

TORTS IN PRIVATE INTERNATIONAL LAW

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Introduction to the Series

Our age has seen a development in private international law of a scale, variety and depth not experienced since the nineteenth century. The subject has acquired practical importance and an international dimension through the participation of many countries in conferences at governmental level, through the increasing use of legislation to deal with problems hitherto left to the courts and juristic writers, and through an increased frequency of occasions for invoking its principles to deal with the complexities of modern life.

The development of this subject in scale may be instanced by the attention given to it in the Conventions of the Hague Conference of Private International Law, the European Economic Community and the Council of Europe. The very existence of the special régime of private international law established by the European Economic Community, for example, creates its own problems of the duality of systems of private international law in member states, if not beyond. We now meet regional groupings of systems for various purposes. In variety we find new problems in many fields including torts, credit and the problems relating to children. In the dimension of evolution, hitherto insufficiently recognised, the systems of private international law of western civilisation, founded as they are on common cultural values and standards of Roman law or the common law, the Christian faith and the Holy Roman Empire, can no longer ignore other systems which fail to conform to these standards, as was often done in the nineteenth century.

These and other factors point to the need for an explanation in depth of areas of private international law in the light of modern conditions. They require a degree of specialisation which may be thought inappropriate in a general text on the subject. A clear answer to this particular need lay in the introduction of a series of monographs, each dealing with an aspect or series of problems in the subject to which special treatment could be devoted.

Under these circumstances it seemed most useful to arrange a marriage of each author with the subject of his choice, not only to ensure the authority of the

statement but to provide a medium in which the author could deal fully with a matter in which he had a special interest or qualification, whether academic or practical. It is on the basis of these two main considerations that the authors of the respective volumes have been invited to contribute. Within the broad limits of editorial policy each author is free to deal with his subject as he thinks best. His opinions are entirely his own, but it may not be simply coincidence that many others will probably share them.

The general policy behind this series will already have appeared. It is to present topics of importance and interest to those concerned with private international law in practice, in the universities or in government. It is not difficult to think of a number of such topics of an almost equal degree of urgency, and while each volume will be complete in itself one can envisage the series eventually covering most of the area of private international law and thus constituting a comprehensive and authoritative statement. The general approach is to compare relevant systems of private international law, not only because of the added value of a wider view of problems in this area, but also because of the special interest or qualification of the authors, and although each one is free to include within his horizons any legal system he may regard as relevant, the general basis of approach in this series is private international law as found within the British Isles, the European Economic Community or the U.S.A. The constraints of space compel all our authors to be selective in their area of comparison but it is hoped that this need for selection will add to rather than detract from the value of their work.

R. H. Graveson

Preface

This volume attempts to trace and analyse the development of choice of law rules in the private international law of tort. My basic approach to the topic has been historical and, to a lesser extent, comparative. A historical approach seemed particularly appropriate for a subject which has reached different stages of development in the Anglo-Commonwealth, the United States and Europe, if only because the history of the law in one jurisdiction may point to how the law might develop in another jurisdiction and, more pertinently, may indicate the desirability of such a development.

As far as comparison is concerned, though my starting point is Anglo-Commonwealth law I have tried to draw on the law of the United States and to a smaller degree on the law of Continental European states in an attempt to analyse and assess the workings of the traditional approaches to choice of law in tort. This I felt to be necessary for two major reasons. Firstly, such traditionalism prevails to a great degree in England, the Commonwealth and Europe. For those who seek the law as it is these approaches are still of paramount importance. Secondly, I felt that consideration of the law as it ought to be, and especially of the desirability of adoption of some of the more recent American views in the area into a European context, could only be of utility when viewed against a traditional backcloth. No doubt mistakenly, I have concluded that while there is much to learn from other systems of private international law, the desirability of any particular change in the law has to be assessed in the context of the system into which change is to be introduced. Thus the book bears traditional hallmarks. On the wider front the need to evaluate the way lawyers in Western Europe think about choice of law problems in general, as opposed to problems of tort in particular, is evident to a modern conflicts lawyer. Accordingly I have tried to describe American developments in the light of the immense contribution made by American writers both to choice of law in tort and choice of law thinking. My own conclusions as to the feasibility of importing American theory and practice into Europe are, I hope, sufficiently clear from the text. However, as

I have tried to show in Chapters 10 and 11, American influences have been at work abroad on a national and supra-national level.

While aiming at being comprehensive I have had to omit a good deal that would fall under the general rubric of my title. Thus what might loosely be called maritime and aerial torts do not receive the separate and specialised treatment which would be inappropriate in a book of this nature. Having kept to the highways of the private international law of tort, I hope the direction I have taken is reasonably clear.

It is particularly appropriate for me to acknowledge the assistance I have received in the preparation of this book. I should like to thank Professor R. H. Graveson, who first suggested that I might undertake the project and who commented helpfully on the text. Professor A. G. Guest drew my attention to material on products liability and limitation of actions that I would otherwise have missed and gave general advice. Ian Kennedy gave me the benefit of his knowledge of domestic tort law in the United States in several discussions. I am most grateful to all of them. Marion Andrew, Pat Canarelli and Denise Ruffell have my unreserved thanks for producing a fine typescript out of my execrable handwriting. Clare Miller was kind enough to help me read the proofs and typed the Index at very short notice, for which I am also grateful. However, my greatest debt of thanks is to Joseph Thomson. He gave a great deal of his time to reading the whole of the book in manuscript, corrected errors of substance and made numerous stylistic improvements. Whatever clarity this book may have is in large measure due to him. The obscurities and errors that undoubtedly remain are my sole responsibility.

Lastly I should like to thank the publishers for their patience, courtesy and assistance at all times.

King's College,
London

C. G. J. Morse

List of Abbreviations

A.	Atlantic Reporter (U.S.A.)
A.2d	Atlantic Reporter, Second Series (U.S.A.)
A.C.	Law Reports, Appeal Cases (England)
A.D.	Supreme Court, Appellate Division Reports (New York, U.S.A.)
A.D.2d	Supreme Court, Appellate Division Reports, Second Series (New York, U.S.A.)
Ala.	Alabama Reports (U.S.A.)
Alberta L. Rev.	Alberta Law Review
A.L.J.	Australian Law Journal
A.L.J.R.	Australian Law Journal Reports
All E.R.	All England Law Reports
A.L.R.	Argus Law Reports (Australia)
Am. J. Comp. L.	American Journal of Comparative Law
Am. J. Legal Hist.	American Journal of Legal History
Am. U. L. Rev.	American University Law Review
App. D.C.	Appeal Cases, District of Columbia (U.S.A.)
Ark.	Arkansas Reports (U.S.A.)
Atl.	Atlantic Reporter (U.S.A.)
Barb.	Barbour's Supreme Court Reports (New York, U.S.A.)
Barn. & Ald.	Barnewall and Alderson King's Bench Reports (England)
B.C.R.	British Columbia Reports (Canada)
Bell C.C.	Bell Crown Cases (England)
B.G.H.	Bundesgerichtshof (Federal Republic of Germany)
Bibb.	Bibb's Reports (Kentucky, U.S.A.)
Bing N.C.	Bingham, New Cases, Common Pleas (England)
Blackf.	Blackford's Reports (Indiana, U.S.A.)
Blatchf.	Blatchford's Circuit Court Reports (U.S.A.)

B.Y.B.I.L.	British Yearbook of International Law
C.A.	Court of Appeal (England)
Cal.	California Reports (U.S.A.)
Cal.2d	California Reports, Second Series (U.S.A.)
Cal.3d	California Reports, Third Series (U.S.A.)
Cal. App.	California Appellate Reports (U.S.A.)
Cal. App. 2d	California Appellate Reports, Second Series (U.S.A.)
California L. Rev.	California Law Review
Cal. Rptr.	California Reporter (U.S.A.)
Can. Bar. Rev.	Canadian Bar Review
Cass. Civ.	Cour de Cassation, Chambre Civile (France)
Cass. Req.	Cour de Cassation, Chambre des Requêtes (France)
Ch.	Law Reports, Chancery Division (England)
Ch.D.	Law Reports, Chancery Division (England)
C.L.J.	Cambridge Law Journal
C.L.R.	Commonwealth Law Reports (Australia)
Clunet	Journal du droit international
C.M.L.R.	Common Market Law Reports
Cmd.	Command Paper
Columbia L. Rev.	Columbia Law Review
Conn.	Connecticut Reports (U.S.A.)
Cowp.	Cowper, King's Bench Reports (England)
Cox C.C.	Cox's Criminal Cases (England)
D.	Recueil Dalloz (France)
De G. & J.	De Gex and Jones, temp. Cranworth, Chelmsford and Campbell, Chancery Reports (England)
D.L.R.	Dominion Law Reports (Canada)
D.L.R.2d	Dominion Law Reports, Second Series (Canada)
D.L.R.3d	Dominion Law Reports, Third Series (Canada)
Dods.	Dodson, temp. Scott, Admiralty Reports (England)
Duke L. J.	Duke Law Journal
Duquesne L. Rev.	Duquesne Law Review
E.E.C.	European Economic Community
E.G.B.G.B.	Einführungsgesetz zum Bürgerlichen Gesetzbuch (Federal Republic of Germany)
E.L. Rev.	European Law Review

F.	Session Cases, 5th Series [Fraser] (Scotland)
F.	Federal Reporter (U.S.A.)
F.2d	Federal Reporter, Second Series (U.S.A.)
F.L.R.	Federal Law Reports (Australia)
F. Supp.	Federal Supplement (U.S.A.)
Ga.	Georgia Reports (U.S.A.)
Gaz.Pal.	Gazette du Palais (France)
Harvard L. Rev.	Harvard Law Review
H. & C.	Hurlstone and Coltman, Exchequer Reports (England)
H.L.C.	House of Lords Cases (Clark) (England)
H. & N.	Hurlstone and Norman, Exchequer Reports (England)
How.	Howard (Reports) (U.S.A.)
I.C.L.Q.	International and Comparative Law Quarterly
Ill.	Illinois Reports (U.S.A.)
Ill.2d	Illinois Reports, Second Series (U.S.A.)
Ill.App.2d	Illinois Appellate Court Reports, Second Series (U.S.A.)
I.L.Q.	International Law Quarterly
I.L.T.	Irish Law Times (Eire)
Ind.	Indiana Reports (U.S.A.)
I.P. Rspr.	Die deutsche Rechtsprechung auf dem Gebiete des internationalen Privatrechts im Jahre (Federal Republic of Germany)
I.R.	Irish Reports (Eire)
Johns.	Johnson's Reports (New York, U.S.A.)
J.R.	Juridical Review
J.T.	Journal des Tribunaux (Belgium)
Jur. Bl.	Juristische Blätter (Austria)
Kan.	Kansas Reports (U.S.A.)
K.B.	Law Reports, King's Bench (England)
Kentucky L. J.	Kentucky Law Journal
Ky.	Kentucky Reports (U.S.A.)
L.J.P.	Law Journal Reports, Probate, Divorce and Admiralty (England)
Ll. L. Rep.	Lloyd's List Law Reports (England)

Lloyd's Rep.	Lloyd's List Law Reports (England)
L.Q.R.	Law Quarterly Review
L.R. Adm. & Ecc.	Law Reports, Admiralty and Ecclesiastical Cases (England)
L.R.H.L.	Law Reports, English and Irish Appeals (England)
L.R.P.C.	Law Reports, Privy Council Appeals (England)
L.R.Q.B.	Law Reports, Queen's Bench (England)
L.T.	Law Times Reports (England)
Man. L.R.	Manitoba Law Reports (Canada)
Mass.	Massachusetts Reports (U.S.A.)
Mass. Col. Rec.	Massachusetts Colony, Records of the Governor and Company of the Massachusetts Bay in New England, 1853–1854 (ed. Nathaniel B. Shurtless)
Mass. Gen. Laws Ann.	Massachusetts General Laws, Annotated (U.S.A.)
Md.	Maryland Reports (U.S.A.)
M.D.R.	Monatsschrift für Deutsches Recht (Federal Republic of Germany)
Mich.	Michigan Reports (U.S.A.)
Mich. L. Rev.	Michigan Law Review
Minn.	Minnesota Reports (U.S.A.)
Minnesota L. Rev.	Minnesota Law Review
Miss.	Mississippi Reports
M.L.R.	Modern Law Review
Mo. App.	Missouri Appeal Reports (U.S.A.)
Munf.	Munford (Reports) (Vermont, U.S.A.)
M & W	Meeson & Welsby, Exchequer Cases (England)
N.B.R.	New Brunswick Reports (Canada)
N.E.	Northeastern Reporter (U.S.A.)
N.E.2d	Northeastern Reporter, Second Series (U.S.A.)
Nederlands Tijdschrift v.i.r.	Nederlands Tijdschrift voor Internationaal Recht
N.H.	New Hampshire Reports (U.S.A.)
N.I.L.Q.	Northern Ireland Legal Quarterly
N.J.	Nederlandse Jurisprudentie
N.J.	New Jersey Reports (U.S.A.)
N.J.W.	Neue Juristische Wochenschrift (Federal Republic of Germany)
N.S.W.R.	New South Wales Reports (Australia)
N.W.	Northwestern Reporter (U.S.A.)

N.W. 2d	Northwestern Reporter, Second Series (U.S.A.)
N.Y.	New York Court of Appeals Reports (U.S.A.)
N.Y. 2d	New York Court of Appeals Reports, Second Series (U.S.A.)
N.Y.S.	New York Supplement (U.S.A.)
N.Y.S.2d	New York Supplement, Second Series (U.S.A.)
N.Y.U.L.Rev.	New York University Law Review
N.Z.L.J.	New Zealand Law Journal
N.Z.L.R.	New Zealand Law Reports
O.G.H.	Oberster Gerichtshof (Austria)
Ohio App.	Ohio Appellate Reports (U.S.A.)
O.J.C.	Official Journal of the European Communities
Oklahoma L. Rev.	Oklahoma Law Review
O.L.R.	Ontario Law Reports (Canada)
O.R.	Ontario Reports (Canada)
Or.	Oregon Reports (U.S.A.)
O.Y.	Yukon Ordinance (Yukon Territory, Canada)
P.	Law Reports, Probate Division (England)
P.	Pacific Reporter (U.S.A.)
P.2d	Pacific Reporter, Second Series (U.S.A.)
Pa.	Pennsylvania Reports (U.S.A.)
Pac.	Pacific Reporter (U.S.A.)
Pas.	Pasicrisie belge
P.D.	Law Reports, Probate Division (England)
P.Wms.	Peere Williams (Reports) (England)
Q.B.	Law Reports, Queen's Bench (England)
Q.B.D.	Law Reports, Queen's Bench Division (England)
Qd. R.	Queensland Reports (Australia)
Que. K.B.	Quebec Reports, King's Bench (Canada)
Que. S.C.	Quebec Reports, Superior Court (Canada)
R.	Session Cases, 4th Series [Rettie] (Scotland)
Recueil des Cours	Académie de Droit International, The Hague, Recueil des Cours
Rev. Crit. d.i.p.	Revue Critique de droit international privé
Revue de d.i.p.	Revue de droit international privé
R.G.	Reichsgericht (Germany)
R.G.Z.	Entscheidungen des Reichsgerichts in Zivilsachen (Germany)

S.	Recueil Sirey (France)
S.A.S.R.	South Australian State Reports
S.C.	Quebec Reports, Superior Court (Canada)
S.C.	Session Cases (Scotland)
S.C.R.	Canada Supreme Court Reports
S.E.	Southeastern Reporter (U.S.A.)
S.E.2d	Southeastern Reporter, Second Series (U.S.A.)
Show. P.C.	Shower's Parliamentary Cases (England)
S.L.R.	Scottish Law Reporter
S.L.T.	Scots Law Times
So.	Southern Reporter (U.S.A.)
So.2d	Southern Reporter, Second Series (U.S.A.)
So. Calif. L. Rev.	Southern California Law Review
Sol. J.	Solicitors' Journal (England)
S.R.N.S.W.	State Reports New South Wales (Australia)
Stanford L. Rev.	Stanford Law Review
State Tr. (N.S.)	State Trials, New Series (England)
St. Tr.	State Trials (Cobbett & Howell) (England)
S.W.	Southwestern Reporter (U.S.A.)
S.W.2d	Southwestern Reporter, Second Series (U.S.A.)
Swab.	Swabey (Reports) (England)
Swan.	Swanston's Chancery Reports (England)
Sydney L. Rev.	Sydney Law Review
Tenn.	Tennessee Reports (U.S.A.)
Tex.	Texas Reports (U.S.A.)
Tex. Civ. App.	Texas Civil Appeal Reports (U.S.A.)
Tex. L. Rev.	Texas Law Review
The Times	The Times Newspaper of London
T.R.	Term Reports, by Durnford and East (England)
Trib. Civ.	Tribunal Civil (France, Belgium)
Trib. Comm.	Tribunal de Commerce (Belgium)
Trib. Gr. Inst.	Tribunal de Grande Instance (France)
Tulane Law Rev.	Tulane Law Review
U.B.C.L.R.	University of British Columbia Law Review
U. Chi. L. Rev.	University of Chicago Law Review
U.C.L.A. L. Rev.	U.C.L.A. Law Review
University of Tasmania L. Rev.	University of Tasmania Law Review
U. Pa. L. Rev.	University of Pennsylvania Law Review

U.S.	United States Supreme Court Reports
U. Tor. L.J.	University of Toronto Law Journal
Va. L. Rev.	Virginia Law Review
Vand. L. Rev.	Vanderbilt Law Review
V.L.R.	Victorian Law Reports (Australia)
V.R.	Victoria Reports (Australia)
Vt.	Vermont Reports (U.S.A.)
Wash. L. Rev.	Washington Law Review
W. Black.	Blackstone W. (Reports) (England)
Wis.	Wisconsin Reports (U.S.A.)
Wis.2d	Wisconsin Reports, Second Series (U.S.A.)
Wis. Stat. Ann.	Wisconsin Statutes, Annotated (U.S.A.)
W.L.R.	Weekly Law Reports (England)
W.N.	Weekly Notes (Reports) (England)
W.P.N.R.	Weekblad voor Privaatrecht, Notariaat en Registratie (Netherlands)
W. Va.	West Virginia Reports (U.S.A.)
W.W.R.	Western Weekly Reports (Canada)
Yale L.J.	Yale Law Journal

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