What Can the United States Learn from English Anti-Suit Injunctions? An American Perspective on Airbus Industrie GIE v. Patel

Kent Anderson
Comment

What Can the United States Learn from English Anti-Suit Injunctions?
An American Perspective on Airbus Industrie GIE v. Patel

Kent Anderson†

INTRODUCTION

Texas prides itself on being a little different than the rest of the states and even the rest of the world.¹ In 1996, the English Court of Appeal

† Associate Professor, Faculty of Law, Hokkaido University, Sapporo, Japan. B.A., Middlebury College; M.A., J.D., Washington University; M.Jur., Oxford University. I would like to thank Lance W. Anderson and David B. Tulloch for their assistance.

¹ As one Texan recently stated:
Texas is America’s Mona Lisa. It’s graceful, gawky, enigmatic, cantankerous. It is a heroine of a thousand faces, a legend with more manifestations than the Buddha, the oilman, the cattle ranch, the slacker, the cheerleader, and the high-society heiress combined. Try to pin it down, distill it, define it, demystify it, and—well, good luck amigo. Texas is a slippery lanker of a myth, whose weight and scale may be too vast for words.

confirmed that reputation and imposed an anti-suit injunction\(^2\) on a group of English plaintiffs who had sought relief in the so-called “unconscionable” Texas judicial system.\(^3\) The House of Lords, in *Airbus Industrie GIE v. Patel*,\(^4\) overruled the Court of Appeal two years later, but it did not reverse the Court of Appeal’s specific findings regarding Texas law.\(^5\) Instead, the House of Lords found, based on the principle of comity,\(^6\) that even if Texas justice was completely deficient, it was not the job of the English courts to police the Texas judicial system.\(^7\) The decision’s practical effect was to allow a group of British plaintiffs to proceed with its Texas lawsuit against a French manufacturer for an accident that occurred in India. The global economy had indeed spread into the area of tort litigation.

In early 1990, an Airbus jet crashed in central India leaving a large number of people dead and injured, including three Americans and two British families. As has become common these days, that disaster started a great international tort race by the lawyers of the unfortunate victims. Over the next nine years, the race proceeded through various courthouses, including the Bombay and Bangalore courts of India, the state and federal courts of Texas, and the civil courts of England. Despite this long and arduous route, the parties to date have not even begun to argue the merits of the case. Hopefully, this will be a suit where the outcome is determined as soon as the contest’s rules are decided.\(^8\)

Although the English courts’ series of decisions in the *Airbus* case\(^9\) established no legally binding precedents in the United States, American

---

\(^2\) An anti-suit injunction is an order by a court against a party in personam “to restrain the institution or continuation of proceedings in a foreign court.” 1 ALLEN V. DICEY & J.H.C. MORRIS, THE CONFLICT OF LAWS 408 (Lawrence Collins ed., 12th ed. 1993).


\(^6\) The U.S. Supreme Court in *Hilton v. Guyot*, 159 U.S. 113 (1895), provided the most often used definition of comity: “Comity,” in the legal sense, is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of persons who are under the protection of its laws. *Id.* at 163–64.


\(^8\) Lord Templeman noted in the preeminent English forum non conveniens case, “[I]n these proceedings parties to a dispute have chosen to litigate in order to determine where they shall litigate.” *Spiliada Maritime Corp. v. Cansulex Ltd.*, [1986] 3 W.L.R. 972, 975, [1986] 3 All E.R. 843, 846 (H.L.). A number of commentators have concluded that a grant of forum non conveniens or similar action is “outcome-determinative in a high percentage of . . . cases.” David W. Robertson, *Forum Non Conveniens in America and England: A Rather Fantastic Fiction*, 103 L.Q. REV. 398, 409 (1987).

\(^9\) When referring to the entire English case, including the opinions by the High Court, Court of Appeal, and House of Lords, this Comment uses the term the “*Airbus*” case. When referring to each
lawyers should find the case compelling for a variety of reasons. First, in a voyeuristic way, it is always interesting to know what your neighbors in the global community say about you (and your legal system) behind your back. Second, the case offers some practical lessons to those who seek to represent British clients in U.S. litigation. Third, the case is an educational case study in complex international litigation and civil procedure. Finally, the *Airbus* case presents a strong argument for the United States, like England, to adopt a strict comity standard for granting anti-suit injunctions.

This Comment reviews a variety of issues that developed in the aftermath of the Indian crash and its subsequent litigation. First, Part I provides the full factual and procedural history of the case as it has worked its way through five court systems on three continents. Next, Part II reviews, compares, and contrasts the English Court of Appeal’s and House of Lords’ holdings and rationales in *Airbus*. Following this, Part III comments on the Court of Appeal’s mistaken presumptions regarding Texas law and on the House of Lords’ ruling regarding anti-suit injunctions. Finally, I argue that based on the example of the *Airbus* case in the English courts, the United States should abandon the laxer or national approach to granting anti-suit injunctions followed by half the federal circuits and fully commit to a strict, comity-based standard.

I. THE FACTS

A. The Accident

On February 14, 1990, an Indian Airlines (“IA”) domestic flight from Bombay to Bangalore, India, crashed during its landing approach. Ninety-two people died and fifty-four people were injured in the crash and the ensuing fire. The passengers were predominately Indian, but eight British citizens from two families were also on board. Four of the British passengers died and four were injured (collectively, the “Patels”). In addition, three Americans were on board and all died in the accident (collectively, the “Lintons”). None of the Americans were Texans.

---

10. Unless otherwise noted, the factual history is taken from the English Court of Appeal opinion, which is the most detailed. See *Patel II*, supra note 3, [1997] 2 Lloyd’s Rep. at 9-14.

11. See *Patel III*, supra note 4, [1998] 2 All E.R. at 259. The House of Lords stated that the Patels were British citizens of Indian origin with homes in London. See id. The Court of Appeal stated: “[The Patels] were on holiday in India at the time, no doubt visiting relatives.” *Patel II*, supra note 3, [1997] 2 Lloyd’s Rep. at 10. The commentators have followed the courts’ lead and noted the Patels’ ethnicity. See, e.g., Adrian Briggs, *The Unrestricted Reach of an Anti-Suit Injunction: A Pause for Thought*, 1997 LLOYD’S MAR. & COM. L.Q. 90, 90 (1997); Jonathan Harris, *Anti-Suit Injunctions—A Home Comfort?*, 1997 LLOYD’S MAR. & COM. L.Q. 413, 413 & n.4 (1997); Phillip Mills & Jonathan Leslie, *The House of Lords Limits Anti-Suit Injunctions*, INT’L COM. LITIG., June 1998, at 49. It is unclear what, if any, significance the courts place on the Patels’ ethnic origins or the purpose of their visit to India. Nonetheless, the various parties’ notation of the fact alone is somewhat odd and incongruous to an American reader.

12. The reported American cases are titled after one of the U.S. victims, Laura Howell Linton. See, e.g., *Linton v. Airbus Industrie*, 30 F.3d 592 (5th Cir. 1994) [hereinafter *Linton II*]. The federal
The aircraft was an Airbus 320-231 ("A320") that had been designed, tested, and manufactured by Airbus Industrie GIE ("Airbus") in Toulouse, France. At the time of the accident, Airbus was a quasi-public corporation made up of governmental, quasi-governmental, and private shareholders from France, Germany, Spain, and England. Apart from delivery in December 1989, the aircraft had never flown outside of India. The plane was operated by IA, which was solely licensed as a domestic Indian carrier. The pilots were Indian nationals, but each had some minimal training at an Airbus training center in either France or the United States.

Following the crash, the Indian government established a board of inquiry under the control of the High Court of Karnataka. The board of inquiry conducted an investigation and took evidence regarding the cause of the crash. In December 1990, the board published its results and concluded that pilot error caused the crash. Specifically, the board found that the pilots mistakenly programmed the jet to descend to an altitude of 700 feet, rather than to descend at the rate of 700 feet per minute. The controls for setting the altitude and vertical speed were next to each other on the airplane's control panel. The board also concluded that the Bangalore airport authority, Hindustan Aeronautics Limited (HAL), aggravated the injuries by having the airport perimeter gates locked and by failing to have established adequate rescue and fire procedures. In conclusion, the board specifically found that the crash was not caused by any failure of the aircraft, its controls, or its engines.

B. The Bombay Case

Following release of the board's report, the various injured parties began settlement negotiations with IA. The parties had not reached an agreement by
the beginning of 1992, and the Indian two-year statute of limitations was approaching. Therefore, on February 12, 1992, the Patels filed suit against IA and HAL in the Bombay High Court. In their complaint, the Patels alleged that IA was liable for gross negligence, recklessness, and willful misconduct based on the pilots' error. In addition, the plaintiffs claimed against HAL in negligence for keeping the perimeter gate locked, for not providing tools to open the gate, for failing to coordinate the fire fighting, and for failing to train adequately the emergency personnel for a crash outside the airport perimeter. On March 6, 1993, IA and the Patels settled for the full amount available under IA's liability insurance. For the four deaths and four injuries suffered by the Patels, they received in total the Indian rupee equivalent of approximately $200,000 plus costs. After paying for legal fees not covered by the settlement, the Patels' net award was approximately $125,000. The plaintiffs did not settle with HAL. As of 1998, that litigation was still pending and had not been vigorously pursued by any of the parties.

C. The Texas Case

On the same day the Patels filed the Bombay Case, the Patels and the Lintons also filed separate cases in the Texas state court for Brazoria County against Airbus and its subsidiary responsible for training the pilots to fly the A320. Both suits alleged numerous product liability and negligence claims.

21. The Patels were plaintiffs in the Bombay Case, see Patel I, supra note 3, 1996 Int'l Litig. Proc. at 468, but it is not clear whether the Lintons were parties to this part of the Indian litigation. See Patel I, supra note 3, 1996 Int'l Litig. Proc. at 468.
23. See id. at 468.
24. See id.
25. The House of Lords speculated that the inactivity against HAL might have been due to a delay in the proceedings or due to difficulty in establishing that HAL was liable for the plaintiffs' deaths and injuries. See Patel III, supra note 4, [1998] 2 All E.R. at 259.
26. Because the English courts did not review the Texas proceedings, the facts in this subsection, unless otherwise noted, are from Linton II, 30 F.3d at 594–95.
27. Brazoria County has attracted a tremendous number of foreign plaintiffs for reasons that are at least partially unclear. See, e.g., Delgado v. Shell Oil Co., 890 F. Supp. 1324, 1337 (S.D. Tex. 1995) (noting a case filed in Brazoria County by plaintiffs from, among others, Burkina Faso, Costa Rica, Dominica, Ecuador, Guatemala, Honduras, Ivory Coast, Nicaragua, Panama, the Philippines, Saint Lucia, and Saint Vincent).
28. The domestic defendants in most of these cases immediately remove the suits to the local U.S. federal district court, which, in response to one foreign plaintiff's choice of venue, recently commented: [G]iven the tremendous number of United States jurisdictions encompassing fascinating and exotic places, the Court can hardly imagine why the [plaintiff] Republic of Bolivia elected to file suit in the veritable hinterlands of Brazoria County, Texas. The Court seriously doubts whether Brazoria County has ever seen a live Bolivian... even on the Discovery Channel. Though only here by removal, this humble Court by the sea is certainly flattered by what must be the worldwide renown of rural Texas courts for dispensing justice with unparalleled fairness and alacrity, apparently in common discussion even on the mountain peaks of Bolivia! Republic of Bolivia v. Philip Morris Co., 39 F. Supp. 2d 1008, 1009 (S.D. Tex. 1999).
29. See Linton III, 934 S.W.2d at 756. The defendants included Airbus Industrie, Aéroconstruction (the subsidiary trainer), Airbus Industrie of North America, Inc., and Airbus Service Company, Inc. (collectively, "Airbus"). See Linton I, 794 F. Supp. at 650. Airbus Industrie owned 90% of Aéroconstruction and the courts essentially treated them as the same party. See id. at 652. The status or outcome of the suit against defendants Airbus Industrie of North America, Inc. and Airbus Service is not
Airbus immediately removed the cases to the federal court for the Southern District of Texas, Galveston Division, basing its federal subject matter jurisdiction on both federal issue jurisdiction and diversity jurisdiction. The federal court, sua sponte, consolidated the Patels' and the Lintons' cases for all purposes, to which none of the parties objected. Once in federal court, Airbus immediately moved for dismissal of the entire consolidated suit based on (1) lack of personal jurisdiction, (2) forum non conveniens, and (3) immunity under the Federal Sovereign Immunities Act (FSIA). In response, the plaintiffs moved to remand the case back to the Texas state courts, arguing that Airbus failed to meet diversity and federal issue jurisdiction requirements.

On July 22, 1992, the U.S. district court held in a detailed opinion that Airbus was not a "foreign state or agency or instrumentality of a foreign state" under the FSIA and, therefore, it could neither invoke federal issue jurisdiction nor claim immunity under the FSIA. Though the court did not say so explicitly, the order appeared to remand the case back to the Texas state courts. Airbus appealed the district court's decision to the United States Court of Appeals, Fifth Circuit. On February 24, 1993, the Fifth Circuit in an unpublished opinion dismissed the appeal, finding that the district court failed clear from the opinions.

29. See Linton III, 934 S.W.2d at 756.
30. See 28 U.S.C. §§ 1330, 1441 (1994). Section 1330(a) provides:
   The [U.S. federal] district courts shall have original jurisdiction without regard to amount in controversy of any nonjury civil action against a foreign state as defined in [28 U.S.C. § 1603(a)] as to any claim for relief in personam with respect to which the foreign state is not entitled to immunity either under [the Foreign Sovereign Immunities Act] or under any applicable international agreement.
   28 U.S.C. § 1330(a). Section 1441(d) provides:
   Any civil action brought in a State court against a foreign state as defined in [28 U.S.C. § 1603(a)] may be removed by the foreign state to the district court of the United States for the district and division embracing the place where such action is pending.
31. See 28 U.S.C. § 1332. Section 1332(a) provides, in part:
   The [U.S. federal] district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interests and costs, and is between . . . (2) citizens of a [U.S.] State and citizens or subjects of a foreign state; [or] (3) citizens of different States and in which citizens or subjects of a foreign state are additional parties.
32. See Linton II, 30 F.3d at 594.
34. 28 U.S.C. § 1603 provides, in part:
   (a) A "foreign state" . . . includes a political subdivision of a foreign state or an agency or instrumentality of a foreign state as defined in subsection
   (b) An "agency or instrumentality of a foreign state" means any entity—
      (1) which is a separate legal person, corporate or otherwise, and
      (2) which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof; and
      (3) which is neither a citizen of a State of the United States . . . nor created under the laws of any third country.
36. See id.
to rule on Airbus’s motions to dismiss for lack of in personam jurisdiction and for forum non conveniens. The circuit court specifically instructed the district court to rule on “defendants’ motion to dismiss expeditiously.”

After the circuit court had sent the case back to the U.S. district court, but before the district court had ruled on Airbus’s motion to dismiss for lack of jurisdiction and forum non conveniens, the plaintiffs and Airbus voluntarily entered into a stipulation agreement establishing the domicile of the parties. In the joint stipulation, the parties agreed that one plaintiff was “stateless” for jurisdictional purposes. It is not clear why Airbus entered into the agreement, but the Fifth Circuit later presumed that Airbus hoped to bolster its forum non conveniens claim by doing so.

On remand the district court was prepared to review the remaining issues as instructed by the circuit court. In fact, the district court noted, but did not rule, that had it addressed Airbus’s motion it would have had to dismiss the case for either forum non conveniens or lack of in personam jurisdiction. Instead, however, the court immediately remanded the case back to the Texas state courts for lack of federal subject matter jurisdiction. The district court held that it lacked jurisdiction, because the stipulation agreement’s domicile provision destroyed diversity jurisdiction and the court had already rejected federal issue jurisdiction by ruling Airbus was not a foreign state. In short, the district court found that because it lacked any basis for subject matter jurisdiction, it did not have the authority to rule on Airbus’s motion to dismiss for either forum non conveniens or lack of in personam jurisdiction.

Airbus again appealed to the Fifth Circuit. Although the circuit court expressed sympathy for Airbus’s plight, it nonetheless affirmed the jurisdictional deficiencies of the case.

---

37. See Linton II, 30 F.3d at 594 (citing Airbus Industrie v. Linton, No. 92-7564 (5th Cir. Feb. 24, 1993)).
38. Id.
39. See id. at 595.
40. See id. at 594.
41. The district court’s opinion was not reported. This summary is found in Linton II, 30 F.3d at 594-95.
42. See id.
45. See Linton II, 30 F.3d at 595.
46. In what turned out to be an ironic twist given Airbus’s subsequent application to the English court for an anti-suit injunction against the Texas litigation, the Fifth Circuit expressed its sympathy by quoting to Airbus the English novelist Charles Dickens’s account of England’s cruel and deficient judicial system from BLEAK HOUSE:

“IT CALL THE WARDS IN JARNDYCE. THEY ARE CAGED UP WITH ALL THE OTHERS. WITH HOPE, JOY, YOUTH, PEACE, REST, LIFE, DUST, ASHES, WASTE, WANT, RUIN, DESPAIR, MADNESS, DEATH, CUNNING, FOLLY, WORDS, WIGS, RAGS, SHEEPSKIN, PLUNDER, PRECEDENT, JARGON, GAMMON, AND SPINACH!” LIKE THE POOR WARDS IN JARNDYCE, THE AIRBUS DEFENDANTS HAVE SEARCHED IN VAIN FOR RESOLUTION OF THEIR CLAIM. WE TAKE COMFORT, THOUGH, IN THE FACT THAT, UNLIKE THE WARDS IN JARNDYCE—WHO WERE FOREVER CONSIGNED TO WANDER ABOUT IN THE FOG OF CHANCERY COURT—THE AIRBUS DEFENDANTS WILL BE ABLE TO HAVE THE MERITS OF THEIR CLAIM OF FSIA IMMUNITY [BUT NOT FORUM NON CONVENIENS] HEARD, ALBEIT IN STATE COURT.
remission to the Texas state courts. The Fifth Circuit concluded without difficulty that if the district court did not have primary jurisdiction, then it could not take appellate jurisdiction.47

Back in the Texas state court system, Airbus renewed its efforts to have the case dismissed under the immunity provisions of FSIA.48 However, it consented to Texas jurisdiction and did not renew its arguments based on lack of in personam jurisdiction and forum non conveniens.49 This appears to have been a concession to the fact that Airbus almost certainly satisfied Texas's minimum contacts requirements having (1) sold A320s in Texas, (2) purchased aircraft parts that were designed and manufactured in Texas, and (3) trained pilots in the United States.50 Airbus also likely conceded the forum non conveniens argument, because the Texas Supreme Court had held in 1990 that a state statute expressly required Texas courts to take jurisdiction in wrongful death and personal injury cases brought in Texas courts even if the injury occurred outside of Texas.51 On February 9, 1995, the state trial court found that Airbus was immune from suit under the FSIA and dismissed the case.52 The plaintiffs appealed the decision to the Texas state appeals court.53

D. The Bangalore Case

Concurrent with the battles in the U.S. federal courts and the Texas state courts, Airbus launched a counter-offensive against the Patels in India. On November 21, 1992, Airbus, which was not a party to the Bombay Case, filed a declaratory judgment suit to determine the limits of its liability, if any, in the City Civil Court of Bangalore, which had jurisdiction over the area where the accident occurred.54 Three years later, following the appeal of the Texas state

---

47. See Linton II, 30 F.3d at 595, 600; see also 28 U.S.C. § 1447(c), (d) (1998) ("If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded [to the state courts]. . . . An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise." (emphasis added)). The defendants continued their efforts to remain in the federal court system by petitioning the Fifth Circuit for a rehearing en banc, see Linton v. Airbus Industrie, 36 F.3d 92 (5th Cir. 1994) (denying petition for rehearing en banc), and by petitioning the Supreme Court for certiorari, see Airbus Industrie G.I.E. v. Linton, 513 U.S. 1044 (1994) (denying certiorari). Both applications were denied.
48. See Linton III, 934 S.W.2d at 757.
51. See Dow Chem. Co. v. Alfaro, 786 S.W.2d 674 (Tex. 1990) (holding that by statutory mandate a Texas court could not refuse jurisdiction for wrongful death and personal injury cases occurring outside of Texas); TEx. Civ. PRAC. & REM. CODE ANN. § 71.031 (West 1990). The status of Texas law of forum non conveniens in 1990 and later is discussed infra in notes 176–189 and accompanying text.
52. See Linton III, 934 S.W.2d at 757.
53. The plaintiffs' appeal succeeded. See id. at 754 (granting the Patels' and theLintons' appeal of the Texas case's dismissal). For a discussion of the subsequent proceedings see infra notes 127–128 and accompanying text.
court's dismissal, Airbus brought and the Bangalore court granted a motion for a permanent anti-suit injunction against the plaintiffs in the Texas case.\(^5\) The Patels, through counsel, made a special appearance in the case and actively argued against the injunction.\(^6\) In deciding to grant the injunction, the Bangalore court fully reviewed and considered the convenience, appropriateness, and jurisdiction of both the Indian and Texan courts.\(^7\) The injunction order provided, inter alia: (1) The plaintiffs were not entitled to proceed against Airbus in any court in the world other than in India/Bangalore; (2) The action filed in Texas was not in conformity with the laws of India; (3) India/Bangalore courts alone should determine the quantum of compensatory damages; (4) The applicable law for any claim against Airbus was Indian law, not Texas law; and (5) Airbus was prohibited from withdrawing from the Bangalore Case at any point prior to the full settlement of the plaintiffs' claims by an Indian court.\(^8\)

After the Bangalore court granted the anti-suit injunction, the Patels simply ignored it.\(^9\) In doing so, the Patels became subject to sanctions by the Indian court.\(^10\) However, because the Patels had no immediate and expected to have no future physical or financial presence in India, sanctions were of limited deterrence. Furthermore, because the injunctions were against the Patels personally and because the Indian courts could not directly encroach on the Texas courts’ jurisdiction,\(^11\) Airbus could neither request nor demand that the Texas courts stay or dismiss the case based on the Indian injunction.\(^12\)

E. The English Case

Concerned that the Texas appeals court might not uphold the lower court’s dismissal, and with the Patels ignoring the Indian injunction, Airbus

---

55. See Patel II, supra note 3, [1997] 2 Lloyd’s Rep. at 12. Airbus had initially sought anti-suit injunctions against the Patels concurrently in both the Bangalore Case and the City Civil Court of Bombay. The Bangalore court denied the injunction. Airbus appealed the decision to the High Court of Karnataka and withdrew its application from the City Civil Court of Bombay. On February 9, 1994, the High Court reversed the Bangalore court and granted Airbus a temporary injunction against the Patels, pending disposal of the case in India. The High Court relied namely on the leading English anti-suit injunction decision of Société Nationale Industrielle Aérospatiale v. Lee Kui Jak, [1987] 1 App. Cas. 871 (P.C. 1987) (appeal taken from Brunei). See Singhain, supra note 54, at C-96. The 1995 application sought to make the injunction against the Patels permanent. See Patel II, supra note 3, [1997] 2 Lloyd’s Rep. at 12. It is notable that the Bangalore judge thus ruled on the request for a permanent injunction after already having been overturned by the High Court on Airbus’s application for a temporary injunction ruling a year earlier.

57. See id.
59. See Patel II, supra note 3, [1997] 2 Lloyd’s Rep. at 12. The English Court of Appeal noted that the Patels’ Texas contingency fee lawyers financed the Indian defense. See id. The opinions do not note, however, whether the Patels or the Texas attorneys financed the subsequent English defenses.
60. See id.
61. See infra note 147 (discussing the general effect on foreign courts of anti-suit injunctions issued personally against a party).
62. See Patel II, supra note 3, [1997] 2 Lloyd’s Rep. at 12 ("Under the rules of private international law, the judgment of the Indian Court creates no rights or obligations in this country.").
tried another avenue. Airbus applied to the English courts: first, to recognize
the Indian injunction and, second, to issue their own injunction preventing the
Patels from pursuing their appeal in the Texas state courts. The practical
effect of either of these remedies was the same: Airbus would receive an
injunction that it could enforce in England, where the Patels were susceptible
to personal jurisdiction and sanctions.

The English anti-suit injunction claim was unique. It is not
unprecedented for an English court to grant an anti-suit injunction preventing
one of its citizens from suing in the United States in favor of forcing the
parties into the English courts. Here, however, Airbus asked the English
court to enjoin the American litigation and compel the British citizens to sue
in Indian courts. In the words of one lawyer, Airbus was asking the English
court to “act as an international policeman,” refereeing between the courts of
two foreign jurisdictions—India and Texas. This was a difficult issue
because:

[The English court was being required to adjudicate between two or more foreign
jurisdictions and to conduct a comparative evaluation of the appropriateness of
proceedings in different foreign courts. It would be less able to carry out this exercise
than if it were comparing one foreign court with an English court as the alternative
forum.]

The courts noted that this was a case of first impression in England.

II. THE AIRBUS DECISIONS

A. **High Court—Patel I**

The case first came before Justice Colman of the English High Court
(Queen’s Bench Division), and on April 23, 1996 he denied Airbus’s motion
to enjoin the Patels.\footnote{See Patel I, supra note 3, 1996 Int’l Litig. Proc. at 484.} In his ruling, Justice Colman found he could not enforce the Bangalore injunction because, inter alia, English courts will only enforce judgments for a quantified sum of money.\footnote{See id. at 477.} Next, he turned to Airbus’s request for an English anti-suit injunction against the Patels’ case in Texas. On this issue he found that the court indeed had the authority to grant such an injunction.\footnote{See id. at 479.} He determined that the test for whether such an injunction should be granted was the same as the present test for standard anti-suit injunctions in favor of English courts: An injunction will be granted where a party, who is within the jurisdiction of the English court, pursues a claim that is vexatious or oppressive in a foreign jurisdiction, which is not the “natural forum.”\footnote{See, e.g., Société Nationale Industrielle Aérospatiale v. Lee Kui Jak, [1987] 1 App. Cas. 871 (P.C.) (appeal taken from Brunei).}

The court applied this test in two parts. First, it asked whether Texas was the natural forum of the dispute and found that, despite some connections, it was not.\footnote{Patel I, supra note 3, 1996 Int’l Litig. Proc. at 479. The “natural forum” is the forum “with which the action has the most real and substantial connection.” DICEY & MORRIS, supra note 2, at 403 (Rule 31).} Second, the court considered whether the facts showed “the very clearest case of oppression” that was “so obviously vexatious and oppressive” that the Patels should be enjoined from pursuing the American litigation.\footnote{See Patel I, supra note 3, 1996 Int’l Litig. Proc. at 480–81.} In applying this second part of the test, the court identified and balanced a number of factors. In favor of Airbus it considered (1) that the evidence was predominantly in India, (2) that Airbus was not able to defend in Texas under a forum non conveniens theory, and (3) that because IA and HAL were not subject to Texas jurisdiction, Airbus could not bring cross-claims for contribution against them in the Texas case.\footnote{Id.} On the other side of the scale, the court weighed (1) that the Lintons would proceed with the Texas litigation even if the court granted an injunction against the Patels, (2) that financially the Patels could only pursue their claims in Texas, which allows for contingency fee arrangements, and (3) that the Indian trial and appeal could take between fourteen and sixteen years.\footnote{See id. at 480–82. The “extensive” and “voluminous” evidence,\footnote{See id. at 482–83.} finally, after reviewing the entire “extensive” and “voluminous” evidence,\footnote{See id. at 484.} Justice Colman concluded that the Texas case was “not vexatious or oppressive and accordingly, this is
not an appropriate case for the English court to grant an anti-suit injunction." 

Airbus appealed to the Court of Appeal.

B. Court of Appeal—Patel II

On July 31, 1996, the Court of Appeal overturned the High Court and enjoined the Patels from further pursuing their claims against Airbus in the Texas state courts. Lord Justice Hobhouse (later to become Lord Hobhouse of the House of Lords) wrote the principal opinion, which was joined without comment by Lord Justice Aldous and with minor comment by Lord Justice Nourse. Preliminarily, the appellate court affirmed Justice Colman's holdings that the Indian injunction order was not enforceable in England and that an English court had the authority to issue an anti-suit injunction in this unique situation. After reviewing the relevant case law, the court also affirmed the general "vexatious or oppressive" test Justice Colman used for granting anti-suit injunctions.

Lord Justice Hobhouse did not stop at this point, however. Instead, he reconsidered and rebalanced the various factors identified by the High Court, distinguishing both legally and factually the weight given to the facts.

86. See id. at 12, 16.
89. The court stated: "The exercise of discretion whether or not to grant the remedy was for the Judge. However if he has not applied the right criteria or has not correctly selected and evaluated the relevant facts and circumstances, this Court must, having determined the correct facts to be taken into account and the correct legal criteria, exercise the discretion itself." Id. As in America, the English appellate court must meet a high standard for overruling the discretion of the trial court. See Spilada Maritime Corp. v. Consulux Ltd., [1986] 3 All E.R. at 847 (Templeman, L.) (stating that regarding the review of a trial court's determination in dismissing under forum non conveniens, "[a]n appeal [of the lower court's discretion] should be rare and the appellate court should be slow to interfere") (emphasis added).
The court applied a modified three-part balancing test. First, it looked at where the natural forum was and was not. Second, the court asked whether Airbus would be prejudiced by defending the suit in Texas. Third, it considered whether the Patels derived any “legitimate” advantages from proceeding in Texas.92

In applying the first part of the test, the court did not specifically state where the natural forum was. The court noted that Bangalore was likely the most convenient forum while France was probably a convenient forum.93 Most significantly, the court found that Texas was an inappropriate forum, stating cursorily that “there can be no question but that Texas is not an appropriate forum for the determination of this dispute.”94 This holding regarding the inappropriateness of Texas as a forum was fundamental to the court’s decision because it set the tone for and the basis on which all other factors were thereafter considered.95 The court succinctly concluded its discussion of the appropriate forum by stating:

[T]here is one forum, India, which is the appropriate forum; there is another forum, France, which is an appropriate forum; the English claimants are seeking to sue in a third forum, Texas, which is clearly inappropriate. The conduct of the English claimants is prima facie oppression.96

Underlying the court’s finding that Texas was clearly an inappropriate forum were its earlier factual determinations regarding forum non conveniens and personal jurisdiction in Texas. As part of its statement of the facts of the case, the court had found that “Texas law . . . provided no basis upon which its jurisdiction, or the continuation of proceedings in its Courts, could be challenged on the basis of forum non conveniens.”97 Based on this finding, Lord Justice Hobhouse argued that “unless an English Court is prepared to give its own decision, the question [regarding forum non conveniens] will not be decided by any Court having jurisdiction to do so. The Texas Court will

91. Lord Justice Hobhouse stated: “I do not consider that Mr. Justice Colman has set the tests at the appropriate level for this case nor do I consider that he has correctly evaluated the facts and circumstances which have to be taken into account.” Patel II, supra note 3, [1997] 2 Lloyd's Rep. at 16. See also id. at 18–19 (“In my judgment Mr. Justice Colman wrongly evaluated the factors which he had to take into account in exercising his discretion. . . . It follows that in my judgment the exercise of discretion by Mr. Justice Colman cannot stand.”) (emphasis added).

92. See id. at 17.

93. See id.

94. Id.

95. The one American commentator who has looked at this case observed that “[o]f crucial significance to the ultimate decision appears to be the determination that Texas was an inappropriate forum . . . .” Teitz, supra note 82, at 320.


97. Id. at 11. The court also stated: “The Courts of India, unlike the Courts of Texas at the material time, recognize and apply the recognized [by England (?)] principles of forum non conveniens.” Id. at 12. The court stated that this lack of forum non conveniens was “peculiar to the state of Texas.” Id. at 11. However, other U.S. jurisdictions such as Louisiana have either rejected wholly or partially the forum non conveniens doctrine. See, e.g., Fox v. Board of Supervisors, 576 So. 2d 978, 990 (La. 1991) (holding that Louisiana courts may not dismiss cases for forum non conveniens except in cases specifically provided for in the Louisiana Code of Civil Procedure). See generally Adrian G. Duplantier, Louisiana: A Forum, Conveniens Vel Non, 48 La. L. Rev. 761 (1988) (reviewing Louisiana’s doctrine of forum non conveniens).
not do so." The court later similarly noted that "[the lower court] wrongly excluded the fact that the Courts of Texas do not allow, in respect of this case, any consideration whether Texas is an appropriate forum." 

Lord Justice Nourse in his concurrence agreed that the key point on the questions of whether the Texas court was an appropriate forum and whether the suit was oppressive was the availability of the doctrine of forum non conveniens. He stated:

The key to both stages in the process is the Texas Court's disregard of the principal of forum conveniens, the crucial significance of which did not come home to the Judge [Colman]. As Lord Justice Hobhouse has pointed out, unless this question is considered by the English Court, it will not be considered by any Court having the power to enforce its decision.

Lord Justice Nourse identified no other factors for overruling Justice Colman's discretion.

In Lord Justice Hobhouse's leading opinion, the appellate court also found that coupled with Texas's apparent lack of forum non conveniens, it employed a broad definition of jurisdiction and, therefore, "personal jurisdiction is very easily established in Texas." The court noted that personal jurisdiction could be found without personal presence based on prior business dealings in Texas that had no connection to the subject matter of the dispute. The court noted, however, that Airbus eventually consented to Texas jurisdiction.

98. Patel II, supra note 3, [1997] 2 Lloyd's Rep. at 16. The appellate court incorrectly noted that France is "the Convention country under which the English claimants are obliged and entitled to sue Airbus Industrie under the Brussels Convention." Id. at 17. The "Convention" and "Brussels Convention" is the Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters, Sept. 27, 1968, as amended by the Convention on the Accession of the Kingdom of Denmark, Ireland, and the United Kingdom of Great Britain and Northern Ireland, Oct. 9, 1978, enacted by Civil Jurisdiction and Judgments Act, 1991, ch. 12, sched. 1 (Eng.) (hereinafter "the Brussels Convention"). The Brussels Convention provides the jurisdictional rules for cases filed concurrently in European Union Contracting States. See C.M.V. Clarkson & Jonathan Hill, Jaffey on the Conflict of Laws 60 (1997). Because the Airbus case involved actions filed concurrently outside the courts of the European Union's Contracting States, despite involving French and English parties (as well as Indian and American parties), it is arguable that the Brussels Convention was not applicable at all and would not limit the forum to France. See In re Harrods (Buenos Aires) Ltd., [1992] 1 Ch. 72 (C.A. 1992) (holding that even where a defendant is domiciled in a Contracting State, the Brussels Convention does not prevent a Contracting State court from staying a case in favor of a non-Contracting State based on forum non conveniens); see also Briggs, supra note 11, at 98 n.51 (questioning the correctness of the appellate court's assertion regarding the application of the Brussels Convention).

100. See id. at 19–20.
101. Id. at 19 (Nourse, L.J., concurring).
102. See id. at 19–20.
103. Id. at 11.
104. See id. at 11. The U.S. Supreme Court has provided the due process requirements for extending jurisdiction as follows:

Even when the cause of action does not arise out of or relate to the foreign corporation's activities in the forum State, due process is not offended by a State's subjecting the corporation to its in personam jurisdiction when there are sufficient contacts between the State and the foreign corporation.

In the second part of the appellate court's balancing test, where the court asked whether Airbus was prejudiced by the proceedings in Texas, the court was primarily concerned with the application of Texas product liability law to the case. The court began its discussion with the cursory and conclusive factual determination that "[t]he liability, if any, of Airbus Industrie will be determined by the Court in Texas on the basis of a strict liability under Texas law which on the recognized principles of conflicts of laws has no place in determination of its liability to the English claimants." Further, the court found regarding Airbus's liability that

\[\text{[Airbus] will be exposed to a potential liability in [punitive] damages which has no legal relationship to any wrong which Airbus Industrie may have done them. An award of penal damages relates to the domestic policy of the state of Texas with which this accident and the supply of this aircraft by Airbus Industrie to Indian Airlines have no connection whatsoever.}^{106}\]

Based on the "implicit" finding that Texas courts would apply Texas product liability law and would impose punitive damages against Airbus, the court concluded that allowing the litigation to proceed in Texas was "a substantial injustice to Airbus Industrie."^{107}

The court next held that Airbus's inability to get contribution from IA or HAL in the Texas case would cause further injustice to Airbus. In contrast, Justice Colman had held that any injustice of this kind would not be resolved by an injunction. He reasoned that because the Lintons would continue to pursue their claims even if the Patels were enjoined from proceeding in Texas, Airbus would still have to defend the Texas suit. Therefore, no judicial or economic efficiency would have been achieved by forcing the Patels into the Indian courts.

Finally, for the third part of the balancing test—advantages that the Patels might benefit from in Texas—the appellate court discounted any financing advantages the Patels would receive proceeding in Texas as

that its acceptance of the personal jurisdiction of the Texas Courts was voluntary for the purposes of the rules of private international law.

\(^{106}\) Id. at 17. The court also stated: "The law of Texas is wholly irrelevant to the resolution of the dispute applying acceptable [English (?)] conflict of laws rules." \(^{107}\) Id.

\(^{108}\) Id.

\(^{109}\) Id. at 11 (emphasis added).

\(^{110}\) See id. at 17–18. In a very similar situation, the House of Lords had ruled that inability to implead potential contributors was a significant factor in favor of granting an anti-suit injunction. See Société Nationale Industrielle Aerospatiale v. Lee Kui Jak, [1987] 1 App. Cas. 871 (P.C. 1987) (appeal taken from Brunei). As a result, Airbus relied chiefly on this rationale in seeking its injunction. See Patel I, supra note 3, 1996 Int'l Litig. Proc. 465, 482 ("[The contribution argument] is heavily relied upon by Airbus as a ground for its contention that it will be subjected to serious injustice if it is forced to litigate in Texas . . . .").

\(^{111}\) See Patel I, supra note 3, 1996 Int'l Litig. Proc. at 482.

\(^{112}\) See id.
“illegitimate” advantages.\textsuperscript{113} The court acknowledged that because the Patels could only finance their litigation against Airbus with the aid of contingency fees, an injunction against the Texas suit would “in practical terms” preclude the Patels from pursuing any claims against Airbus.\textsuperscript{114} Nevertheless, the court reasoned that because it found the Texas case as a whole to be inappropriate, the ability to perpetuate the case through contingency fees must be an “illegitimate” advantage.\textsuperscript{115} The court also noted that the avoidance of any delays that might be encountered in India would be a legitimate advantage of the Texas courts but of “limited cogency,” because it was unclear how much longer an Indian proceeding would take than the Texas case, which had already lasted four years.\textsuperscript{116}

In conclusion, the court found that Justice Colman had “wrongly evaluated the factors,”\textsuperscript{117} and based on that failure, the Court of Appeal could not let his decision stand.\textsuperscript{118} Then, in lieu of the lower court’s balance, it applied its own conclusions and held that because the suit in “Texas [was both] clearly oppressive and cause[d] significant injustice to Airbus Industrie,” it was necessary to enjoin the Patels from pursuing their appeal in the Texas courts.\textsuperscript{119} The Patels appealed to the House of Lords, England’s court of final appeal.\textsuperscript{120}

\section*{C. House of Lords—Patel III\textsuperscript{121}}

On April 2, 1998, the House of Lords overruled the Court of Appeal and denied Airbus’s request for an anti-suit injunction against the Patels’ participation in the Texas litigation.\textsuperscript{122} Unlike the Court of Appeal’s approach, the House of Lords did not specifically overrule the lower court’s balancing of the various factors.\textsuperscript{123} Instead, in a speech\textsuperscript{124} given by Lord Goff of Chieveley
and agreed to by all other members, the court held that not only did the foreign proceedings have to be vexatious and oppressive, comity required a finding that the English court had a strong interest in the case.  

The House of Lords began by restating the facts and noted three additional developments that had occurred between the decisions of the Court of Appeal and the House of Lords. First, as Airbus had feared, the Texas Court of Appeals overturned the Texas trial court's dismissal of the Texas litigation. Airbus appealed to the Texas Supreme Court, but at the time of the House of Lords' opinion the Texas Supreme Court had not decided the case. Second, in their appellate brief for the House of Lords, the Patels stated that they would not seek punitive damages in the Texas case. Third and similarly, in oral arguments before the court the Patels' counsel agreed that they would waive any reliance on Texas product liability law in the U.S. litigation.

The court then used the bulk of the opinion to clarify the standard for granting an anti-suit injunction. As discussed above, Justice Colman and Lord Justice Hobhouse had applied the same test, which used a balancing test to query whether a suit was "vexatious or oppressive" based on multiple factors, including (1) where the natural forum was, (2) the prejudice caused to the defending party, and (3) the advantages enjoyed by the initiating party.

In contrast, Lord Goff opined that comity required the court to focus not only on the vexatiousness or oppression of the foreign case, but also on the connection of the suit with England. Under Lord Goff's formulation, England's connection to the case was considered an independent and essential element rather than merely one of the multiple factors to be considered when determining whether the foreign case was oppressive. In its practical application, the court's approach translated into a two part test: (1) Does the court issuing the injunction have a sufficient interest in the case and, if so, (2) is the foreign proceeding vexatious or oppressive enough to justify intrusion?

---

126. See id. at 260.
130. See id. The court does not explain why the Patels made these concessions regarding the applicable law and damages. As discussed below, however, this was likely a rational decision based on the actual status of Texas law. See infra notes 200–205 and accompanying text.
132. See supra notes 73–81, 87–117 and accompanying text.
134. See id. at 267.
135. See id.
Relying on a split among U.S. circuit courts, Lord Goff referred to his method as the "stricter approach" and the English lower courts' methodology as the "laxer approach." Goff argued that regard for comity dictated that England follow the stricter approach and only grant injunctions where it needed to protect its own jurisdiction or prevent evasion of its own public policy. The court noted in support of this approach that the leading courts in Canada, Australia, and part of the United States had followed it.

Under the House of Lords' test, an English court has a sufficient interest in the case if the foreign proceeding will impinge on its jurisdiction or evade its public policy. As a practical matter, a party proves this interest by

---

136. The U.S. federal courts for the Second, Third, Sixth, and D.C. Circuits apply the strict standard. See Republic of Philippines v. Westinghouse Elec. Corp., 43 F.3d 65, 74–80 (3d Cir. 1994) (denying an injunction against foreign executive branch); Gau Shan Co. v. Bankers Trust Co., 956 F.2d 1349 (6th Cir. 1992) (denying an injunction against Hong Kong proceedings); China Trade and Dev. Corp. v. M.V. Coong Yong, 837 F.2d 33 (2d Cir. 1987) (denying an injunction against Korean proceedings); Laker Airways Ltd. v. Sabena, 731 F.2d 909 (D.C. Cir. 1984) (granting an injunction against English proceedings); Compagnie des Bauxites de Guinea v. Insurance Co. of N. Am., 651 F.2d 877, 887 (3d Cir. 1981) ("[D]uplication of insurers' and the issuer's delay in filing the London action were the sole bases for the district court's injunction, and we hold that these factors alone did not justify the breach of comity among the courts of separate sovereignties.").


138. See id. at 267. Under some formulations of the laxer approach the court will only consider comity if the defending party can show actual evidence, such as a statement from the Department of State, that an injunction will impair comity. See id.; see also Kaepa, 76 F.3d at 627 (declining to require the district court to apply comity generally); Allendale, 10 F.3d at 431 (same).

139. See Amchem Prods. Inc. v. British Columbia Workers' Compensation Bd., 102 D.L.R.4th 96 (Can. 1993) (denying anti-suit injunction to enjoin Canadian citizens from bringing a tort action in Texas state courts). Justice Colman also relied on this case. See Patel I, supra note 3, 1996 Int'l Litig. Proc. at 481. In contrast to the House of Lords, which cited this case for its respect of comity, Justice Colman relied on the case only for its specific holding that Texas jurisdictional law was not overreaching. See id. He quoted Amchem in part:

[Although the Texas courts do not operate a forum non conveniens doctrine, as do the Canadian courts, the application of the minimum contact requirement as a basis for founding in personam jurisdiction, pursuant to section 1 of the Fourteenth Amendment to the United States Constitution, is "consistent with [Canadian] rules of private international law relating to forum non conveniens." Specifically the jurisdiction is not based on some "long arm" legislation such as the United States Anti-Trust laws.

Id. (quoting Amchem, 102 D.L.R.4th at 123). Commentators have noted conspicuous absence of Amchem from the Court of Appeal's decision. See Fentiman, supra note 82, at 47 ("[Amchem is] oddly missing from the judgments on appeal in Airbus.")


showing that England is the natural forum.\textsuperscript{143} While the High Court and Court of Appeal inquired into the appropriate forum for the case,\textsuperscript{144} the House of Lords inquiry differed because it required a finding that England was the natural forum. Thus, the House of Lords approach shifts the reviewing court’s focus on the appropriateness of the forum from the foreign court to the English court. For example, under the laxer standard the lower courts asked whether Texas was the natural forum, an appropriate forum, or an inappropriate forum.\textsuperscript{145} In contrast, the House of Lords in \textit{Patel III} asked what England’s connection to the case was and whether England was the natural forum.\textsuperscript{146} This focus emphasizes that the initial and crucial issue is not whether foreign courts are acting in some inappropriate manner, but whether the English courts should act to disrupt comity by interfering with the foreign court’s jurisdiction.\textsuperscript{147}

Though the court’s formulation required that, for the most part, the reviewing court must find England to be the natural forum before issuing an anti-suit injunction,\textsuperscript{148} Lord Goff also recognized two exceptions to this rule. First, in the so-called “single-forum” cases,\textsuperscript{149} where a claim exists only in the foreign court, Lord Goff left open the possibility that an English court may

\begin{verbatim}
143. See id. at 269.
147. The courts on both sides of the Atlantic now acknowledge that an anti-suit injunction indirectly interferes with the foreign court’s jurisdiction over the proceedings, though technically the injunction is only directed in personam at the plaintiff in the foreign litigation. In America, in response to an English High Court’s injunction, which impacted the \textit{Laker} antitrust case before it, the U.S. District Court of the District of Columbia noted:

The British court appears to have rationalized its action on the grounds that its injunction operate only on the plaintiff, not [the U.S.] Court . . . . At least in this country, as the Supreme Court held over a century ago, there is no difference between addressing an injunction to the parties and addressing it to the foreign court itself . . . . [The British judge] has also stated . . . . that the type of injunction he issued “does not represent an interference by one court with the proceedings of another.” With the utmost respect, this Court must differ. It can hardly be said that an order which, for example, directs a party not to file further papers in this court . . . is anything other than a direct interference with the proceedings in this Court.


The approach [to granting an anti-suit injunction] has to be cautious because an injunction restraining a person within the jurisdiction of the English court from pursuing a remedy in a foreign court where, if he proves the necessary facts, he has a cause of action is, however disguised and indirect, an interference with the process of justice in that foreign court.

\textit{British Airways Board v. Laker Airways Ltd., [1985] 1 App. Cas. 58, 95 (H.L. 1985).}

149. Peel has briefly, but insightfully, criticized the distinction between multi-forum and single-forum anti-suit injunction cases as illusory. See \textit{Peel, supra note 121, at 544. He states:}

It may well be in certain cases, like those involved in the \textit{Laker} anti-trust litigation, that the plaintiff may have no prospect of success on the merits in an [alternative] court; but this does not mean there is a single forum available for resolution of his claim, and it is quite wrong to describe these as cases “where England was not available \textit{at all} for the trial of the main action.”

\textit{Id. (quoting, in part, Harris, supra note 11, at 422 (emphasis added)).}
\end{verbatim}
intervene despite not being the natural forum, as long as there was a sufficient connection. This single-forum distinction accommodated holdings such as the notorious Midland Bank PLC v. Laker Airlines Ltd., in which even though England was not the natural forum, the Court of Appeal enjoined a British airline from pursuing a U.S. antitrust case when there were no similar antitrust claims available in England.

In addition to the single-forum situation, the House of Lords ruled that in an "extreme case" an English court might grant an injunction even where it has no interest. The court provided this exception to ensure that courts did not apply the strict comity test "too rigidly." For guidance as to what constituted an "extreme case," the court noted that it should be found in those situations where an English court would normally not give comity respect to a foreign jurisdiction's laws.

The court added that despite Lord Justice Hobhouse's opinion to the contrary, the Texas court's failure to consider forum non conveniens did not constitute an extreme case, because the forum non conveniens doctrine was not universally accepted and in fact was rejected wholly by most civil law countries. Further, the lords found that the natural forum's inability to restrain the foreign proceeding, such as India's vis-à-vis the Patels, would neither satisfy a showing that the English court had a sufficient interest in the case nor constitute an extreme case. The court noted earlier in the opinion that Japan, a civil law country, appeared to employ a forum non conveniens doctrine. The court noted that Japan, a civil law country, appeared to employ a forum non conveniens doctrine. The court noted that Japan, a civil law country, appeared to employ a forum non conveniens doctrine. The court noted that Japan, a civil law country, appeared to employ a forum non conveniens doctrine. The court noted that Japan, a civil law country, appeared to employ a forum non conveniens doctrine.

154. Id.
155. See id.
156. See id. The court noted earlier in the opinion that Japan, a civil law country, appeared to employ a forum non conveniens doctrine. See id. at 263 (citing Ellen Hayes, Forum Non Conveniens in England, Australia, and Japan: The Allocation of Jurisdiction in Transnational Litigation, 26 U.B.C. L. Rev. 41, 54–63 (1992)). See also Fentiman, supra note 82, at 47–48 (arguing that the English courts' approach to forum non conveniens should not discriminate blindly between legal systems that offer reliance on the theory and those that do not, such as the civil law countries).
157. Patel III, supra note 4, [1998] 2 All E.R. at 270–71. In response to Airbus's argument that England should assist the Indian court, the natural forum, in its efforts to enjoin the Patels, the House of Lords noted that the normal process to do this was by enforcing or recognizing a judgment of the Indian court. See id. at 270. In this case, however, the court could not consider such assistance because the High Court had denied recognition and enforcement of the Indian injunction, and Airbus
summarized: "The basic principle is that only the courts of an interested jurisdiction can act in the matter; and if they are powerless to do so, that will not of itself be enough to justify the courts of another jurisdiction to act in their place."\textsuperscript{158}

Because the House of Lords found that England had no interest in the case, it never asked the question upon which the lower courts had disagreed—whether the Patels' suit in Texas was "oppressive or vexatious."\textsuperscript{159} The court did comment that had it reached this issue, it would have found that the Texas proceedings were not oppressive, because before the House of Lords the Patels agreed not to rely on Texas product liability law or seek punitive damages.\textsuperscript{160} The court specifically stated, however, that it was not reviewing this part of the Court of Appeal's decision and, therefore, it was neither approving nor disapproving of the appellate court's decision to overrule Justice Colman's discretionary determination.\textsuperscript{161}

The court concluded by setting aside the Court of Appeal's injunction and allowing the Patels to proceed with the Texas case.\textsuperscript{162} As a postscript, the court added that Texas, "like other common law jurisdictions, [has now] adopted the principle of forum non conveniens."\textsuperscript{163} Therefore, the court speculated that a case like \textit{Airbus} would not arise again.\textsuperscript{164}

### III. Analysis

Two impressions emerge from the \textit{Airbus} opinions. First, Americans should be concerned by the Court of Appeal's view of Texas justice. This concern might, perhaps, be founded in part on the wounded pride of having an outsider adjudge one's own legal system as unconscionable. However, more alarming is the fact that the Court of Appeal's conclusions are largely grounded on facially incorrect interpretations of and assumptions regarding Texas law. Quite simply, the Court of Appeal failed to understand the facts of

\textsuperscript{158} Id. at 271.

\textsuperscript{159} Id. Peel concluded on this point that "[i]f England had been the natural forum, or at least had had a sufficient connection with the claim, there seems little doubt that an injunction would have been granted on the grounds that the Texas proceedings were vexatious and oppressive." Peel, supra note 121, at 544.


\textsuperscript{161} See \textit{id.} The court seemed to hint that it did not approve of the Court of Appeal's mere reweighing of the facts. See id.; see also supra note 89 (discussing the deference of appellate review to the trial court's determination regarding the forum non conveniens factors). The House of Lords stated:

\textit{It should not however be inferred from the mere fact that your Lordships have not reviewed the decision of the Court of Appeal to interfere with Colman J's exercise of his discretion that, had the point arisen, your Lordships would necessarily have approved of the decision of the Court of Appeal in this respect.}\textsuperscript{162}


\textsuperscript{163} Id.; see also infra note 181 and accompanying text (discussing the scope and extent of Texas's new statutory forum non conveniens doctrine).

\textsuperscript{164} See \textit{Patel III}, supra note 4, [1998] All E.R. at 271. Ominously, however, the court also noted that civil law jurisdictions continue not to recognize the forum non conveniens doctrine. See \textit{id.} Therefore, it appears that the possibility of a similar case indeed still exists.
the case and the substantive and procedural laws of Texas and the United States. Second, in contrast to the Court of Appeal’s approach, one is impressed with the House of Lords’ decision and its overall respect for the policies of comity and its consideration of and reliance on foreign legal theories. While some American courts in some cases would follow a similar approach, none have articulated so clearly the legal theories and international environment in which the courts necessarily act.

A. An English Court’s View of Texan Justice

The Court of Appeal’s opinion by Lord Justice Hobhouse both directly and indirectly exposes contempt for, among other things, Texas jurisprudence, Texas lawyers, and the Patels. However, the opinion is largely based on a misunderstanding of the facts of the case, a misinterpretation of the substantive and procedural law of Texas, and a disregard for the respect that comity requires one nation to give to another legal system. Specifically, in reaching his decision that Texas justice would be oppressive, Lord Justice Hobhouse largely relied on incorrect assumptions regarding three aspects of the Texan (and American) legal system: (1) the scope of personal jurisdiction, (2) the applicability of U.S. products liability law, and (3) the nature of a contingency legal fee system. These errors combined with a lack of consideration for the U.S. legal system to produce a decision that the House of Lords had no choice but to overturn.

165. One might ask whether Lord Hobhouse had any motive for preferring a French corporation’s concerns over those of a British citizen’s. Because Britain’s commercial interest in Airbus was indirect and limited, see Linton III, 934 S.W.2d at 758 (stating that the private company British Aerospace’s ownership in Airbus was twenty percent), financial protectionism does not seem applicable. The answer may, in part, be the judge’s inherent and altruistic disdain for legal maneuvering (what some would call blatant “forum shopping”) by parties such as the Patels. More cynically, one may get the impression that the Lord Justice had an unconsciously prejudicial suspicion and distrust of non-English legal systems (for example, the American legal system). Lord Hobhouse had stated before his opinion regarding the unappealing nature of foreign and international law in comparison to the English judicial system. See, e.g., J.S. Hobhouse, International Conventions and Commercial Law: The Pursuit of Uniformity, 106 L.Q. Rev. 530 (1990) (arguing against international conventions on commercial law and in favor of the domestic legal system).

166. In Lord Justice Hobhouse’s defense, Airbus’s and the Patels’ English counsel may be chiefly responsible for the decision’s errors on Texas law, due to their failure to fully educate the court on the correct status of the law. Comparative Anglo-American commentators have noted that “English judges tend to assume that, if something ought to be brought to their attention in a particular case, counsel will do it for them.” P.S. Atiyah & Robert S. Summers, Form and Substance in Anglo-American Law 283 (1987).

One reason for the parties’ failure to clearly and correctly present Texas law was that it was not in their best interest to do so. Obviously, Airbus benefited from Lord Justice Hobhouse’s exceedingly negative presumptions about Texas law, even if they were not completely accurate. As for the Patels’ lawyers, they too were constrained from pleading a more accurate and temperate view of Texas law, because Airbus could use such pleadings as admissions in Texas court to prevent the Patels and the Lintons from arguing some of their more extravagant and less legally founded claims. Moreover, it should be noted that English judges, unlike their American counterparts, review the case pleadings and conduct the necessary background research without the benefit of law clerks. See id. at 279–80, 283.
1. **Texas Personal Jurisdiction and Forum Non Conveniens**

In granting the injunction against the Patels, the Court of Appeal placed significant weight on its factual determination that Texas courts did not or would not dismiss a case under the doctrine of forum non conveniens or for lack of personal jurisdiction. This holding, however, was incorrect.

First, it is clear that the defense of forum non conveniens was available in the U.S. federal courts of Texas. In fact, Airbus had pleaded the doctrine and a federal district court judge was prepared to dismiss based on it. Nonetheless, Airbus, by its own action, lost the opportunity to rely on the defense when it voluntarily entered into the domicile stipulation agreement. Because this was an action within its control, the consequences of the act should fall wholly on Airbus (and its legal counsel). In the similar situation where a defendant fails to timely plead lack of personal jurisdiction, in both the United States and England, the defendant is bound by his acts no matter how harsh the outcome.

Therefore, contrary to the Court of Appeal’s characterization, Airbus did have an opportunity to plead forum non conveniens, but due to its own oversight the bid failed. One suspects that this fact was hidden in the “complicated procedural manoeuvres” that both the High Court and the Court of Appeal declined to describe, or perhaps even review.

167. See, e.g., Linton II, 30 F.3d at 594 (noting that forum non conveniens could be relied upon in Texas). Interestingly, the availability of forum non conveniens in the federal court was the Texas legislature’s primary rationale for recodifying the doctrine into Texas law in 1993. See Carl C. Scherz, *Section 71.051 of Texas Civil Practice and Remedies Code—The Texas Legislature’s Answer to Alfaro and Forum Non Conveniens*, 46 BAYLOR L. REV. 99, 109 n.47 (1994) (citing the legislative history to TEX. CIV. PRAC. & REM. CODE ANN. § 71.051—Forum Non Conveniens). The Texas legislature was concerned that Texas corporations would be prejudiced by the absence of a forum non conveniens defense when sued by foreign plaintiffs in Texas state courts. It reasoned that because Texas corporations were not able to remove their cases to the federal courts based on diversity jurisdiction, only Texas corporations would not be able to avail themselves of the federal courts for seeking dismissal on forum non conveniens grounds. See id.

168. See Linton II, 30 F.3d at 594–95.

169. See id.

170. The issue was not raised in the opinions, but Airbus’s counsel’s willingness to enter the domicile stipulation agreement, which destroyed federal diversity jurisdiction and consequently deprived Airbus of the forum non conveniens defense, might arguably be a cause for a malpractice suit by Airbus against its counsel. Correspondingly, this raises another lesson of the *Airbus* case for local counsel to be aware of when representing foreign parties. See infra Subsection III.A.4.

171. See Fed. R. Civ. P. 12(h)(1) (“A defense of lack of jurisdiction over the person . . . is waived (A) if omitted from a motion [for consolidation of defenses] or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted . . . as a matter of course.”).

172. In England, a party is deemed to submit to English jurisdiction if he fails to challenge that jurisdiction prior to defending the action on the merits. See Rules of Supreme Court, Order 12, Rules 8(1), 8(7), S.I. 1965, No. 1776. The same proposition is true for those cases arising under the Brussels Convention. See Case 150/80, Elefant Schuh GmbH v. Jacqmain, 1981 E.C.R. 1671, [1982] 3 C.M.L.R. 1 (E.C.J. 1981) (holding under article 18 of the Brussels Convention that if a defendant does not contest personal jurisdiction at the first opportunity available he will be deemed to consent to jurisdiction); see also CLARKSON & HILL, *supra* note 98, at 73–74, 97–98 (discussing the Brussels Convention rule).

173. The High Court stated: “Following procedural manoeuvres of astonishing complexity it was decided by the Texas State District Court on 9 February 1995 that Airbus and Aeroformation were
Airbus's own actions the defense would have been available, the real issue before the English courts was whether to grant an anti-suit injunction where the plaintiffs themselves made the defense of forum non conveniens unavailable. Under the English precedent of *In re Maxwell Communication Corp. PLC (No. 2)*, which holds that a foreign court should be able to determine its own jurisdiction before an English court will grant an injunction, it seems highly unlikely that an English court would grant an anti-suit injunction based on this revised issue.

Second, the appeal court's reliance on Texas's lack of forum non conveniens is misplaced because Texas in fact recognized the principle. The shape and scope of Texas's forum non conveniens doctrine, however, was different than England's. But rarely are mere differences in the scope accorded to a discretionary theory justification for infringing on the jurisdiction of another nation's courts.

Texas has employed the forum non conveniens doctrine since at least the 1890s. In contrast, England only began to recognize the theory in 1974.
over eighty years after Texas.\textsuperscript{180} Between 1990 and 1993, Texas did, however, have a narrower version of the doctrine than England in one respect.\textsuperscript{181} By statute, the Texas legislature had limited its courts’ discretion to dismiss or stay for forum non conveniens when the action was for death or personal injury.\textsuperscript{182} For all other justiciable claims, however, the doctrine survived.\textsuperscript{183}

The Texas Supreme Court held that the statutory limitation was a legislative mandate intended to constrict the scope of forum non


180. See \textit{Atlantic Star}, [1974] 1 App. Cas. 436 (H.L.) (recognizing the concept but not referring to it as forum non conveniens). The first English decision to expressly apply the term forum non conveniens was \textit{Abidin Daver}, [1984] 1 App. Cas. 398, 411 (C.A.).

181. See, e.g., \textit{Dow Chem. Co. v. Alfaro}, 786 S.W.2d 674 (Tex. 1990). The statute that \textit{Alfaro} interpreted as eliminating the doctrine of forum non conveniens for death or personal injury cases outside of Texas was enacted in 1913. \textit{See Act of Apr. 8, 1913, ch. 161, 33d Leg., 1913 Tex. Gen. Laws 338, 338–39}. Texas courts applied this statute inconsistently until \textit{Alfaro}. \textit{See Scherz, supra note 167, at 104–05}. The Texas legislature statutorily reintroduced forum non conveniens for these claims in 1993 when it enacted section 71.051 of the Texas Civil Practice and Remedies Code. \textit{See Act of Feb. 24, 1993, S.B. 2, ch. 4, § 1, 73rd Leg., 1st Reg. Sess. (Tex. 1993)}. Section 71.051, however, only applies to claims filed after September 1, 1993. \textit{See id. § 2}. Whether the Texas courts since 1993 have applied forum non conveniens under section 71.051 in a stricter or laxer manner than other jurisdictions is difficult to tell, because no cases interpreting the statute have been reported to date. Section 71.051 provides, in part:

(a) With respect to a plaintiff who is not a legal resident of the United States, if a court of this state, on written motion of a party, finds that in the interest of justice a claim or action to which this section applies would be more properly heard in a forum outside this state, the court may decline to exercise jurisdiction under the doctrine of forum non conveniens and may stay or dismiss the claim or action in whole or in part on any conditions that may be just.

(b) With respect to a plaintiff who is a legal resident of the United States, on written motion of a party, a claim or action to which this section applies may be stayed or dismissed in whole or in part under the doctrine of forum non conveniens if the party seeking to stay or dismiss the claim or action proves by a preponderance of the evidence that:

(1) an alternative forum exists in which the claim or action may be tried;

(2) the alternate forum provides an adequate remedy;

(3) maintenance of the claim or action in the courts of this state would work a substantial injustice to the moving party;

(4) the alternate forum, as a result of the submission of the parties or otherwise, can exercise jurisdiction over all the defendants properly joined to the plaintiff’s claim;

(5) the balance of the private interests of the parties and the public interest of the state predominate in favor of the claim or action being brought in an alternate forum; and

(6) the stay or dismissal would not result in unreasonable duplication or proliferation of litigation.

(c) The court may set terms and conditions for staying or dismissing a claim or action under this section as the interests of justice may require, giving due regard to the rights of the parties to the claim or action. If a moving party violates a term or condition of a stay or dismissal, the court shall withdraw the order staying or dismissing the claim or action and proceed as if the order had never been issued. Notwithstanding any other law, the court shall have continuing jurisdiction for the purposes of this subsection.

\textit{Id. § 71.051.}

182. \textit{See Alfaro}, 786 S.W.2d at 674.

conveniens. Nonetheless, the law also contained safeguards against its misapplication. For example, a suit was subject to the limitation only where (1) the plaintiff had a cause of action for death or injury under the laws of Texas or the place where the injury occurred, (2) the action was begun within the applicable time limitations for both Texas and the place of the injury, and (3) the plaintiff’s country of domicile had equal treaty rights with the United States. From its opinion, one can only assume that the Court of Appeal was unaware of the true status of the doctrine of forum non conveniens in Texas. Airbus indeed could not specifically satisfy the requirements for Texas’s version of forum non conveniens in this case. Nonetheless, given the relative newness of the concept in England, it is surprising that the court could find unconscionable an interpretation of the doctrine that simply did not quite match the exact shape and scope of the English version.

184. See Alfaro, 786 S.W.2d at 678-79. The Alfaro court only applied what it saw as the strict mandate of the law. See id. Neither in the lead opinion nor in the concurrence did the court identify the legislative rationale for abolishing the doctrine. Justice Dogget in his concurrence argued against the forum non conveniens doctrine based on the rationale that the doctrine’s practical effect was to kill litigation and thereby immunize multinational corporations, though this rationale does not appear to have come from the Texas legislature. See id. at 680-81 (Dogget, J., concurring).

185. See TEX. CIV. PRAC. & REM. CODE ANN. § 71.031(a)(1)-(4) (West 1990).

186. Section 71.031(a) of the Texas Civil Practice and Remedies Code provides: An action for damages for the death or personal injury of a citizen of this state, of the United States, or of a foreign country may be enforced in the courts of this state, although the wrongful act, neglect, or default causing the death or injury takes place in a foreign state or country, if:

1. a law of the foreign state or country or of this state gives a right to maintain an action for damages for the death or injury;
2. the action is begun in this state within the time provided by the laws of this state for beginning the action;
3. for a resident of a foreign state or country, the action is begun in this state within the time provided by the laws of the foreign state or country in which the wrongful act, neglect, or default took place; and
4. in the case of a citizen of a foreign country, the country has equal treaty rights with the United States on behalf of its citizens.

Id.


188. Briggs has noted that “[i]t would be a dazzling example of the zeal of the convert for English law to characterize the lack of a doctrine, which it itself refused to admit until only yesterday, as oppressive. . . . [S]ome systems of law have jurisdiction rules which do not need a doctrine of forum non conveniens to act as a corrective.” Briggs, supra note 11, at 99 (footnote omitted).

Third, the English appeal court appeared annoyed that Texas would even extend personal jurisdiction to Airbus. Unlike the lower court, the Court of Appeal failed to mention that Airbus sold A320s in Texas; purchased from U.S. dealers A320 parts that were designed and manufactured in the United States; and trained the A320 pilots in the United States. Furthermore, as the Court of Appeal did point out, Airbus eventually consented to Texas jurisdiction. Lord Justice Hobhouse also did not record, and perhaps was unaware, that a U.S. judge was prepared to dismiss the case for lack of personal jurisdiction, but for Airbus’s indirect consent to such. Moreover, it is interesting to note that Airbus apparently learned from its strategic litigation errors in this case and convinced a Texas federal court to dismiss a nearly identical case in 1994 for lack of personal jurisdiction as well as forum non conveniens. Given each of these factors, not to mention that the scope of personal jurisdiction in England is itself quite broadly construed, Lord Justice Hobhouse’s indignation with Texas’s scope of personal jurisdiction appears unfounded.

Finally, and the point on which the House of Lords overruled, Lord Justice Hobhouse failed to fully respect the minor differences existing between the two forums’ legal systems. In short, Lord Justice Hobhouse

190. See Patel II, supra note 3, [1997] 2 Lloyd’s Rep. at 11. The court stated: “As regards Airbus Industrie it apparently was sufficient that it had at some time in the past done business with a Texas based corporation, for example, selling an aircraft to an airline which had its corporate head office in Texas.” Id. Two of America’s largest airlines, American Airlines and Continental Airlines, are headquartered in Texas.

191. See Patel I, supra note 3, 1996 Int’l Litig. Proc. at 480–81. It is unclear from the opinion whether the parts were made and the training was conducted in Texas or somewhere else in the United States. See id.


193. See Linton II, 30 F.3d at 594–95.


The plaintiffs filed separate Texas state suits, which were later consolidated, against Airbus. The plaintiffs were from a variety of European and Asian countries and parts of the United States, however, no plaintiff was from Texas. Airbus removed the cases to the federal district court for the Southern District of Texas, Houston Division, and moved for dismissal based on, inter alia, lack of personal jurisdiction and forum non conveniens. See id. Noting that the crash occurred in Nepal, the flights originated in Thailand and Pakistan, Airbus manufactured the planes in France, the pilots had not been trained in the United States, and none of the defendants conducted business in Texas, the court dismissed the case for both lack of personal jurisdiction and forum non conveniens. See id. at 534–35, 537–38. Plaintiffs in both the Kern and the Linton cases were represented by at least one of the same attorneys, while the lead counsel for Airbus were the same in both cases. Compare Kern, 867 F. Supp. at 526, with Linton III, 934 S.W.2d at 756 (both noting plaintiffs’ attorney Michael J. Maloney and Airbus attorneys Jacques E. Soret and Thad T. Damris). See generally David N. Zeehandelaar, 1996 Recent Developments in Aviation Law, 62 J. AIR L. & Com. 15, 21-22 (1996) (reviewing the Kern case but not discussing the Airbus case).

195. See Baroda v. Wildenstein, [1972] 2 Q.B. 283 (C.A.) (finding personal jurisdiction where service was made on defendant who was only transiently in the jurisdiction and where the case had no other connections to England); Rules of Supreme Court, Order 11, Rule 1, S.I. 1965, No. 1776 (allowing service on a party not found within the jurisdiction and subsequently basing subject–matter jurisdiction on that service).
simply overemphasized the insignificant, subtle, and formalistic differences between Texas's and England's use of discretion to grant or deny jurisdiction. In doing so, he failed to give Texas's judicial system the respect demanded by comity. This point, along with the House of Lords' view of comity, is discussed more fully below.

2. Products Liability Law

Lord Justice Hobhouse was also concerned with what he saw as the inappropriate application of Texas product liability law to the case. First, he took issue with the fact that Texas law allowed a cause of action based on strict liability concepts. This alone should not offend an English judge's notion of fairness. Many other nations, including England, have some form of product liability law based on no fault concepts.

Second, even more objectionable to Lord Justice Hobhouse was that the Texas court might apply Texas product liability law to a tort case arising in India. The lord justice's offense was misplaced, however, because his implicit understanding of Texas law was again wrong. Under Texas conflict of laws rules for torts, the courts applied a most significant relationship test that in practice worked in much the same way as England's modified version of lex loci delicti—the law where the tort occurred applies. Given all the

196. A Canadian commentator has noted regarding Texas jurisdiction:
[T]he Texas courts do have a responsible way to ensure that suits brought before them neither encroach on the sovereignty of foreign jurisdictions nor subject out-of-state defendants to a forum which has an insufficient connection to the subject matter of the suit, but this is derived not from the common law doctrine of forum non conveniens but rather from the U.S. Constitution. The adjudication of geographically complex cases may require decision makers to be flexible and even imaginative when inquiring into the nature of foreign legal systems.


198. See generally Geraint Howells, Comparative Product Liability (1993) (reviewing no fault standards and product liability law in the European Union, United Kingdom, France, Germany, Scandinavia, United States, Canada, Australia, and New Zealand). Airbus claimed in an unrelated, but factually similar case, that French product liability law was stricter towards manufacturers than U.S. product liability law. See Kern, 867 F. Supp. at 538. For a discussion of Kern see supra note 194.


200. Section 71.031 provided that "[t]he court shall apply the rules of substantive law that are appropriate under the facts of the case." TEX. CIV. PRAC. & REM. CODE ANN. § 71.031(c) (West 1990). This sub-section was added to section 71.031 to address the holding in Marmon v. Mustang Aviation, Inc., 430 S.W.2d 182 (Tex. 1968) (holding that Colorado tort law applied to a suit arising from an airplane crash in Colorado even though defendant was a Texas corporation, the negligent pilot was a Texas resident, four of five deaths were of Texans, the plane was returning to Texas, and the trial occurred in Texas), and its progeny, such as McEntire v. Estate of Forte, 463 S.W.2d 491, 493 (Tex. App. 1971) (applying New Mexico substantive law to an accident in New Mexico during a New Mexico to Texas flight, even though both the guest and pilot were residents of Texas). See Act of May 29, 1975, ch. 530 § 2, 1975 Tex. Gen. Laws 1381, 1382. In practice, the courts still consider the place of the tort as a significant, if not the determinative, factor. See Duncan v. Cessna Aircraft Co., 665 S.W.2d 414, 422 (Tex. 1984) (considering New Mexico law, but applying Texas law to an air crash in New Mexico); Gutierrez v. Collins, 383 S.W.2d 312, 318–19 (Tex. 1964) (adopting most significant contacts test as provided in RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 6 (1988 Revisions)).

facts, including that the crash, the majority of the witnesses, and most of the evidence were in India, Texas courts would almost certainly apply Indian substantive law where the action sounded in strict liability and negligence.\textsuperscript{202} A Texas court would apply local procedural law,\textsuperscript{203} but both the tort law and its remedies were considered substantive issues governed by the law of the jurisdiction with the most significant relationship to the accident.\textsuperscript{204} As a result, the Texas courts would not, as Lord Justice Hobhouse feared, have found fault based on strict liability or granted punitive damages,\textsuperscript{205} unless such was allowed under Indian law.\textsuperscript{206}

The judge's mistaken assumption may be attributed to his inexperience with the weight given to notice pleadings used in the United States. It appears that Hobhouse accepted at face value the accuracy of the Patels' claims in their complaint on the applicability of Texas law.\textsuperscript{207} Faced with the possibility that their entire case might be enjoined because of their overreaching statements regarding the state of Texas law in their initial pleadings, the Patels conceded before the House of Lords that they would not (or could not) rely on Texas product liability law to establish general liability or punitive damages.\textsuperscript{208} In the end, because the Texas courts would apply neither Texas product liability law nor allow for the recovery of punitive damages in the

\begin{itemize}
\item \textsuperscript{202} Even after the adoption of the most significant contacts test, the presumption remains that the law of the place of the tort will apply, unless another state has more significant contacts. \textit{See Restatement (Second) of Conflict of Laws} § 146 (1988 Revisions).
\item \textsuperscript{203} \textit{See Tex. Civ. Prac. & Rem. Code Ann.} § 71.031(b) (West 1990) (“[A]ll matters pertaining to procedure in the prosecution or maintenance of the action in the courts of this state are governed by the law of this state.”).
\item \textsuperscript{204} \textit{See Hayward v. Southwest Ark. Elec. Coop.,} 476 F. Supp. 1008, 1011 (E.D. Tex. 1979) (finding that remedies were of substantive law issues).
\item \textsuperscript{205} \textit{See supra} note 107 and accompanying text (quoting Hobhouse, L.J.). One might argue, however, that if the A320s were defective in manufacturing or design and sold in Texas, then their use put Texas citizens at risk. The argument continues that because Texas has an interest in protecting its citizens, this would be best accomplished by imposing no-fault liability and punitive damages on Airbus.
\item \textsuperscript{206} Furthermore, even had the Texas court granted punitive damages, many, if not most, nations would neither recognize nor enforce this portion of the judgment. \textit{See, e.g., Protection of Trading Interests Act, 1980, §§ 5–6 (Eng.) (English statute denying recognition of multiple damages); Entscheidungen des Bundesgerichtshofes in Zivilsachen [BGHZ] [Supreme Court] 118, 312 (F.R.G. 1992) (German court refusing to enforce exemplary damages); ICC Case No. 5946 (1990), \textit{reprinted in} 16 Y.B. Com. Arb. 97, 113 (1991) (Swiss arbitration refusing to enforce punitive damages). But see SA Consortium Gen. Textiles v. Sun & Sand Agencies Ltd., 1978 Q.B. 279, 299–300 (C.A. 1977) (Eng.) (allowing French award for \textit{résistance abusive} by finding such damages were not a penalty but rather part of the costs or exemplary damages).
\item \textsuperscript{207} Lord Hobhouse appears to have made his factual conclusions based on the affidavits of the plaintiffs' complaint. \textit{See Patel II, supra} note 3, [1997] 2 Lloyd's Rep. at 11. Because of notice pleading practice in America, however, it is unlikely that an American judge would base conclusions of fact on the bald conclusory statements of a complaint. \textit{See 5 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure} §§ 1202, 1253 (Civil 2d 1990 & Supp. 1998). Wright and Miller provide: “The only function left to be performed by the pleadings is that of notice.” Id. § 1202. Further, “[w]hen a pleader is uncertain whether the foreign law applies or is in doubt as to which country's law controls, he may refrain from asserting foreign law until it is convenient for him to do so. Consequently it is not necessary to plead state law, whether it be the forum state's law or the law of another state.” \textit{Id.} § 1253 (citations omitted).
\item \textsuperscript{208} \textit{See Patel III, supra} note 4, [1998] 2 All E.R. at 262.
\end{itemize}
Indian accident, Lord Justice Hobhouse’s reliance on this basis for finding the Texas proceedings unconscionable was misplaced.

3. Contingency Fees

After disparaging Texas’s personal jurisdiction rules and product liability law, Lord Justice Hobhouse set out to show why the Patels’ use of the contingency fee system was inappropriate. He began by noting that the Patels’ use of contingency fee lawyers “is clearly very strongly influenced by, if not wholly dependent upon the availability of strict liability in Texas and the ability to recover damages which exceed the claimants’ actual loss and far exceed those recoverable in other jurisdictions.” Yet, he cited to no source for this extreme conclusion, which ignores the fact that the United States has employed a contingency fee system since before product liability theories or punitive damages were available.

The court later found that, even though the availability of contingent fee attorneys was a real advantage to the Patels, this advantage was “illegitimate.” In one of the more interesting passages, Lord Justice Hobhouse stated:

The ability [of the Patels] to finance the Texas proceedings [through contingency fees] arises from the willingness of the Courts of Texas to apply inappropriate legal criteria to the determination of liability and the assessment of damages. As I have previously said, on acceptable principles of conflict of laws, American principles of strict liability and the award of penal damages have no place in the determination of the liability of Airbus Industrie to the English claimants in respect to this accident. Their use of the contingent fee system is part and parcel of their recourse to an inappropriate forum causing injustice to Airbus Industrie and, consequently, is itself an illegitimate advantage.

The court’s conclusion is nonsensical, however, because it is both circular and based on all of the prejudices and errors regarding Texas law noted above. Furthermore, the court failed to identify and respect Texas’s arguably valid public policy reasons for allowing contingency fees.

210. Furthermore, this conclusion in fact proved incorrect, because the Texas attorneys continued to represent the Patels even after they conceded the application of Texas product liability law and punitive damages. See supra notes 129-130 and accompanying text (discussing the Patels’ concessions before the House of Lords).
212. Id. (emphasis added). It is not clear whether, by “acceptable principles,” Lord Justice Hobhouse meant English, Indian, international, or universal principles.
213. The court’s logic is circular because under its rationale whether the availability of contingency fees is appropriate or inappropriate depends on whether it finds the foreign court to be appropriate or inappropriate based on the other factors. In other words, the weight of the factor depends on the outcome of the ultimate issue to which it is supposed to be contributing.
In contrast to Lord Justice Hobhouse's finding the availability of contingency fees in Texas an illegitimate advantage, High Court Justice Colman held that the Texas fee system was an important advantage because the Patels did not otherwise have the financing to pursue their claims against Airbus in India or France, where contingency fee lawyers were not available.\footnote{See Patel I, supra note 3, 1996 Int'l Litig. Proc. at 483. Lord Justice Hobhouse also recognized this, but did not find the fact persuasive. See Patel II, supra note 3, [1997] 2 Lloyd's Rep. at 18.} Thus, the practical effect of denying the Patels of their Texas contingency attorneys was denying them legal representation.\footnote{See Patel I, supra note 3, 1996 Int'l Litig. Proc. at 483 ("[T]he question of foreign law, although a question of fact, is a question of fact of a peculiar kind, and the same considerations do not apply in considering whether and to what extent this court should interfere with the decision of the [lay] magistrates, as in the case of the ordinary questions of fact [e.g., the factual issues that would be decided by a jury in the United States] which come before a magistrates' court.").} In the end, the court was unjustified in finding that the Patels' use of contingency fee lawyers was an "illegitimate" advantage.

4. Conclusions Regarding an English Court's View of Texas Law

Two practical observations linger regarding the Court of Appeal's decision. First, it is surprising how many mistakes the learned judge made involving the operative facts of the case, including the state of the law in Texas.\footnote{A U.S. attorney may be particularly susceptible to becoming overly confident, and correspondingly overly reliant, on the foreign judge when the foreign legal system, like England's, is based on the common law and conducted in the English language. See generally ATIYAH & SUMMERS, supra note 166 (discussing the significant differences in English and American courts' and lawyers' practical approach to the law).} As mentioned above, the judge's errors may have been due to his over-reliance on the Patels' statement of the case included in their preliminary pleadings. One lesson, therefore, is that American counsel need to ensure that foreign counsel can fully explain to the foreign judiciary both the procedural and substantive law applicable in a U.S. case. As a practical matter, it seems this would best be accomplished by retaining foreign counsel that have American experience or training or at a minimum international experience and sensitivities. Lord Justice Hobhouse's errors also teach American lawyers not to be overly confident of an English or any foreign judge's ability to understand complex and unfamiliar American procedural and substantive law.\footnote{Issues of foreign law are treated as matters of fact—not law—in England. See Clarkson & Hill, supra note 98, at 16. Cf. Parkasho v. Singh, 1968 P. 233, 250 (1966) ("[T]he question of foreign law, although a question of fact, is a question of fact of a peculiar kind, and the same considerations do not apply in considering whether and to what extent this court should interfere with the decision of the [lay] magistrates, as in the case of the ordinary questions of fact [e.g., the factual issues that would be decided by a jury in the United States] which come before a magistrates' court.").} Just as one would be more careful when instructing an American judge on the law of a foreign jurisdiction, it is imperative that the foreign judge be instructed more thoroughly and more elementarily when a matter that involves U.S. law is directly or indirectly relevant.

The second observation is the degree to which Lord Justice Hobhouse failed to respect arguably valid systemic legal differences between Texas and England. Because of his factual determinations regarding Texas law, Lord
Justice Hobhouse was comfortable impinging on Texas's comity. However, his factual determinations were wrong. As a result, his opinion exemplifies the dangers inherent in trying to make a discretionary decision that requires balancing the justice offered by a system which is not one's own. Because the court is not familiar with the practice or law of the foreign jurisdiction, blatant errors and, more commonly, mistaken assumptions are inevitable. This is precisely what happened to Lord Justice Hobhouse. The lesson, therefore, is that to the extent possible counsel needs to ensure either that the judge is thoroughly familiar with the intricacies of the foreign law of the case, or that he is willing to rely on comity, rather than a subjective inquiry into the sufficiencies of the foreign law.

B. An English Approach to Anti-Suit Injunctions

In Patel III, the House of Lords directed English judges henceforth to respect, as much as possible, the principles of comity and refrain from subjective inquiries into the sufficiency of foreign law. This is exactly the type of test a nation would hope that its global neighbors would employ. This international or stricter approach shows great respect for and deference to another nation’s judicial and legal systems and to a large degree precludes a court from making demeaning case-by-case inquiries into the adequacies and inadequacies of a foreign system. For the protection of one’s own citizens, however, it is arguable that the best approach might be to allow the home courts to consider unhindered the specific justice provided by a foreign court. Under this nationalistic or laxer approach, the local court would be better able to protect its citizens from vexatious litigation and inefficient concurrent proceedings. In America, the U.S. federal circuit courts are divided evenly between these two approaches.

Because the U.S. circuit courts have embraced both the stricter and the laxer approaches, there is already much judicial and academic commentary on the subject. English commentators and courts have cautioned: “Many foreign laws are different and even strange to English eyes but ‘those who live in legal glass houses, however well constructed, should perhaps not be over-astute to throw stones at the laws of other countries.’” Clarkson & Hill, supra note 98, at 529 (quoting in part Regina v. Brentwood Superintendent Registrar of Marriages, [1968] 3 W.L.R. 351, 357 (C.A.)).


See supra note 136 (identifying the split between the circuit courts).


See, e.g., George A. Bermann, The Use of Anti-Suit Injunctions in International Litigation, 28 Colum. J. Transnat'l L. 589, 630–31 (1990) (advocating the laxer approach); Trevor Hartley, Comity and the Use of Anti-Suit Injunctions in International Litigation, 35 Am. J. Comp. L. 487, 509 (1987) (advocating the stricter approach); Markus Lenenbach, supra note 136, at 322–23 (advocating the laxer approach); Haig Najarian, Granting Comity its Due: A Proposal to Revive the Comity-Based
commentary regarding the relative advantages and disadvantages of each. In fact, it has been noted that "This important divergence renders the issue ripe for clarification by the Supreme Court." In support of the laxer approach, courts and commentators argue that it is more efficient and flexible. Primarily because the injunctions are more freely granted under the laxer approach, the court can prevent concurrent proceedings and their corresponding inefficiencies and costs. The courts also characterize this reasoning as protecting U.S. citizens from spurious foreign lawsuits. Furthermore, from a practical standpoint, the laxer approach is advantageous in that it prophylactically prevents inconsistent and conflicting rulings and judgments when multiple courts are hearing the same issue. Recently one commentator has also argued that the laxer approach is better for "protecting the private parties' rights and enforcing their duties."

In addition to these traditional arguments for the laxer approach, Chief Judge Richard Posner has promoted a modified laxer standard requiring an empirical showing that the anti-suit injunction will directly infringe the foreign nation's judicial or political sovereignty before comity will be considered. Chief Judge Posner suggests that evidence of such interstate interference must come from official statements by entities such as the U.S. State Department or the foreign country's Office of Foreign Affairs. In the case before him, however, Chief Judge Posner found that a statement from

224. Swanson, supra note 223, at 36. The Supreme Court, however, has passed on the opportunity to clarify the issue. See Achilles Corp. v. Kaepa, Inc., 519 U.S. 821 (1996) (denying certiorari). Two commentators on the subject have advocated legislative solutions, absent the Supreme Court clarifying the position. See Roberson, supra note 223, at 433 (advocating extending the Anti-Injunction Act of 1793, codified as amended at 28 U.S.C. § 2283 (1994), which is similar to a codification of the stricter standard and which forbids federal courts from enjoining state courts except in limited situations, to international disputes); Salava, supra note 223, at 269-70 (advocating codification of the stricter standard as an amendment to Fed. R. Ctv. P. 65(f)).

225. See Kaepa, 76 F.3d at 627-28; Allendale, 10 F.3d at 431-33; Seattle Totems, 652 F.2d at 856; see also Lenenbach, supra note 136, at 261 (arguing that the laxer rule is more efficient).

226. Lenenbach, supra note 136, at 323 (arguing that the stricter approach overemphasizes protection of foreign nations' sovereignty). This rationale seems to fail to consider the different occasions when an anti-suit injunction may be sought. See Bermann, supra note 223, at 627-28 (classifying anti-suit injunctions into three categories: (1) for violations of public policy; (2) for violations of private parties' obligations; and (3) based on inconvenience, vexatiousness, or oppression). As both the laxer approach and the stricter approach appear to be in agreement regarding the need to allow anti-suit injunctions more liberally for violations of public policy and private party obligations, the real divergence in the approaches occurs regarding anti-suit injunctions based on vexatiousness or oppression.

227. See Allendale, 10 F.3d at 431. In the words of Chief Judge Posner: "[the court] wanted some empirical flesh [i.e., evidence] on the [stricter approach's] theoretical skeleton." Id.

228. See id.
France’s Insurance Commission was insufficient.229 He reasoned that the Commission’s amicus curiae brief did not provide whether it had the authority to speak for the French state and that the Commission’s arguments regarding the interference that would be caused by an injunction were unconvincing.230 The practical effect of this approach is significant in that it overturns the initial presumption in favor of non-intervention and shifts the burden of proof regarding comity onto the party defending the anti-suit injunction.231

The courts and academics advocating the stricter or comity approach rely on a variety of competing rationales. First and most basically, the stricter standard emphasizes the need for respect among nations. These courts argue that this comity approach sends a message of confidence in and respect for foreign courts as co-equals. Correspondingly, based on this respect, international judicial cooperation is promoted and future retaliations are avoided.232 Second, the comity group notes that the stricter standard promotes certainty and predictability, because courts applying this view only grant injunctions in limited situations. The corollary to this reasoning is that predictability benefits international commerce by lowering risks and transaction costs.233 Third, the courts note that a stricter standard for granting anti-suit injunctions limits the possibility of conflicting anti-suit and anti-anti-suit injunctions.234 This actually occurred in the Laker case235 and is the worst-case scenario because, by eliminating all possible forums for resolution, it effectively prevents the dispute from being resolved on its merits. Fourth, advocates of the stricter rule argue that it is mandated because granting an injunction often directly or indirectly impinges on international politics, which is more appropriately left to the executive branch.236 This rationale seems to

229. See id.
230. See id. at 431–32.
231. Leaving the theoretical merits or demerits of Chief Judge Posner’s rule aside, in application this standard would create a number of practical problems, such as delays necessary to procure official statements. These problems would be borne primarily by the party seeking to avoid the injunction. Furthermore, as Chief Judge Posner applied his own rule, it appears that very few, if any, parties will be able to meet his empirical requirements. This is because only a few persons or entities will be able to speak on behalf of the foreign country’s interest and the degree to which these official bodies will seek to involve themselves in private disputes is seriously circumspect. It is also because, as Chief Judge Posner applied the rule, the U.S. courts, based on their own assessment of the facts and the foreign interests, will be able to ignore or discount the official foreign statements asserting interference if they choose to do so. This substitution of one’s own judgment for the official determinations already made within the lex fori is one of the specific concerns that the strict comity approach is aimed at avoiding.
232. See Gau Shan Co. v. Bankers Trust Co., 956 F.2d 1349, 1354–55 (6th Cir. 1992); Laker Airways Ltd. v. Sabena, 731 F.2d 909, 937 (D.C. Cir. 1984); see also Bermann, supra note 223, at 630, 631 (arguing that the stricter approach is more respectful); Najarian, supra note 223, at 983–84 (same); Note, supra note 223, at 1070 (same).
233. See, e.g., Gau Shan, 956 F.2d at 1354–55; China Trade and Dev. Corp. v. M.V. Choong Yong, 837 F.2d 33, 36–37 (2d Cir. 1987); Laker, 731 F.2d at 937–45; see also Salava, supra note 223, at 269; Schimek, supra note 63, at 520–24.
234. See, e.g., Gau Shan, 956 F.2d at 1354–55; China Trade, 837 F.2d at 36–37; Laker, 731 F.2d at 937–45.
235. See supra note 152 (discussing the Laker case).
236. See, e.g., Gau Shan, 956 F.2d at 1354–55; China Trade, 837 F.2d at 36–37; Laker, 731 F.2d at 937–45; see also Swanson, supra note 223, at 36 (arguing that an imposition on international affairs is more appropriate for the executive branch); Note, supra note 223, at 1070 (same).
address the same concerns that Chief Judge Posner's laxer approach raises, but err on the side of non-interference. Fifth, it has been noted that applying the laxer rule significantly complicates the courts' task by requiring them to weigh a number of ambiguous factors such as differences among nations' substantive laws and remedies. This flexible and amorphous balancing in turn results in an increase in the number of parties seeking its relief. The end result is that international litigation is further complicated and delayed. Finally, some courts note that the less obtrusive option of refusing to enforce a judgment issued in the foreign concurrent proceeding is also available. This option allows the foreign court an opportunity to exercise jurisdiction and, depending upon that outcome, may avoid the need for the local court to act at all.

Despite the broad development of academic and judicial commentary, *Airbus* adds to this discourse (1) a pointed example of the danger of adopting the laxer or nationalistic approach, (2) new persuasive authority from the clearly articulated opinion of one nation's highest court, and (3) the international context in which a U.S. court will necessarily be acting. First, as discussed above, the Court of Appeal's opinion is a superlative example of the dangers inherent in applying a laxer approach to the granting of an anti-suit injunction where the determinative test is largely based on the subjective balancing of multiple variables. Under this approach, the court necessarily must review the adequacy of justice available in the foreign court. This requires evidence and determinations regarding the status of foreign substantive and procedural law. As Lord Justice Hobhouse's failures illustrate, even when the two systems are as closely related as the English and American systems, the court may commit serious errors and draw erroneous inferences. In addition, the review of a foreign judicial system is an inefficient and cumbersome judicial process that, more often than not, is compounded by differences in language, society, and legal systems much greater than in the Anglo-American case. Furthermore, one hopes that the litigating parties ensure that the court is fully and correctly versed on the foreign law, but as was likely the case in the Court of Appeal, the parties are not always able or willing to thoroughly educate the bench. As the Court of Appeal case so vividly shows, a rule that requires even the best judges to make comparative value judgments regarding the adequacy of justice available abroad is a dangerous and inefficient prospect.

Second, the House of Lords findings offer new and persuasive authority in favor of the stricter, international comity approach. Lord Goff did not expressly state his reasons for adopting the stricter rule, but his speech

---

237. See Bermann, supra note 223, at 630.
238. See id.
239. See Gau Shan, 956 F.2d at 1355; Kaepa, Inc. v. Achilles Corp., 76 F.3d 624, 630 (5th Cir. 1996) (Garza, J., dissenting).
240. The improvement in efficiency made by keeping all the proceedings in one court is one of the most significant arguments made in favor of the laxer standard. See supra note 225 and accompanying text. If efficiency may be achieved to the same degree by the stricter standard, however, this objective may be accomplished without intruding into the foreign court's authority.
highlighted his concerns. Lord Goff’s formulation of the problem suggested that his primary interest was respect for the diversity of legal systems in the world today. For example, he acknowledged that the common law’s methods represented only one option among the many available. He noted that the civil law nations’ approach to concurrent jurisdiction is based on a completely different set of presumptions. Civil law courts generally employ rigid jurisdictional rules to avoid clashes between states or do not object to concurrent proceedings. Thus, these countries do not need to rely on forum non conveniens or other theories to facilitate consolidated proceedings in a different jurisdiction. Nevertheless, this approach has proven to be a workable option.

The court also noted that England’s own first-hand experience under the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters suggests that the civilian approach may even work in England. The Brussels Convention governs the exercise of jurisdiction by European Union Contracting States when the parties concurrently file actions in more than one EU court. The Convention was originally drafted solely by civilians and reflects that approach. Nonetheless, since England’s accession to the Convention, it has proven workable for English litigants and courts. Therefore, both the experiences of the civil law nations and England under the Brussels Convention suggest that the differences in how states deal with issues of jurisdiction may be more formalistic than substantive. Because of this, it appears that Lord Goff was less willing to declare a foreign system unconscionable simply because it was different. This respect for a foreign jurisdiction’s laws, administration, and adjudication is the essence of comity.

241. Goff began his analysis of the case from the extremely broad foundation of looking at the two worldwide approaches to concurrent litigation: the common law nations’ use of broad jurisdiction rules with forum non conveniens limitations and the civil law nations’ use of specific rules for taking and declining jurisdiction with allowances of concurrent litigation. See Patel III, supra note 4, [1998] 2 All E.R. at 263.

242. See id. This fundamentally different approach also appears to be at the heart of the difference between the rationales of the laxer and stricter approaches. The laxer faction makes a great point out of the inefficiency and wastefulness of concurrent proceedings that may be avoided by granting an injunction, see Seattle Totems Hockey Club, Inc. v. National Hockey League, 652 F.2d 852, 856 (9th Cir. 1981), while the stricter faction begins with the premise that, despite possible inefficiencies, parallel proceedings do not need to be avoided per se; see China Trade and Dev. Corp. v. M.V. Choong Yong, 837 F.2d 33, 36 (2d Cir. 1987); Laker Airways, Ltd. v. Sabena, 731 F.2d 909, 926–27 (D.C. Cir. 1984).


244. See id.

245. See Clarkson & Hill, supra note 98, at 60.

246. See id.


248. As the U.S. Circuit Court for the District of Columbia stated:

[T]he central precept of comity teaches that, when possible, the decisions of foreign tribunals should be given effect in domestic courts, since recognition fosters international cooperation and encourages reciprocity, thereby promoting predictability and stability through satisfaction of mutual expectations.

Finally, the strict comity-based rule adopted in Patel III conforms to a developing international standard. The House of Lords found that Canada, Australia, and half of the courts in the United States followed a comity-based rule for granting anti-suit injunctions. England may now be added to that list. Conformity to an international standard, or at least uniformity among the common law countries, is advantageous. First, if most nations use the same standard, then international law will become more predictable. Predictability in turn produces benefits for international commercial actors and lawyers. Second, if there is near uniformity about when to accept, decline, and force jurisdiction, cases should move more smoothly and efficiently towards their natural or appropriate forums. An international standard for anti-suit injunctions, therefore, will lessen those occasions when resort to such injunctions becomes necessary.

The Airbus case adds perspective to the American debate over the standard for granting anti-suit injunctions. The Patel II case, in which the English court infringed on the jurisdiction of a Texas court, provided the unique perspective of how the laxer, nationalistic approach for granting injunctions can unfairly and unreasonably impede a competent court from hearing a case. For a change, the U.S. court was on the receiving end of what the Sixth Circuit has referred to as "[t]he message, intended or not, that the issuing court has so little confidence in the foreign court's ability to adjudicate a given dispute fairly and efficiently that it is unwilling even to allow the possibility." Patel III adds the persuasive authority of the House of Lords for a standard based on comity. Significantly, the lords adopted the comity standard only after England's experience of having to adapt to the civilian approach of the Brussels Convention, which has proven different and yet entirely adequate. In short, Patel III identifies and explains the international context and environment in which American courts must necessarily act. By defining and promoting an international standard, Patel III's comity-based rule contributes to a more efficient resolution of jurisdictional disputes between nations.

CONCLUSION

So what can an American lawyer learn from the English courts' treatment of the Airbus case? First, Patel II teaches the practical importance of fully educating foreign counsel and judges on the complexities and subtleties of the American substantive and procedural law directly and indirectly involved. Second, Patel II gives an excellent example of the inherent dangers of the nationalistic or laxer approach to granting anti-suit injunctions, where the decision is based solely on the subjective balancing of factors and judgments regarding the adequacy of the foreign legal system. Third, Patel III provides England's highest court's clearly articulated rationale for adopting the international or comity approach to deciding whether to grant an anti-suit injunction.
injunction. Whether American courts will follow the lead of the House of Lords and refer to a foreign jurisdiction's handling of the same international issue remains to be seen. Considering the direct and disruptive impact anti-suit injunctions have on foreign jurisdictions, not to mention the accompanying insult of perceived inadequacy, it is hoped that the next American court asked to prevent a foreign court from hearing an issue will consider *Airbus* and will employ an approach that similarly emphasizes the doctrine of international comity.