Recent Developments in International Tort Law in the British Commonwealth of Nations--Comment

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law is on the threshold of crossing the Rubicon into what has been described above as
the proper law theory of torts. This would then make the English common law and the
U.S. law co-terminous.

**RECENT DEVELOPMENTS IN INTERNATIONAL TORT LAW**

**IN THE BRITISH COMMONWEALTH OF NATIONS—COMMENT**

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Although the English courts once led the common law tradition in choice of law in
tort, they now follow a statutory regime pursuant to the Private International Law (Mis-
cellaneous Provisions) Act of 1995. Section 11 of the act provides that as a general rule
the applicable law is the law of the country in which the events constituting the tort in
question occur. Section 12 provides for displacement of the general rule where, in all
the circumstances, a comparison of the significance of the factors connecting the tort
with the country in which that law applies, and the factors connecting the tort with
another country, make it appear that it is substantially more appropriate for the other
law to apply.

In Canada, judicial consideration of the law that was pronounced
by the Supreme
Court of Canada in *Tolofson v. Jensen* has resulted in different rules for interprovincial
and international torts. In interprovincial torts, the courts have felt constrained to ad-
here strictly to the requirement of applying the *lex loci*, but in international torts, on
occasion, the courts have applied the personal law of the parties, as was done in *Hanlan
v. Sernesky*. In *Wong v. Wei*, the British Columbia Supreme Court took the unusual but
arguably appropriate step of applying the personal law of the parties in a situation in
which it did not provide an advantage to the plaintiff to do so. In a case that was similar
to that in *Babcock v. Jackson*, the court was not persuaded to apply the *lex loci*. This
meant that the plaintiff could not claim the extent of nonpecuniary damages that might
have been available under the law of California, the place where the tort occurred.

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3 Private International Law (Miscellaneous Provisions) Act 1995-Part III—Choice of Law in Tort and Delict, c. 42 (Eng.).