


Contribution claims

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Position in domestic law

Civil Liability (Contribution) Act 1978 s1(1):

Subject to the following provisions of this section, any person liable in respect of any damage suffered by another person may recover contribution from any other person liable in respect of the same damage (whether jointly with him or otherwise).

Time limit: s10 Limitation Act 1980: two years from:

- Judgment, or
- Settlement

Position in domestic law

Civil Liability (Contribution) Act 1978 s1(6):

References in this section to a person's liability in respect of any damage are references to any such liability which has been or could be established in an action brought against him in England and Wales by or on behalf of the person who suffered the damage; but it is immaterial whether any issue arising in any such action was or would be determined (in accordance with the rules of private international law) by reference to the law of a country outside England and Wales.

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Pre-Rome I and Rome II position

Arab Monetary Fund v Hashim (No 9) The Times, 11 October 1994

- ▶ 1978 Act applies to all claims brought in England and Wales
- ▶ Regardless of choice of law
- ▶ Even if there's no right to a contribution in the proper law
- ▶ Even if the right to a contribution is time-barred under the proper law

Under Rome I and Rome II

Rome I: Contract claims

(e.g. tour operator against supplier)

Article 16: Multiple Liability

If a creditor has a claim against several debtors who are liable for the same claim, and one of the debtors has already satisfied the claim in whole or in part, the law governing the debtor's obligation towards the creditor also governs the debtor's right to claim recourse from the other debtors. The other debtors may rely on the defences they had against the creditor to the extent allowed by the law governing their obligations towards the creditor.

Rome II: Tort claims

(e.g. against another driver)

Article 20: Multiple Liability

If a creditor has a claim against several debtors who are liable for the same claim, and one of the debtors has already satisfied the claim in whole or in part, the question of that debtor's right to demand compensation from the other debtors shall be governed by the law applicable to that debtor's non-contractual obligation towards the creditor.

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Does *Hashim* survive Rome I/II?

- ▶ Dickinson: “*it may be doubted whether [the rule in Hashim] is sustainable under the Regulation, given the limited role it reserves to the law of the forum*”.
- ▶ Dicey, Morris and Collins: “*it may be doubted whether such principles will fall within the restricted understanding of the phrase “overriding mandatory provisions” that is likely to emerge under the Rome II Regulation*”.
- ▶ Docherty: “*it is not at all clear that the 1978 Act remains ‘unequivocal in its application to all proceedings brought in England’*”.

Overriding mandatory provision

Rome I

Article 9: Overriding mandatory provisions

1. *Overriding mandatory provisions are provisions the respect for which is regarded as crucial by a country for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the contract under this Regulation.*
2. *Nothing in this Regulation shall restrict the application of the overriding mandatory provisions of the law of the forum.*
3. *Effect may be given to the overriding mandatory provisions of the law of the country where the obligations arising out of the contract have to be or have been performed, in so far as those overriding mandatory provisions render the performance of the contract unlawful. In considering whether to give effect to those provisions, regard shall be had to their nature and purpose and to the consequences of their application or non-application.*

Rome II

(e.g. against another driver)

Article 20: Multiple Liability

Nothing in this Regulation shall restrict the application of the provisions of the law of the forum in a situation where they are mandatory irrespective of the law otherwise applicable to the non-contractual obligation.

...a what?

*Overriding mandatory provisions are provisions the respect for which is regarded as **crucial** by a country for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are **applicable to any situation falling within their scope**, irrespective of the law otherwise applicable*

Is the 1978 Act an overriding mandatory provision?

Roberts v Soldiers, Sailors, Airmen and Families Association [2019] EWHC 1104 QB, [2020] QB 310 – Soole J

Tort claim arising pre-Rome II

BUT characterises 1978 Act as an “overriding mandatory provision” applying *Cox v Ergo Versicherung AG* [2014] AC 1379, HL

Within the meaning of Articles 9 and 16?

...maybe

Court of Appeal: 28-29 April 2020

Conclusions

- ▶ If 1978 Act applies: contribution claims are easy peasy
- ▶ If it doesn't: they aren't