

CONNECTING CONTINENTS

Civil justice systems shape how individuals and countries address harm and seek accountability around the world. Here, five members of AAJ's international community from the **United Kingdom, Canada, Australia, South Africa, and Spain** explore features of their legal systems, including multidistrict litigation, freezing orders, resort liability, and cross-border matters.



AND COURTS



MDL Differences



While the U.S. class action system offers a centralized approach, requirements vary across **Canadian provinces**.

Jordan Assaraf

There is power in numbers. Plaintiff lawyers in Canada and the United States have relied on collective litigation for decades. Yet, despite their shared roots in English common law, courts in each country take notably different approaches to mass and collective claims.

Canada's Class Action System

In Canada, class actions remain the primary procedural vehicle for mass tort litigation. The Constitution of Canada grants provinces exclusive jurisdiction over most civil matters. Federal courts may hear only cases that fall within their limited civil jurisdiction, such as antitrust matters, competition law claims, or disputes

involving federally regulated industries.¹ As a result, most class actions proceed in provincial superior courts. These courts are administrated provincially but staffed by federally appointed judges,² and they have broad jurisdiction to hear cases involving federal and provincial law.³

Most Canadian jurisdictions impose distinct procedural rules to certify a class action in the common law provinces or authorize one in Quebec. That province, which was formerly a French colony, employs a Civil Code. Key differences among jurisdictions include

- Limitation periods⁴
- Whether courts automatically appoint a case management judge (or, in Quebec, a

- coordinating judge) or one must be requested⁵
 - Procedures and timelines for certification or authorization⁶
 - Which parties may seek certification or authorization⁷
 - Whether class members must opt in or opt out⁸
 - How courts apportion or award costs⁹
- Understanding these jurisdictional nuances is essential to building an effective class action.

Strategic Considerations

Because procedural rules vary by province, plaintiff lawyers must select the most appropriate venue carefully. Although certification or authorization criteria differ, the common law provinces generally require plaintiffs to

- Establish that the claim discloses a reasonable cause of action
- Define the class
- List common issues of law or fact
- Establish that a class action is the preferable procedure
- Seek the appointment of a representative class member who can adequately protect the class's interests¹⁰

Most Canadian class proceedings arise in Ontario, Quebec, and British Columbia—the country's most populous provinces.¹¹ To certify a case in most common law provinces, a plaintiff must show "some

Quebec does not have a comparable preferable procedure test, which further lowers the bar for authorization in that province.¹⁵ But Quebec's distinct civil law system can complicate multijurisdictional proceedings. British Columbia, by contrast, recently eased multijurisdictional certification and rarely imposes adverse costs awards against unsuccessful parties.¹⁶ As a result, this varying landscape across the country influences where some class actions are filed.

If a proposed class action is not certified, plaintiff lawyers can continue the cases as a mass tort. A recent class action on behalf of former hockey players who alleged abuse failed certification because it lacked a workable litigation plan. One plaintiff couldn't represent all claims under the Ragoonanan principle, which requires a representative plaintiff to have a cause of action against each defendant.¹⁷ The justices recommended that plaintiff counsel prepare an Individual Issues Protocol under §7.2 of the Class Proceedings Act of 1992, allowing the case to proceed in a different form.¹⁸

Canadian Federalism

The U.S. multidistrict litigation (MDL) process allows the Judicial Panel on Multidistrict Litigation to consolidate similar cases filed in multiple federal

Plaintiffs generally face a lower threshold for certification in Canada than in the United States.



basis of fact." In contrast, a recent Supreme Court of Canada decision reaffirmed Quebec's lower threshold for authorization where speculative, unsupported, or incomplete allegations could be accepted if they are not frivolous or clearly get the law wrong.¹²

Ontario's revised certification rules ensure that a class action is the most appropriate way to resolve claims or hold defendants accountable for alleged wrongdoing.¹³ Additionally, questions of law relating to the class "predominate" over questions relating to individual plaintiffs.¹⁴

courts for coordinated pretrial proceedings.¹⁹ The panel also selects the transferee court and assigns the presiding judge or judges.

Canada lacks a comparable national framework because provinces exercise exclusive jurisdiction over most civil matters. The Canadian Constitution divides jurisdictional powers to balance regional autonomy with national interests. As a result, neither the federal government nor federal courts can coordinate parallel civil actions across provincial boundaries. Some provincial superior courts may certify class actions




on a multijurisdictional basis—often nationally or nationally excluding Quebec—while, in practice, judges have also coordinated parallel proceedings informally to reduce duplication and avoid inconsistent rulings where overlapping actions exist.²⁰

Provinces also differ in how they resolve competing proposed class actions within their borders. In Ontario and British Columbia, parties commonly bring carriage motions, allowing one action to proceed while staying others.²¹ In Quebec, courts often let the first-filed action move forward.²²

Consequences and Opportunities

Plaintiffs generally face a lower threshold for certification in Canada than in the United States. At the same time, Canada’s decentralized federal structure complicates the management of multijurisdictional litigation. Plaintiffs can pool resources and share discovery while preserving the right to settle individually or proceed to trial as mass tort litigation becomes increasingly common across provinces.

The MDL framework in the United States offers a potential model for reform. Although political and constitutional challenges remain, a Canadian MDL-style process may ultimately prove necessary to provide a clearer, more efficient path to justice.

Canada’s class action framework may be more accessible to plaintiffs compared to the U.S. system, but it is also more fragmented. Collaboration across borders can help shape litigation narratives, streamline procedures, and establish early, objective expectations for resolution that can carry forward into subsequent proceedings. 



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NOTES

1. *Constitution Act, 1867*, 30 & 31 Vict., ch. 3, sec. 92(13).
2. *Id.* at sec. 96.
3. Dep’t of Just. Can., *How the Courts Are Organized*, www.justice.gc.ca/eng/cs-j-sjc/ccs-ajc/02.html (last updated Sept. 1, 2021).
4. See Civil Code of Quebec, C.Q.L.R., ch. CCQ-1991. For example, there is no act that prescribes limitation periods in Quebec. Instead, Article 3131 of the Civil Code of Quebec states that each type of action is governed by applicable law

to merits of the dispute (usually found in the section of the Civil Code dealing with the relevant law). Article 2922 also extinguishes all rights and actions not otherwise regulated by law after 10 years. Generally, there is a three-year limitation period for most types of civil claims.

5. Canadian Bar Ass’n B.C., *Reinstating Default Case Management in Class Actions*, BarTalk (June 27, 2025), bartalk.org/article/at-cbabc/advocacy-in-action/reinstating-default-case-management-in-class-actions.
6. For example, Article 575 in Quebec’s Code of Civil Procedure, ch. C-25.01, lists authorization criteria. See Mark Cardwell, *New Class Action Process Launched in Montreal*, *Canadian Lawyer* (Apr. 10, 2018), www.canadianlawyermag.com/news/features/new-class-action-process-launched-in-montreal/275040.
7. See Sandra Shutt, *Quebec’s Own Class Action Authorization Regime*, *Canadian Lawyer* (Apr. 25, 2016), www.canadianlawyermag.com/news/general/quebecs-own-class-action-authorization-regime/270136.
8. For the opt-in provinces, see Class Proceedings Act, R.S.N.B. 2011, ch. 125, secs. 8(2), 10(g), 18(3), and Class Actions Act, S.N.L. 2001, ch. C-18.1, secs. 7(2), 9(g).
9. Most provinces operate under a “loser pays” system. British Columbia requires all parties to bear their own costs except in exceptional circumstances. See Class Proceedings Act, R.S.B.C. 1996, ch. 50, sec. 37. In Ontario, courts may consider the nature of the case (public interest, novel legal questions, and test cases, among others) when deciding costs awards. See *Davis v. Amazon Can. Fulfillment Servs., ULC*, 2023 ONSC 5929 at para. 40.
10. See, e.g., Class Actions Act, S.N.L. 2001, ch. C-18.1, sec. 5.
11. Jérémy Boulanger-Bonnely, *Class Actions Progress Report*, Uniform L. Conf. of Can. at p. 4 (Aug. 2024), www.ulcc-chlc.ca/ULCC/media/EN-Annual-Meeting-2024/Class-Actions-Progress-Report-2024.pdf.
12. *Desjardins Financial Servs. Firm Inc. v. Asselin*, 2020 SCC 30.
13. Class Proceedings Act, 1992, S.O. 1992, ch. 6, sec. 5(1.1) (as amended by Smarter and Stronger Justice Act, 2020, S.O. 2020, ch. 11, sched. 4, sec. 7).
14. *Id.*
15. Code of Civil Procedure, C.Q.L.R., ch. C-25.01, art. 575.
16. See Class Proceedings Amendment Act, 2018, S.B.C. 2018, ch. 6 and Class Proceedings Act, R.S.B.C. 1996, ch. 50, sec. 4.1; see also Nick Hooge, *Understanding BC’s Unique Class Proceedings Act*, *Lexpert Bus. of L.* (June 28, 2023), www.lexpert.ca/news/legal-insights/understanding-bcs-unique-class-proceedings-act/376944.
17. *Carcillo v. Canadian Hockey League*, 2023 ONSC 886; *Ragoonanan Est. v. Imperial Tobacco Canada Ltd.*, 2000 CanLII 22719 (ON SC).
18. *Distribution and Individual Issues Protocol*, Fed. Admin. Segregation Class Actions (2022), tinyurl.com/8fx58xyc; Class Proceedings Act, 1992, S.O. 1992, ch. 6.
19. Joanna R. Lampe, *Multidistrict and Multicircuit Litigation: Coordinating Related Federal Cases*, *Libr. of Cong.* (Nov. 17, 2021), www.congress.gov/crs-product/IF11976.
20. See, e.g., *Hafichuk-Walkin v. BCE Inc.*, 2016 MBCA 32 (outlining the Hafichuk test); *Winder v. Marriott Int’l Inc.*, 2019 ONSC 5766; see, e.g., *Britton v. Ford Motor Co. of Can.*, 2021 ABQB 17 (CanLII); *Brazeau v. Canada (Att’y Gen.)*, 2020 ONSC 7229.
21. Class Proceedings Act, 1992, S.O. 1992, ch. 6, sec. 13.1.
22. *Hotte c. Servier Canada Inc.*, 1999 CanLII 13363 (QC CA).

Transatlantic Injury Claims

When a person sustains a serious injury in the **United Kingdom**, establishing jurisdiction in England and Wales can strengthen the claim.

Christopher Deacon

Citizens from the United States who suffer life-changing injuries in the United Kingdom often assume they will secure a better outcome by pursuing their claim in the United States. That assumption may be reasonable—but when any party is across the Atlantic, U.S. litigation can introduce complications.

One common scenario includes when a U.S. citizen, while traveling as a passenger touring the United Kingdom either for work or vacation, is

involved in a road traffic collision and sustains a spinal injury. In these types of cases, jurisdictional disputes, enforcement issues, and conflicts of law can all cause an increase in cost, delay, and uncertainty.

Establishing Jurisdiction

When can a U.S. citizen establish jurisdiction in England and Wales (E&W)? The answer depends on the facts.

English common law permits a plaintiff to file suit without the court’s permission if the defendant



can be served in E&W. Jurisdiction typically follows the defendant's domicile. However, even where a defendant is domiciled outside E&W, their attorneys—or solicitors, as they're known across the pond—may be nominated to accept service within the jurisdiction.

Under E&W Civil Procedure Rule (CPR) 6.7, the defendant or their solicitor must let the plaintiff know that the solicitor was nominated to accept service.¹ Then, the plaintiff must serve the claim at the solicitor's address.²

typically the Hague Service Convention.⁵

It can be advantageous to file a claim in E&W because there are procedural and funding mechanisms that can make litigation more predictable and accessible for injured parties. The loser-pays principle applies, helping protect successful plaintiffs from adverse costs. In addition, after-the-event insurance and no-win, no-fee agreements can fund litigation and manage financial risk, subject to the insurance policy's terms and conditions.

Motor vehicle crash claims in E&W also provide meaningful protections. If an insurance policy covers a vehicle registered in the United Kingdom, bodily injury coverage is generally unlimited. Where a vehicle is uninsured or the driver can't be traced, the Motor Insurers' Bureau (MIB) provides guaranteed funds to meet valid claims that satisfy the requirements of the MIB agreements.⁶ Therefore, the innocent victim of a road traffic collision in E&W should always have a viable route to recover damages, subject to any issues of contributory negligence or defenses such as illegality.

Forum Non Conveniens

Even when the jurisdictional gateways are satisfied, a U.S. plaintiff may still face a challenge to jurisdiction.

The central question becomes whether England and Wales is the proper place for the case to be heard. English courts have developed a substantial body of case law on this issue, reflecting the fact-specific nature of the inquiry.⁷

Relevant considerations may include the location of witnesses, the language used in key documents, and whether liability is genuinely in dispute. In some cases, defendants may choose not to contest jurisdiction in E&W if the alternative is defending proceedings in the United States, where litigation costs and exposure may be significantly higher.

England and Wales will ordinarily be the appropriate forum where, for example, a plaintiff is injured by a local defendant-driver in a motor vehicle crash, or sustains an injury while on a package holiday involving a U.K. tour operator and accommodations in London or where English law applies.⁸

When a plaintiff has more than one option for jurisdiction, it is important to consider which one

offers the best path to recovery, taking into account any limitation periods under the applicable law to ensure that the plaintiff's position is fully protected.

Defendants From the United States


In a recent case, a plaintiff accompanied her husband (both residents of South Carolina) on a business trip to England, where they were involved in a collision and she sustained injuries.⁹ The plaintiff would need to name her husband as a defendant in the proceedings, but in reality was pursuing a claim against the U.K.-based insurers.

When the insurers were unresponsive, the plaintiff attorneys collaborated with United Kingdom counsel on a settlement strategy. The approach aimed to maximize the plaintiff's recovery while preserving her ability to file suit in the United States and England if pretrial settlement failed.

The E&W motor claims system can offer plaintiffs greater certainty through early liability admissions and access to interim funding. This case was unique, however, due to the interplay between rules on jurisdiction and private international law principles. These rules required the application of South Carolina law because both the plaintiff and her husband were domiciled there.¹⁰

Where a U.S. defendant must be served in E&W proceedings, it's mandatory for service to comply with the Hague Service Convention, which introduces additional procedural requirements and potential delay.¹¹ These delays may stem from completing and filing the formal request for service and accompanying documents with the Foreign Process Section at the Royal Courts of Justice. The process can involve a Senior Master—the judge in E&W assigned with overseeing the requirements of the Hague Service Convention—among others. But service is possible through informal delivery, such as sending court proceedings through the postal service.

When representing U.S. citizens injured in England and Wales, it's critical to assess whether E&W offers procedural or strategic advantages. These may include the Pre-Action Conduct Rules enshrined in the Pre-Action Protocol of the E&W CPR, which references the Rehabilitation Code, and features of English law generally.¹² Establishing a strong jurisdictional foundation in an international

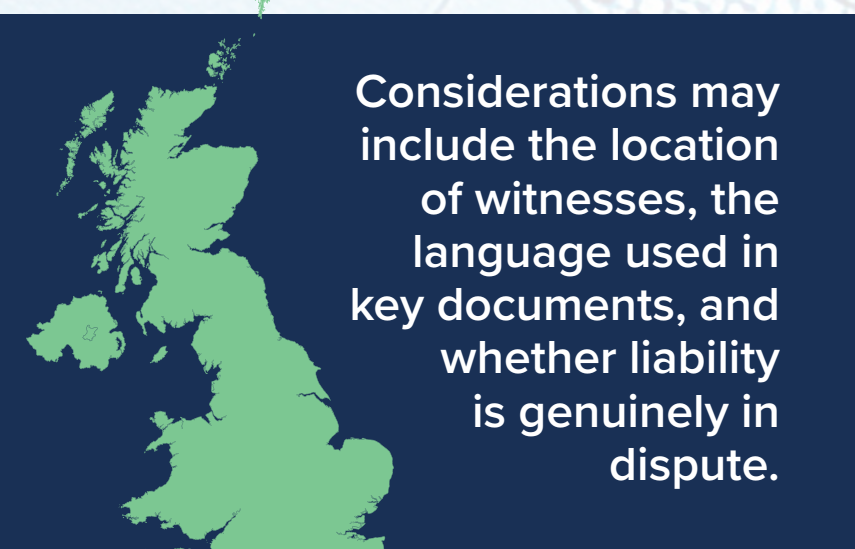
injury claim can streamline proceedings, manage costs, and ultimately help secure meaningful redress for injured clients. 



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NOTES

1. E&W Civil Procedure Rule 6.7.
2. *Id.*
3. See E&W Civil Procedure Rule 6.36 and Practice Direction 6B, para. 3.1.
4. *FS Cairo (Nile Plaza) LLC v. Brownlie*, [2021] UKSC 45.
5. See E&W Civil Procedure Rules 6.40–6.46.
6. See MIB Uninsured Agreement, Motor Insurers' Bureau (July 3, 2015) and MIB Untraced Drivers Agreement, Motor Insurers' Bureau (Feb. 28, 2017); U.K. Motor Insurers' Bureau, www.mib.org.uk.
7. See, e.g., *Harty v. Sabre Int'l Sec., Ltd. & Anor*, [2011] EWHC 852 (QB) (where a security consultant seriously injured in Iraq sued two defendants and the liable defendant would have had immunity from suit in Iraq); *Peacock v. Del Seatek India Priv. Ltd.*, [2019] EWHC 2867 (Adm.) (where the claimant sustained serious injury while working for an Indian company and operating from a vessel owned and operated by a South Korean company; key lay witnesses were based in E&W and expert evidence on diving could be provided by an expert based in E&W); *Stylianou v. Toyoshima*, [2013] EWHC 2188 (QB) (where the plaintiff had originally started proceedings in Australia, agreed to pay the costs of abandoning those proceedings on issuing her claim in England, and would have faced considerable difficulty in participating in proceedings in Australia because of her spinal cord injury; the claim was for quantum only, and it was more practical for experts based in E&W to provide evidence to the court).
8. *VTB Cap. plc v. Nutritek Int'l Corp.*, [2013] UKSC 5.
9. *MC v. MC*, (Unreported 2021).
10. *Id.*; Regulation (EC) 864/2007 of the European Parliament and of the Council of 11 July 2007 on the Law Applicable to Non-Contractual Obligations (Rome II), 2007 O.J. (L. 199), art. 4(1), pp. 40–49 (retained following Brexit pursuant to The Law Applicable to Contractual Obligations and Non-Contractual Obligations (Amendment etc.) (EU Exit) Regulations 2019, SI 2019/834 and The Jurisdiction, Judgments and Applicable Law (Amendment) (EU Exit) Regulations 2020, SI 2020/1574).
11. See E&W Civil Procedure Rules 6.40–6.46.
12. See Pre-Action Protocol for Personal Injury Claims, U.K. Ministry of Justice (Mar. 22, 2024) www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_pic (including a reference to the Rehabilitation Code); The 2015 Rehabilitation Code, Int'l Underwriters Ass'n (Sept. 2015), tinyurl.com/ym8h2msa; *A Guide to the Conduct of Cases Involving Serious Injury*, Serious Injury Guide (July 2016), www.seriousinjuryguide.co.uk/files/serious-injury-guide-20160825.pdf.



Considerations may include the location of witnesses, the language used in key documents, and whether liability is genuinely in dispute.

If a U.S. citizen pursuing their claim in E&W wishes to bring in a defendant not domiciled in E&W, they must receive the court's permission through one or more gateways, including

- Joining the overseas defendant to proceedings against an “anchor” defendant domiciled in England and Wales
- Bringing a claim based on a contract governed by English law or formed in E&W
- Pursuing a tort where damage was or will be sustained within the jurisdiction³

The U.K. Supreme Court has established that “damage” includes the initial injury-causing event as well as ongoing pain, suffering, and financial losses sustained within the jurisdiction.⁴ The plaintiff must serve the claim form outside E&W using an approved international service method,

Keeping Justice Intact

Freezing orders can prevent defendants from adjusting their international assets, ensuring clients have access to adequate relief.

Noor Blumer

For U.S. clients pursuing defendants who hold assets abroad, early strategic decisions are critical to preserve a plaintiff's ability to obtain meaningful relief.

Freezing orders—also called Mareva injunctions or asset attachment orders¹—are an equitable remedy designed to prevent defendants from moving or dissipating assets before a judgment is rendered. While procedures vary by jurisdiction, the underlying goal is always the same: to ensure that a client's legal victory can translate into real justice.

For many clients, the key question is not only whether liability can be established, but whether litigation can deliver outcomes that meaningfully address their harm. Freezing orders help safeguard the effectiveness of the legal process, allowing clients to see the benefit of their claims and ensuring the justice system fulfills its purpose.

Obtaining and enforcing a freezing order is straightforward when defendants hold assets in the jurisdiction where the claim is filed. But when a U.S. client files a lawsuit against a defendant that has assets located abroad—for example, in Australia, Canada, or the European Union (EU)—strategic planning and careful jurisdictional analysis are essential to protecting clients' interests.

Know the Criteria

Countries with legal systems based on English common law—including the United States, the EU, and the United Kingdom—have similar standards for granting freezing orders. However, rules vary by jurisdiction.

In the United States, some states limit freezing orders to assets within the state. For example, California courts cannot freeze assets outside the state.²

Courts generally require plaintiffs to demonstrate

- An arguable case on the merits
- A real risk that assets may be improperly dissipated
- A promise to compensate the defendant for any financial loss the order causes³

Freezing orders are most effective when sought *ex parte*, before litigation formally begins. Once proceedings start, a defendant may attempt to move or conceal assets. Interim orders can include

- Temporary freezing orders
- Requiring prompt notification to the defendant and relevant third parties
- Ordering respondents to disclose assets and financial circumstances

If contested, freezing orders typically remain in place until the court rules, though defendants may consent to modifications.

Protecting Clients' Interests

Early, careful analysis ensures that clients' interests remain central. Key considerations include

Asset availability. Identify whether the defendant holds sufficient assets to satisfy a judgment. Use professional investigators to trace property, corporate interests, or affiliated entities.⁴

Risk to achieving justice. Evaluate whether assets could be dissipated or otherwise inaccessible, potentially undermining the client's ability to enforce a judgment. Freezing orders help ensure that legal



Strategic planning and careful jurisdictional analysis are essential to protecting clients' interests.

remedies translate into actual recovery and justice for the client. Where a defendant serves as a company director, for example, searches may reveal affiliated entities.⁵


My first freezing order application involved a client who had been the victim of an assault. The client's original counsel in the civil case had to withdraw because they were representing the alleged assailant in criminal proceedings. This meant the defendant had constructive notice that a civil claim was imminent. We also presented evidence that the defendant was in the process of selling their house, which we argued could be an attempt to place an asset beyond my client's reach. The risk was clear.

Even when evidence is less direct, courts often grant freezing orders because they are temporary and the respondent has the opportunity to contest both shortly afterward. I've found that judges frequently rely on circumstantial indicators—such as patterns of financial behavior, previous dishonesty, criminal activity, or steps suggesting potential dissipation—to determine whether interim relief is warranted.

Jurisdictional strategy. Choose the forum that best protects your client's rights and facilitates effective relief. Consider local laws as well as whether *ex parte* relief is available. Examine international treaties, such as the 1965 Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents and the 2019 Hague Convention on Recognition and Enforcement

of Foreign Judgments.⁶ Both allow plaintiffs to serve and enforce U.S. judgments in other signatory countries.⁷

Enforcement rules for countries outside these treaties are more complex, requiring careful planning on a case-by-case basis to maximize the client's ability to secure justice.

The decision to pursue a freezing order should always be guided by the client's interests and the integrity of the process. Careful jurisdictional analysis, thorough asset investigation, and clear evidence of dissipation risk are essential. 



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NOTES

1. See *Mareva Campania Naviera SA v. Int'l Bulk Carriers SA*, [1980] 1 All ER 213.
2. Cal. Civ. Proc. Code (West).
3. See *Fiona Trust & Holding Corp. v. Privalov*, [2016] EWHC 2163; see also *Chitel v. Rothbart*, (1982) 39 O.R. (2d) 513. This is a general overview, and the law differs materially in each jurisdiction.
4. In Australia, directors must provide their personal addresses under the Corporations Act 2001 (Cth) pt. 2D.5, 205B. This requirement may not apply in other places.
5. *Id.*
6. Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (The Hague, Nov. 15, 1965), entered into force Feb. 10, 1969, www.hcch.net/en/instruments/conventions/full-text/?cid=17; Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (The Hague, July 2, 2019), entered into force Sept. 1, 2023, www.hcch.net/en/instruments/conventions/full-text/?cid=137.
7. *Id.*; Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (The Hague, Nov. 15, 1965), entered into force Feb. 10, 1969, www.hcch.net/en/instruments/conventions/status-table/?cid=17 (last updated Mar. 21, 2024) (status table listing convention signatories); Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (The Hague, July 2, 2019) entered into force Sept. 1, 2023, www.hcch.net/en/instruments/conventions/status-table/?cid=137 (last updated May 13, 2025) (status table listing convention signatories).

Foreign Resorts

Spanish courts can offer a path to justice for clients injured at **Spanish-owned resorts** in Latin America and the Caribbean.

Ana Romero Porro



In 2024, U.S. citizens traveled overseas in record numbers, with departures to Central America rising to 145% of their pre-pandemic volume and travel to the Caribbean rising to 121% of 2019 levels.¹ Many stayed at resorts operated by Spanish multinational hotel groups, such as Barceló, Iberostar, Meliá, and RIU, which collectively operate hundreds of resorts across Costa Rica, Cuba, the Dominican Republic, Jamaica, and Mexico.²

Spanish hotel chains have a major presence in key Caribbean resort markets. Leading Spanish companies such as Bahía Príncipe, Barceló, Iberostar, Meliá, and RIU manage a significant share of the hotel capacity in Cuba, the Dominican Republic, and the Mexican Caribbean—including tens of thousands of rooms across these destinations.³

The widespread presence of Spanish hotel chains raises important legal considerations. When a guest suffers an injury at a Spanish-owned resort and lacks

jurisdiction to file a claim in U.S. courts, Spain may provide an alternative forum for relief.

Jurisdiction

As a general rule, claims are best brought in the jurisdiction where the injury occurred. In practice, however, litigating in Latin America or the Caribbean can present significant obstacles, including

- Limited or nonexistent discovery procedures
- Language barriers
- Lengthy judicial timelines
- Uncertainty regarding enforcement of judgments

Where the defendant is a Spanish-domiciled legal entity, Spanish courts may accept jurisdiction under Article 22.3 of the Spanish Organic Law of the Judicial Power (Ley Orgánica del Poder Judicial).⁴ Regulation (EU) No. 1215/2012 also grounds jurisdiction. This regulation bases jurisdiction on where the defendant is domiciled.⁵ Although that

regulation primarily governs disputes within the European Union, Spanish domestic law mirrors its framework.

In my law firm's experience, Spanish courts have repeatedly accepted jurisdiction in personal injury cases arising outside the EU where the defendant hotel group is domiciled in Spain.

Hotel Management Structure

Understanding how a resort is owned and operated is critical. The nature of the contractual relationship—and the degree of operational control exercised by the Spanish entity—often determines whether Spanish courts will accept jurisdiction.

Spanish hotel groups typically operate resorts under one of four models:

- Direct ownership.
- Lease agreements.
- Franchise arrangements.
- Hotel management agreements (HMAs).

In lease and HMA structures, the Spanish hotel group generally retains operational oversight, which bolsters the case for Spanish jurisdiction. Jurisdiction is more difficult to establish in franchise models, where plaintiffs must demonstrate direct control or misleading representations by the Spanish entity.

Link the Spanish Entity to the Resort

To access Spanish civil courts, plaintiffs must establish a meaningful connection between the Spanish parent company and the day-to-day operation of the resort. Relevant evidence may include

- Booking confirmations referencing the Spanish entity through branding, legal disclaimers, or contact information
- Website legal notices or privacy policies identifying the Spanish company as owner or data controller
- Marketing materials or press releases announcing resort openings or operations
- Post-incident correspondence routed through customer service departments in Spain
- Corporate filings from the Spanish Commercial Registry (Registro Mercantil) linking the foreign resort to the parent company⁶

Spanish courts have accepted jurisdiction where the plaintiff's perception of dealing with a Spanish entity was sufficient to establish that connection. For example, the Balearic Islands Court of Appeal upheld jurisdiction based on the plaintiff's understanding of the hotel group's identity and role.⁷

Applicable Law

Spanish courts apply domestic law and European regulations to determine both substantive and procedural issues, including liability, damages, statutes of limitations, and burden of proof.

Under Article 4(1) of the Rome II Regulation (EU) No. 864/2007, courts generally apply the law of the country where the injury occurred.⁸ If an injury takes place in Mexico, Mexican substantive law typically governs, regardless of the defendant's domicile.

To access Spanish civil courts, plaintiffs must establish a meaningful connection between the Spanish parent company and the day-to-day operation of the resort.



However, Article 4(3) allows courts to apply the law of another country if the claim is manifestly more closely connected to that jurisdiction.⁹

In addition, Spanish procedural law requires parties to plead and prove foreign law. If they fail to do so, Spanish courts frequently apply Spanish substantive law by default based on Article 33 of Law 29/2015 on international legal cooperation in civil matters.¹⁰

Spanish Tort Law

When Spanish law governs the claim, familiar tort principles apply.

Liability. Spanish tort law is fault-based and rooted in Article 1902 of the Spanish Civil Code.¹¹

Plaintiffs must establish

- A negligent act or omission in breach of local applicable standards
- Actual damage
- A causal link between the negligence and the damage

Articles 128 and 147 of Royal Decree 1/2007 (General Law for the Protection of Consumers and Users) reverse the burden of proof in favor of guests for consumer claims.¹²


Statute of limitations. Article 1968(2) of the Spanish Civil Code imposes a one-year limitation period, running from either the date of the incident or the date the injuries are deemed consolidated—a point frequently litigated in Spanish courts.¹³ Also, Article 1973 allows the limitation period to reset through extrajudicial demands or formal legal steps.¹⁴

Damages. Spanish law recognizes

- Pecuniary damages, including medical expenses, lost earnings, and other economic losses
- Nonpecuniary damages, such as pain and suffering, permanent injuries, and loss of quality of life

Although punitive damages are not available, courts often rely on the Baremo Guide—developed for traffic incidents—by analogy when calculating compensation.¹⁵

Bringing injury claims against Spanish-owned resorts in Spanish courts puts the case where the hotel operators and their insurers actually operate, making accountability clearer and more practical.

Successful cases can make it easier for future claimants to get through the door and push Spanish hotel groups to apply the same safety standards at all of their overseas resorts. 



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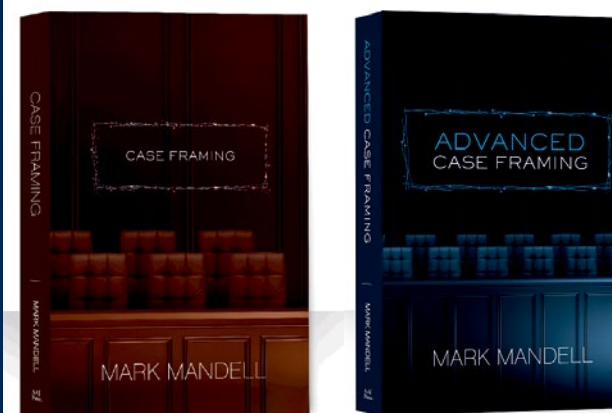
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1. U.S. Dep't of Com., Int'l Trade Admin., *December and Annual 2024 Total International Travel Volume*, tinyurl.com/4y5j4k36.
2. Vivi Hinojosa, *Hosteltur Ranking of the International Presence of Spanish Chains*, *Hosteltur* (Jan. 13, 2025), tinyurl.com/2y3ntmep.
3. *Main Spanish Hotel Chains Maintain Preponderance in the Caribbean*, *Travel Trade Caribbean*, tinyurl.com/567t5hfb.
4. Art. 22.3 of the Spanish Organic Law of the Judicial Power.
5. See Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (Recast), 2012 O.J. (L. 351), art. 4(1), 18.
6. *Registro Mercantil*, Registradores de España, www.registradores.org/el-colegio/registro-mercantil.
7. Balearic Islands Ct. App., Judgment 498/2010, §3^a, Rec. 542/2010 (Dec. 10, 2010) (“It does not seem reasonable to expect a third party to be aware of the corporate structure that derives income from the hotel, based on a distinction between ownership, operation and marketing, regardless of whether, in its internal relations, the entity that appears before third parties may subsequently take action against the company that bears ultimate responsibility. In short, it is the entities that manage the hotel that have created a confusing situation, from which they cannot benefit.”).
8. Regulation (EC) No. 864/2007 of the European Parliament and of the Council of 11 July 2007 on the Law Applicable to Non-Contractual Obligations (Rome II), 2007 O.J. (L. 199), art. 4(1).
9. *Id.* at art. 4(3).
10. Art. 33 of Law 29/2015.
11. Art. 1902 of the Spanish Civil Code.
12. Arts. 128, 147 of Royal Decree 1/2007.
13. Art. 1968(2) of the Spanish Civil Code.
14. Art. 1973 of the Spanish Civil Code (“The statute of limitations on actions is interrupted by the bringing of such actions before the Courts, by an out of court claim issued by the creditor and by any act of acknowledgement of the debt by the debtor.”).
15. Law 35/2015.

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Changing Challenges and Trends

Attorneys litigating medical negligence and motor vehicle crash cases in **South Africa** face procedural obstacles and limited avenues of relief.

Tzvi Brivik

The South African litigation landscape is a challenging one. Administrative instability, strategic obstruction by public defendants, and persistent judicial delays continue to frustrate personal injury claims. Even so, professional legal associations and plaintiff attorneys have worked to preserve access to justice.

Because South Africa's government systems provide recovery for injuries from motor vehicle crashes and medical negligence claims brought against the state, the state is frequently exposed

to substantial liability. It continually seeks to ameliorate its risk and financial exposure through changes to the law.

Motor Vehicle Cases

The Road Accident Fund (RAF), regulated by Act 56 of 1996, provides statutory relief to people injured in road incidents.¹ Its purpose was to compensate victims of road injuries, whether they were drivers, passengers, or pedestrians. Previously, private insurers administered the RAF, but the state now has control over the fund's operations.

The RAF has a state-appointed board and is run similar to a private company, but it reports to the government and the Minister of Transport. In practice, however, the agency faces administrative challenges that cause systemic delays in claim resolution.

Changes to legislation. The Road Accident Fund has attempted to amend legislation drastically by reducing the rights of plaintiffs and preventing access to justice. It proposed the Road Accident Fund Amendment Bill 2023, which would have changed the available recovery from traditional damages to social benefits.²

The benefits would only have applied to people injured on public roads, likely excluding claims from tourists injured on private roads at game reserves and other popular tourist destinations.³ Additionally, a proposal to allow some damages to be paid in installments may have led to fewer attorneys accepting cases on a contingency basis. Fortunately, these proposals were abandoned.

But the legislature is still considering one of the RAF's proposals: the Road Accident Fund Benefit Scheme.⁴ If passed, this legislation would remove an injured person's need to prove negligence against drivers, cap damages, and severely restrict the recovery of past medical expenses. It would effectively create a tariff for medical care well below private sector rates. Despite previously rejecting the bill, the legislature is reconsidering it.

Delays and nonpayment. Payment delays are routine. The RAF routinely defaults on court-ordered damages and uses procedural hurdles to postpone or avoid payment.

More recently, the RAF sought to extend its existing payment moratorium on individual claims. The current moratorium allows the RAF 180 days from judgment or settlement to make payment.⁵ This proposal would have made the RAF's payment due only after a full year since the conclusion of the case—excluding interest. The agency attempted to double that period, but the court rejected the request, holding that payments could not be delayed any further.⁶

In response—and in light of the newly appointed board members—the RAF committed to addressing its backlog of unpaid claims through phased payments.

New court rules that mandate mediation further delay justice.⁷ While this seems like a reasonable requirement, it assumes that both parties wish to

enter the mediation process. The court will not give the plaintiff a trial date without a mediation attempt.

As a result, plaintiffs face increased costs and delays when headed for trial. One division of the court hears up to 300 matters a week, and failed mediation attempts have pushed some trial dates into 2031.⁸

Medical Negligence Claims

South Africa's provincial governments have adopted litigation strategies in medical negligence cases that further narrow available relief. These claims arise from treatment received by the majority of the population in South Africa—including both citizens and noncitizens. All indigent patients rely on the state to pay for their medical treatment.

The state and its employees have the same standard of care requirements as private health care providers.⁹ But the state frequently argues that its limited resources, such as insufficient staffing, equipment, and facilities, should serve as a complete defense to medical negligence claims. In my experience, the government usually raises this defense in emergency situations, where a patient requires a diagnostic CT scan or an MRI. Often, the facility either lacks the equipment, the equipment is broken, or it doesn't have qualified health care providers on site to operate it.

Installment payments and structured settlements. Recent appellate decisions have opened the door to installment-based settlements.¹⁰ These structured payment plans reduce immediate financial pressure on the state, they leave plaintiffs and their attorneys without certainty. They can also delay full recovery for plaintiffs who might otherwise expect lump-sum payments.

'In kind' state medical care. Provinces have also increasingly offered "in kind" compensation—typically future medical treatment at state facilities—in lieu of traditional monetary damages. Although courts have permitted this approach in principle, serious concerns remain regarding whether those facilities can deliver adequate, reliable, and continuous care.¹¹

The treatment that a plaintiff would qualify for—which is often subject to debate—must relate to the injuries they sustained from the incident. Treatment may include surgery, medication, and rehabilitation. States can face challenges in providing this treatment due to staffing shortages, long surgical wait lists,





The state frequently argues that its limited resources should serve as a complete defense to medical negligence claims.

and difficulties accessing medications for chronic conditions or newer, more specialized treatments.

We have successfully challenged this defense by arguing that the common law precludes the state from offering future medical services instead of monetary damages.¹²

Common Defenses

State defendants frequently try to defeat claims on technical or procedural grounds rather than on the merits. Courts have pushed back against this approach, emphasizing that minor procedural defects should not bar access to justice.¹³

Nonetheless, it's been my experience that public defendants often change legal representatives mid-litigation, miss discovery deadlines, and pursue appeals with limited substantive merit—tactics that collectively delay proceedings. Although formal judicial case management mechanisms exist, enforcement is inconsistent across jurisdictions.

Advocacy Groups

Despite these challenges, several professional organizations actively advocate for plaintiff rights and systemic reform.


Pretoria Attorneys Association. This group engages regularly with the judiciary and legislature on procedural reform and access-to-justice issues.

South African Medico-Legal Association. This organization brings together attorneys, medical experts, actuaries, and academics involved in personal injury litigation, providing education, research support, and policy engagement.

Personal Injury Plaintiff Lawyers Association. This association promotes ethical plaintiff practice and challenges obstructive defense tactics, including improper substitution and delay strategies.

Collectively, these organizations have played a central role in litigating test cases, engaging with policymakers, and coordinating reform efforts

in support of injured plaintiffs and their legal representatives.

South Africa's civil justice system reflects a legal framework grounded in the common law but shaped by distinctive constraints. Administrative delay, limited remedial flexibility, and enforcement challenges play a far greater role than U.S. practitioners might expect. With careful navigation and informed expectations, cross-border litigation involving South African defendants is complex—but still important. 



Tzvi Brivik is the director of *Malcolm Lyons & Brivik* in Cape Town, South Africa, and can be reached at tzvi@mlblegal.co.za.

NOTES

1. *Road Accident Fund*, www.raf.co.za/Pages/Default.aspx; Road Accident Fund Act 56 of 1996.
2. Road Accident Fund Amendment Bill 2023.
3. *Id.*
4. Road Accident Benefit Scheme Bill, B17-2017; Natalie Viljoen, *Government Revives Rejected Bill to Fix Road Accident Fund*, Moonstone (June 5, 2025), tinyurl.com/yc394nc5.
5. *Road Accident Fund v. Legal Pract. Council*, 2025 ZAGPPHC 189.
6. *Id.*
7. Uniform Rules of Court, R. 41A (promulgated Jan. 15, 1965) (updated Jan. 30, 2025).
8. North & South Gauteng Court Rules; *Directive Introducing Mandatory Mediation in the Guateng Division*, Office of the Judge President, Guateng Division of the High Court of South Africa (Apr. 22, 2025), tinyurl.com/3fhnsyn8; Legal Practitioners Indemnity Insurance Fund, lpiif.co.za.
9. See, e.g., *TN obo BN v. Member of the Exec. Council for Health, E. Cape*, 36/2017 (unreported); *Lushaba v. MEC for Health, Guateng* 2015 (3) SA 616 (G.J.).
10. *Member of the Exec. Council for Health & Soc. Dev., Gauteng Provincial Gov't v. PN*, 2021 ZACC 6.
11. *Member of the Exec. Council for Health & Soc. Dev., Gauteng v. DZ obo WZ*, 2017 ZACC 37.
12. *Mashinini v. Member of the Exec. Council for Health & Soc. Dev., Gauteng Provincial Gov't*, 2023 (5) SA 137 (SCA).
13. *Id.*

NOTICE OF PROPOSED MEMBERSHIP DUES INCREASE

Attention voting members of the American Association for Justice

Pursuant to Article IX; Section 1 of the Association Bylaws, notice is hereby provided that there is a proposed membership dues increase. The proposed dues increase will be considered for approval by a two-thirds vote of the Board of Governors present at the spring Board of Governors meeting.

A vote on the proposed dues increase will take place at the spring Board of Governors meeting on Thursday, April 30, 2026, via Zoom.

Membership Dues Increase Proposal

AAJ Regular and Associate Members

Years in Practice	Current Rate	New Rate
Less than 1	\$50	\$52
Greater than 1, but less than 5	\$125	\$130
Greater than 5, but less than 10	\$225	\$235
Greater than 10, but less than 15	\$380	\$400
Greater than 15, but less than 20	\$505	\$550
Greater than 20, but less than 25	\$615	\$660
25+	\$685	\$750

Other Membership Categories

Other Membership Categories	Current Rate	New Rate
Sustaining	\$895	\$950
President's Club	\$3,500	\$3,750
International Member	\$125	\$150
Government Member	\$35	\$50
Military Member	\$35	\$50
Law Professor	\$35	\$50
Law Student	\$15	\$20
Paralegal Affiliate	\$75	\$100
Legal Administrator Affiliate	\$75	\$100