

Chapter 12

Between the Parochial and the Cosmopolitan

The Hon JJ Spigelman AC

Introduction

The focus of this collection is on the significance of values in the law. In the context of international commerce, relevant legal decision-makers in the legislative, executive and judicial branches of government are influenced by their philosophical predisposition with regard to the respect to be given to the foreign elements that arise. This predisposition ranges over a broad spectrum: from parochialism at one end to cosmopolitanism at the other.

This range of values affects every stage of the process: what treaties are ratified and given statutory force; what regional or bilateral arrangements are made; what model laws are adopted and implemented; how other national legislation recognises foreign law and jurisdiction; how judges choose from the broad range of options that are often available in litigation.

The multifaceted process known as globalisation has significantly extended the circumstances in which such decisions have to be made. The focus of this chapter is on the judiciary.

Cross-border issues

The issues that arise in cross-border litigation have engaged my interest for some time.¹ I suspect that an objective appraisal of my philosophical predisposit-

¹ These issues have arisen in the following judgments: *James Hardie Industries Pty Ltd v Grigor* (1998) 45 NSWLR 20; *Hyde v Agar* (1998) 45 NSWLR 487; *Worsley v Australian Rugby Football Union Ltd* (1998) 45 NSWLR 487; *Raguz v Sullivan* (2000) 50 NSWLR 236; *James Hardie & Coy Pty Ltd v Barry* (2000) 50 NSWLR 357; *Brear v James Hardie & Coy Pty Ltd* (2000) 50 NSWLR 388; *Damberg v Damberg* (2001) 52 NSWLR 492; *Julia Farr Services Inc v Hayes* (2003) 25 NSWCCR 138; *European Bank Ltd v Citibank Ltd* (2004) 60 NSWLR 153; *Robb Evans v European Bank Ltd* (2004) 61 NSWLR 75; *Dalton v NSW Crime Commission* (2004) 62 NSWLR 77; *British American Tobacco Australia Services Limited v Sharon Y Eubanks for the United States of America* (2004) 60 NSWLR 483; *Hamilton v Merck & Co Inc* [2006] NSWCA 55; *Hutchinson v Merck Sharp & Dohme (Australia) Pty Ltd* (2006) 66 NSWLR 48; *Amaca Pty Ltd v Frost* (2006) 67 NSWLR 635; *Garsec Pty Ltd v His Majesty*

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