

Santa's "legal" helpers

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PRACTICES Litigation, International Arbitration

Father Christmas runs a vast, vertically integrated business, manufacturing and packaging toys above the Arctic circle - in one of the harshest environments on Earth - and delivering them safely, by air, near-simultaneously, to billions of consumers globally. And not just to their doorsteps or letter boxes, but to inside their properties, with the majority requiring to be delivered within a short window of less than 24 hours on 24/25 December (Santa delivers on a few other days too e.g. 5 or 6 December in the Netherlands).

Santa, rightly, gets a lot of credit for all this. But just thanking Santa is a bit like thanking Jeff Bezos for your Amazon parcel. We need to remember that this is a team effort. Increasingly, modern depictions do recognise the crucial contribution made by individual Elves, reindeer, Mrs Claus and other members of Santa's vast workforce. But – incomprehensibly – one exciting part of Santa's operation never seems to make it into feelgood holiday movies. Spare a thought, please, for the unsung heroes in Santa's legal department. While Santa has a few competitors (e.g. Saint Basil, Amu Nowrus, Befana and Olentzero), his business is definitely the leader in terms of market share, and you don't achieve and maintain global dominance without a lot of little legal helpers, checking you've crossed the i's and dotted the t's.

What laws govern Santa's Arctic operations?

It is very common, at this time of year, to see 'funny' articles by lawyers querying whether Santa's Arctic manufacturing operation complies with, say, the Equality Act 2010 (it depends if he's rejecting all non-elf applicants) or the National Minimum Wage Act 1998.

Such articles are patently ridiculous, and not serious works of legal scholarship. There is no dry land at the North Pole – it is frozen ocean. Under the UN Convention on the Law of the Sea the five states which border the Arctic Ocean (Canada, Denmark (via Greenland), Norway, Russia and the US) each have territorial seas which extend twelve nautical miles from their coastline, where their laws will apply. It's unclear if Santa's workshop is at the magnetic North Pole or the True North Pole (both move around) but, either way, it is definitely in international waters, over 400 miles from the nearest land. English law regulating working hours or holiday pay have no extraterritorial effect.

National laws with extraterritorial effect

A few national laws do purport to have an extraterritorial effect. For example, there are English statutes which make it an offence to commit piracy on the high seas or hijack aircraft in international airspace. The Bribery Act 2010 criminalises extra-territorial bribery by UK-connected people and businesses. Section 2 of the Modern Slavery Act 2015 criminalises human trafficking by UK nationals, regardless of where it takes place. Santa, of course, does none of these things, and is, anyway, neither a UK connected person nor a UK national. So Santa's lawyers need lose no sleep over those national laws.

What even is Santa, in legal terms?

It is very ambiguous how Santa's organisation is structured in legal terms. Perhaps there is some corporation – of which Santa is sole shareholder and director - which is the employer of each Elf, and which owns title to the stocks of raw materials, the workshops, the toys they produce, and the sleigh and reindeer by which delivery is effected. But, if so, where is this company incorporated, and under what laws? Or does he personally employ all these people and owns all these things directly himself, like a feudal monarch?

A useful analysis may be to view Santa's workshop as a *de facto* state, and him as the head of it, a perpetual monarch (or benevolent dictator) ruling by jolly *fiat* and with his word as law within the territory he controls. Admittedly, his workshop is not recognised as a sovereign state by any other country, he has no embassies and he is not a signatory to any treaties or conventions. Yet he is no less the *de facto* sovereign for all that. If you're an Elf being disciplined for forgetting to feed the reindeer (or whatever) it will cut no ice (pun intended) to be denying the big man's right to dock your candy cane ration by pointing out that he 'doesn't even have a seat at the UN'.

Peremptory norms of international law

The international community recognises certain basic legal norms from which no derogation is permitted. For example, the prohibition on wars of aggression and territorial aggrandizement, refoulement and genocide. These kinds of laws apply to states, but also to individuals (see the Nuremburg trials) and so Santa's Arctic operations are arguably subject to those laws and the international community could, in theory, act to hold him to them.

As a benevolent figure who brings joy and happiness, Santa rarely starts wars, seizes territory, deports refugees or tries to destroy national, ethnic, racial or religious groups so, again, these peremptory norms are unlikely to trouble Santa's legal advisers.

What about the peremptory norm prohibiting slavery? In recent years, to the dismay of Santa's PR department, it has become all-too-common to see revisionist attacks on Santa, seeking to besmirch his good name by characterising his treatment of elves in this way. Santa's elves are, however, volunteers, who are free to leave if they want and are compensated for their efforts and treated with dignity and respect. On being contacted for comment, Santa's HR department were a little unclear on the precise details of elf remuneration, but keen to stress the cute, rustic accommodation, delicious food and correspondingly generous dental package and joyful working atmosphere. Santa was also swift to point out that peremptory norms are concerned with *human* rights, and international law does not even recognise the *existence* of elves, let alone accord them any rights, and so he feels he is on the right side of history.

Does Santa comply with national laws?

As we have seen, Santa's operations, are not, however, confined to his territory in the Arctic. The logistical challenge has already been remarked upon above. Some miserable Scrooges even question whether such an operation is plausible, but the vast legal work required should not be glossed over.

Santa generally respects and tries to comply with the laws of other sovereign nations when he visits their territory. Even Santa's comity, though, has its limits. He pointedly continued, for example, to deliver presents in England after 1647 when Christmas celebrations were banned during the *interregnum*, and similarly refused to pay the five shilling fine which the Massachusetts Bay Colony charged Christmas celebrants in 1659.

It is the need to comply with national laws in the countries to which he delivers on Christmas Eve – not his year round Arctic operations – which are the real cause of his lawyers' strife. Laws on working at height, animal welfare, health and safety require substantial work by Santa's lawyers, with national regimes often requiring Santa to prepare plans and standard operating procedures explaining how he will safely access people's homes via chimneys and letterboxes and similar.

While the substance of Santa's operation remains completely unchanged from year to year, the need to constantly check that the right forms have been filled out absorbs a great deal of time from the paralegal elves, though, from centuries of present wrapping, they are impressively adept at dealing with such red tape.

By far the greatest part of Santa's legal budget, however, goes to navigating the shifting labyrinth of international tariffs. Tariffs are usually charged based on a product's country of origin. Santa's goods originate from the North Pole which (as mentioned) is not a country, but a point in international waters. For tariff purposes, the point of origin of fish caught in international waters is usually accepted to be the country whose flag the fishing vessel flies. Santa will frequently create a branch or subsidiary in the country to which goods are to be delivered, and have that subsidiary claim to have 'caught' those goods in international waters, so that the point of origin is treated as being the country where delivery is to take place, and no tariff will apply.

Another device used by Santa, to avoid or minimise *ad valorem* tariffs, is to record a very low transaction value for the goods, claiming that he is paid nothing for them. Some flint-hearted customs officials, however, still levy modest tariffs, arguing that the mince pies, carrots, glasses of sherry and so on which consumers leave out for Santa represent payment for the goods he delivers, and are not just an incidental, *ex gratia* gift. These customs officials, of course, receive coal in their stockings.

In other instances, Santa will avoid or minimise his tariff liabilities by delivering goods in a clever order, so that he will always arrive in given country from the country whose toy exports enjoy the most favourable tariff treatment. The fact he is transporting live animals brings further its own headaches.

Aviation

This brings us to the other big problem for Santa's legal team, which is aviation law. Santa passes through the airspace of every country on Earth and his flight path is astonishingly complex. He also travels at very high speed, with tight turns and frequent accelerations and decelerations generating vast G-forces, and all at very low altitude, so it is crucial he file detailed flight plans with air traffic control in every country he visits and satisfies relevant national authorities as to the airworthiness of his sleigh and his competence and experience as a pilot.

North American Aerospace Defence Command (NORAD) tracks Santa's flightpath and has also published images suggesting the US provides Santa ("*Red One*") with an escort by two F-35 jets in US airspace to prevent collisions. Canada similarly claims to provide him an escort by CF-18s and the RAF claim to provide him an escort of Typhoon jets out of RAF Lossiemouth. Such claims are, however, completely implausible and just a cynical attempt by our military industrial complex to garnish a little PR by associating themselves with Santa because, while estimates of Santa's speed vary, even the lowest have Santa travelling at something in excess of 0.5% the speed of light or 4,370 times the speed of sound – vastly faster than any such jet, or even a hypersonic missile or ICBM.

Litigation

While lawyers specialising in international trade and aviation law are in high demand at the North Pole, Santa has very little use for litigators.

People who believe they have been placed on the naughty list without proper justification do sometimes try to avail themselves of England's generous defamation laws to try to clear their names. And, given the speed at which Santa travels and the quantity of brandy and mince pies he consumes, Santa probably does damage the odd rooftop or chimney pot. But any coal-recipient or aggrieved homeowner seeking recompense is likely to be disappointed. The English court will grant permission to serve outside the jurisdiction for claims in tort where the damage is sustained in England, but the court would need to accept that the claim had a reasonable prospect of success, and a judge might view such claims against Santa with a degree of scepticism.

The next problem will be serving Santa. Since his territory is not party to any relevant international convention regarding the service of proceedings, the court will also need to grant permission to serve by alternative means. In theory a judge might direct that this be by way of a claim form addressed to "*Santa Claus, The North Pole*" being burned in the claimant's fireplace. I understand the practice of English judges dealing with prospective claims against Santa is almost invariably to order that the claimant must effect personal service. It turns out that few prospective claimants are willing to trudge hundreds of miles over sea ice, dodging polar bears, to pursue a claim for a damaged chimney.

Where a judge permits service by the fireplace method, it is unclear how long Santa would have to acknowledge service or serve a defence. The Civil Procedure Rules provide different time periods depending on the country where the claim form is to be served, but the North Pole is not listed. A Defendant in Greenland, the closest land to the North Pole, would be allowed 31 days to respond. Given Santa's enormous postal burden and all the other draws on his time, one suspects he would rarely acknowledge service and so a claimant would probably obtain default judgment. Such judgments, however, are likely worthless, since Santa's assets are at the North Pole, and enforcement will be impossible, given Santa's status as *de facto* sovereign.

Therefore, whenever such questions arise (or, indeed, whenever mean-spirited people raise questions about Santa's alleged infringements of intellectual property rights and anti-competitive practices) our advice is, invariably, to refrain from trying to sue Santa, and leave his small team of litigation elves in peace. Peace is always a remarkable Christmas present.