

Publisher's Note

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Klar

Remedies in Tort

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This five-volume national work provides thorough coverage of the law relating to recovery in tort actions in Canada. The first three volumes focus on specific torts while the fourth volume covers substantive and procedural issues common to all tort litigation. The final volume includes a Master Table of Contents, Table of Cases, a Table of Statutes, and a comprehensive index.

This release features valuable updates to the case law and commentary in Chapters 26 (Liability) and 28 (Parties).

Release Highlights

- **Chapter 26 – Joint and Several Liability – Contribution among tortfeasors – Limitation period for claims for contribution:** Defendants sued on their personal guarantees third partying lawyer for contribution and indemnity more than two years after first defendant served with claim on personal guarantee; summary dismissal of third party proceedings as statute barred set aside on appeal; Limitations Act, 2002, s. 18 subject to discoverability principles as part of overall scheme of Act; second defendant's presumptive limitation period commencing when he was served, not when first defendant was served; facts relating to discovery of claim against lawyer contentious and not suited to summary judgment: *Mega International Commercial Bank (Canada) v. Yung*, 2018 CarswellOnt 6978, 2018 ONCA 429 (C.A.).

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- **Chapter 26 – Conflict of Laws – Jurisdiction:** Prominent Ontario businessman and celebrity in Israel, alleging defamatory material published in Israeli newspaper article; online article read in Ontario; defendant’s application for stay of Ontario proceedings dismissed; appeal allowed; presumption of jurisdiction not rebutted since reasonable foreseeability of defendant being sued in Ontario, but Israel more appropriate forum; per Côte J. (Brown and Rowe JJ. concurring): robust and careful review of *forum non conveniens* required in internet defamation cases; comparative convenience and expense for parties and witnesses, fairness, and judgment enforcement favouring Israel, while less weighty factors of loss of juridical advantage and applicable law favouring Ontario; per Abella and Wagner JJ. (concurring) choice of law rule for internet defamation should be place of most substantial harm to plaintiff’s reputation; on application of that test Israel clearly more appropriate forum; per McLachlin C.J., Moldaver and Gascon JJ. (dissenting): Ontario court having jurisdiction and Israel not clearly more appropriate forum; comparative convenience and expense favouring Israel while applicable law, fairness to parties and loss of juridical advantage weighing in favour of Ontario on *forum non conveniens* analysis: *Haaretz.com v. Goldhar*, 2018 CarswellOnt 8883, 2018 CarswellOnt 8884, 2018 SCC 28, 46 C.C.L.T. (4th) 177, 18 C.P.C. (8th) 1 (S.C.C.), reversing 2016 CarswellOnt 10242, 2016 ONCA 515, 401 D.L.R. (4th) 634, 132 O.R. (3d) 331, 349 O.A.C. 132 (C.A.).
- **Chapter 28 – Parties – Crown – Liabilities of the Crown in tort – Tort liability of the Crown in right of Canada:** Clear and unequivocal legislative language is required to change the common law and override Crown immunity; under Crown Liability and Proceedings Act (Can.) federal Crown is not required to submit to discovery in proceedings in which it is not a party: *Canada (Procureur général) c. Thouin*, 2017 CarswellQue 8001, 2017 CarswellQue 8002, 2017 SCC 46, [2017] 2 S.C.R. 184, 414 D.L.R. (4th) 201, 10 C.P.C. (8th) 223, 24 Admin. L.R. (6th) 179 (S.C.C.).
- **Chapter 28 – Parties – Corporations – Capacity to be sued:** Company suing auditors for losses arising from fraudulent misstatement of its financial statements by directors and some senior management; auditors liable to company for damages resulting from negligent preparation of statutory audit; auditors unsuccessfully arguing that directors’ fraud attributable to company and that defences of illegality and contributory negligence applicable; auditors unable to attribute conduct of fraudulent directors and managers to company under doctrine of corporate identification; application of doctrine not in public interest; applying doctrine in these circumstances rendering very purpose of statutory audit meaningless; no other compelling reasons here to justify use of doctrine, and auditors’ failure to take third-party proceedings against fraudulent directors weighing against application of doctrine; evidence not establishing negligence of innocent shareholders or directors in failing to discover fraud or to minimize harm; since negligence or fault not attributable to corporate plaintiff Negligence Act (Ont.), s. 3 not applicable: *Deloitte & Touche v. Livent Inc. (Receiver of)*, 2017 CarswellOnt 20138, 2017 CarswellOnt 20139, 2017 SCC 63, 43 C.C.L.T. (4th) 1, 416 D.L.R. (4th) 32, [2017] 2 S.C.R. 855, 55 C.B.R. (6th) 1, 71 B.L.R. (5th) 175 (S.C.C.).
- **Chapter 28 – Parties – Corporations – Capacity to be sued:** Plaintiffs seeking to satisfy foreign judgment against American parent company by executing against assets of 7th level wholly owned Canadian subsidiary; Canadian subsidiary a separate legal person, not an asset of corporate parent; Execution Act (Ont) not

establishing cause of action against subsidiary nor giving parent interest in subsidiary's shares or assets; test for piercing corporate veil not satisfied; no fraud alleged in corporate structure; parent company not dominating or exercising total effective control over subsidiary; courts not recognizing independent "just and equitable" exception to principle of corporate separateness; appellate court affirming rejection of group enterprise theory of corporate liability; shares and assets of Canadian subsidiary not exigible to satisfy judgment against parent: *Yaiguaje v. Chevron Corp.*, 2017 CarswellOnt 868, 2017 ONSC 135, 410 D.L.R. (4th) 409, 136 O.R. (3d) 261 (S.C.J.), affirmed 2018 CarswellOnt 7942, 2018 ONCA 472 , 141 O.R. (3d) 1 (C.A.).