McNeilly v Imbree [2007] NSWCA 156

The decision of the New South Wales Court of Appeal in *McNeilly v Imbree* [2007] NSWCA 156 may be of interest to those in the United Kingdom (and elsewhere) because it raises the private international law dimensions of the same New South Wales statute as was considered by the House of Lords in *Harding v Wealands* [2006] UKHL 32; [2006] 4 All ER 1; [2006] 3 WLR 83, namely the New South Wales *Motor Accidents Compensation Act 1999* (the ***MACA***).

McNeilly concerned a plaintiff who was seriously injured in a car accident that occurred in the Northern Territory. The plaintiff took action in New South Wales against the driver of the car for negligence. One issue in the case was whether the assessment of damages was governed by the MACA or the equivalent Northern Territory statute, the MACA providing a lower discount rate for damages for future economic loss. The Court of Appeal concluded that the Northern Territory statute applied on the basis that the assessment of damages was a question of substance governed by the law of the Northern Territory as the place of the tort, pursuant to the Australian common law choice of law rule for torts (the *lex loci delicti* rule). It was not argued that the *lex loci delicti* rule was excluded by s 123 of the MACA as a mandatory law of the forum, which provides: "A Court cannot award damages to a person in respect of a motor accident contrary to this Chapter."

McNeilly may be contrasted with *Harding*, which concerned a claim before the English courts arising out of a car accident in New South Wales. The House of Lords characterised the question of damages as a question of procedure and therefore applied English law as the law of the forum, rather than the MACA. Section 123 of the MACA could not affect this conclusion: even if it had the effect of a mandatory law of the forum in a case before the New South Wales courts, it could not have that effect in a case before the English courts.