

Private International Law (Miscellaneous Provisions) Act 1995 (c. 42)

1995 c. 42 - continued

PART III. Choice of Law in Tort and Delict

Purpose of Part III.

9.—

1. The rules in this Part apply for choosing the law (in this Part referred to as "the applicable law") to be used for determining issues relating to tort or (for the purposes of the law of Scotland) delict.
2. The characterisation for the purposes of private international law of issues arising in a claim as issues relating to tort or delict is a matter for the courts of the forum.
3. The rules in this Part do not apply in relation to issues arising in any claim excluded from the operation of this Part by section 13 below.
4. The applicable law shall be used for determining the issues arising in a claim, including in particular the question whether an actionable tort or delict has occurred.
5. The applicable law to be used for determining the issues arising in a claim shall exclude any choice of law rules forming part of the law of the country or countries concerned.
6. For the avoidance of doubt (and without prejudice to the operation of section 14 below) this Part applies in relation to events occurring in the forum as it applies in relation to events occurring in any other country.
7. In this Part as it extends to any country within the United Kingdom, "the forum" means England and Wales, Scotland or Northern Ireland, as the case may be.
8. In this Part "delict" includes quasi-delict.

Abolition of certain common law rules.

10. The rules of the common law, in so far as they—

- a. require actionability under both the law of the forum and the law of another country for the purpose of determining whether a tort or delict is actionable; or
- b. allow (as an exception from the rules falling within paragraph (a) above) for the law of a single country to be applied for the purpose of determining the issues, or any of the

issues, arising in the case in question,

are hereby abolished so far as they apply to any claim in tort or delict which is not excluded from the operation of this Part by section 13 below.

Choice of applicable law: the general rule.

11.—

1. The general rule is that the applicable law is the law of the country in which the events constituting the tort or delict in question occur.
2. Where elements of those events occur in different countries, the applicable law under the general rule is to be taken as being—
 - a. for a cause of action in respect of personal injury caused to an individual or death resulting from personal injury, the law of the country where the individual was when he sustained the injury;
 - b. for a cause of action in respect of damage to property, the law of the country where the property was when it was damaged; and
 - c. in any other case, the law of the country in which the most significant element or elements of those events occurred.
3. In this section "personal injury" includes disease or any impairment of physical or mental condition.

Choice of applicable law: displacement of general rule.

12.—

1. If it appears, in all the circumstances, from a comparison of—
 - a. the significance of the factors which connect a tort or delict with the country whose law would be the applicable law under the general rule; and
 - b. the significance of any factors connecting the tort or delict with another country,that it is substantially more appropriate for the applicable law for determining the issues arising in the case, or any of those issues, to be the law of the other country, the general rule is displaced and the applicable law for determining those issues or that issue (as the case may be) is the law of that other country.
2. The factors that may be taken into account as connecting a tort or delict with a country for the purposes of this section include, in particular, factors relating to the parties, to any of the events which constitute the tort or delict in question or to any of the circumstances or consequences of those events.

Exclusion of defamation claims from Part III.

13.—

1. Nothing in this Part applies to affect the determination of issues arising in any defamation claim.
2. For the purposes of this section "defamation claim" means—
 - a. any claim under the law of any part of the United Kingdom for libel or slander or for slander of title, slander of goods or other malicious falsehood and any claim under the law of Scotland for verbal injury; and
 - b. any claim under the law of any other country corresponding to or otherwise in the nature of a claim mentioned in paragraph (a) above.

Transitional provision and savings.

14.—

1. Nothing in this Part applies to acts or omissions giving rise to a claim which occur before the commencement of this Part.
2. Nothing in this Part affects any rules of law (including rules of private international law) except those abolished by section 10 above.
3. Without prejudice to the generality of subsection (2) above, nothing in this Part—
 - a. authorises the application of the law of a country outside the forum as the applicable law for determining issues arising in any claim in so far as to do so—
 - i. would conflict with principles of public policy; or
 - ii. would give effect to such a penal, revenue or other public law as would not otherwise be enforceable under the law of the forum; or
 - b. affects any rules of evidence, pleading or practice or authorises questions of procedure in any proceedings to be determined otherwise than in accordance with the law of the forum.
4. This Part has effect without prejudice to the operation of any rule of law which either has effect notwithstanding the rules of private international law applicable in the particular circumstances or modifies the rules of private international law that would otherwise be so applicable.

Crown application.

15.—

1. This Part applies in relation to claims by or against the Crown as it applies in relation to claims to which the Crown is not a party.
2. In subsection (1) above a reference to the Crown does not include a reference to Her Majesty in Her private capacity or to Her Majesty in right of Her Duchy of Lancaster or to the Duke of Cornwall.
3. Without prejudice to the generality of section 14(2) above, nothing in this section affects any rule of law as to whether proceedings of any description may be brought against the Crown.