

UNITED KINGDOM

Introduction

1. There are two main sources of law which are relevant in examining UK law and practice on State immunity: legislation and the common law¹. The common law consists of the uncodified principles of the legal system, which are interpreted and developed through the decisions of the courts. Customary international law can be a source of the common law, and the rules of customary international law in relation to State immunity form part of the common law.

2. The rule of *stare decisis*, or binding precedent, is strictly applied in relation to both the common law and to the interpretation of statutes. Thus a decision of a court on a point of law (or precedent) will generally be binding in future cases, unless such future cases can be distinguished in some way or a hierarchically superior court overrules the precedent.

3. The hierarchy of the English civil courts is as follows:

- The Court of first instance in substantial cases is the *High Court* – the High Court is divided into three Divisions:
 - a) The *Queen's Bench Division* (which deals mainly with the law of civil obligations including contract and tort);
 - b) The *Chancery Division* (which deals essentially with property matters, including issues of company law); and
 - c) The *Family Division* (which deals with matters of family law);
- Appeals from the High Court are generally made to the *Court of Appeal*;
- A further appeal may be made to the highest court, the *Supreme Court*. The Supreme Court replaced the *Appellate Committee of the House of Lords* as the highest court in the United Kingdom in October 2009.

4. There are certain specialist tribunals in the English legal system, the most relevant for present purposes being in the field of employment law. Complaints in most employment cases will be made to a specialist *Employment Tribunal* at first instance. A decision of an Employment Tribunal may be appealed to the *Employment Appeal Tribunal (EAT)*. The EAT is made up of a panel of two lay persons presided over by a High Court Judge. A further appeal from the EAT may be permitted to the Court of Appeal.

5. Legislation in the UK takes two forms:

¹ This note focuses on the law of England and Wales. The law in Scotland and Northern Ireland is similar.

- *Primary legislation* which consists of Acts of Parliament, which pass through full processes of debate and scrutiny in Parliament; and
- *Secondary legislation* consisting of statutory instruments, made by virtue of an enabling power in primary legislation, and passed in Parliament under summary procedures. Secondary legislation is thus most often used to provide detailed regulations within the framework of a piece of primary legislation.

6. By virtue of the constitutional principle of the supremacy of Parliament, in case of conflict between a rule of common law and an Act of Parliament, the latter will be applied.

7. Treaties do not automatically form part of domestic law upon ratification, but rather require to be incorporated by legislation.

The State Immunity Act 1978

8. The State Immunity Act 1978 is based upon the European Convention on State Immunity, though it does not replicate the terms of the Convention exactly. The Act is also intended to be compatible with the 1926 Brussels Convention on the Immunity of State-owned Ships. The Act came into force on 22 November 1978, and establishes a firm foundation for the restrictive doctrine of State immunity in UK law, and consolidates the incremental steps in this direction that had been made in the common law.

9. The Act sets out a general rule of immunity for foreign States in section 1; in sections 2-11 it sets out a number of specific exceptions to this immunity in respect of various private law activities. Sections 12 and 13 deal with procedural privileges, including immunities from execution. Section 14 deals with the definition of the State and the degree to which separate entities of the State are entitled to immunity. Section 15 allows for some fine-tuning of immunities in the case of particular States. Thus it enables secondary legislation to be made, either to reduce the level of immunities granted to a State, where that State would grant a reduced level of immunity to the United Kingdom (on the principle of reciprocity), or to extend immunities to particular States where this is required under a treaty. Section 16 excludes certain matters from the scope of the Act (see below), and section 17 deals with interpretation of particular terms in this part of the Act.

10. The remaining parts of the Act deal with slightly different questions. Sections 18 and 19 deal with recognition of judgments against the UK in accordance with the European Convention scheme. Section 20 deals with the immunities of foreign Heads of State (and provides that they enjoy a similar level of immunities to the head of a diplomatic mission). Finally section 21 deals with the provision of evidence by means of a conclusive certificate of the Executive on certain questions (see below).

11. There has been limited secondary legislation made by virtue of the enabling powers contained in the Act. Statutory Instruments have been passed to extend the provisions of the

Act to the UK's Overseas Territories, and to grant immunity to the Austrian Provinces and the German Lander.

12. There is a growing body of caselaw under the State Immunity Act. A sample of this caselaw is included in the List of Materials as indicative of the main trends and areas of controversy. Particular themes are:

- The definition of a commercial transaction;
- The characterisation of acts of sovereign authority;
- The relationship of immunity from jurisdiction and immunity from execution;
- The extent of immunity from execution;
- The extent of procedural privileges;
- The scope of jurisdictional immunity in employment cases;
- The relationship of diplomatic immunities and State immunity;
- The persons entitled to claim State immunity; and
- The question of immunity in relation to breaches of international law.

13. The landmark decision of the House of Lords in the Pinochet case ([2000] 1 A.C. 147) has not been included for present purposes, given that its focus was on the immunities of a former Head of State in relation to criminal proceedings.

The common law

14. Until the entry into force of the State Immunity Act the common law was the sole source of law on State immunity applied by the English courts. Even now, since the State Immunity Act excludes certain matters from its scope (section 16), those residual matters continue to be governed by the common law. These include the matters of direct taxation, the activities of visiting forces, and criminal proceedings.

15. Traditionally the courts adhered strictly to absolute immunity. However the mid-1970s saw the courts move towards restrictive immunity, first in relation to actions *in rem* against State-owned trading ships and subsequently in relation to actions *in personam* in respect of commercial transactions of foreign States.

16. The major turning point came in 1977, in the case of *Trendtex Trading Corporation v. Central Bank of Nigeria*, when the Court of Appeal found that the common law should reflect the restrictive doctrine of immunity that had emerged in customary international law. That finding was subsequently approved by the House of Lords in the case of *10 Congreso del Partido*, in which it was found that certainly as far back as 1975 the restrictive rule of immunity was part of customary international law. There is little doubt that today the common law adopts the restrictive doctrine.

17. Recent cases before the English courts have involved the immunity granted to heads of state, and the immunities of a foreign State in respect of acts of its visiting forces in the UK (matters excluded from the scope of the State Immunity Act by virtue of section 16(2)). In the former category, the courts have made a distinction between the period in which a head of state holds office and enjoys immunity *ratione personae* extending to all matters whether official or private, and the period after he has ceased to hold office (whether during

his lifetime or on death), when he enjoys immunity *ratione materiae* solely for acts which constituted the performance of his official functions during his period of office. In the latter category, the courts have applied the distinction between acts *iure imperii* and acts *iure gestionis*. In doing so they have accepted that in principle the characterisation of an act ought to be made by reference to its nature, rather than its purpose. However the courts have also stressed the importance of considering the act in its context.

LIST OF MATERIALS IN RESPECT OF THE UNITED KINGDOM

1. Legislation

The key legislative acts in respect of State immunity are:

A. *Primary Legislation*

- State Immunity Act 1978 (original text as passed is available [here](#));
- Diplomatic Privileges Act 1964 (original text as passed is available [here](#)).

B. *Secondary Legislation*

- The State Immunity (Federal States) Order 1979 (S.I. 1979/457) – by which the Austrian Provinces enjoy immunity (original text as passed is available [here](#));
- The State Immunity (Federal States) Order 1993 (S.I. 1993/2809) – by which the German Lander enjoy immunity (original text as passed is available [here](#)).

2. Executive Acts or Statements

The Executive plays a limited role in decisions on State immunity, this being a matter for the Courts. However upon request by the court or by both parties to a dispute, the Executive will provide a certificate on certain matters which are exclusively within its own knowledge or appreciation. Thus under section 21 of the State Immunity Act, provision is made that a certificate of the Secretary of State for Foreign and Commonwealth Affairs shall be conclusive on the following questions:

- a) Whether any country is a State for the purposes of the Act, or similarly whether a territory is a constituent territory of a federal State, or whether a person or persons is to be regarded as the Head of the government of a State;
- b) Whether a State is a party to the 1926 Brussels Convention;
- c) Whether a State is a party to the European Convention on State Immunity;
- d) Whether a document has been served or received in accordance with section 12 of the Act (which provides for the service of the document instituting proceedings and / or any judgment via the Foreign and Commonwealth Office on the Ministry of Foreign Affairs of the respondent State).

Such certificates are made on a case by case basis. No examples are attached.

3. Decisions of National Courts and Tribunals

Details of the following cases are included below:

A. Decisions under the *State Immunity Act*

- GB/1. Intpro properties (UK) Ltd v Sauvel, CA, 29.3.83, [1983] 2 WLR 908, 64 ILR 384
- GB/2. Alcom Ltd v. Republic of Colombia, HL, 12.4.84, [1984] 2 All ER 6
- GB/3. Maclaine Watson and co. Ltd v. Department of Trade and Industry and others, CA, 27.4.88, [1988] 3 WLR 1033, 80 ILR 49
- GB/4. A. Co. Ltd v. Republic of X, QBD (Commercial Court), 21.12.89, 87 ILR 412
- GB/5. Re Rafidain Bank, Ch D (Companies Court), 9.7.91, 101 ILR 332
- GB/6. Ahmed v. Government of the Kingdom of Saudi Arabia, CA, 6.7.95, [1996] 2 All ER 248
- GB/7. Kuwait Airways Corp. v. Iraqi Airways Corp., HL, 24.7.95, [1995] 1 WLR 1147, 103 ILR 340
- GB/8. Al-Adsani v. Government of Kuwait, CA, 12.3.96, 107 ILR 536
- GB/9. Propend Finance pty and others v. Sing and others, CA, 17.4.97, 111 ILR 611
- GB/10. An International Bank plc v. Republic of Zambia, QBD (Commercial Court), 23.5.97, 118 ILR 602
- GB/11. Banca Carige SpA Cassa di Risparmio di Genova e Imperia v. Banco Nacional de Cuba, Ch.D, 11.4.01, [2001] 3 All ER 923
- GB/12. AIG Capital Partners Inc v. Kazakhstan, QBD, 20.10.05, [2005] EWHC 2239 (Comm); [2006] 1 W.L.R. 1420 (text of judgment available [here](#))
- GB/13. Jones v. Saudi Arabia, HL, 14.06.06, [2006] UKHL 26; [2007] 1 A.C. 270 (text of judgment available [here](#))
- GB/14. Aziz v. Aziz, CA, 11.07.07, [2007] EWCA Civ 712; [2008] 2 All E.R. 501 (text of judgment available [here](#))
- GB/15. KOO Golden East Mongolia v. Bank of Nova Scotia, CA, 19.12.07, [2007] EWCA Civ 1443; [2008] Q.B. 717 (text of judgment available [here](#))
- GB/16. NML Capital Ltd v. Argentina, UKSC, 06.07.11, [2011] UKSC 31; [2011] 2 A.C. 495 (text of judgment available [here](#))
- GB/17. SerVaas Inc v. Rafidain Bank, UKSC, 17.08.12, [2012] UKSC 40; [2013] 1 A.C. 595, (text of judgment available [here](#))

- GB/18. Benkharbouche v. Sudan, EAT, 04.10.13, [2014] 1 C.M.L.R 40; [2014] I.C.R. 169 (text of judgment available [here](#))
- GB/19. London Steam Ship Owners Mutual Insurance Association Ltd v. Spain (The Prestige), QBD, 22.10.13, [2013] EWHC 3188 (Comm); [2014] 1 Lloyd's Rep 309 (text of judgment available [here](#))
- GB/20. Taurus Petroleum Ltd v. State Oil Marketing Company of the Ministry of Oil, Iraq, QBD, 18.11.13[2013] EWHC 3494 (Comm); [2014] 1 Lloyd's Rep. 432 (text of judgment available [here](#))

B. Decisions at *common law*

- GB/21. Trendtex Ltd v. Central Bank of Nigeria, CA, 13.01.77. [1977] 2WLR 979. 64 ILR 111
- GB/22. Sengupta v. Republic of India, EAT, 17.11.82, 64 ILR 352
- GB/23. 1o Congreso del Partido, HL, 16.7.81, [1981] 3 WLR 328
- GB/24. R. v. Inland Revenue Commissioners, ex parte Camacq Corp and another, CA, 3.8.89, [1990] 1 WLR 191
- GB/25. Littrell v. USA (No.2), CA, 12.11.93, [1995] 1 WLR 82
- GB/26. Holland v. Lampen-Wolfe, HL, 20.07.00, [2000] 3 All ER 833
- GB/27. Harb v. Aziz, Ch.D, 09.06.14, [2014] EWHC 1807 (Ch); [2014] H.R.L.R. 16 (text of judgment available [here](#))

UK Treaty Practice

The UK is party to the European Convention on State Immunity; the declarations made at the time of ratification and subsequently are available [here](#). The UK is also a party to the 1926 Brussels Convention for the Unification of certain Rules concerning the Immunity of State-owned Ships; the UK reservation on ratification is available here [here](#).

(a)	Registration no.	GB/1
(b)	Date	29 March 1983
(c)	Authority	Court of Appeal
(d)	Parties	Intro Properties (UK) Ltd v. Sauvel and others
(e)	Points of Law	<ol style="list-style-type: none"> 1) A State is not immune from the jurisdiction of the UK courts in proceedings relating to the possession or use of immovable property (section 6(1) State Immunity Act), unless the property in question is used for the purposes of a diplomatic mission (section 16(1)(b) State Immunity Act); 2) An apartment leased by a foreign State for use as the private residence of one of its diplomatic agents in the UK (other than the head of the diplomatic mission), is not "property used for the purposes of a diplomatic mission". A foreign State is therefore not immune in proceedings relating to the lease of such property.
(f)	Classification	0.b.1, 1.b
(g)	Source	[1983] 2 WLR 908; 64 ILR 384
(h)	Additional Information	

(a)	Registration no.	GB/2
(b)	Date	12 April 1984
(c)	Authority	House of Lords
(d)	Parties	Alcom Ltd v. Republic of Colombia
(e)	Points of Law	<ol style="list-style-type: none"> 1) Under customary international law the bank account of a diplomatic mission used for defraying the expenses of running the mission, enjoys immunity from execution in the receiving State; 2) The State Immunity Act should be construed so far as possible to accord with the requirements of customary international law; 3) The bank account of a foreign embassy in the UK used for the day to day running of that embassy is used both for the supply of goods and services and for sovereign purposes. Since the account is indivisible, it is not property "in use or intended for use for commercial purposes" within section 13(4) of the State Immunity Act, and is therefore immune from measures of execution; 4) If an embassy bank account is earmarked by the foreign State solely for commercial transactions, it will not be immune from measures of execution. However it is for the judgment creditor to prove this, and a certificate from the head of the diplomatic mission that the account is not in use or intended for use for

		commercial purposes is sufficient evidence of that fact, unless the contrary is proved.
(f)	Classification	0.b.1, 0.b.3, 2.b
(g)	Source	[1984] 2 All ER 6
(h)	Additional Information	

(a)	Registration no.	GB/3
(b)	Date	27 April 1988
(c)	Authority	Court of Appeal
(d)	Parties	Maclaine Watson and Co Ltd v. Department of Trade and Industry
(e)	Points of Law	1) The issue of immunity must be determined as a preliminary issue, before the substantive action can proceed; 2) The contracts of the International Tin Council in question were commercial transactions; if the plaintiffs had been able to establish either a primary or a secondary liability for the obligations of the ITC on the part of the member States they would not enjoy immunity; 3) The EEC was not entitled to State immunity.
(f)	Classification	0.b, 0.b.1, 0.b.3, 1.b
(g)	Source	
(h)	Additional Information	NB. Extracts only of the case are attached, since the issues of State immunity were secondary to those of the status and nature of the International Tin Council, and the question of the possible liability of the member States for its debts. The decision of the Court of Appeal was appealed to the House of Lords which gave its judgment on 26 October 1989 ([1989] 3 All ER 523). However the judgment of the House of Lords does not deal explicitly with the question of State immunity, but rather the questions of status of the ITC and the liability of its member States for its debts.

(a)	Registration no.	GB/4
(b)	Date	21 December 1989
(c)	Authority	High Court, Queen s Bench Division
(d)	Parties	A Co. Ltd v. Republic of X
(e)	Points of Law	A contractual waiver of State immunity from jurisdiction and enforcement, will not be sufficient to waive the inviolability and immunity of either the premises and/or property of a diplomatic mission, or the private residence and/or property of a diplomatic agent, enjoyed under, respectively, Articles 22 and 30 of the Vienna Convention on Diplomatic Relations.
(f)	Classification	0.b.1, 2.b
(g)	Source	[1990] 2 Lloyds Rep.520, 87 ILR 412
(h)	Additional Information	

(a)	Registration no.	GB/5
(b)	Date	9 July 1991
(c)	Authority	High Court, Chancery Division
(d)	Parties	Re Rafidain Bank
(e)	Points of Law	In the context of the liquidation of a commercial company owned by a foreign State, monies owed by the company to that foreign State are not protected by State immunity and cannot therefore be paid out by the liquidators in preference to other creditors (section 6(3) State Immunity Act).
(f)	Classification	0.b.1, 1.c
(g)	Source	101 ILR 332
(h)	Additional Information	

(a)	Registration no.	GB/6
(b)	Date	6 July 1995
(c)	Authority	Court of Appeal
(d)	Parties	Ahmed v. Government of the Kingdom of Saudi Arabia
(e)	Points of Law	<ol style="list-style-type: none"> 1) A foreign State enjoys immunity from the UK courts in respect of proceedings arising out of employment contracts of all members of its diplomatic mission, including locally engaged members of the technical and administrative staff; 2) The requirement that a waiver of immunity must be by way of prior written agreement, must be an express and complete agreement to submit to the jurisdiction, made by the head of the diplomatic mission or some other person endowed with the authority of the sending State.
(f)	Classification	0.b.3, 1.b
(g)	Source	[1996] 2 All ER 248
(h)	Additional Information	

(a)	Registration no.	GB/7
(b)	Date	24 July 1995
(c)	Authority	House of Lords
(d)	Parties	Kuwait Airways Corp. v. Iraqi Airways Co.
(e)	Points of Law	<ol style="list-style-type: none"> 1) Service of proceedings on a foreign State must be done through the Foreign and Commonwealth Office on the Ministry of Foreign Affairs of that State; 2) The seizure and removal of property by a State-owned entity of a foreign State on the orders of that foreign State, in the context of an armed invasion of another State, was an act in the exercise of sovereign authority 3) The subsequent retention and use of that property by the State-owned entity, following a

		formal legislative act vesting the property in the entity, were not acts in the exercise of sovereign authority.
(f)	Classification	0.a, 0.b, 1,1.b
(g)	Source	[1995] 1 WLR 1147, 103 ILR 340
(h)	Additional Information	

(a)	Registration no.	GB/8
(b)	Date	12 March 1996
(c)	Authority	Court of Appeal
(d)	Parties	Al-Adsani v. Government of Kuwait
(e)	Points of Law	A foreign State enjoys immunity in the UK in relation to proceedings in respect of torture committed outside the UK. The exception to immunity in respect of acts occasioning personal injury or death, applies only when they are caused by acts or omissions in the UK (section 5, State Immunity Act). There is no general exception to immunity in respect of acts of torture or other violations of international law.
(f)	Classification	0.a, 1.b
(g)	Source	107 ILR 536
(h)	Additional Information	

(a)	Registration no.	GB/9
(b)	Date	17 April 1997
(c)	Authority	Court of Appeal
(d)	Parties	Propend Finance Pty Ltd v. Sing and others
(e)	Points of Law	An official of a foreign State enjoys immunity in respect of his official acts on behalf of that State, to the extent that that State would itself enjoy immunity in respect of those acts if the proceedings had been brought against it.
(f)	Classification	0.a, 1.b
(g)	Source	111 ILR 611
(h)	Additional Information	

(a)	Registration no.	GB/10
(b)	Date	23 May 1997
(c)	Authority	High Court, Queen's Bench Division (Commercial Court)
(d)	Parties	An International Bank v. Republic of Zambia
(e)	Points of Law	Submission to jurisdiction and waiver of the privileges of a State in relation to service of proceedings, do not imply a waiver of immunities/procedural privileges in relation to service of a default judgment against a foreign State and execution.
(f)	Classification	0.b, 0.b.1, 0.b.3, 1.b, 2
(g)	Source	118 ILR 602
(h)	Additional Information	

(a)	Registration no.	GB/11
(b)	Date	11 April 2001
(c)	Authority	High Court, Chancery Division (Companies Court)
(d)	Parties	Banca Carige SpA Cassa Di Risparmio Geneva E Imperia v. Banco Nacional De Cuba and another
(e)	Points of Law	The immunity from enforcement proceedings of a central bank (section 14(4) State Immunity Act), is a relevant factor for a Court to consider when deciding whether to exercise a discretion allowing proceedings to be served outside the jurisdiction.
(f)	Classification	0.b.3, 2.a
(g)	Source	[2001] 3 All ER 923
(h)	Additional Information	

(a)	Registration no.	GB/12
(b)	Date	20 October 2005
(c)	Authority	High Court, Queen's Bench Division
(d)	Parties	AIG Capital Partners Inc v Kazakhstan
(e)	Points of Law	<ol style="list-style-type: none"> 1) The words "property of a state's central bank or other monetary authority" within section 14(4) State Immunity Act mean any asset in which the relevant institution has some kind of property interest irrespective of the capacity in which it holds the assets or the purpose for which the assets are held; this includes all real and personal property and embraces any legal, equitable or contractual right or interest in those assets. Therefore, even where it is unclear what the nature of the national bank's right is, the assets concerned are still immune from enforcement processes. 2) The State Immunity Act makes clear that the position of a central bank or other monetary authority should be dealt with distinctly from any other state department: when it is performing the function of acting as guardian or regulator of the state's monetary system, it is exercising sovereign authority and not acting for commercial purposes. 3) Section 14(4) State Immunity Act is not incompatible with rights under the European Convention on Human Rights. Although section 14(4) impinges on the rights of access to the enforcement jurisdiction of the courts, engaging Article 6 European Convention on Human Rights, a restriction on the right of a party to enforce a judgment on the property of a central bank or other monetary authority is legitimate and proportionate, and so justified under Article 6(2). Furthermore, section 14(4) would not

		deprive a claimant of its “possession” in the form of an arbitration award, since that award is subject to the restrictions on enforcement existing at the time of the award, so precluding an infringement of article 1 to the First Protocol to the Convention.
(f)	Classification	0.b.1, 1.b
(g)	Source	[2005] EWHC 2239 (Comm); [2006] 1 W.L.R. 1420
(h)	Additional Information	

(a)	Registration no.	GB/13
(b)	Date	14 June 2006
(c)	Authority	House of Lords
(d)	Parties	Jones v Saudi Arabia
(e)	Points of Law	<p>1) Part I of the State Immunity Act was not disproportionate as inconsistent with a peremptory norm of international law, such as the prohibition of torture. There is no evidence that states have recognised or given effect to an international law obligation to exercise universal jurisdiction over claims arising from alleged breaches of peremptory norms of international law.</p> <p>2) There is symmetry between the rules of liability and the rules of immunity. A state would incur responsibility in international law if one of its officials, under colour of his authority, tortured a national of another state, even though the acts were unlawful and unauthorised. Therefore, it is not possible to sustain an argument that torture or some other contravention of an <i>ius cogens</i> cannot attract immunity <i>ratione materiae</i> because it is not an official act.</p>
(f)	Classification	0.c, 1.a
(g)	Source	[2006] UKHL 26; [2007] 1 A.C. 270
(h)	Additional Information	Mr Jones claimed that this decision of the House of Lords in violated his rights under Article 6(1) of the European Convention on Human Rights. The Court held by six votes to one that there had been no violation, see Chamber Judgment [2014] ECHR 32 (14 January 2014) available here .

(a)	Registration no.	GB/14
(b)	Date	11 July 2007
(c)	Authority	Court of Appeal
(d)	Parties	Aziz v Aziz
(e)	Points of Law	1) The obligations of section 20 State Immunity

		<p>Act requiring the United Kingdom, including its courts, to treat a head of state with due respect and all appropriate steps to prevent any attack on his dignity, apply equally to the foreign head of state in his personal capacity as they apply to his public capacity.</p> <p>2) Outside physical attack or interference, however, the right to due respect or dignity amounts to no more than courtesy or comity. In this case, a court's refusal to further redact judgments to remove all material that might lead to identification of a head of state, when they had already been redacted to remove material of a confidential nature, did not amount to a failure to treat him with due respect or to an attack on his dignity.</p>
(f)	Classification	0.c, 1.c
(g)	Source	[2007] EWCA Civ 712; [2008] 2 All E.R. 501
(h)	Additional Information	

(a)	Registration no.	GB/15
(b)	Date	19 December 2007
(c)	Authority	Court of Appeal
(d)	Parties	KOO Golden East Mongolia v Bank of Nova Scotia
(e)	Points of Law	A claimant cannot obtain relief against the agent of a foreign state which it could not obtain directly against the foreign state. Therefore, where an agreement is made by a central bank in the exercise of sovereign authority - for example entering into transactions of a financial nature for the refining of gold or placing of refined gold on account in order to increase the state's currency reserves -, sections 1(2) and 14(4) State Immunity Act prevent a claimant from obtaining a, for example, disclosure order against other banks acting as the central bank's agents.
(f)	Classification	0.b.3, 1.b
(g)	Source	[2007] EWCA Civ 1443; [2008] Q.B. 717
(h)	Additional Information	

(a)	Registration no.	GB/16
(b)	Date	6 July 2011
(c)	Authority	Supreme Court
(d)	Parties	NML Capital Ltd v Argentina
(e)	Points of Law	1) (By majority) The exclusion from state immunity for proceedings "relating to ... commercial transaction" within the meaning of section 3 State Immunity Act does not extend to proceedings for the execution of a foreign judgment which itself relates to a commercial transaction.

		2) If state immunity is the only bar to jurisdiction, a written agreement to waive immunity is tantamount to submission to the jurisdiction.
(f)	Classification	0.b.3, 1.b, 2.c
(g)	Source	[2011] UKSC 31; [2011] 2 A.C. 495
(h)	Additional Information	

(a)	Registration no.	GB/17
(b)	Date	17 August 2012
(c)	Authority	Supreme Court
(d)	Parties	SerVaas Inc v Rafidain Bank
(e)	Points of Law	<p>1) As a debt and chose in action, monies payable to a state under a scheme of arrangement relating to a state-controlled bank are property within the meaning of section 13(2)(b) State Immunity Act and so immune from execution.</p> <p>2) Property is only subject to execution where it is currently “in use, or intended for use, for commercial purposes”. It is not sufficient for the property to be relevant to or connected to the commercial transaction. The expression “in use for commercial purposes” is to be given its ordinary and natural meaning having regard to its context, and it would not be an ordinary use of language to say that a debt arising from a transaction was “in use” for that transaction. The origin of the property is not relevant to whether it is in use for commercial purposes.</p>
(f)	Classification	0.b.1, 1.b
(g)	Source	[2012] UKSC 40; [2013] 1 A.C. 595
(h)	Additional Information	

(a)	Registration no.	GB/18
(b)	Date	5 February 2015
(c)	Authority	Court of Appeal
(d)	Parties	Benkharbouche v Sudan; Jannah v Libya
(e)	Points of Law	<p>1) These cases arose out of employment dispute between service staff and their employer, the Sudanese and Libyan embassies in London. The Court of Appeal decided in these cases that that immunity conferred by two sections of the State Immunity Act 1978 interferes unreasonably with the ECHR right to a fair trial (Article 6) and discriminates on ground of nationality (article 14).</p> <p>2) The Court issued a declaration that sections 16(1)(a) and 4(2)(b) of the State Immunity Act 1978 are incompatible with the Human Rights Act as they apply to these claims. This does not of itself affect</p>

		the continuing application of those section . 3) The Court held that the two provisions are also incompatible with Art 47 of the EU Charter (for the same reasons). As EU law takes precedence over conflicting UK law, the Court has therefore ordered these provisions to be dis-applied in respect of that part of the claims that is 'within the scope of EU law'.
(f)	Classification	0.b.2
(g)	Source	[2015] EWCA Civ 33
(h)	Additional Information	This case is subject to an outstanding appeal to the Supreme Court.

(a)	Registration no.	GB/19
(b)	Date	22 October 2013
(c)	Authority	High Court, Queen's Bench Division
(d)	Parties	London Steam Ship Owners Mutual Insurance Association Ltd v Spain (The Prestige)
(e)	Points of Law	1) The prima facie immunity of a state from the jurisdiction of the English courts under section 1(1) State Immunity Act is only lost to the extent that one of the exceptions set out in the Act is satisfied, such as submitting to an agreement in writing under section 9(1). 2) When a state claims under an insurance policy containing an arbitration clause, it becomes a person claiming under or through a party to the arbitration agreement and thereby a party to the arbitration agreement. This means that it has submitted to an agreement in writing for the purposes of section 9(1) and consequently is excluded from claiming state immunity.
(f)	Classification	0.b.3, 1.b
(g)	Source	[2013] EWHC 3188 (Comm); [2014] 1 Lloyd's Rep 309
(h)	Additional Information	

(a)	Registration no.	GB/20
(b)	Date	18 November 2013
(c)	Authority	High Court, Queen's Bench Division
(d)	Parties	Taurus Petroleum Ltd v State Oil Marketing Company of the Ministry of Oil, Iraq
(e)	Points of Law	1) Under section 14 State Immunity Act a 'separate entity' is "any entity ... distinct from the executive organs of the government of the state and capable of suing or being sued" such as a separate judicial entity formed by the state for commercial or industrial purposes with its

		<p>own management and budget, notwithstanding that the state exercises close supervision of its operation and affairs. There is a strong presumption that this separate corporate status should be respected, and the entity is only entitled to sovereign immunity if the proceedings relate to something done by it in the exercise of sovereign authority and the circumstances are such that the state would be so immune.</p> <p>2) The commercial purposes exception provided for in section 13(4) State Immunity Act does not apply to the property of a state's central bank for the purposes of section 14(4). Provided that the central bank has a qualifying interest in the "property" at issue, for example a legal interest in a debt under a letter of credit, the protection afforded by section 14(4) is triggered.</p>
(f)	Classification	0.b.1, 0.b.3, 1.b
(g)	Source	[2013] EWHC 3494 (Comm); [2014] 1 Lloyd's Rep. 432
(h)	Additional Information	This case is subject to an outstanding appeal to the Court of Appeal.

(a)	Registration no.	GB/21
(b)	Date	13 January 1977
(c)	Authority	Court of Appeal
(d)	Parties	Trendtex Trading Corporation v. Central Bank of Nigeria
(e)	Points of Law	<ol style="list-style-type: none"> 1) The restrictive doctrine of State immunity as recognised in customary international law is part of the common law; 2) The question as to whether a separate legal entity of a foreign State is entitled to immunity depends upon the degree of control exercised by the State over that entity and the functions which the entity performed; 3) (By majority) The Central Bank of Nigeria was not an emanation of the State entitled to claim immunity; 4) Since the Bank was not immune its funds were not immune from seizure or injunction.
(f)	Classification	0.b.1, 0.b.3, 1.b, 2.b
(g)	Source	[1977] 2 WLR 356, 64 ILR 111
(h)	Additional Information	

(a)	Registration no.	GB/22
(b)	Date	17 November 1982
(c)	Authority	Employment Appeal Tribunal
(d)	Parties	Sengupta v. Republic India

(e)	Points of Law	<p>1) In a case to which the State Immunity Act did not apply it was necessary to apply the common law of State immunity, which incorporated the distinction made in customary international law between acts <i>iure imperii</i> and acts <i>iure gestionis</i>;</p> <p>2) In determining whether a contract of employment was an act <i>iure imperii</i> or <i>iure gestionis</i>, it was necessary not only to look at the nature of the a contract, but to ask the following questions:</p> <ul style="list-style-type: none"> a) Was the contract of a kind which a private individual could enter into? b) Did the performance of the contract involve the participation of both parties in the public functions of the foreign State, or was it purely collateral to such functions? c) What was the nature of the breach of contract or other act of the foreign State giving rise to the proceedings? d) Will the investigation of the claim by the Tribunal involve investigation into the public or sovereign acts of the foreign State? <p>3) The plaintiff's employment as a clerical officer in the diplomatic mission of a foreign State would involve his participation in the public acts of a foreign sovereign. His dismissal concerned the performance of a public function i.e. the running of diplomatic mission. An investigation into the fairness of that dismissal would involve the Court in an investigation of, and interference with, a public function of a foreign sovereign.</p>
(f)	Classification	0.b.2, 1.b
(g)	Source	64 ILR 352
(h)	Additional Information	

(a)	Registration no.	GB/23
(b)	Date	16 July 1981
(c)	Authority	House of Lords
(d)	Parties	1o Congreso Del Partido
(e)	Points of Law	<p>1) The restrictive doctrine of State immunity in customary international law forms part of the common law. A foreign State cannot therefore claim State immunity in respect of acts <i>iure gestionis</i>;</p> <p>2) In characterising an act as <i>iure imperii</i> or <i>iure gestionis</i>, a court should in general consider the nature, rather than the purpose or motive, of the act in question. However the Court must consider the whole context against which</p>

		the claim against the foreign State is made; 3) (By majority) The breaches by the defendant State, as owner of the ships, of its obligations towards the owners of the two cargoes in this case, were acts <i>iure gestionis</i> , notwithstanding their political motivation.
(f)	Classification	0.b, 0.b3, 1.b
(g)	Source	[1981] 3 WLR 328
(h)	Additional Information	

(a)	Registration no.	GB/24
(b)	Date	3 August 1989
(c)	Authority	Court of Appeal
(d)	Parties	R. v. Inland Revenue Commissioners ex parte Camacq Corporation
(e)	Points of Law	1) Questions of the application of direct taxation to foreign sovereigns, fall outside the scope of the State Immunity Act (section 16(5)); 2) The Inland Revenue is entitled to refuse to pay the whole of a tax credit to a foreign sovereign, where it was clear that the transaction in question was artificially arranged to take advantage of the UK tax rules; there is no binding rule that the IR had to give consent to payment of the amount of the tax credit direct to a foreign State.
(f)	Classification	0.c, 1.c
(g)	Source	[1990] 1 WLR 191
(h)	Additional Information	

(a)	Registration no.	GB/25
(b)	Date	12 November 1993
(c)	Authority	Court of Appeal
(d)	Parties	Littrell v. USA (No.2)
(e)	Points of Law	1) The State Immunity Act does not apply to acts of the armed forces of a foreign State whilst present in the UK. The issue of whether a foreign State enjoyed immunity in respect of a claim arising out of the standard of medical treatment of one of its servicemen stationed at one of its bases within the UK was determined under the common law of sovereign immunity, which incorporates customary international law in this respect; 2) In applying the distinction between acts <i>iure imperii</i> and <i>iure gestionis</i> , the court should consider the nature of the act, rather than its purpose, but the nature of the act must be appreciated in its context; 3) The context included the location of the act, the identity of the persons involved and the kind of

		act it was; 4) The terms of the relationship between a foreign State and its own servicemen, and in particular the standard of medical care which that foreign State affords its servicemen, is a matter within its own sovereign authority.
(f)	Classification	0.a, 1.b
(g)	Source	[1994] 4 All ER 203, 100 ILR 438
(h)	Additional Information	

(a)	Registration no.	GB/26
(b)	Date	20 July 2000
(c)	Authority	House of Lords
(d)	Parties	Holland v. Lampen-Wolfe
(e)	Points of Law	<p>1) A contract with a civilian of the sending State to teach members of a military base of that State on the territory of the UK, is a matter which is excluded from the State Immunity Act, which does not apply to "anything done by or in relation to the armed forces of a State whilst present in the UK" (s.16(2)). It is therefore governed by the common law of State immunity;</p> <p>2) In determining whether it was an act <i>iure imperii</i> or <i>iure gestionis</i>, the defendant's assessment of the plaintiff's provision of educational services to members of the base had to be viewed in its context, including taking account the persons involved and the place in which the acts took place;</p> <p>3) The impugned assessment of the plaintiff's teaching related to the standard of education which the sending State afforded to its own servicemen. It was therefore a matter within its own sovereign authority;</p> <p>4) In recognising the immunity of the sending State in this case, there was no violation of Article 6 of the European Convention on Human Rights. Article 6 provides procedural guarantees in relation to due process, but does not in itself provide a basis of jurisdiction where this is not permitted under international law.</p>
(f)	Classification	0.a, 1.b
(g)	Source	[2000] 3 All ER 833
(h)	Additional Information	

(a)	Registration no.	GB/27
(b)	Date	9 June 2014
(c)	Authority	High Court, Chancery Division
(d)	Parties	Harb v Aziz
(e)	Points of Law	1) During the period in which a head of state

		holds office, his immunity from suit at common law extends to all matters, whether official or private (immunity <i>ratione personae</i>), but, on ceasing to hold office during his lifetime or on death, his immunity from suit is thereafter limited to acts which constituted the performance of his official functions during his period in office (immunity <i>ratione materiae</i>).
		2) The underlying justification for state immunity is the notion that the head of state is the personal embodiment of the state itself. But a sovereign who dies in office, and is replaced either by hereditary succession or due process, does not remain the embodiment of the state once deceased, there being no room for two embodiments of the state in the doctrine.
(f)	Classification	0.c, 1.c
(g)	Source	[2014] EWHC 1807 (Ch); [2014] H.R.L.R. 16
(h)	Additional Information	

(a)	Registration no.	GB/28
(b)	Date	30 October 2014
(c)	Authority	Court of Appeal
(d)	Parties	Belhaj and others v Straw and others
(e)	Points of Law	<p>1) State immunity does not extend to bar claims in which a foreign state (or emanation of) would have the legality of its conduct examined, albeit that they were not a party to the proceeding;</p> <p>2) Article 6(2)(b) of the UN Convention on Jurisdictional Immunities of States and their Property, which appears to support a wider context of indirect impleader, does not represent either the law in the UK, nor accepted customary international law.</p>
(f)	Classification	
(g)	Source	[2014] EWCA Civ 1394
(h)	Additional Information	<p>The judgment is subject to an appeal to the Supreme Court.</p> <p>The judgment also addresses the 'act of state' doctrine, and this is also on appeal to the Supreme Court.</p>

(a)	Registration no.	GB/29
(b)	Date	11 November 2014
(c)	Authority	High Court
(d)	Parties	Rahmatullah and another v MOD and another
(e)	Points of Law	Followed the Court of Appeal judgment in Belhaj (see above) to find that state immunity does not extend to bar claims in which a foreign state (or emanation of) would have the legality of its

		conduct examined, albeit that they were not a party to the proceeding.
(f)	Classification	
(g)	Source	[2014] EWHC 3846 (QB)
(h)	Additional Information	<p>The judgment is subject to an appeal. It is unclear at present whether this will be to the Court of appeal or to the Supreme Court.</p> <p>The judgment also addresses the 'act of state' doctrine, both in respect of 'foreign' act of state and 'Crown' act of state; and this is also on appeal.</p>