Law Commission
Reforming the law

Digital assets and (electronic) trade documents in private international law

including Section 72 of the Bills of Exchange Act 1882

Summary of the Consultation Paper

This consultation

Who are we?	The Law Commission of England and Wales is an independent body established by statute to make recommendations to government to reform the law.
What are we doing?	Conducting a public consultation on our provisional proposals to reform certain aspects of private international law. This is the summary of a full consultation paper available at https://lawcom.gov.uk/project/digital-assets-and-electronic-trade-documents-in-private-international-law/.
What is it about?	We make provisional proposals for certain reforms in respect of international jurisdiction and applicable law to accommodate digital assets. We also make proposals to reform section 72 of the Bills of Exchange Act 1882.
Who do we want to hear from?	We are keen to receive responses from as many stakeholders as possible, including practising lawyers, legal academics, market participants who own, use, trade and/or develop digital assets or electronic trade documents, technologists, and anyone else who has an interest in the issues covered in the paper.
How do I respond?	For details on how to respond, and to access the full consultation paper, see https://lawcom.gov.uk/project/digital-assets-and-electronic-trade-documents-in-private-international-law/.
What is the deadline?	The submission period closes on **8 September 2025.**
What happens next?	After reviewing all responses, we will decide on our final recommendations for law reform, which we will publish in a report early in 2026.

Introduction

In recent years, a significant aspect of the Law Commission's work has focused on emerging technologies, including smart legal contracts, electronic trade documents, decentralised autonomous organisations (DAOs) and digital assets such as crypto-tokens. These developments often rely on distributed ledger technology (DLT), which uses a network of computers – potentially located in many different places in the world – to record and store data. DLT is versatile and increasingly prevalent in modern commerce. It can be used, for example, to facilitate international trade, to hold or transfer assets, and as a substitute for traditional payments systems.

Our consideration of such technologies has raised issues of private international law. Private international law is engaged when the parties to a private law dispute are based in different countries, or where the facts and issues giving rise to the claim cross national borders. In these circumstances, questions arise as to in which country's courts the parties should litigate the dispute, which country's private law should be applied to resolve the claim, and whether any resulting judgment can be recognised and enforced in the courts of other countries. Private international law provides rules to answer these questions.

Those who invest in or use emerging technologies require certainty as to how these questions will be answered. Litigation is an expensive and time-consuming process, which can be further complicated by uncertainty as to whether the court chosen by one or both of the parties will accept jurisdiction to hear the claim. Parties who organise their affairs according to the laws of one country may find during litigation that their legitimate expectations that such law will apply are frustrated by a rule of private international law. Finally, the entire litigation process may be of limited practical value if the resulting judgment cannot be recognised and enforced in the courts of other countries.

The Law Commission has been asked to examine and clarify the legal framework in which questions of private international law arising from the use of emerging technologies will be resolved. This project complements our existing work on emerging technologies.

Whilst these questions may arise from the use of a wide range of emerging technologies, we focus on areas of the current law which we think need modification, clarification or modernisation to ensure that the private international law of England and Wales can respond appropriately to the challenges presented by these new technologies, and to the expectations of parties in cross-border litigation.

The consultation paper

This is a summary of our consultation paper, which is structured in the following way.

1. Chapter 1 provides an introduction to the project, explaining the background and our work so far.

2. In Chapter 2, we offer an introduction to the core problem that digitisation and decentralisation pose for private international law. We also set out our overall approach to the problem. This chapter does not contain proposals for reform.

3. In Chapter 3, we explain the bases on which a court might accept international jurisdiction to hear a case with a cross-border element. We introduce the rules of international jurisdiction that apply in England and Wales, which are often referred to as the "gateways for service out of the jurisdiction". We consider the crypto-token cases over which the courts of England and Wales have accepted international jurisdiction and note that most of these so far have comprised applications for interim orders in cases of fraud or hacking.

4. In Chapter 4, we make provisional proposals for a new free-standing information order. This would assist claimants at the initial investigations stage of proceedings where the pseudo-anonymous and decentralised nature of the crypto-token environment present significant obstacles to formulating and issuing a fully pleaded substantive claim. We also set out how we think certain gateways for service out of the jurisdiction are to be interpreted in claims relating to crypto-tokens.

5. In Chapter 5, we explain the various approaches to applicable law, which is also known as the "conflict of laws". We demonstrate the challenges that truly decentralised phenomena present to the existing approach to resolving conflicts of laws, which requires courts to identify "the" applicable law from a range of potential options. We provisionally conclude that an alternative approach is required for cases where the degree of decentralisation is such that a forced application of the existing rules mean that the benefits of the existing approach to the conflict of laws are no longer being delivered.

6. In Chapter 6, we set out our provisional proposals for resolving a conflict of laws in cases where the degree of decentralisation is such that a different approach is required. We illustrate our proposals by reference to (i) contracts allegedly arising in a wholly decentralised finance application and (ii) property disputes in relation to crypto-tokens arising in a wholly decentralised environment.

7. In Chapter 7, we focus on applicable law issues arising from the Electronic Trade Documents Act 2023 (ETDA 2023). In particular, we discuss section 72 of the Bills of Exchange Act 1882 as an area of private international law that we have identified as ripe for reform, independently of the digital and decentralised context we were initially asked to consider. We make proposals for reform to section 72.

The consultation paper focuses on wholly decentralised applications of DLT, which we have identified as posing very particular and novel challenges to the current rules of private international law. The nature of these challenges is such that we provisionally conclude that some law reform will be required if the private international law of England and Wales is to remain up to date and relevant in light of these technologies.

Our FAQ documents

Our focus in the consultation paper on the very particular challenges that decentralisation poses to private international law means we do not address certain issues that, while not necessarily in need of reform, are nevertheless of concern to many stakeholders. It was clear from our discussions with stakeholders and the responses received to the Call for Evidence that there remains uncertainly as to how the current rules of private international law should be interpreted and applied in certain other contexts.

We therefore published three FAQ documents to respond directly to some concerns raised by stakeholders. These documents seek primarily to clarify the existing legal position and do not make proposals for reform.

1. Our first FAQ, published in October 2024, focuses on electronic trade documents (ETDs) in private international law. In it, we broadly address concerns regarding how the Electronic Trade Documents Act 2023 operates in the cross-border legal context and how it interacts with private international law.

2. Our second FAQ, published in January 2025, focuses on digital assets in private international law. In it, we address concerns regarding how certain rules of private international law might apply in the wider legal context, with a particular

emphasis on the tax law and banking regulation contexts. We also look briefly at the private international law issues that may arise in relation to tokenisation.

3. Our third FAQ, published in June 2025, focuses on property issues and permissioned DLT systems in private international law. In it, we discuss in more detail why permissioned applications of DLT are less problematic for private international law, the importance of characterisation (particularly in relation to tokenised financial assets), and the modern pressures on the traditional *lex situs* ("the law of the place") rule for property issues in the conflict of laws.

We encourage readers with an interest in the use of DLT and crypto-tokens other than in the wholly decentralised contexts to refer to the FAQ documents.

Private international law and the core problem

There are three main issues that usually need to be resolved when questions of private international law arise.

1. In which country's court should the parties litigate their dispute? This is the "jurisdiction" question, also known as the "forum" question.

2. Which law or combination of laws should be applied to resolve their dispute? This is the "applicable law" question, also known as the "conflict of laws" or "choice of law" question.

3. Once these two questions are answered, and provided that the litigation proceeds to judgment, there is a final question: how can the judgment be recognised and enforced in the courts of other countries? This is the "recognition and enforcement" question.

When answering these questions, private international law has traditionally placed significant emphasis on geographical location within the territory of a sovereign state. This reflects a general principle of international law, dating to the 17th century, that sovereign authority is limited to geographically defined territories. This is often known as the "territoriality principle" and it continues to be one of the main operating principles of modern private international law.

This emphasis on territoriality is apparent on the face of the traditional rules of private international law. These are typically expressed in territorial terms, such as "the courts of the place where the property object is situated" or "the law of the place where the damage occurred". The result is that persons and objects physically located within the territorial boundaries of a particular country will be subject to the courts and laws of that country; and acts or events occurring within the territorial boundaries of a particular country will be subject to the courts and laws of that country.

In the past, these rules were quite effective in resolving conflicts of jurisdictions and of private laws. In the 17th century social and economic contexts in which the foundational principles of international law were developed, persons, objects, acts, and events typically only could "exist" or "occur" in one place at a time. Application of the traditional rules of private international law pointed to a single place – and therefore a single legal system – to the exclusion of all others. It was therefore easier to resolve conflicts of jurisdiction and of private laws to reach a relatively clear and straightforward answer to the questions with which private international law is concerned to resolve.

In more recent times, the changes precipitated by information technology – and particularly wholly decentralised applications of DLT – pose problems for private international law because they challenge this underlying territorial basis upon which modern systems of

private international law are premised. This is well illustrated by Bitcoin, which remains the starting point for understanding the challenges that DLT potentially poses to private international law.

Bitcoin was invented in 2009 with the express intention of creating an alternative payments system that did not rely on any form of centralised third party (such as a central bank) to ensure that the records of a payments ledger are accurate. Its aim was to decentralise the authority to update the ledger of a payments system across the participants of the payments system itself. In this way, every single computer or device that participates in the Bitcoin system contributes in an equal way to storing, managing, and securing the ledger, and every single computer or device that participates in the system keeps an equally authoritative and definitive copy of the ledger.

In addition, Bitcoin is wholly permissionless. This means that the network itself does not have rules as to who can or cannot join the Bitcoin "payments system" and participate in storing, managing, and securing the ledger. Anyone, anywhere in the world, can join the Bitcoin network simply by downloading the relevant source code. Once the source code is downloaded and installed, the device on which the source code is stored becomes a participant in the DLT network in accordance with the decentralised ideal.

Bitcoin is, thus, a direct challenge to the territoriality principle on which modern systems of private international law is premised and which its rules reflect. The fundamental nature of this challenge is reflected in the term "omniterritoriality", which was coined by Professor Matthias Lehmann to describe phenomena that "cannot be linked to a specific country because they have simultaneous and equally valid connections to jurisdictions all over the world."

It is, however, important to recognise why this is problematic (and what is not problematic). In particular, the fact that crypto-tokens and DLT have no physical form located in a particular place is not problematic for private international law. Although private international law often seems to be concerned with questions of geographical location, it is ultimately concerned with finding some objective feature of the facts and issues of the case that convincingly connects it to one particular country in preference to all the others. Such features are called "connecting factors". In the search for an appropriate connecting factor, private international law takes a wide range of features – physical, factual, and legal – into account.

For example, the traditional rules for property issues refer to the place where the object is situated to determine both the jurisdiction and applicable law questions for cross-border property disputes. Connecting factors, however, need not necessarily reflect the physical features of the object itself (if indeed, the object has any). If a property object does not have any physical features, this simply means that physical features are not useful in the search for a factor that connects a property dispute arising in relation to that object convincingly to the legal system of a single country. The conflict of laws has long developed methods for applying rules that refer to the place where an object is situated without reference to the physical features of the object at all. These may include a focus on where the object can be controlled or where the object can be dealt with effectively in law.

It is therefore important to recognise the true nature of the challenge that wholly decentralised applications of DLT pose for private international law: use of DLT can mean that the act, event, or object does not simply exist "nowhere", but arguably exists "nowhere and everywhere, at the same time." It therefore becomes harder to resolve conflicts of jurisdictions and of applicable laws because there is no connecting factor that convincingly points to a single national court or single national system of private law as the clear "winner" over each of the others.

It is, however, equally important to recognise that not every use of DLT will give rise to these problems of "omniterritoriality" in private international law. Many subsequent developments in the DLT sphere do not subscribe to the Bitcoin ideal of total decentralisation.

This includes the intermediaries that have developed around the Bitcoin and other cryptocurrency networks. Most users of Bitcoin do not actually participate directly in the Bitcoin network. Rather, they use third-party service providers, such as crypto exchanges and wallet providers, who intermediate participation in a DLT network. Crypto intermediaries provide a strong point of centralisation that mitigates considerably the challenges that DLT can pose for private international law.

In addition, subsequent developments in DLT, notably the Ethereum network, allowed for a further range of practical applications of DLT that are not necessarily intended as an alternative and decentralised payments system. In many cases, DLT is used to streamline existing commercial or administrative processes and practices. In the financial markets, for example, DLT is often used specifically as a ledger or record of transactions in relation to other financial assets, such as registered securities. In the context of trade finance and the ETDA 2023, many reliable systems facilitate use of electronic trade documents, such as electronic bills of lading and electronic bills of exchange, through a DLT-based platform.

Importantly, the vast majority of these applications of DLT differ from the Bitcoin system in that they are not intended as a challenge to centralisation and do not typically operate on a permissionless basis. Only those who have been admitted to the system by the system operator may participate in the DLT system. In addition, the system operator typically also reserves to itself the authority to commit updates to the ledger. There is, therefore, a strong degree of centralisation in the system operator or "gatekeeper" to the DLT systems used in commercial practice, which can therefore be used as a connecting factor for the purposes of private international law.

It is therefore difficult to describe or assess the challenges that DLT poses for private international law in any general way because the technology is deployed in such a wide variety of ways and for different purposes, not all of which will be truly decentralised. It is, therefore, particularly important to identify why particular use cases of DLT are more problematic for private international law than others.

International jurisdiction

In private international law, questions of jurisdiction primarily concern the circumstances in which it is appropriate for the courts of one country to accept or decline jurisdiction to adjudicate a private law dispute with cross-border elements.

Two key considerations underpin the rules of international jurisdiction. The first consideration relates to the fairness and practicalities of litigation. This includes practical issues, such as whether the forum is convenient for all parties to the litigation, and more abstract issues, such as access to justice and effective legal remedies. The second consideration reflects the need for national courts to justify the assertion of international jurisdiction over a private law dispute if the dispute also has links to another country.

In practical terms, the question of whether it is appropriate for the courts of one country to assert jurisdiction over a case often means asking whether the court may legitimately assert judicial authority over the defendant by summoning them to court and subjecting them to its processes. This is assessed by reference to the ties between the country in question and either (i) the defendant or (ii) the facts and issues of the case.

The general rule of international jurisdiction focuses on the first measure of assessment; that is, the personal ties between the country and the defendant. The general rule is that the claimant should sue the defendant in the defendant's "home court".

Where the defendant does not have personal ties to the country in which the claimant issues proceedings, something else is required to justify summoning the defendant to the courts of that country. In these circumstances, a clear link between the facts, issues, or nature of the case and that country is usually sufficient to justify a court accepting international jurisdiction over the case. Such link is often referred to as an "adequate link" to the country.

In the law of England and Wales, these principles of international jurisdiction are reflected in the rules for service of proceedings. Under the common law rules of England and Wales, the general principle is that "where there is service, there is jurisdiction". If a defendant can lawfully be served with proceedings, the courts will assert jurisdiction over the defendant. The rules differ, however, depending on whether the claim form is to be served on a defendant within or outside of England and Wales.

The rules for service within the jurisdiction take a highly territorial approach to the personal tie between the country and the defendant, and require only that the defendant is present within England and Wales. For natural persons, such presence might be domicile and habitual residence. In principle, mere physical presence, even for a fleeting period of time, also suffices. For legal persons, carrying out business within England and Wales will count as presence.

The rules of international jurisdiction based on an "adequate link" between the country and the facts and issues of the case are reflected in the rules for service out of the jurisdiction. Claimants wishing to bring proceedings in our courts against a defendant who is not physically within (or, as relevant, does not have a place of business in) the territory of England and Wales, must generally obtain permission from the court to serve the claim form on the defendant outside of the jurisdiction.

Generally, the court will grant permission (and thereby indicate a willingness to assert international jurisdiction over the claim) if the claimant satisfies the court that the following three conditions are met.

1. There is a good arguable case that each pleaded claim falls within one or more of the "jurisdictional gateways" set out in Practice Direction 6B of the Civil Procedure Rules (CPR). The jurisdictional gateways identify the connections between the intended proceedings and the territory of England and Wales that are considered sufficient to justify summoning a foreign defendant to the courts of England and Wales to answer a claim. These are largely expressed in territorial terms.

2. There is a serious issue to be tried on the merits of the claim.

3. In all the circumstances, England and Wales is the proper place or "convenient" forum for the trial of the claim. This limb provides the court with considerable discretion to refuse permission and is the subject of a very detailed line of common law authority.

Given that our core focus in this project is the ways in which digitalisation and decentralisation challenge the territoriality premise of certain rules of private international law, we focus on the jurisdictional gateways.

International jurisdiction and the core problem

The jurisdictional gateways contained in Practice Direction 6B of the CPR identify the links between the dispute and England and Wales that are considered adequate to justify summoning a foreign defendant to our courts

to answer a claim. The gateways have their origins in the mid-19th century.

The rules of international jurisdiction contained in the gateways therefore reflect certain 19th century assumptions regarding litigation, both generally and in the cross-border context with which private international law is concerned. Typical cross-border litigation at that time might have arisen from a contract of carriage by sea of goods from one country to another, an international sale of goods, or the financing associated with either of these transactions. In these circumstances, the parties to litigation will generally be known to one another before proceedings are issued, and will seek from the courts a final determination of their respective rights and obligations.

The inherent assumptions as to cross-border litigation in the gateways mean that the gateways have not been readily able to accommodate more recent cases arising in the digital and decentralised context we are considering in our work.

We have identified at least 22 cases in which the courts of England and Wales have granted permission to serve claims relating to crypto-tokens out of the jurisdiction. These claims have tended to follow a particular fact pattern and have engaged similar procedural issues in the law of England and Wales.

1. The claimant has been (or claims to have been) the victim of a fraud or hack resulting in the loss of crypto-tokens. The pseudo-anonymity of the crypto-token environment means it is near-impossible to obtain any information that might help them identify the perpetrators of the fraud, and where the misappropriated crypto-tokens have gone. They are therefore unable to conduct the normal initial investigations a person might undertake when deciding whether to issue a claim in the court, and, if so, against what defendant and in what jurisdiction.

2. The claimant knows the blockchain address to which the crypto-tokens were transferred, so engages specialist technologists who follow the misappropriated crypto-tokens through the transaction histories recorded on the blockchain from and to specific blockchain addresses. However, even with this information, it remains very difficult to obtain complete information regarding the identity or location of the person who controls that address for the purpose of bringing a claim.

3. Some of these blockchain addresses might, however, be linked to an identifiable person, typically a crypto-token intermediary, such as a crypto-token exchange. These intermediaries may have information about the person on whose behalf they maintain the relevant blockchain address. Even if they do not have such information, if the crypto-tokens remain held at that address, the intermediary may have the practical ability to freeze or even move the crypto-tokens in the wallet. Claimants have sought court orders to compel an identified intermediary or other third party to provide the information necessary to complete the preliminary investigations.

4. In these circumstances, when the defendant – and therefore their home court – is not (yet) identifiable and it is unclear which intermediary is the correct respondent to any court order, claimants have turned to the courts of England and Wales for a variety of reasons. Under the CPR, the only way to obtain certain types of interim relief - notably information orders - against a non-party to the litigation, is to commence, or intend to commence, substantive proceedings in England and Wales, and then apply for an information order in support of that claim.

5. As claimants have no idea who the defendant is, let alone whether they are within England and Wales, they have been

issuing proceedings against persons unknown and applying for permission to serve proceedings out of the jurisdiction. This requires the claimant to show, amongst other things, a good arguable case that the claim falls within one of the gateways. As we have seen above, this entails showing that the facts and issues arising in the case have an adequate (and usually territorial) link to England and Wales.

6. Accordingly, the courts have been asked to make interim decisions granting permission to serve an unknown defendant on the basis of the claimant's argument that the case has an adequate territorial link to England and Wales. Given that the perpetrators of the fraud remain unknown, proceedings have been served by alternative and digital means. These have included service by WhatsApp, Facebook Messenger, and the transferring of a non-fungible token containing links to the relevant court documents to a blockchain address.

7. In reality, what claimants have sought are free-standing information orders, freezing orders and proprietary injunctions aimed at third party intermediaries who are potentially able to assist claimants in their initial investigations as to the identity of the defendant and the best claim to plead against them. At this point claimants do not know whether proceedings will be brought in England and Wales, nor who the defendant is.

These features of the crypto-token litigation before our courts give rise to two distinct challenges for the rules of international jurisdiction in England and Wales: (1) access to justice in the crypto-token and DLT environment, and (2) the interpretation of the gateway requirements in cases with a fully decentralised element. We consider these separately.

Access to justice in the crypto-token environment: proposal for a new free-standing information order

In all of the cases concerning fraud, the real objective of issuing proceedings has been to obtain interim relief against an innocent intermediary. They remain at this stage the only identifiable person "in the real world" who has had any dealings with the misappropriated crypto-tokens. Such intermediaries represent, therefore, the only chance the claimant may have to complete the initial investigations required to formulate and bring a claim.

This raises particular challenges in the law of England and Wales. A large part of the difficulty with these types of crypto-token cases arises from the fact that the courts of England and Wales have traditionally declined to grant interim relief where substantive pleadings against a defendant have not been issued in the courts of England and Wales, or are not contemplated in the courts of England and Wales. These reservations are in line with the principles of international law, which will continue to be valid and relevant for the vast majority of cross-border cases that are litigated in our courts.

However, upon careful consideration, we have provisionally concluded that aspects of these established principles are proving to hinder, rather than promote, access to justice in the digital and decentralised realities of the 21st century that we have been asked to consider in this project. This has, moreover, had distorting effects on the existing framework of international jurisdiction, as cases for which it is not suited have had no choice but to pass through its rules.

In response to these challenges, we provisionally propose the recognition of a new power of the courts to grant free-standing information orders in those digital and decentralised contexts where pseudo-anonymity or difficulty in following and tracing

misappropriated assets present significant obstacles to bringing a claim. We think this could meet the evident need for a means by which claimants can access justice in these novel circumstances, while preserving the existing framework of international jurisdiction for more typical cross-border cases (including those involving crypto-tokens).

We envisage that the proposed new power would operate at the initial investigations stage of proceedings, at which there is not yet any defendant on whom proceedings can be served. Nor would there be any formulated claim that reflects a conventional "adequate link" to this jurisdiction.

The proposed new power would be based on the principles of access to justice, necessity, and preventing injustice in the modern digital and decentralised context. Its purpose would be to provide assistance to a claimant who has clearly been a victim of wrongdoing, but who is unable to complete the initial investigations necessary to bring a claim owing to the pseudo-anonymous and omniterritorial features of the DLT environment. It would enable the courts to grant free-standing information orders to claimants who are able to demonstrate to a relevant threshold that they have been the victim of a wrong but are not yet in a position to say where they should and will litigate a fully-pleaded substantive claim.

In the consultation paper we set out further details on the proposed threshold test and the necessary link to this jurisdiction that claimants would need to demonstrate. We seek views on the provisional proposal for the creation of a new discretionary power to grant free-standing information orders, on the required threshold test and link requirement, and on the impact of such proposals.

The gateways and the territoriality principle

The core challenge that digitisation and decentralisation pose to private international law is rooted in a tension between the territorial premise of private international law and objects and acts that are by their nature aterritorial or "omniterritorial".

In the context of the rules of international jurisdiction in England and Wales, this tension arises from the fact that, in general, the courts of England and Wales take a highly territorial approach to jurisdiction. In the context of service out of the jurisdiction, the gateways that express the "adequate link" between England and Wales and the facts and issues of the case are framed in territorial terms. For example, they may require a claimant to show that an act or event occurred within England and Wales or that a person or property object was located within England and Wales at a relevant time. Where a case contains an aterritorial or omniterritorial element, these rules of international jurisdiction become difficult to apply.

In the crypto-token cases, so far, little (if any) consideration has been given to the underlying principles and policies that determine what counts as an "adequate link". When all that is realistically been asked for is interim relief, it is not difficult to see why the courts have been keen to provide assistance, and have not been overly focused on the real detail of the case or the interpretation of the gateways.

However, the combined impact of the cases appears to constitute a growing body of decisions that are inconsistent with one another as well as the general principles of international jurisdiction. Although we recognise the specific circumstances in which these claims were pleaded, we think it is equally important to recognise that granting access to justice in these cases may be seen as having come either at the expense of principle, or straining consideration of the novel issues of digital assets into more

conventional frameworks that are not entirely suited for these purposes.

We therefore consider two grounds of jurisdiction we have identified as particularly problematic:

1. Gateway 9(a) for claims in tort where damage was suffered in England and Wales; and

2. Gateways 11 and 15(b) for claims relating to property within England and Wales.

Broadly, we think that the proper interpretation of these rules becomes clear if they are considered in light of the policies underpinning the general rules of international jurisdiction, as well as the specific policies underpinning the substantive claims.

Property within the jurisdiction

In the crypto-token cases so far, while what is immediately wanted from the court is some form of interim relief, the claimant's ultimate objective is usually to recover the misappropriated crypto-tokens (or, if this is not possible, their financial equivalent.) The real nature of the claimant's case is therefore generally proprietary.

Gateways 11 and 15(b) provide grounds of international jurisdiction for claims relating to property within England and Wales. They reflect a rule, consistent across most, if not all, systems of private international law today, that cross-border property disputes should be litigated in the courts of the place where the property object is situated at the relevant time. This is an exception to the general rule that the claimant should sue in the home court of the defendant.

The rationale for this can be understood largely by reference to practical considerations relating to an adequate remedy. Where a claimant seeks delivery up of a property object on the basis that it belongs to them and is therefore "theirs", the general effect of the rules is that the claimant must go to the courts of the place where the property object is situated. Alternatively, for property objects that do not have an obvious physical existence, the conventional interpretations of the rules tend to point to the courts of the place where the object can be effectively dealt with.

We think that the general principles that underpin the "localisation" of property in private international law can be applied to crypto-tokens held in truly decentralised DLT systems without undue difficulty. If the basic principle is to look to the place where the object can be effectively dealt with, the cases show that there are many ways in which this place can be identified. These have generally tended to focus on practical control over the crypto-tokens that have given rise to the claim such that they may be effectively dealt with.

Given this, we provisionally conclude that:

1. The most appropriate court to hear a cross-border property claim aimed at recovery of the crypto-token is the court of the place where the crypto-token can most effectively be dealt with at the relevant point in time.

2. The relevant point in time should be the place where the crypto-token can be dealt with effectively at the time when proceedings are issued.

The effect of this provisional conclusion would be that there will be a good arguable case that a property claim falls within gateways 11 and 15(b) where the claim relates to a crypto-token that can be controlled from within England and Wales at the time when proceedings are issued.

We do not think that our provisional conclusion represents any law reform, but is rather an interpretation of the gateways that is consistent with the general principles underpinning the existing rules of international jurisdiction. We do not therefore think that the creation of a new gateway is required to implement our provisional conclusion.

That said, we are aware of suggestions from some stakeholders that a crypto-specific gateway would provide more certainty. Such a gateway could provide a ground of jurisdiction where a crypto-token can be controlled from within England and Wales at the time when proceedings are issued. In our consultation paper, we ask consultees whether they think such a gateway would be desirable.

Damage or detriment suffered in England and Wales

The law of tort in England and Wales encompasses a wide range of actions that may be available to a claimant where they have suffered loss or damage as a result of a breach of non-contractual duty by the defendant. Many of these actions may be suitable for a crypto-token claim.

The traditional rules for tort in private international law use the place of the tort as the primary connecting factor. There are, however, two alternative interpretations of this rule: the place where the tortious act was committed or the place where the damage was sustained.

Gateway 9(a) for claims in tort reflects the latter and provides a ground of international jurisdiction where damage was suffered in England and Wales.

The cases so far have shown that there are several ways in which tortious damage in relation to crypto-tokens could be conceptualised. We focus on: (i) interference with a crypto-token; (ii) being deprived of a crypto-token; and (iii) being deprived of access to a crypto-token having been denied access to an online account or computer system. Each of these will be subject to its own analysis as to "where" the relevant damage was sustained.

We provisionally conclude that:

1. Where it is necessary or desirable to "localise" tortious damage by reference to the victim, the damage is sustained where the victim physically was at the time of damage. Recourse to personal connecting factors, such as habitual residence, domicile, or place of business, are not relevant in this analysis.

2. Where damage consists of being denied access to an online account that, in principle, could previously have been accessed from anywhere in the world and no real reason can be given for saying the damage "occurred" in one location over the others, it would be appropriate to revert back to the general rule of international jurisdiction pointing to the defendant's home court, where this is possible.

The effect of this provisional conclusion would be that there will be a good arguable case that a claim falls within gateways 9(a) and 21(a) where the victim was physically present within England and Wales at the time of the damage. The provisional conclusion also serves as a reminder that the option to sue in the "home court" of the defendant will always be available in cases where the defendant has been identified.

Given that we do not think that our provisional conclusion represents any law reform, but merely an interpretation of the gateways that is consistent with the general principles underpinning the existing rules of international jurisdiction, we do not consider that the creation of a new gateway is required to implement our provisional conclusion.

Applicable law (or the "conflict of laws")

In private international law, the issue of applicable law goes to the question of which country's substantive law will apply to determine whether the claimant's case against the defendant will succeed. This branch of private international law is traditionally known in England and Wales as the "conflict of laws".

There are three distinct approaches to resolving conflicts of law between different private law systems.

The "supranational" approach effectively avoids any conflict of laws issues arising by using a special body of substantive rules that apply wherever there is an international element to a private law dispute. This approach is often formalised at the level of public international law through conventions and treaties. The approach does not, however, require the special substantive rules to be a state-based law or agreed at an international level.

The "unilateralist" or "statutist" approach looks at the relevant legal provision to determine whether the legislature intended that provision to apply on the facts of the relevant case. There is a general presumption that the UK Parliament does not design its statutes to operate beyond the territorial limits of the UK unless there is clear drafting to show an intention that the statute is to apply extraterritoriality.

The "multilateralist" approach uses a self-contained system of rules and principles. Its core premise is that every legal issue that comes before a court "naturally belongs to" or "has its 'objective seat' in" one national legal system or another, identified by applying a set of rules.

It is common for all of these three approaches to the conflict of laws to be present in any one legal system, and this is the case in England and Wales. However, the most prevalent approach in private international law today across jurisdictions is the multilateralist approach. To understand the nature of some of our proposed reforms, it is helpful to appreciate that the multilateralist approach to resolving conflicts of laws is often called a "jurisdiction-selecting" approach. This is because it proceeds on the basis that any conflicts that may exist between the private laws of different legal systems are to be resolved by selecting one (and only one) over all the other possibilities as **the** applicable law.

The conflict of laws and the core problem

We said above that the core challenge that decentralised applications of DLT poses to private international law today is reflected in the term "omniterritoriality". The problem is not that omniterritorial transactions, acts, or objects have no genuine connections to a single territory. Rather, the problem is that they exhibit too many genuine connections to too many territories.

This challenges one of the core premises of the multilateralist approach to the conflict of laws: the notion that every legal issue has a single objective seat in one legal system, which is identified through a connecting factor. It is worth noting this difference with international jurisdiction: whereas a connecting factor need not necessarily point to a single legal system for the purposes of international jurisdiction, the multilateralist approach to the conflict of laws is premised on the proposition that every legal issue before a court "naturally belongs" to a single legal system.

In cases with truly omniterritorial features, application of a multilateralist rule does not narrow down the options to a single legal system that emerges as the "clear winner". This presents a fundamental challenge to the "jurisdiction-selecting" approach of the multilateralist theory, which resolves any conflict between the private laws of different

legal systems by selecting one in preference to the others as **the** applicable law.

We provisionally conclude that forcing the application of the existing rules to cases where omniterritoriality poses a true challenge will mean that the benefits of the multilateralist approach are no longer being delivered. This includes giving effect to the "legitimate and reasonable expectations of the parties to a transaction or occurrence". A different solution is, therefore required for cases where the application of the existing rules would lead to arbitrary outcomes.

We provisionally propose that, in such cases, the courts should focus on the fundamental issue with which the conflict of laws is ultimately concerned: the just disposal of proceedings.

This would not require the courts to identify **the** applicable law, but would enable the just disposal of proceedings by reference to special substantive rules (the supranational approach). Under this provisional proposal:

1. The overall objective of the courts in these cases should be the just disposal of the proceedings with an omniterritorial element.

2. To achieve the just disposal of proceedings, the courts should take into account a wide range of factors. In particular, this would include considering the legitimate expectations of the parties which, in these circumstances, are likely to reflect the basis on which the participants have interacted with the relevant system, such as the terms of the relevant DeFi protocol and any white paper or other public document relating to the DeFi network.

3. The outcomes of the case will remain subject to the public policy and overriding mandatory rules of England and Wales.

We illustrate the need for reform and how our proposals might work in practice by reference to the following two case studies:

1. the existence and validity of contracts (purportedly) concluded by smart contracts in wholly decentralised finance ("DeFi") applications; and

2. property relationships in respect of crypto-tokens held in accordance with the Bitcoin decentralised ideal.

Both of these issues (i) pose particularly novel problems to the existing applicable law rules as truly decentralised applications of DLT; and (ii) have been identified by stakeholders as likely to become prevalent in practice even though they have not yet been brought before the courts in this jurisdiction.

Case study 1: the just disposal of proceedings and the existence of contractual obligations arising (or not) in a DeFi protocol

DeFi is a general term for decentralised and/or disintermediated applications that facilitate the provision of services traditionally associated with finance (such as payments, lending, trading, investments insurance and asset management). DeFi applications also generally involve some level of automation through use of smart contracts.

Smart contracts are computer programs that run automatically, in whole or part, without the need for human intervention. Smart contracts can also be used to define and perform the obligations of a legally binding contract: we call this a "smart legal contract". DeFi systems are likely to use a combination of these to execute transactions, typically involving the transfer of crypto-tokens, amongst participants of the system.

Participants will generally engage with a DeFi application on the basis of a "white paper", being in this context a document prepared by

the people behind a crypto project which summarises the important information about the project. It will usually cover the project's goals, products and features, and will set out what a participant in the system can expect. It is also likely to explain the rules of the "protocol", which is effectively the rules by which the smart contracts will operate.

The degree to which DeFi systems are decentralised can vary. Our proposals focus on wholly decentralised DeFi systems.

What law determines the existence and validity of a contract allegedly concluded as a result of engaging with the DeFi protocol? The law currently resolves this question by reference to the rule for the law governing the substance of a contractual obligation. Ultimately, the relevant conflict of laws rule provides that the issue will be determined by the law of the country with which the (alleged) contract is "most closely connected".

This means that the court therefore must evaluate the connecting factors and determine which of these is the place with which the contract is "most closely connected". Under the existing multilateralist approach, the possible connecting factors could be used to identify the country with which the (alleged) contract is "most closely connected". As we have explained, for wholly decentralised applications, this process is unlikely to be helpful, and might lead to arbitrary results that may frustrate the legitimate and reasonable expectations of the parties.

By contrast, under our proposed supranational approach, the courts of England and Wales would not need to identify **the** law with which the (alleged) contract is most closely connected. If the level of decentralisation on the facts of the case is such that problems of omniterritoriality arise when seeking to apply the existing rules, courts could instead adopt our supranational approach, taking into account a range of factors including the legitimate expectations of the parties.

From this, we suggest that relevant factors could include (noting that the actual factors in any particular case would be submitted by the parties):

- The contents of any "white paper" or other public disclosure by the DeFi protocol provider on which a participant might have reasonably relied when joining the protocol.
- The principles of each of the substantive contract laws submitted by the parties as being relevant, as well as the contract law of the forum.
- The fact that the parties have both (voluntarily) engaged with the DeFi protocol.
- Any prejudice to other participants to the DeFi protocol, and any risk or possibility of a precedent being created for this protocol and/or other multilateral contracts in this protocol, by findings and a ruling in the present case.
- The policies that underpin contract law more broadly; such as freedom of contract, the parties' intentions, understandings, reasonable expectations as commercial actors, the nature of the obligations to be performed, and the party incurring the obligation.

These are factors that a court could consider in the just disposal of a dispute as to contractual obligations said to arise in the wholly decentralised DeFI protocol with, therefore, an omniterritorial element

Case study 2: the just disposal of proceedings and competing property claims to decentralised crypto-tokens

The vast majority of crypto cases that have been before the courts so far have ultimately been proprietary in nature. The general rule for the law applicable to such property disputes is that issues relating to property rights are determined according to the law of the country where the property object is situated (this is known as the *lex situs* rule).

Applying the *lex situs* rule, however, to decentralised crypto-tokens is one of the most difficult problems raised by truly decentralised applications of DLT. If forced to apply the rule, the courts would ultimately be seeking to find some feature of the facts and issues of the case that convincingly connects the dispute to the law of a single country in clear preference each of the other possibilities.

Under the existing multilateralist approach, the possible connecting factors that could be used to identify this country could include the place where the servers are hosted, or where the majority of mining nodes are located, but such options are arbitrary and there is no real reason why one should be preferred over another. In the circumstances, applying the *lex situs* rule ultimately amounts to an exercise in "localising" an object that exists "nowhere and everywhere, at the same time".

Under our proposed supranational approach, the courts of England and Wales would not need to identify ***the*** country where the crypto-token "was" at the relevant time. Rather, they would focus on a just disposal of the proceedings, taking into account a wide range of factors including the legitimate expectations of the parties.

From this, relevant factors could be (noting that the actual factors in any particular case would be submitted by the parties):

- The contents of any white paper or other public document/disclosure in relation to the DLT network.
- The principles of each of the substantive property laws submitted by the parties as being relevant, as well as the property law of the forum.
- The fact that parties may have voluntarily participated in the DLT network.
- Any prejudice to third parties to the DLT network.
- Any prejudice to other participants to the network, and any risk or possibility of a precedent being created for subsequent property claims in this DLT network by a finding on applicable law in the present case.
- The effectiveness of any remedy that might be granted.
- The policy underpinning property law more broadly, such as certainty for third parties, clarity, commercial certainty and convenience, and the sovereign authority to grant property rights.

Electronic Trade Documents and section 72 of the Bills of Exchange Act 1882

Section 72 of the Bills of Exchange Act 1882 (BoEA 1882) is a conflict of laws provision that identifies the law applicable to particular contractual issues arising in connection with bills of exchange and promissory notes. Having been drafted almost 150 years ago, there are many concerns that section 72 has failed to keep up with developments over the past century in the conflicts of law.

It is important to note that these criticisms arise independently of the issues of private international law arising in digital and decentralised contexts that we were initially asked to consider in our project. Nonetheless, we recognise that the passage of the Electronic Trade Documents Act 2023 (ETDA 2023) has precipitated a renewed interest in the BoEA 1882, and section 72 in particular. We consider, therefore, that there is a case for reforming section 72 more generally. This requires us to look at the existing conflict of laws rules themselves, rather than to only look at how they should be applied in the electronic context. Our provisional proposals for reform to section 72 would apply to both electronic and paper bills of exchange.

Beyond section 72, we do not make any general proposals for reform in relation to trade documents or ETDs in private international law. For stakeholders who are interested in how the ETDA 2023 operates in the cross-border legal context generally, we have published an FAQ document to explain this. In the FAQ we explain the limits of what private international law can do in relation to cross-border legal risk and the validity of electronic trade documents across different jurisdictions.

Bills of exchange, cheques, and promissory notes

Bills of exchange, cheques and promissory notes are negotiable instruments embodying a claim to the payment of a sum of money. Negotiable instruments give rise to a very particular configuration of legal rights and obligations among a range of various parties. Our focus – and the focus for private international law – is these legal rights and obligations, rather than the instrument itself.

Although the BoEA 1882 covers bills of exchange, cheques and promissory notes, we focus on the bill of exchange as an understanding of the bill of exchange provides the foundation for both cheques and promissory notes. Bills of exchange are used as a means of facilitating cross-border payments and the provision of credit amongst parties to the instrument.

A bill of exchange has several parties. There is:

1. The drawer, the person who creates the bill of exchange by writing down the order to another party, known as the drawee, to pay a third party a specified sum of money.

2. The drawee, the person to whom the drawer's order to pay is addressed.

3. The acceptor, the person the drawee becomes if the drawee accepts the drawer's order to pay (note that the acceptor has very different legal obligations to a drawee who does not accept the order to pay).

4. The payee, the third party to whom the drawee is ordered to pay the sum of money.

5. The indorser, the person the payee becomes if they specify for a negotiable bill of exchange to be paid to someone else.

6. The first holder, the person who is given the bill by the drawer and is usually the payee who is entitled to present the bill to the drawee.

From this, it is essential to separate the different legal relationships that arise from a bill of exchange. At its core lies a contractual obligation to pay the sum of money specified on the face of the bill by the drawer. Each party to the bill of exchange has different contractual rights and obligations.

1. The acceptor, by accepting the bill, undertakes to pay the person entitled to payment under the terms of the instrument.

2. The drawer, by drawing the bill, undertakes that if the drawee refuses to accept the order written on the bill (resulting in the bill being "dishonoured by non-acceptance") or refuses to pay, having accepted the order written on the bill (resulting in the bill being "dishonoured by non-payment"), then they, the drawer, will pay the sum of money to the person entitled to payment.

3. The indorser, by specifying that the payment should be made to another party, undertakes that if the bill is dishonoured (either by non-acceptance or non-payment), they, the indorser, will pay the sum of money to the person entitled to payment.

Bills of exchange thus contain a number of different contractual rights, obligations and liabilities that arise under distinct contracts. It is helpful to keep in mind the main contracts on a bill of exchange: the drawer's contract, the acceptor's contract, and the contracts of each indorser. Each of these contracts is essentially entered into with the current holder of the instrument, that is, the person entitled to payment.

Section 72 of the Bills of Exchange Act 1882

Each contract on the bill is subject to its own conflicts of law analysis. Each contract may therefore be governed by different applicable laws.

Section 72 provides conflict of laws rules to determine the law applicable to four different contractual issues arising from a bill of exchange. Three of these are of particular importance for our purposes.

- **Section 72(1)** concerns "requisites in form", otherwise known as "formalities" or "formal validity". These are the requirements that parties must comply with in order to give legal effect to their contracts on a bill of exchange. Section 72(1) identifies the law that determines two questions of formal validity in relation to bills of exchange: (i) the formal validity of the bill itself (that is, the formal validity of drawer's contract); and (ii) the formal validity of supervening contracts (that is, the formal validity of the acceptor's and each indorser's contracts).

- **Section 72(2)** identifies the law that determines the interpretation of the drawing, indorsement, acceptance or acceptance of the bill.

- **Section 72(3)** determines the laws that apply to the duties of the holder of the bill.

Is section 72 out of date?

Many stakeholders have criticised section 72 on the basis that it does not reflect the modern approach to the conflict of laws. This criticism is primarily directed at sections 72(1) and (2), both of which use the place where the contract on the bill of exchange is made as the connecting factor that identifies the law governing formal requisites and "interpretation".

Most, if not all, of the criticism is directed at section 72(2). In modern private international law, party autonomy is widely acknowledged to be the default rule for the law applicable to contractual obligations; and modern commercial parties therefore expect to be able to select the law that will govern their contractual obligations. Section 72(2), on the face of the rule, does not allow for this.

There is less criticism of section 72(1). This is not surprising, given that it reflects a well-established conflict of laws rule that a contract is formally valid if the contracting parties have complied with the formalities prescribed by the law of the place of contracting. At the policy level, there is no criticism that section 72(1) is out of date, at least in relation to the broader proposition that parties must comply with the formalities prescribed by the law if they wish to give legal effect to their intentions.

We recognise, however, that the application of the principle to contractual matters arising in the modern digital and decentralised environments is problematic. In the modern commercial environment, the place where a contract is "made" (however that may be defined) is often a matter of pure coincidence. Individuals might sign a contract while on holiday or travelling on a plane. In these cases, the place where the contract is "made" has only a very weak and coincidental connection to the courts and law of that place.

The criticisms of section 72(3) have been milder, but there is considerable uncertainty regarding its interpretation. Although it is drafted as a single statutory provision, it actually contains four separate conflict of laws rules. This in itself can make it unclear for users of the law. Section 72(3) is also drafted in wholly territorial terms, which often point to places that are fortuitous or have only tenuous connections to the relevant contracts and parties. It also raises particular difficulties in the electronic environment.

We summarise our proposals for each sub-section below. Given the nature of our proposals, it is convenient to begin with section 72(2), which provides the context for our proposals for section 72(1). We then consider section 72(3).

Section 72(2)

Section 72(2) does not expressly provide for party autonomy, nor expressly purport to cover the law governing the substance of contractual obligations. It provides that:

> the interpretation of the drawing, indorsement, acceptance, or acceptance supra protest of a bill, is determined by **the law of the place where such contract is made**.

There has been significant disagreement as to what "interpretation" in section 72(2) actually covers. The two mains views are:

- the "narrow" view, which limits section 72(2) to the meaning and construction of the words used in the contract in question. On this view, substantive matters, such as the obligations arising under each contract, are excluded from the scope of the provision; and

- the "wide" view, which reads "interpretation" more broadly to mean that section 72(2) covers, not only the construction and interpretation of the words used in the contract, but also substantive matters or "legal effects" of the words. On this view, the substantive obligations arising from each of the contracts would fall within the scope of the provision.

We provisionally propose that section 72(2) should be amended to make it clearer that it applies to all the issues that fall under the "wide" view of what section 72(2) currently encompasses. This means that subsection 72(2) would apply to also identify the law applicable to the rights and obligations of the parties. It would also include matters of material validity, such as whether a contractual

obligation is void for substantive reasons like illegality.

We further provisionally propose that the current section 72(2) should be replaced with a multi-limb structure that would use party autonomy as the default rule. We then propose rules that would apply where each relevant party has not made a valid choice, distinguishing between the acceptor and the parties incurring secondary liability on the bill. Under our proposals, the basic structure would be:

1. The default rule for the law applicable to each contract on a bill is the law chosen by the party incurring the relevant obligation.

2. In the absence of a valid choice by:

    a. the acceptor, the applicable law is the law of the place where the instrument is payable, as interpreted consistently with the place of "proper presentment" under section 45 of the 1882 Act.

    b. the drawer, indorsees, and other secondary parties, the applicable law is the law of the relevant secondary party's habitual residence.

We provisionally propose that an "escape clause" or "catch all provision" would not be necessary nor desirable.

Section 72(1)

It has been a contractual rule of universal recognition since the Middle Ages that the law applicable to the formal validity of a contract is the place where the contract was made. This rule continues to be recognised in both the Rome I Regulation and the common law rules of England and Wales. It also underpins section 72(1), the material part of which provides:

> The validity of a bill as regards requisites in form is determined by the law of the place of issue […].

Under the definitions in section 2, "issue" means the first delivery of a bill or note, complete in form to a person who takes it as a holder and "delivery" means transfer of possession, actual or constructive, from one person to another.

In the commercial context, it has long been recognised that the place of contracting is often uncertain and fortuitous. These difficulties are further compounded in the digital environment, where contracting parties are frequently based in different countries, and documents are received, signed, and delivered in electronic form.

We provisionally propose that the law governing the formal validity of each contract on a bill of exchange should be the law that governs the substance of the relevant contract. We consider that, in the modern commercial context, the place where a contract is made is in most cases too fortuitous to provide any substantial connection to the legal system of that place. The law governing the substance of the relevant contract is used in many modern applicable law rules for the law governing the formal validity of a contract.

We provisionally propose adopting a "menu" structure comparable to Article 11 of the Rome I Regulation.

Our proposed menu of options includes:

1. The law governing the substance of the relevant contract.

2. The law governing the substance of the drawer's contract.

3. The law governing the substance of the acceptor's contract.

4. The law of the place where the instrument is payable.

Each contract on a bill of exchange would only need to comply with the formal requirements applicable to one of these options in order for it to be upheld as formally valid.

More broadly, including each of the main contracts arising on a bill of exchange in our menu would give effect to a "pro formal validity" approach. This recognises that all the contracts on a bill of exchange together form a commercial unit, while also recognising that each of these contracts are independent in law. This avoids the use of complex validating provisions to mitigate the difficulties arising from formal validity being referred to different laws.

Section 72(3)

Section 72(3) provides for the duties of the holder:

> The duties of the holder with respect to presentment for acceptance or payment and the necessity for or sufficiency of a protest or notice of dishonour, or otherwise, are determined by the law of the place where the act is done or the bill is dishonoured.

There is considerable uncertainty surrounding the interpretation of this rule. Specifically, although it is drafted as a single statutory provision, it actually contains four separate conflict of laws rules. This in itself can make it unclear for users of the law.

Section 72(3) also makes use of wholly territorial connecting factors, which often point to places that are fortuitous or have only tenuous connections to the relevant contracts and parties. These, moreover, become difficult to apply in the electronic environment.

Although "presentment" is not defined in the 1882 Act, we have been told that presentment in the common law authorities involves the physical presentation of the bill of exchange to the acceptor with a formal demand for payment, which is not possible in the case of electronic documents. As such, a bill will be dishonoured by non-payment at the place where it has been duly presented for payment. This is, however, difficult to identify in the electronic environment.

We provisionally propose reform to section 72(3) in two core ways. First, our provisional reforms would clearly distinguish the four sub-rules implicit in the current rule. Second, and in line with our broader approach of focussing on the policy underpinning rules of private international law, rather than geographical location, we also provisionally propose that the drafting should avoid using connecting factors that refer – ultimately – to the location of the bill itself at the relevant times.

Our provisional proposals for section 72(3) are therefore as follows:

1. The duties of the holder with respect to presentment for acceptance should be governed by the law of the place where the drawee has their habitual residence.

2. The necessity for or sufficiency of a protest or notice upon dishonour by non-acceptance should be governed by the law of the place where the drawee has their habitual residence.

3. The duties of the holder with respect to presentment for payment should be governed by the law of the place where the bill is payable.

4. The necessity for or sufficiency of a protest or notice upon dishonour by non-payment should be governed by the law of the place where the bill is payable.