BVI in determining the validity of a testamentary instrument for effecting the transmission of those shares on the death of the owner. If the laws of the BVI apply, the testamentary instrument, to be valid, would have to meet the requirements of section 7 of the Wills Act.

2. On this appeal the dispute concerns the validity of a testamentary instrument by a Qatari national, Sheikh Saoud Mohammed A A Al Thani ("the deceased") who was domiciled in Qatar at the time of his death on 9 November 2014. His testamentary instrument (his "will") is valid under Qatari law. As explained below, that point is no longer in contention following a decision of the Qatari Court of Appeal. Nor is it disputed that, as a general rule in private international law, the transmission of a deceased person's movable estate is governed by the law of that person's domicile at the date of death.

3. The question arises because at the date of his death the deceased owned shares in one or more BVI companies. The appellants submit that the deceased's Qatari will is not effective to transmit those shares.

1. The factual background

4. On 3 June 1990 the deceased attended before a judge of the Supreme Personal Status Court in Qatar and made a declaration as to the inheritance of his estate. On 11 June 1990 an entry ("the entry") was made in the court records of the Supreme Personal Status Court in Qatar, which recorded that the declaration had been made and its terms.

5. On 25 June 2015 the appellants, who are the widow of the deceased and their daughter, and their son commenced proceedings in the Total Family Court in Qatar seeking a declaration that the entry, which in Qatari law is a valid will, had been revoked.

6. On 20 July 2015 the appellants filed an application in the BVI High Court for the grant of letters of administration of the deceased's estate in the BVI. In that application the appellants disclosed neither the existence of the will nor the proceedings in the Qatari family court. On 7 October 2015 the appellants obtained letters of administration over the deceased's BVI estate and were appointed personal representatives of the deceased.

7. Thereafter, the Qatari proceedings as to whether the will had been revoked took place. In summary, the Qatari Court of Appeal in a judgment dated 29 January 2018 held that the will had not been revoked and that it was a valid and enforceable will ("the Qatari judgment"). The proceedings concluded when on 22 May 2018 the Court of Cassation determined not to accept an appeal from that decision of the Court of Appeal.

2. The legal proceedings in the BVI

8. The respondents are the deceased's sister, niece and a long-term friend, who was the deceased's "right-hand man", to whom the deceased gave in aggregate 20% of his worldwide estate in his Qatari will, under which he also gave 5% of that estate to charity. The wider dispute between the parties therefore has been in relation to the transmission of 25% of that estate, and the dispute which comes before the Board is in relation to the shares in one or more BVI companies which are said to hold substantial assets.

9. On 21 August 2019 the respondents commenced legal proceedings in the BVI seeking among other things (i) revocation of the grant of the letters of administration to the appellants, (ii) an order seeking probate of the Qatari will, and (iii) the grant of new letters of administration to an independent administrator.

10. The BVI proceedings involved a trial of a preliminary issue whether the appellants were estopped by the Qatari judgment from contending that the will of the deceased dated 11 June 1990 was not valid and enforceable. In a judgment dated 12 January 2021 Ellis J held that the Qatari judgment was conclusive as to the validity and enforceability of the will in the BVI for the disposal of the deceased's movable property in the BVI and that the appellants were estopped from contending to the contrary. She also gave directions for a summary trial to determine whether the letters of administration granted to the appellants should be revoked.

11. In her judgment Ellis J addressed the issue which is the matter to be determined on this appeal. That is whether section 245 of the Business Companies Act 2004 ("the 2004 Act"), which is set out in para 18 below, deems the shares of a BVI company to be immovable property for the purposes of private international law with the result that the devolution of those shares on death would be governed by the laws of the BVI as the lex situs, and not the law of the deceased's domicile at the date of his death. Ellis J rejected this contention, holding that the statutory provision merely identified the situs of the shares for the purposes of determining matters relating to title and jurisdiction (para 85). She concluded (para 93):

> "[I]n pronouncing on [the will's] formal validity under the laws of Qatar, the Qatari Court of Appeal effectively determined the validity under Virgin Islands law through the application of

> common law principles of private international law. And there can be no doubt that in the absence of any local legislation or case law to direct its approach, the Virgin Islands court will look to these common law principles which [were] extended to the Virgin Islands by the Common Law (Declaration of Application) Act 1705 …"

12. The Court of Appeal (Baptiste and Michel JJA and Webster JA (ag)) in a judgment dated 23 March 2022 dismissed the appellants' appeal against the order of Ellis J. In its judgment delivered by Michel JA, the Court of Appeal held (i) that the appellants were subject to an issue estoppel which barred them from contending that the will was not valid and enforceable in the BVI (para 30), (ii) that the court looked to common law principles on the validity and the enforceability of foreign wills in the BVI, and (iii) that, as a result, the BVI law determines the succession and administration of immovable property located in the BVI and the law of a deceased's foreign domicile determines the succession and administration of movable property in the BVI (para 32). These findings are not challenged before the Board.

13. On the matter that is disputed before the Board the Court of Appeal held that the registered shares of a BVI company are movable property. The court held that section 245 of the 2004 Act, which fixes the lex situs of such shares (the law of the jurisdiction in which the asset is located) for the purpose of determining questions of title and jurisdiction, does not extend to other matters such as succession. Section 245 does not transform the nature of such shares into immovable property. In paras 43 and 44 of his judgment Michel JA stated:

> "[43] Pursuant to section 245 of the [2004 Act], registered shares in the BVI are situated where they are registered. However, although the situs of shares is the BVI for title purposes, shares in a company are considered to be movables. It follows therefore that shares in a BVI company are deemed situated in the BVI for title purposes, but are movable property for succession purposes.
>
> [44] Therefore, for succession purposes, the Deceased's movables, including his shares in the BVI, are governed by the law of the jurisdiction where he was domiciled at his death, which is Qatar. Accordingly, the laws of Qatar are to be applied in determining the validity and enforceability of the Will and any dispositions made thereunder."

14. The appellants now appeal to the Board with the leave of the Court of Appeal.

3. The relevant company legislation of the BVI

15. For many years the BVI encouraged international businesses to use its jurisdiction to incorporate companies in the BVI by providing in legislation that the companies which traded exclusively outside the BVI could be incorporated in the BVI as international business companies. Such companies did not have to locate their share register in the BVI but were required to maintain a copy of their share register at their registered office in the BVI. Section 28 of the International Business Companies Act 1984 ("the 1984 Act") provided that a company incorporated under this Act was required to keep one or more share registers containing among other things the names and addresses of the holders of registered shares. Sub-section (3) provided:

> "A copy of the share register, commencing from the date of the registration of the company, shall be kept at the registered office of the company referred to in section 38."

16. Section 116 of the 1984 Act provided:

> "For purposes of determining matters relating to title and jurisdiction but not for purposes of taxation, the situs of the ownership of shares, debt obligations or other securities of a company incorporated under this Ordinance is in the British Virgin Islands."

17. Until 2005 a company could be incorporated either as a local company, to which the BVI Companies Act would apply, or as an international business company to which the 1984 Act would apply. The 2004 Act abolished the distinction between local companies and international business companies with effect from 1 January 2005. International business companies were re-registered, either on their own initiative or automatically as from 1 January 2007. It was not suggested that any differences in the rules that apply to former international business companies are material to the questions raised on this appeal. Nor is it suggested that the BVI has altered its policy of encouraging international businesses trading outside the BVI to incorporate companies in the BVI.

18. The central question on this appeal, to which the Board will return, is the proper interpretation of section 245 of the 2004 Act which, like section 116 of the 1984 Act before it but in relation to all BVI companies, provides:

> "For purposes of determining matters relating to title and jurisdiction but not for purposes of taxation, the situs of the

> ownership of shares, debt obligations or other securities of a company is in the Virgin Islands."

4. The Wills Act 1872

19. Section 7 of the Wills Act 1872 provides:

> "No will shall be valid unless it shall be in writing and executed in manner hereinafter mentioned; (that is to say,) it shall be signed at the foot, or end, thereof by the testator, or by some other person in his presence and by his direction, and such signature shall be made, or acknowledged, by the testator in the presence of two, or more, witnesses present at the same time, and such witnesses shall attest and shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary."

20. It cannot be disputed that the deceased's will did not comply with this statutory provision. But was the Wills Act applicable?

5. The interpretation of section 245 of the 2004 Act

21. Stephen Moverley Smith KC for the appellants contends that section 245 of the 2004 Act has the effect that shares in a BVI registered company are to be treated as immovable property, with the result that the formal validity of a will transmitting such shares must meet the requirements of the Wills Act. After discussion in the hearing before the Board, Mr Moverley Smith's reasoning in favour of his contention can be summarised as follows: (i) section 245 fixes the situs of the shares for the purpose of determining matters relating to title and jurisdiction; (ii) the fixing of the situs of the shares for the purpose of determining matters of title has the effect that the law of the BVI governs not only the transfer of the shares inter vivos but also their transmission on the death of the owner; (iii) this is because by fixing the situs of the shares the section deems them to be immovable property, with the result that (iv) the BVI courts are bound to apply the domestic BVI law of succession, and in particular the Wills Act, to determine the formal validity of a testamentary instrument that purports to transmit those shares.

22. The question for the Board is a question of statutory interpretation. In the BVI there is legislative provision which sets out certain ground rules for statutory interpretation that are consistent with the rules of English common law, to which the Board was also referred. The Interpretation Act provides among other things that every enactment shall be interpreted as always speaking (section 31), and that an interpretation

which promotes the purpose or object underlying the enactment should be preferred over one that does not (section 42(1)). Section 42(2)–(4) authorises the use of extrinsic materials as aids to the interpretation of a statutory provision if they are capable of assisting in the ascertainment of the meaning of the provision.

23. Turning to the common law, in *R (Quintavalle) v Secretary of State for Health* [2003] UKHL 13; [2003] 2 AC 687, Lord Bingham of Cornhill stated (para 8):

> "The basic task of the court is to ascertain and give effect to the true meaning of what Parliament has said in the enactment to be construed."

This is not a licence simply to interpret literally the particular provision and neglect the purpose which the legislature intended to achieve when it enacted the statute.

24. Reading a provision in its statutory and historical context assists in determining the purpose of the provision. Lord Bingham continued in *Quintavalle* (also in para 8):

> "Every statute other than a pure consolidating statute is, after all, enacted to make some change, or address some problem, or remove some blemish, or effect some improvement in the national life. The court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose. So the controversial provisions should be read in the context of the statute as a whole, and the statute as a whole should be read in the historical context of the situation which led to its enactment."

25. The House of Lords in R v Secretary of State for the Environment, Transport and the Regions, Ex p Spath Holme Ltd [2001] 2 AC 349, ("Spath Holme") 396–398 per Lord Nicholls of Birkenhead, and the United Kingdom Supreme Court in R (O) v Secretary of State for the Home Department [2022] UKSC 3; [2023] AC 255, ("R(O)") paras 29–31 per Lord Hodge, have also placed emphasis on the importance of interpreting statutory words in their context. In the latter case the court stated (para 29):

> "Words and passages in a statute derive their meaning from their context. A phrase or passage must be read in the context of the section as a whole and in the wider context of a relevant group of sections. Other provisions in a statute and the statute as a whole may provide the relevant context. They are the words which Parliament had chosen to enact as an expression

> of the purpose of the legislation and are therefore the primary source by which meaning is ascertained."

26. Often reports of advisory committees or explanatory notes which accompany legislation can assist the interpretation of a statutory provision or give guidance on the purpose of the legislation as a whole. But such external aids usually play a secondary role. In *Spath Holme* Lord Nicholls (p 397) explained the constitutional reason for having regard primarily to the statutory words and the statutory context and purpose:

> "Citizens, with the assistance of their advisers, are intended to be able to understand parliamentary enactments, so that they can regulate their conduct accordingly. They should be able to rely on what they read in an Act of Parliament."

27. On this appeal neither party has discovered any written secondary aids to guide the Board on the meaning of section 245 of the 2004 Act or its predecessor, section 116 of the 1984 Act. Further, section 245 is a stand-alone provision located in Part XV of the 2004 Act, which is headed "Transitional and Miscellaneous Provisions", and there is nothing in the provisions that surround it or in the Act as a whole which sheds light on its meaning.

28. In *R(O)* at para 31 the task of the court was described in these terms:

> "Statutory interpretation involves an objective assessment of the meaning which a reasonable legislature as a body would be seeking to convey in using the statutory words which are being considered."

The Board in carrying out that task on this appeal is left with the words of the section, what Lord Bingham described as the historical context of the situation which led to its enactment, and inferences as to the purpose of the statutory provision. The Board considers each in turn.

(i) The words of the section

29. Looking at the words used by the legislature, the first point is that the section provides, and only provides, that the court, when considering the situs of shares, debt obligations and securities of a company incorporated in the BVI, must treat the situs as the BVI. Secondly, the court must do so only for the purposes of determining matters relating to title and jurisdiction. As Edward Cumming KC argues in his succinct and

powerful written case for the respondents, the section does not go further to state or imply that the shares etc are also to be recategorised as immovables for the purposes of private international law.

(ii) The historical context of the enactment and its purpose

30. The Board in addressing the historical context of the enactment of the provision must look to the legal circumstances which pertained at the time of the enactment of section 116 of the 1984 Act, which is the origin of the provision as well as at the time of the enactment of section 245 of the 2004 Act. As the Board explains below, the legal context at the time of the enactment of those provisions discloses a clear purpose, which supports Mr Cumming's submission on the effect of the provision.

31. First, as acknowledged by the courts below, in the BVI the courts look to the principles of private international law of the English common law in the absence of statutory provision. While legislation in England and Wales has increased the number of connecting factors which can determine the legal system which governs the formal validity of a will, the Board must look to the common law for the relevant rules of the private international law of the BVI.

32. Secondly, in private international law the situs or location of an asset can be important for several reasons. Again, as stated by the courts below, English private international law holds as a general rule that the law of the deceased's domicile governs succession to movable property, and the lex situs governs succession to immovables: see *Dicey, Morris and Collins on The Conflict of Laws,* 16th ed (2022) ("*Dicey*") Rules 164 and 165 (paras 28R-010 and 28R-017) in relation to intestate succession, and para 28-032 and Rule 168 (para 28R-043) in relation to the approach of the common law to the formal validity of a will disposing of movable or immovable property. (See also *Cheshire, North & Fawcett, Private International Law*, 15th ed (2017), pp 1339–1340 and 1352.) In *In re Berchtold* [1923] 1 Ch 192, 199 Russell J recorded that counsel conceded this well-established rule in relation to an intestate estate.

33. In a commercial context it is important to know the location of a particular property because the law of that place (the lex situs) governs the transfer of ownership of that property and the creation of security over that property. The lex situs also governs whether a particular property is movable or immovable**.** *Dicey* states as Rule 135 (para 23R-001):

> "The law of a country where a thing is situate (lex situs) determines whether:

> (1) the thing itself is to be considered an immovable or a movable; or
>
> (2) any right, obligation, or document connected with the thing is to be considered an interest in an immovable or in a movable."

As *Dicey* states in the commentary on this rule (para 23-002) the law can determine whether a given thing shall be treated as movable or immovable and the only law which can effectively determine whether things are to be treated as movable or immovable is the law of the country which has control of the thing. If the thing is tangible that law is the law of the country where the thing is situated.

34. The lex situs governs the proprietary consequences of a contract to transfer property. Thus, in *Hardwick Game Farm v Suffolk Agricultural Poultry Producers' Association* [1966] 1 WLR 287, 330 Diplock LJ summarised English private international law in relation to movables:

> "The proper law governing the transfer of corporeal moveable property is the lex situs. A contract made in England and governed by English law for the sale of specific goods situated in Germany, although it would be effective to pass the property in the goods at the moment the contract was made if the goods were situate in England, would not have that effect if under German law (as I believe to be the case) delivery of the goods was required in order to transfer the property in them."

35. The situs of property also determines the jurisdiction of a court to make a judgment in rem (ie which is valid as against the whole world) in relation to a particular property. *Dicey's* Rule 50 (para 14R-108) highlights the importance of the location of the property:

> "A court of a foreign country has jurisdiction to give a judgment in rem capable of enforcement or recognition in England if the subject matter of the proceedings wherein that judgment was given was immovable or movable property which was at the time of the proceedings situate in that country."

36. It is equally important to be able to identify the situs of incorporeal movable property, also known as intangibles, such as monetary obligations or shares in a company,

as the lex situs governs the proprietary aspects of a transaction, such as whether a transfer of property has been effected or whether a security has been validly created over the thing.

37. English private international law treats shares as intangibles and it is common practice to include intangibles within the classification of movable property (see *Dicey* para 23-010; *Pattni v Ali* [2006] UKPC 51; [2007] 2 AC 85, para 27 per Lord Mance).

38. *Pattni v Ali* concerned the enforcement in the Manx courts of a judgment in personam pronounced by the High Court in Kenya, to whose jurisdiction the parties had submitted, for specific performance of an agreement governed by Kenyan law for the sale and purchase of shares of an Isle of Man company. Lord Mance, after addressing judgments in rem and *Dicey's* Rule 40 (in the 14th edition: now rule 50 in the 16th edition of Dicey), stated (para 25):

> "An order purporting actually to transfer or dispose of property is, however, to be distinguished from a judgment determining the contractual rights of parties to property. Courts frequently adjudicate on the rights to property and otherwise of parties before them arising out of contractual transactions relating to movables or intangibles situate in other states; in doing so, common law courts apply the governing law of the relevant contract and the lex situs of the relevant movable or intangible to the contractual and proprietary aspects of the transaction as appropriate in accordance with principles discussed in the text to rules 120 and 124 in *Dicey, Morris & Collins*."
>
> (The equivalent rules in the 16th edition of *Dicey* are rules 136 and 141.)

39. It is unavoidably less straightforward to determine the situs of incorporeal movable property (or intangibles) such as debts, securities or shares, than the situs of corporeal property. In the leading modern English law case in relation to the situs of shares, *Macmillan Inc v Bishopsgate Investment Trust plc (No 3)* [1996] 1 WLR 387, the Court of Appeal of England and Wales was concerned with a question as to who had the better right to ownership of shares in a New York corporation, Berlitz International Inc ("Berlitz"). Berlitz was incorporated in New York and had its share register there. One party to the competition was Macmillan Inc ("Macmillan"), which was controlled by the late Robert Maxwell, who, contrary to Macmillan's interests, had arranged that Bishopsgate Investment Trust plc, which he and his family controlled and which held the Berlitz shares on trust for Macmillan, pledged those shares to three banks in security for loans to his private interests. The opposing parties were the three banks which had taken the shares as security for the loans and claimed to be transferees for value without notice

of Macmillan's interest. The judges of the Court of Appeal (Staughton, Auld and Aldous LJJ) each considered that this proprietary issue was to be determined by the lex situs. Staughton LJ stated (p 399F–G): "The general rule, which is subject to exceptions, appears to me to be that issues as to rights of property are determined by the law of the place where the property is." He concluded (p 405A–B) that in the ordinary way, unless the shares were negotiable instruments by English law, the lex situs of shares is the law of the place where the company is incorporated, but he left open the possibility of cases where the lex situs is the law of the place where the shares are registered. Auld LJ came to a similar conclusion in favour of New York as the situs of the shares, holding (p 411E) that the lex situs of the shares would normally be where the share register is kept, but not always the country of incorporation. Aldous LJ also considered that the appropriate law to determine the issue as to priority to the shares is the lex situs which is the same as the law of incorporation (p 424F–G). The judges' differing views as to the significance of the place of the register or the place of incorporation were immaterial in that case as both were New York.

40. The Board was also referred to three of its earlier decisions on appeals from Canada on whether a Canadian province could claim succession duty on the transmission of shares on the death of their owner, a question which turned upon whether the shares were situated in the province at the date of death. In the first, *Brassard v Smith* [1925] AC 371, a person resident and domiciled in Nova Scotia died owning shares in a bank which had its head office in Montreal, Quebec. The bank was empowered to open and maintain a share registry office in each province in which it had branches and resident shareholders, at which the shares held by such residents were to be registered and at which, but not elsewhere, such shares could be validly transferred. The Board held that, as the shares could be effectually dealt with only in Nova Scotia, the Province of Quebec was not entitled to succession duty on their transmission. Similarly, in *Erie Beach Company Ltd v Attorney-General for Ontario* [1930] AC 161, the Board upheld a claim to succession duty by the Province of Ontario in respect of the transmission of shares in a company incorporated in Ontario because under the Ontario Companies Act the shares could be effectually dealt with only in Ontario. In *R v Williams* [1942] AC 541 the Board held (pp 557–558) that the relevant effective dealings were those between the shareholder and the company which entitled the transferee to all the rights of a member of the company.

41. Thus, while in *Macmillan Inc* the lex situs and the law of the place of incorporation were the same, it is clear from *Brassard* and the other cases to which the Board has referred that the lex situs may not coincide with the law of the place of incorporation if the shares could be effectually dealt with by registration in another jurisdiction.

42. *Dicey* in its commentary on Rule 136 at para 23-042 summarises the position in relation to shares so far as relevant as follows (footnotes omitted):

> "*Shares in companies.* At first sight, the cases on the situs of shares seem to conflict, or rather they seem to ascribe a different situs for different purposes, but this may be better understood as the application of common principle to varying situations. *The basic principle, set out in Macmillan Inc v Bishopsgate Investment Trust Plc (No3), is that shares are situate in the country where, under the law of the country in which they are incorporated, they can be effectively dealt with as between the owner for the time being and the company*. The law of the place of incorporation of the company decides how shares in the company may be transferred. If they may be transferred only by registration on a particular register, they will be regarded as situate at the place where the register is kept. If they are transferable on more than one register, they will be situate at the place of the register on which they would be dealt with in the ordinary course of affairs by the registered owner for the time being …" (emphasis added).

43. Counsel referred the Board to an academic critique of the judgments in *Macmillan* which suggests that the decision has left many uncertainties in the choice of law rules in relation to share transactions: Maisie Ooi, "The ramifications of fragmentation in the choice of law for shares" (2016) 12 J Priv Intl L, 411–435. It is not necessary in this judgment to address those concerns, including as to whether the choice of law analysis in *Macmillan* should be applied to intermediated shares. To find a policy rationale for section 245 of the 2004 Act one need look no further than the potential uncertainty for BVI incorporated companies inherent in *Dicey's* analysis which locates shares at the place where they can be effectively dealt with.

44. In the Board's view, the emphasised passage from *Dicey* discloses the likely purpose of section 116 of the 1984 Act and later section 245 of the 2004 Act. The general principle, that shares are situated in the country in which, under the law of the country in which the company is incorporated, they can effectively be dealt with as between the owner and the company, had the potential to create uncertainty in transactions involving the shares of international business companies. As stated in para 15 above, section 28 of the 1984 Act allowed international business companies to maintain more than one share register and required only that a copy of the share register be kept in the BVI. This allowance, absent section 116 of the 1984 Act, would have been a recipe for uncertainty in identifying the law which governed the proprietary consequences of transactions in the shares of international business companies.

45. Under the 2004 Act, but for section 245, there would remain the potential for uncertainty as to the lex situs of the company's shares. The 2004 Act requires a company to keep a register of members, but does not specify where that register is to be located (section 41); it may be overseas and the company may change the location of that register.

The company may opt, but is not required, to file a copy of its register of members with the Registrar of Companies for registration (section 43A). A company must have a registered office in the BVI (section 90). It must also have a registered agent in the BVI (section 91) and must keep at the registered agent's office, among other records, either its register of members or a copy of that register (section 96(1)(b)). If the company keeps only a copy of the register of members at its agent's office, the company must notify the registered agent within 15 days of the date of any change of that register. As a transfer of shares takes effect when the name of the transferee is entered in the register of members (section 54(8)) the location of that principal register of members is the place at which shares can effectively be dealt with as between the transferee and the company. Section 245, by providing for the situs of the shares, makes it unnecessary for the court to enquire where the principal register of members was located at the time of the transfer.

46. There were therefore good reasons both in 1984 and in 2004 for the House of Assembly to wish to remove doubt as to the situs of the shares of companies incorporated in the BVI and to establish that the courts of the BVI have jurisdiction to make orders regarding title to those shares.

47. Although this was not discussed by counsel, the Board considers that the legislature may well have had similar concerns about the situs of debt obligations and securities of a company incorporated in the BVI. *Dicey* in Rule 136 (para 23R-023) states:

> "The situs of things is determined as follows:
>
> (1) Choses in action generally are situate in the country where they are properly recoverable or can be enforced …"

By providing that the situs of debts and securities of a BVI registered company is in the BVI, the legislature has removed the need to enquire as to the jurisdiction where such choses in action are properly recoverable or can be enforced.

48. Counsel also referred to two judgments of the BVI courts, *Sempacher Foundation v Lark Services Inc* BVIHC (COM) 2018/0027 and *Paraskevaides v Citco Trust Corp Ltd* BVIHCMAP 2018/0046, both of which concerned bearer shares rather than registered shares. It was not suggested that they provide any material assistance in determining the question before the Board.

(iii) Other inferences as to purpose

49. The appellants accept in their submission that, but for section 245 of the 2004 Act, the private international law of the BVI would characterise shares as movable property in accordance with the English rules of private international law. A requirement to treat shares in a company incorporated in the BVI as immovable, which the appellants say is implicit in section 245, would be a radical change to the rules of private international law which otherwise would apply in the BVI. It would have the effect that owners of shares in a BVI company who are domiciled outside the BVI would have to make a separate will, which was valid under the Wills Act of the BVI, to transmit those shares on death and could not rely on a testamentary instrument which was valid under the law of the domicile to do so. This would amount to a trap for the foreign investor. In the Board's view it is inconceivable that section 245, which was designed to create greater legal certainty in matters of title and the jurisdiction of the BVI courts, was intended to have such an effect. The canon of construction that a legislature must use clear words if it seeks to abrogate a long-standing rule of law—see for example *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG* [1975] AC 591, 648 per Lord Simon of Glaisdale—is also applicable. There are no such clear words here.

6. Conclusion

50. For these reasons the Board is satisfied that Ellis J and the Court of Appeal came to the correct conclusion.

51. The Board will humbly advise His Majesty that the appeal should be dismissed.