

Foreign judgments and issue estoppel: orthodoxy reasserted

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In *Aviator LLC v Spribe OÜ* [2026] EWCA Civ 1224, the Court of Appeal confirmed that English law as the *lex fori* governs the

question of whether a foreign judgment gives rise to an issue estoppel in a claim made in subsequent English proceedings, even where the claim itself is governed by foreign law. The decision restores the orthodox position in English private international law, which had been put in doubt by the judgment at first instance.

The facts

The case concerned a worldwide copyright dispute. The Claimant entities ("**Aviator**") alleged that Spribe OÜ ("**Spribe**") had distributed an online gambling game in the United Kingdom and in other countries using a logo that had been copied from an image in which Aviator asserted UK and foreign copyright ownership.

In earlier proceedings in Georgia, Aviator LLC had successfully challenged the validity of a Georgian trade mark registered by Spribe for its logo on the ground that it would infringe Aviator's copyrights. Aviator contended that

the Georgian judgment gave rise to issue estoppels in respect of issues as to the existence and infringement of Aviator's UK and foreign copyrights in the image, including copying of the image.

Spribe argued that the question of whether issue estoppels arose from the Georgian judgment was a matter concerning liability for copyright infringement and was therefore governed, in respect of the foreign copyright claims, by the law of each relevant foreign country pursuant to Article 8(1) of the Rome II Regulation.¹ This article provides that non-contractual obligations arising from infringement of intellectual property rights are governed by the law of the country in respect of which protection is claimed. Aviator's position was that English law as the *lex fori* governed this issue for all copyright claims (whether UK or foreign). Aviator sought the determination of a preliminary issue as to which law applied to the preclusive effect of the Georgian judgment as regards foreign copyright claims.

The first-instance decision

At first instance, following a review of the English authorities describing issue estoppel as a rule of substantive law,² Michael Tappin KC (as he then was, sitting as a Deputy High Court Judge) characterised the question of whether

the Georgian judgment produced issue estoppels as a substantive matter because it went to the determination of whether a party was liable for copyright infringement. As such, it was governed by the law of the underlying claim (*lex causae*) designated by Article 8(1) of the Rome II Regulation.³ This was said to be supported by Article 15(a), which defines the scope of application of the applicable law and provides that it governs, *inter alia*, the basis and extent of liability.⁴ Accordingly, the effect of the Georgian judgment in respect of each foreign copyright claim would be determined by applying the relevant foreign country's law.⁵

The Court of Appeal's judgment

Overturning the Deputy Judge's decision, Arnold LJ (with whom Miles and King LJ agreed) had no doubt that the question of whether the Georgian judgment gave rise to issue estoppels was to be characterised as a matter concerning the process of adjudication rather than as a matter of liability for copyright infringement. The question was therefore governed by English law as the "adjectival law", i.e. the *lex fori*.⁶

In brief, the Court of Appeal gave four reasons for this conclusion:

- (i) The effect of a foreign judgment on a claim in English proceedings fell within

¹ Regulation (EC) No. 864/2007 on the law applicable to non-contractual obligations (the "**Rome II Regulation**"). The Rome II Regulation was assimilated into the law of the United Kingdom by SI 2019/834 following the UK's withdrawal from the European Union.

² *Aviator LLC & Ors v Spribe OÜ* [2026] EWHC 1216 (Ch) at [10]-[13] and [18].

³ *Ibid* at [18] and [28]-[29].

⁴ *Ibid* at [28].

⁵ *Ibid* at [31] and [40].

⁶ *Aviator LLC & Ors v Spribe OÜ* [2026] EWCA Civ 1224 at [37] and [54].

the area of recognition of foreign judgments, which was inherently a matter for the *lex fori*.⁷

(ii) The Rome II Regulation had not altered this approach as it was not intended to address questions of recognition and enforcement of foreign judgments. These are dealt with by the Brussels I (recast) Regulation under the EU private international scheme, from which the assimilated Rome II Regulation is derived.⁸

(iii) Although issue estoppel (like other procedural rules) might affect the determination of questions of liability, this did not detract from the fact that the doctrine was concerned with the process of adjudication. It was therefore not relevant that Article 15(a) of the Rome II Regulation provides that the *lex causae* governs the basis and extent of liability.⁹

(iv) The conclusion was supported by practical considerations. If a plea of issue estoppel was subject to the *lex causae*, different laws might apply to this question depending on how the underlying claim was framed (e.g. as a claim in tort or contract). Moreover, the effect of an English judgment on an

issue raised in later English proceedings could be subject to a law other than English law if the later claim was pleaded under foreign law, which would be an odd result.¹⁰

Comments

The Court of Appeal's judgment in *Aviator* restores the orthodox view — dating back to the House of Lords' seminal decision in *Carl Zeiss Stiftung v Rayner & Keeler Ltd*¹¹ — which treats issue estoppel arising from foreign adjudications as a branch of the law on recognition and enforcement of foreign judgments. This view had been reaffirmed more recently by Foxton J (as he then was) in *PJSC National Bank Trust v Mints*.¹²

Although the decision does not break new ground, the following four points are worth emphasising.

First, the upshot of the Court of Appeal's decision is that English law will determine not only whether the foreign judgment is entitled to recognition but also the personal and material scope of the issue estoppel and its effects. The following questions will therefore be decided by reference to English law principles:¹³

- (i) Did the foreign court have jurisdiction to give judgment

⁷ *Ibid* at [40].

⁸ *Ibid* at [42]–[47]. The Brussels I (recast) Regulation ((EU) No 1215/2012) replaced the Brussels I Regulation ((EC) No 44/2001).

⁹ *Ibid* at [53]–[56].

¹⁰ *Ibid* at [58].

¹¹ [1967] 1 AC 853 esp. at 919C (Lord Reid).

¹² [2022] EWHC 871 (Comm), [2022] 1 WLR 3099 at [23(iii)].

¹³ See the requirements of issue estoppel summarised in *Gol Linhas Aereas SA v MatlinPatterson Global Opportunities Partners (Cayman) II LP* [2022] UKPC 21; [2023] Bus. L.R. 1305 at [36] (Lord Hamblen and Lord Leggatt); *The Sennar (No 2)* [1985] 1 WLR 490 at 499A–C (Lord Brandon).

- against the party alleged to be estopped?
- (ii) Is the foreign judgment final and conclusive on the merits?
 - (iii) Does the party alleged to be estopped have any defence to recognition of the foreign judgment (e.g. fraud, public policy, breach of natural justice)?
 - (iv) Who are the parties and their privies for the purposes of the issue estoppel?
 - (v) To what matters raised in the later English proceedings does the issue estoppel apply?
 - (vi) Are there any "special circumstances" which justify disapplying the issue estoppel on the facts?¹⁴

As regards the penultimate question, the Supreme Court recently confirmed in *Skatteforvaltningen v MCML Ltd*¹⁵ that issue estoppel has a narrow scope in English law and only operates in respect of pleaded issues of fact or law that were necessary and fundamental to the earlier judgment in the sense that their determination was the immediate foundation of the ultimate decision.¹⁶

Secondly, the Court of Appeal's judgment will avoid the need for parties to incur the costs and inconvenience of seeking foreign law expert evidence on the above questions. If issue estoppel were governed by the *lex causae*, the parties might need to obtain evidence on issue estoppel and cognate doctrines under multiple legal systems whenever the claim is framed as one for breach of various obligations that are (or arguably are) governed by different laws. This is common, for instance, in proceedings brought against fiduciaries faced with claims for breach of contract, breach of fiduciary duty, knowing receipt, dishonest assistance, conspiracy etc. Moreover, foreign experts might realistically disagree about various features of issue estoppel under their own legal systems, leading to satellite disputes about the content of foreign law.

Thirdly, the Court of Appeal indicated *obiter* that both cause of action estoppel and *Henderson v Henderson* abuse of process would also be governed by the *lex fori*.¹⁷ This surely makes sense. Cause of action estoppel is different in scope but not in nature from issue estoppel. *Henderson v Henderson* abuse of process is concerned with the exercise of the court's procedural powers and the protection of its process,¹⁸ which are quintessentially matters for the forum's procedural law.

¹⁴ The "special circumstances" exception was recognised in *Arnold v National Westminster Bank plc* [1991] 2 AC 93 at 109A-B. See also *Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd* [2013] UKSC 46, [2014] AC 160 at [20]-[22].

¹⁵ [2026] UKSC 19; [2026] 3 WLR 219.

¹⁶ *Ibid* at [41] and [43]-[45].

¹⁷ *Aviator LLC* (n 6) at [37].

¹⁸ *Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd* [2013] UKSC 46, [2014] AC 160 at [25]; *Salinas Pliego v Astor Asset Management 3 Ltd* [2026] EWCA Civ 940 at [64] and [82].

Fourthly, the decision concerned a judgment from the Republic of Georgia, which is not currently a party to the Hague 2019 Judgments Convention (the "**Convention**").¹⁹ The analysis may be different in respect of judgments given by the courts of Convention states. The Convention, which has been in force in the United Kingdom since 1 July 2025,²⁰ is silent on the law applicable to the scope of the *res*

judicata effects of foreign judgments. The Explanatory Report suggests that the question is governed neither by the law of the State of origin nor by the law of the requested State but should be resolved autonomously in line with the objectives of the Convention.²¹ English law may therefore not apply where issue estoppel is said to arise from a judgment given by a court of a Convention state.

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¹⁹ The Convention's full title is the Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters.

²⁰ The Convention was incorporated into the law of the United Kingdom pursuant to SI 2024/713 by amendments to the Civil Jurisdiction and Judgments Act 1982.

²¹ Garcimartín/Saumier Explanatory Report at [114]-[115].

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