

INDEX—GOVERNMENTAL TORT LIABILITY

ADMINISTRATION

of public tort liability: City Attorney's role in, 234-5, 237, 287, 289, 348-51, 365-6, 343-4, 348-62; problems in, 235-6, 343-4, 348-62; lack of records on, 239-40; organization for, 349-50, filing of claims, 350; investigative practices in, 351-4; time factor in, 346, 356-7; amounts claimed, 357-60, claims made in Virginia, 298, 364-5; judicial participation in: generally, 344-7, delay through, 345-6, disadvantages in, 346, 347, advantages in, 347, expenses of, 347, as influenced by *stare decisis*, 217. See MUNICIPAL TORT LIABILITY, STATE TORT LIABILITY, FEDERAL TORT LIABILITY, NEW YORK, STATISTICS.

Bailey v. The Mayor of New York, 215, 216.

Barrett v. State, 271.

Chisholm v. Georgia, 244, 245.

COMPARATIVE LAW

of systems of governmental tort liability: England, 182-7; United States, 187-96; Germany, 196-205; France, 205-11; final conclusions on, 211-3.

CONSTITUTIONAL LAW

state liability for torts as affected by, 243-7, 244, by U. S. Constitution, Art. III, 243-4, 11th Amendment, 244-6, 332.

COUNTIES

public tort liability of: model draft act, 298. See MUNICIPAL TORT LIABILITY.

COURT OF CLAIMS

Act of 1855 relating to, 188, 243, 312; Act of 1863 relating to, 312; federal contract liability enforced in, 312, 313, 333; Act of 1910 permitting patent infringement suits in, 313; advisory action by, on Congressional resolution of reference, 323; proposed as appellate court under Federal Tort Claims Bill, 329.

Cunningham v. Macon & Brunswick, 188.

EMPLOYEES COMPENSATION ACT

see FEDERAL TORT LIABILITY.

ENGLAND

public tort liability in: history of, 182; liability of the Crown or central government, 182-4, 243; Crown Proceedings Committee Report on, 184; responsibility of administrative officers and, 184-5; as affected by Statute of Westminster I, 184, II, 185; of local authorities, 185-6; law of, summarized, 185-7, "emanations of the Crown" as qualifying, 184, 185; doctrine of *respondet superior* as affecting, 185-6; doctrine of *ultra vires* as qualifying, 186, 187.

Eric R. R. v. Tompkins, 322.

FEDERAL TORT CLAIMS BILL

legislative history of, 282, 327-8, 332; provisions of, as to: exempted activities, 285, 330-2; scope of

liability, 291, 329; exclusive jurisdiction of district courts, 328, 329, liability for federal "agencies," 328; venue, 329, settlement, 329; procedure, 329; substantive law, 329-32, immunity for action under unconstitutional statute, 330-1, limitations, 331; need for enactment of, 333-4; Presidential message on, 325-6, 327-8.

FEDERAL TORT LIABILITY

suits against the U. S. based on, 243, 311, 333; history of, 311-4.

private Acts of Congress establishing: generally, 243, 311-2, 321-6; providing direct payment in cases of, 322; waiving immunity from suits to enforce, 313, 322, 333; waiving defenses against, 322; limiting amounts recoverable for, 322; procedure in passing on, in Congressional Claims Committees, 323-4, 325, in House and Senate, 324, 325, in omnibus bills, 324-5; Presidential participation in, 325; Presidential message on, 325-6, 327-8; Federal Constitution in relation to, 243, 333.

judicial determination of: generally, 313-7, under "Suits in Admiralty Act of 1920," 314-5; under 1925 amendments to Act of 1920, 315; in suits for patent infringements against U. S., 313, 316, 333, for damage to oyster beds, 316; for torts of federally owned or controlled corporations, 316-7. administrative determination of: generally, 317-21, 334; by Federal Employees' Compensation Comm'n, 118, 188, 317; under "Small Claims Act of 1922," 317-8, by U. S. department and bureau heads, 318-21; procedural and substantive limitations on, 321.

Fowler v. City of Cleveland, 190.

FRANCE

public tort liability in: system of, 205; historical development of, 205-9; under Civil Code, 206; distinction of public and proprietary functions as affecting, 206, 208; Council of State administering, 206; "administrative guarantee" as basis of, 206-7; *Blanco* case as affecting, 207; *Pelletier* case establishing four principles of, 207, 208; doctrine of risk as affecting, 208; system of, summarized, 210-1; *Fentry* case as affecting jurisdiction over "departments" and "communes," 209; liability of officials, 209-10; personal fault and "fault of service" distinguished in, 209, 210; *Companie Générale, Sieur Hacquart, Martin, Justet, and Anguet* cases as affecting, 210.

GERMANY

public tort liability in: historical development of, 196-7; Roman law influence on, 196-8; Nicolaus Hert and the doctrine of, 199; doctrine of the "fiscus," 199; General State Code of Prussia (A.L.R.) on, 199-200; German commentators on, 200; *Reichsgericht* passing on, 201, 202, 203; as affected by Civil Code, 201, by Art. 131 of the Weimar

Constitution, 202-3; law of, summarized, 204-5; liability of officials, 203, under Civil Code of 1900, 203-4.

Hans v. Louisiana, 188.

Karl v. State, 274.

Kawananaoia v. Polyblank, 187, 188.

Keijer & Keijer v. Reconstruction Finance Corporation, 331.

Miller v. Horton, 194.

Mower v. Leicester, 191.

MUNICIPAL TORT LIABILITY

as affected by distinctions based on character of functions: public and private, 189-90, 214, 283; proprietary and governmental, 217, 218, 219, 226, 283, 296, 297, 339; mandatory and voluntary, 221, discretionary and ministerial, 222-3; arising regardless of nature of functions, 218; tests for: generally, 219-24, 297; nonfeasance and malfeasance, 190; pecuniary profits or charges for services, 221, 222, 226, 227; "local benefit," 222, 228; "active wrongdoing test" in New Jersey, 223-4, 232; historical test, 224; scope of: based on negligence, 285-6, 296-7; on nuisance, 218, 228, 296, 297; *ultra vires* doctrine as restricting, 229; fear of excessive liability as circumscribing, 220-2, 341-2, 363-7; as affected by criminal law, 231; in cases involving: Police Department, 222, 224-5, 291, 297-8; Fire Department, 221, 222, 225, 231, 297, 298; water, gas and electricity supply, 225-6; for sewers and garbage disposal, 226; streets, sidewalks and bridges, 226, 288-9, 296, 297, 298, 307, 309; traffic signals, 227; parks, swimming pools and recreation centers, 227-8, 297; education 228, 297; airports, 228, 298.

statutory changes as affecting: generally, 229, 230, 284-6, 336-7; relating to negligence, 285-6, 296-7; to damages for pain and suffering, 286; procedural limitations on, 286-90, 309-10, 342, 350-1; "notice laws," 230, 286-7, 342, 350-1; jury trial, 285, pre-trial examination, 287, 353, settlement, 287-8, 354-6; notice of defect, 288-9; "minor defect" rule in California, 288; special statutes for small municipalities, 289, 307, 308-10, 363-7; insurance, 289-90, 309, 367; motor vehicles, 297, 301, 302; mob violence 297, 302; costs of liability, 298, 364-5, of administration, 360-2.

commentators on: Prof. Borchard, 214, 216, 218, 222, 226; earlier criticism, 215, modern, 216, suggestions, 230-3, 339, 342; bonding of officers suggested, 232, complete liability urged, 232-3; local policies and attitudes considered as explaining divergencies, 339-42, arguments for continued immunity, 341-2; for assumption of, by states, 309, 367.

model draft acts: general, 298, on motor vehicle liability, 301, 302; on mob violence, 302; on police officers' stray bullets, 303; on assistance to police

officers, 303; for assumption of liability by state, 309-10. See NEW YORK.

Murray v. Hoboken Land & Improvement Co., 194.

NEW YORK

public tort liability in: history of, 262; Board of Canal Appraisers, 262-3; State Board of Audit, 263-4; Board of Claims, 264; Court of Claims, 264, 266; substantive law on, 266-74; consent to be sued and assumption of, 286-8.

Court of Claims Act of 1939: as affecting, 268; scope of liability under, 268-74; negligence under, 269; governmental and proprietary functions, 269-72; suits by felons, 272, consequential damages, 272; highway defects, 273-4, 305; procedure, 274-7; jurisdictional requirements, 274-5; limitations on suits, 275, 307; rules of pleading, 275-6; appeals, 277; settlements, 277-9; administration, 278; administrative costs, 278; investigations, 279, payment of awards, 279, 280, 281, conclusions on, 280-1.

texts of New York statutes on: general municipal law, 304; highway law, 305, judiciary law, 306; mental hygiene law, 306; public authorities law, 307; public housing law, 307, second class cities law, 307, town law, 307, village law, 308.

OFFICIALS

tort liability of: legislative, 192; judicial, 192; executive, 192; administrative, 192-3; ministerial, 193; criteria for, 193-4, for action under unconstitutional statutes, 194, 247, for nonfeasance and malfeasance, 195, 196; *ultra vires* doctrine as affecting, 186, 187, 194-5; as affected by numerous distinctions, 196; bonding of officers against, 232; public liability insurance as affecting, 232; reimbursement statutes as affecting, 232-3; rule of law as affecting, 247, 248; indemnification as protection against, 297-8.

Paige v. State, 269, 270, 271, 272.

PUBLIC TORT LIABILITY

concept of: appraised, 283, scope of, 285, 337; negligence as resulting in, 285, 291, 217; in federal tort claims bill, 330-1; conflicting theories underlying, 337-8; "social cost" notion as basis of, 338, 340. See MUNICIPAL TORT LIABILITY, STATE TORT LIABILITY, FEDERAL TORT LIABILITY, NEW YORK, STATISTICS.

RESEARCH

in public tort liability: generally, 234-51, 336; sponsored by Committee on Public Administration of Social Science Research Council, 235-6, 284, 335-6, 344, 348; lack of statistical data for, 236, 285; of records for, 239-40; by A. B. A. Committee, 236, 238, 284; by Bureau of Public Administration of University of Virginia, 238, 348, 363; by Prof. R. S. Rankin in North Carolina cities, 238; findings of, in Austin, Boston, Chicago, Medford, and Washington, D. C., 240-1, 284, 289-90, 336, 345; over-emphasis on case analysis in, 336.

RESPONDEAT SUPERIOR

doctrine of, as basis for public tort liability, 185-6, 338-9, 219; in N. J., 224, in N. Y., 263, 265, 266, 271, 272, 274.

Russel v. The Men of Devon, 191, 215, 216, 234.

Smith v. State, 265, 266, 267.

SOVEREIGNTY

as basis for non-liability: in England, 183; in U. S. A., 187, 242-3, 331-2; challenged by Prof. Borchard, 216.

STATE TORT LIABILITY

generally, 242; Federal Constitution as affecting, 243-6; consent to suit asserting, 245-53, 254, 255, 257, 258, 290; state-owned corporations causing, 246; rule of law as affecting, 247, 248; moral obligation as basis for, 247-9, 291, 342.

legislative determination of: generally, 249-51, 259, 290; right of petition as basis of, 249, 250;

claims committees in, 250, 251, problems of, 342-4; administrative determination of: generally, 251, 291-2, 343; claims commissions, 251-3.

judicial determination of: generally, 253, 257-9, 280, 281, 292, 343; state constitutions and statutes on liability to suit as affecting, 253, 254, 290;

courts of claims in: Illinois, 254, Michigan, 254, New York, 254, 255, 259, 262, 290-1, 292; Nebraska practice, 255-7; procedures summarized, 259-61.

governmental and proprietary functions as affecting, 283, statutory changes in, 284-5; jury trial for determination of, 285; cost of, 292-3; model statutes for, 293-6. See NEW YORK.

STATISTICS

on public tort liability: for New York Court of Claims, 259, 281, 292-3; Nebraska, 259; Michigan, 292; for New York municipal liability, 298; under private acts of Congress, 321-2; for Austin, Boston, Chicago, Los Angeles, Medford: as to nature of claims, 344, outcome and duration of suits, 345, 346; pre-trial settlements, 354; of amounts claimed, settled, recovered, etc., 357-60, costs of administration, 360-1; regarding the burden of small municipalities, 363-4, 366.

UNITED STATES

see CONSTITUTIONAL LAW; COURT OF CLAIMS, FEDERAL TORT CLAIMS BILL; FEDERAL TORT LIABILITY.

United States v. Sherwood, 331.

Western Maid, The, 188.