



# Private International Law (Choice of Law in Tort) Act 2017

Public Act 2017 No 44  
Date of assent 4 December 2017  
Commencement see section 2

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Private International Law (Choice of Law in Tort) Act 2017.

**2 Commencement**

This Act comes into force 15 days after the date on which it receives the Royal assent.

**Part 1  
Preliminary provisions**

**3 Purpose**

The purpose of this Act is to establish rules for choosing the law to be used for determining issues relating to tort.

**4 Transitional, savings, and related provisions**

The transitional, savings, and related provisions set out in Schedule 1 have effect according to their terms.

**5 Interpretation**

In this Act, unless the context otherwise requires,—

**applicable law** means the law to be used for determining issues relating to tort

**claim** means a claim in tort

**country** means a country in the sense of private international law.

**6 Act binds the Crown**

(1) This Act binds the Crown.

(2) Nothing in this Act limits or affects the application of the Crown Proceedings Act 1950 in respect of any claim in tort by or against the Crown.

Compare: Private International Law (Miscellaneous Provisions) Act 1995 s 15 (UK)

**Part 2  
Substantive provisions**

**7 General principles**

(1) 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 New Zealand.

(2) The applicable law is to be used for determining the issues arising in a claim that have been characterised as relating to tort, including the question of whether an actionable tort has occurred.

- (3) The applicable law excludes any choice of law rules forming part of the law of the country or countries concerned.
- (4) To avoid doubt, this Act applies in relation to events occurring in New Zealand as well as to events occurring in any other country.

Compare: Private International Law (Miscellaneous Provisions) Act 1995 s 9 (UK)

## 8 General rule

- (1) 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,—
  - (a) for a cause of action in respect of personal injury caused to an individual or death arising from personal injury, the law of the country where the individual was when he or she sustained the injury; and
  - (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**—

- (a) means a physical, mental, or physical and mental injury (even if the injury causes death); and
- (b) includes disease or infection.

Compare: 2010 No 110 s 17(4), (5); Private International Law (Miscellaneous Provisions) Act 1995 s 11 (UK)

## 9 When general rule displaced

- (1) The general rule is displaced if the court determines in accordance with subsection (2) that in all the circumstances it is substantially more appropriate for the law of another country (**country B**) to be the applicable law.
- (2) The court must make its determination by comparing the following:
  - (a) the significance of the factors that 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 any 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, but are not limited to, factors relating to—
  - (a) the parties; or
  - (b) any of the events that constitute the tort in question; or
  - (c) any of the circumstances or consequences of those events.

- (4) If the general rule is displaced under this section, the law of country B (excluding any choice of law rules forming part of the law of that country, in accordance with section 7(3)) applies for the purposes of determining the issues, or any issue, arising in the case.

Compare: Private International Law (Miscellaneous Provisions) Act 1995 s 12 (UK)

#### **10 Rule of double actionability and related common law rules abolished**

The following rules of common law, to the extent that they apply to a claim in tort, are abolished:

- (a) the rules of common law, to the extent that they require actionability under both New Zealand law and the law of another country, for the purpose of determining whether a tort is actionable;
- (b) the rules of common law, to the extent that they allow (as an exception from the rules falling within paragraph (a)) for the law of a single country to be applied for the purposes of determining the issues, or any of the issues, arising in the case in question.

Compare: Private International Law (Miscellaneous Provisions) Act 1995 s 10 (UK)

#### **11 Relationship between Act and other rules of law**

- (1) Nothing in this Act affects any rule of law (including rules of private international law) other than the rules that section 10 abolishes.
- (2) Without limiting the generality of subsection (1), nothing in this Act—
- (a) authorises the application of the law of a country outside New Zealand as the applicable law to the extent that doing 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 New Zealand; 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 New Zealand; or
- (c) precludes recognition or development of a choice of law rule giving effect to an agreement as to the applicable law.
- (3) To avoid doubt, subsection (2)(b) must be applied in accordance with the rules of New Zealand private international law in force at the time that the rules or questions referred to in that provision fall to be applied or determined in relation to a claim.
- (4) This Act has effect without prejudice to the operation of any New Zealand rule of law that—
- (a) has effect despite the rules of private international law applicable in the particular circumstances; or

- (b) modifies the rules of private international law that would otherwise be applicable in the particular circumstances.

Compare: Private International Law (Miscellaneous Provisions) Act 1995 s 14 (2)–(4) (UK)

## Schedule 1

### Transitional, savings, and related provisions

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#### Part 1

##### Provision relating to this Act as enacted

#### 1 Transitional provision

Nothing in this Act applies to acts or omissions that give rise to a claim that occur before the commencement of this Act.

#### Legislative history

22 September 2016	Introduction (Bill 181–1)
7 December 2016	First reading and referral to Justice and Electoral Committee
7 June 2017	Reported from Justice and Electoral Committee (Bill 181–2)
28 June 2017	Second reading
26 July 2017	Committee of the whole House
29 November 2017	Third reading
4 December 2017	Royal assent

This Act is administered by the Ministry of Justice.