

Private International Law (Miscellaneous Provisions) Act 1995

Chapter 42

Part III

Choice of Law in Tort and Delict

9 Purpose of Part III

- (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.
- (2) The characterisation for the purposes of private international law of issues arising in a claim as issues relating to tort 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 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 this Part applies in relation to events occurring in the forum as it applies in relation to events occurring in any other country.

10 Abolition of certain common law rules

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 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 which is not excluded from the operation of this Part by section 13 below.

11 Choice of applicable law: the general rule

- (1) Subject to subsection (1) of section 12 the general rule is that the applicable law is the law of the country in which the events constituting the tort 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.

12 Choice of applicable law: displacement of general rule

- (1) A party's non-contractual obligations to another party shall be governed by any law expressly chosen by those parties in an agreement between them to apply such law to those non-contractual obligations, whether entered into before or after the event giving rise to the damage occurred.
- (2) Subject to subsection (1) if it appears, in all the circumstances, from a comparison of—
 - (a) the significance of the factors which connect a tort with the country whose law would be the applicable law under the general rule; and
 - (b) the significance of any factors connecting the tort 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.
- (3) The factors that may be taken into account as connecting a tort 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 in question or to any of the circumstances or consequences of those events.

13 Exclusion of defamation claims from Part III

- (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 the Abu Dhabi Global Market for libel or slander or for slander of title, slander of goods or other malicious falsehood; 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.

14 Transitional provision and savings

- (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.

Part IV
Supplemental

19 Short title

This Act may be cited as the Private International Law (Miscellaneous Provisions) Act 1995.