

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

www.ijlra.com

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

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NEGLIGENT MISSTATEMENTS IN PRIVATE INTERNATIONAL LAW: ANALYSING CASE OF CUSTOMS AND EXCISE COMMISSIONERS V BARCLAYS BANK

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Abstract

Negligent misstatement is significant in the ambit of private international law, especially in the consideration of cross-border and multicompany dealings. The paper gives a view of the development of negligent misstatement through an analysis of the laws of deceit and the application of key legal principles and their responses in commercial disputes on an international scale. The impact of important cases is outlined in the paper, the cases being Hedley Byrne & Co Ltd v Heller & Partners Ltd and Customs and Excise Commissioners v Barclays Bank plc, which are considered in terms of how they define the duty of care and what domestic principles apply to liability for economic loss. The work examines issues such as the tension caused by conflicting domestic laws, the influence of the UN Convention on Contracts for the International Sale of Goods (CISG), and enforcement when it comes to negligent misstatement claims across jurisdictions. Judicial trends including the doctrines of forum non conveniens and lex loci delicti are captured in the paper, explaining complexities in determining applicable laws and jurisdictional authority. The findings reveal the case for legal harmonization with a view to ensuring clearer rules and predictability in international disputes relating to negligent misstatement.

Introduction

Negligent misstatement is a major issue in private international law, especially for cross-border transactions and multinational dealings. This is where a false or misleading statement is made negligently, causing loss to another party. Fraudulent misrepresentation, on the other hand, entails an intention to deceive. The focus of negligent misstatement is on carelessness or recklessness when making a statement. The paper discusses the context of negligent misstatement, its development under tort law, the legal systems that regulate its application to international transactions, and the issues concerning conflicts of laws.

This gains greater relevance in private international law as global trade becomes more complex and transnational disputes proliferate. Wrong statements give rise to liability claims, which are pertinent given that businesses and persons operate on various financial reports, advice, and representations emanating from multiple jurisdictions. This paper gives an insight into the development of negligent misstatements in tort law, the legal principles in transactional contexts relating to negligent misstatement, landmark cases, and conflict of law challenges.

The origin of the doctrine of negligent misstatement lies in the law of deceit where proof of fraudulent intent was required for liability to come about. Common law jurisdictions had historically confined liability for misrepresentation to intentional fraud cases. Over time, jurisdictions began to recognize that negligent making of statements could attract liability even where there was no fraudulent intent.

A landmark case in the development was *Hedley Byrne & Co Ltd v Heller & Partners Ltd* [1964] AC 465 which established in Britain a better-learning rule of the law that a duty of care existed in cases of negligent misrepresentation provided the party making the statement had a duty to the party relying on it. The decision became a force to other common law jurisdictions by increasing the liability exposure from the element of fraud. This case paved the way for tortious principles application in negligent misstatement, freeing the rigid requirement of fraudulent intent.

Research questions:

1. How do different legal systems determine liability for negligent misstatement in cross-border transactions, and what are the challenges in applying uniform international standards?
2. What role do landmark cases, such as *Customs and Excise Commissioners v Barclays Bank plc* and *Hedley Byrne & Co Ltd v Heller & Partners Ltd*, play in shaping the legal principles of negligent misstatement in private international law?

Research methodology:

The research methodology is doctrinal legal methodology, where case laws, statutes, and scholarly literature are analyzed to assess the phenomenon of negligent misstatement in private international law. This is done using primary sources such as landmark case laws (*Hedley*

Byrne & Co Ltd v Heller & Partners Ltd, Customs and Excise Commissioners v Barclays Bank plc) and international legal frameworks such as the CISG and Rome II Regulation, as well as secondary sources like journal articles and legal commentaries. Further, comparative legal analysis is done to study how various jurisdictions regulate negligent misstatement will focus on liability issues, enforcement, and conflict of law. The study will analyze judicial reasoning, jurisdictional problems, and the role of foreseeability and proximity in claims of cross-border misstatement.

Literature review:

This research provides an overview of negligent misstatement in private international law: its jurisprudential basis, construction by the courts, and issues of enforcement. The study uses case law, international legal instruments, and scholarly opinions to analyze how various jurisdictions deal with liability for negligent misrepresentation.

Cases like Hedley Byrne & Co Ltd v Heller & Partners Ltd defined the duty of care principle concerning negligent misstatement, while Caparo Industries plc v Dickman defined the test for liability. In contrast, Customs and Excise Commissioners v Barclays Bank plc set further limits on claims for economic loss by reinforcing the principle that third parties do not, by default, owe a duty of care. The paper also investigates certain inconsistencies under international law, in particular the exclusion of tortious liability by the CISG and the role of the Rome II Regulation in ascertaining applicable law.

Some scholars, such as Carpenter and Bohlen, endorsed a fault-based approach stressing reliance and foreseeability, while others, such as Williston, argued for absolute liability for misstatements. The literature showed that jurisdictional barriers make it necessary for the various countries to harmonize their laws so that cross-border claims might reach uniformity. The paper therefore contributes to the debate by appraising case law, principles of law, and enforcement, shedding light on the resolution of clarifying aspects of international disputes.

Analysis

A) Theoretical Frameworks and Judicial Approaches

The issue of liability in negligent misstatement cases has been discussed by scholars of the law for centuries. Carpenter argues that liability for misrepresentation ought to extend to include

honest but mistaken statements in appropriate circumstances. Williston takes the stance that absolute liability should be imposed since this would better ensure predictability and fairness. On the contrary, Bohlen adopts the more traditional negligence-based view, stating that duty should only arise where the misstatement was made in a careless manner and where reliance on this misstatement was reasonable for the injured plaintiff.

A major issue in private international law is how to determine which legal system governs cases where a negligent misstatement is made in one jurisdiction and relied upon in another. Some courts will favor a strict territorial approach, while others will rely on the nature of the relationship between the two parties. Additionally, doctrines such as proximity and foreseeability are predictably applied quite differently across jurisdictions, making any correlation between them even more complicated.

B) Negligent Misstatement and the CISG in International Contracts

The UN Convention on Contracts for the International Sale of Goods (CISG) serves to unify the rules governing international commercial transactions; on the other hand, it fails to comment specifically on negligent misstatements. In viewing the limitations of the CISG in respect of addressing various kinds of misrepresentation claims, Schroeter (2013) describes the difficulties arising in reconciling domestic tort remedies with uniform international contract law. The CISG predominantly prescribes the contract formation, obligations, and remedies provided for breach, thereby leaving a little margin for national laws to deal with misrepresentation occurring during the pre-contractual phase. This presents the potential for conflict in enforcement where one party seeks damages for negligent misstatements under domestic tort law while the other argues that such claims are preempted by the CISG.

Furthermore, since there is no tortious liability against precontractual misrepresentation in the CISG, this creates a divergence from domestic laws, leading to contrary outcomes. Domestic misrepresentation laws are applied by some courts, while strictly abiding by the CISG framework is the choice of others; hence, inconsistency results. Unclear instructions entailing principles of good faith have thus come to occupy the center stage of most disagreements; however, the good faith itself continues to be a highly contentious principle in international law.

C) Landmark Cases in Private International Law

In the case **Customs and Excise v. Barclays Bank plc** presented a significant decision by the House of Lords in the area of tort law, particularly regarding the requirement of the duty of care in terms of negligence for pure economic loss. The issue was whether a bank, once notified of a freezing injunction against a customer's account, could then owe a duty of care towards the third party that got the injunction.

Case Background

In January 2001, Her Majesty's Commissioners of Customs and Excise obtained freezing injunctions against Brightstar Systems Limited and Doveblue Limited in order to prevent both companies from dealing with their assets in any way while they owed substantial amounts of unpaid VAT. The freezing orders named Barclays Bank as the bank where the accounts were held and were faxed to them. They then proceeded to allow payments to be made from accounts in these names. This led HMCE to claim from Barclays damages for the amounts that were improperly paid out.

Legal Issues

The legal issue in this suit was whether Barclays Bank owed a duty of care to HMCE to take reasonable steps to ensure compliance with freezing injunctions. The following legal principles delineated the case:

- **The Test for Duty of Care:** Whether Barclays met the criteria for a duty of care, as established in *Caparo Industries plc v. Dickman* [1990] 2 AC 605, which requires foreseeability of harm, proximity, and that it is fair, just, and reasonable to impose a duty.
- **Assumption of Responsibility:** An issue was whether Barclays had voluntarily assumed responsibility for the acts of HMCE and whether HMCE relied on Barclays to comply with the order.
- **The Role of Contempt of Court:** The court assessed whether the threat of contempt proceedings was the more suitable means of enforcement instead of torts.

The Decision of the House Lords

In favor of Barclays Bank, the House of Lords judged that the bank owed no duty of care toward HMCE, and the reasons were as follows:

- **Lack of Assumption of Responsibility:** The court found that Barclays had no duty of care in assuming responsibility toward HMCE.
- **Nature of Freezing Injunctions:** These freezing orders restrain a party (the bank's customer) from dissipating assets, though they do not impose further obligations on third parties such as the bank.
- **Appropriate Remedy through Contempt Proceedings:** The House of Lords also held that freezing injunctions are enforced through contempt per violations rather than through duty of care in tort.

Effects of the Judgment

- **Clarification on tortious liability:** This ruling reaffirmed that tort liability for economic loss must arise out of clearly defined assumptions of responsibility and reliance.
- **Responsibilities of banks under a freezing order:** It confirmed that banks are required to comply with freezing orders but are not automatically liable in negligence to third parties for breaches.
- **Limitation on claims for economic loss:** The case set a significant precedent for limiting claims of negligence due to economic loss when obligations have been imposed by the court on third parties.

As established in *Customs and Excise v. Barclays Bank plc*, the common law tort doctrine, as such, does not compel banks or other third parties who have been notified of court orders as not to lend out their duty of care directly to the parties who benefit from such orders. It opens up the proper venue for enforcement through contempt proceedings. The case remains the greatest authority regarding the confines of claims for economic loss in negligence alongside the framework of duty owed by banks in asset restraint by order of the courts.

Other landmark cases include *Spiliada Maritime Corp v. Cansulex Ltd.* established the principle of *forum non conveniens* in the adjudication of cross-border disputes, thereby providing a guide as to when a court ought to decline its jurisdiction in favor of the appropriate forum.

Owusu v. Jackson clarified that courts in the EU do not have the authority to decline jurisdiction in favor of a non-EU forum under the Brussels Regulation. This case thus enhances the principle of legal certainty in international disputes.

Adams v. Cape Industries plc dealt with corporate liability in cross-border tort cases, delineating the circumstances in which a parent company could be held liable for actions of its foreign subsidiaries.

Maharane of Baroda v. Wildenstein examined the enforcement of oral contracts made in different jurisdictions, bringing to the fore the ambivalence of burden of proof concerning contract formation with particular reference to foreign nations.

Kiobel v. Royal Dutch Petroleum Co. restricted the extraterritorial application of American law to tort claims against foreign corporations and called for the jurisdictional relation to be robust. These cases have illustrated the level of complexity that transnational disputes pose in the application of legal principles, especially while determining jurisdiction, applicable law, and enforcement of foreign judgments.

In the absence of any specific treaties on negligent misstatement, such as the CISG, the courts will rely on domestic law to settle the disputes. The relevant law is determined by 'lex loci delicti,' that is, the law of the place of the wrong. This is not problematic where the misstatement is made in the same country, but it is very confusing in cases where the misstatement occurred in one country but the injury happened in another. A court could also use the most significant relationship test to determine, among others the place where the parties carried on business, the place of occurrence of the economic loss, and the citizenship of the parties.

In the EU, the Rome II Regulation tells about the law governing noncontractual obligations such as negligent misstatement. It includes party autonomy but provides default rules based on place of damage. Such a system is not universally acknowledged outside the EU and thus various interpretations of law will be there.

D) Trends in the Judiciary and Case Law

The negligent misstatement issue has been nowadays viewed in courts quite variably attributable to differences in legal traditions as well as policy considerations. In the U.S., *Ultramares Corp v. Touche* confined the liability for misstatement in negligence to conditions whereby the relationship of the parties involved was special enough to warrant liability. This provision intended to prevent professionals, when issuing financial or business advice, from

facing overly severe liability. Meanwhile, courts throughout Europe have tended towards much wider interpretations, thus giving teeth to the liability wherever reliance upon a miss-statement was reasonable and expected.

In this regard, international tribunals involved in arbitrating disputes often balance domestic tort law principles with the general higher goal of attaining legal certainty in global trade. As such, for example, the ICC International Court of Arbitration has made rulings on cross-border financial misstatements but has done so applying principles from both contract and tort.

Conclusion

Negligent misstatement is a very complex and evolving area of private international law. That tension continues to present great challenges not only to the legal practitioner but also to the courts, because the guide of domestic tort law principles hobbles and corsets many bounds of the conventions of international contract law such as the CISG. As transnational commerce expands, there appears a greater need for common legal standards to govern the subject of negligent misrepresentation in international transactions.

Future law reforms may concern the clearer rules developing conditions as to liability, reliance, and applicable law in cases of negligent misstatement. In this way, there will be greater congruence and predictability in transactions on a global level. By greater interjurisdictional cooperation, perhaps models or international conventions, could serve to iron out ambiguities and improve the means to give legal remedies to those injured in international trade owing to negligent misstatement.

References:

1. **Ulrich G. Schroeter**, *Defining the Borders of Uniform International Contract Law: The CISG and Remedies for Innocent, Negligent, or Fraudulent Misrepresentation*, 58 **Vill. L. Rev.** 553 (2013).
2. **Charles E. Carpenter**, *Responsibility for Intentional, Negligent and Innocent Misrepresentation*, 9 **Or. L. Rev.** 413 (1929-1930).
3. **Hedley Byrne & Co Ltd v. Heller & Partners Ltd**, [1964] AC 465 (HL) (UK).
4. **Caparo Indus. plc v. Dickman**, [1990] 2 AC 605 (HL) (UK).
5. **Customs & Excise Comm'rs v. Barclays Bank plc**, [2006] UKHL 28.

6. **Spiliada Mar. Corp. v. Cansulex Ltd**, [1987] AC 460 (HL) (UK).
7. **Owusu v. Jackson**, Case C-281/02, [2005] ECR I-1383 (ECJ).
8. **Adams v. Cape Indus. plc**, [1990] Ch 433 (CA) (UK).
9. **Maharane of Baroda v. Wildenstein**, [1972] 2 QB 283 (UK).
10. **Kiobel v. Royal Dutch Petroleum Co.**, 569 U.S. 108 (2013).
11. **Ultramares Corp. v. Touche**, 255 N.Y. 170, 174 N.E. 441 (1931) (U.S.).
12. **Rome II Regulation**, Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations, 2007 O.J. (L 199) 40.
13. **United Nations Convention on Contracts for the International Sale of Goods (CISG)**, Apr. 11, 1980, 1489 U.N.T.S. 3.

