

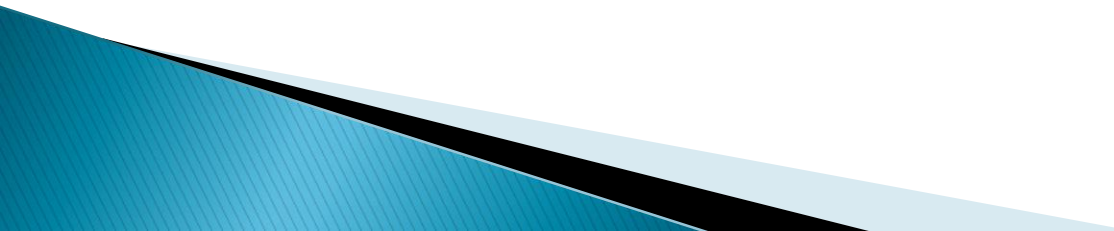


Demystifying Jersey for asset tracers

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Jersey

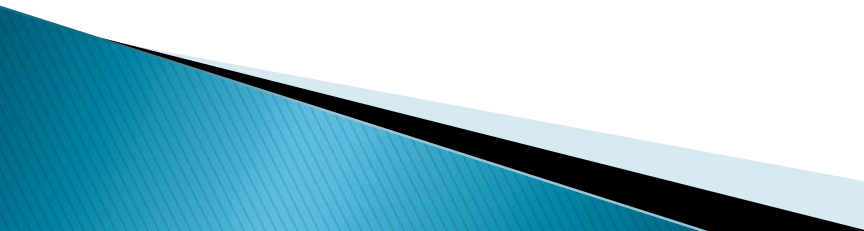
- ▶ Crown dependency
 - ▶ Not part of UK or EU
 - ▶ Separate jurisdiction: own parliament and courts
 - ▶ Origins of Jersey law
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Sources of information and pressure (other than through court process)

- ▶ Confidentiality (Tournier)
- ▶ Public Registry
- ▶ Register of Companies (Companies (Jersey) Law 1991) (companies, not partnerships, trusts or foundations)
- ▶ Register of Security Interests (Security Interests (Jersey) Law 2012)
- ▶ AG Notices:
 - Investigation of Fraud (Jersey) Law 1991
 - Criminal Justice (International Co-operation) (Jersey) Law 2001
- ▶ Tax Notices (TIEAs under the Taxation (Implementation) (Jersey) Law 2004)
- ▶ AML obligations and powers
- ▶ Jersey Financial Services Commission
- ▶ International cooperation

Sources of information and pressure: court process

▶ Jersey Courts

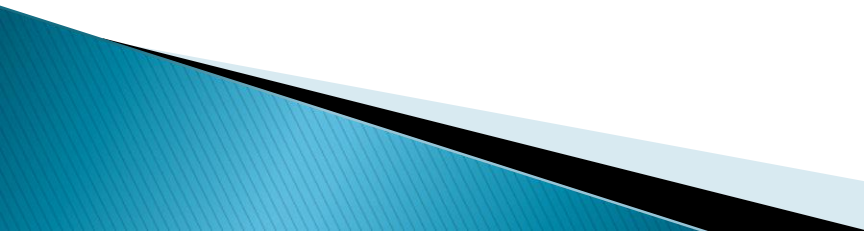
- Structure
 - Rules and procedure
 - Jurisdiction (Solvalub Ltd v Match Investments Ltd 1996 JLR 361)
 - Forum (Spiliada v Cansulex)
 - Costs and funding (not CFAs)
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Sources of information and pressure: court process

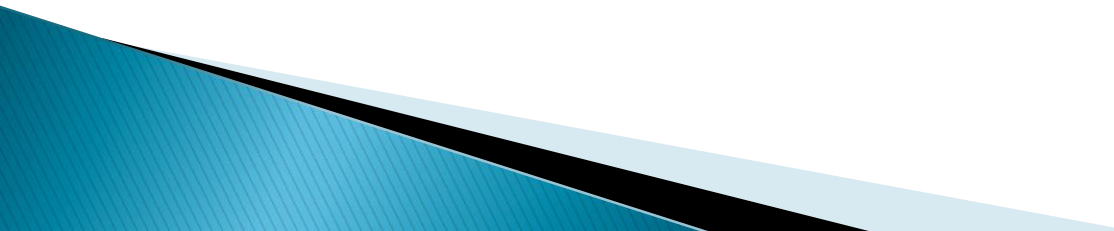
▶ Information-gathering

- Pre-action disclosure and Norwich Pharmacal (Macdoel – Brazil 2007 JLR 201)
- Search and seize: Anton Piller Orders
- Mareva and disclosure orders (American Cyanamid Co v Ethicon Ltd 1975 AC 396)
- Discovery (Peruvian Guano test)
- Letters rogatory (Service of Process and Taking of Evidence (Jersey) Law 1960)
- Insolvency: foreign trustees in bankruptcy

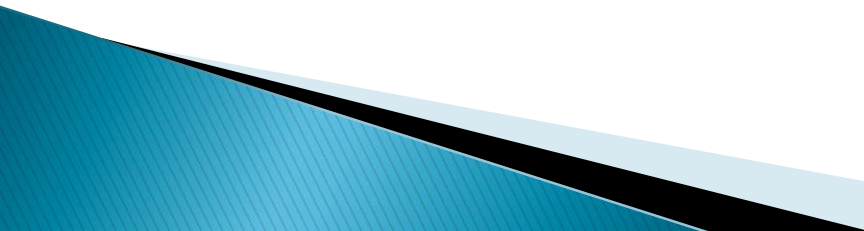
Causes of action

- ▶ Contract
 - ▶ Fraud (dol)
 - ▶ Knowing receipt
 - ▶ Dishonest assistance (Nolan v Minerva Trust Co Ltd 2014 (2) JLR 117)
 - ▶ Restitution on basis of unjust enrichment
(In re Esteem Settlement 2002 JLR 53)
 - ▶ Insolvency: transactions at an undervalue, preferences, wrongful/fraudulent trading
 - ▶ Pauline action (In re Esteem Settlement 2002 JLR 53)
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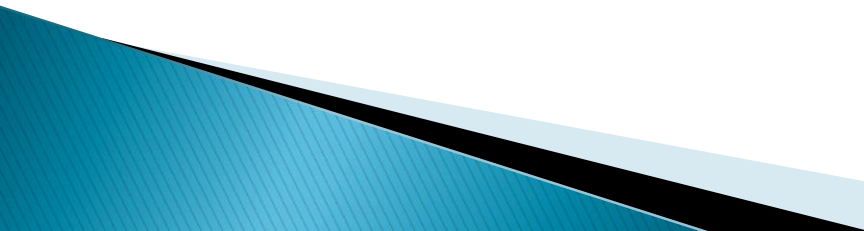
Remedies

- ▶ Constructive trusts (In re Esteem)
 - Tracing (Brazil v Durant Intl Corpn (Jersey) Ltd 2015 UKPC 35)
 - Inferences (Lloyds v Fragoso 2013 JRC 211)
 - ▶ Damages
 - ▶ Giving an account
 - ▶ Transfer of assets
 - ▶ Specific performance
 - ▶ Injunctions
 - ▶ Declarations
- 

Limitation

- ▶ Contract and generally for the recovery of movables: 10 yrs
 - ▶ Tort, breach of trust and dishonest assistance: 3 yrs
 - ▶ Recovery of trust property from a trustee: no limitation period
 - ▶ N.b. empêchement de fait/droit
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Enforcement

- ▶ Registration: Judgments (Reciprocal Enforcement) (Jersey) Law 1960
 - ▶ Post-judgment freezing and disclosure relief (Apricus Investments v CIS Emerging Growth 2003 JLR N40)
 - ▶ Realise assets, arrest on wages, secure debt on immovables
 - ▶ Inherent jurisdiction (Brunei Investment Agency v Fidelis 2008 JLR 337 n.b. Dicey & Morris)
 - ▶ But Art. 9 Trusts (Jersey) Law 1984
 - ▶ Civil Asset Recovery (International Co-operation) (Jersey) Law 2007
 - ▶ Arbitration awards: Arbitration (Jersey) Law 1998
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