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, New York, Statistics.

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, 322.

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 1865 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 respondeat superior as affecting, 185-6; doctrine of ultra vires as qualifying, 186, 187.

Erie 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, 292; 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, 317-4.

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.


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; Pellestor case establishing four principles of, 207, 208; doctrine of risk as affecting, 208; system of, summarized, 210-1; Fenyé case as affecting jurisdiction over “départements” and “communes,” 209; liability of officials, 209-10; personal fault and “fault of service” distinguished in, 209, 210; Companie Générale, Sieur Hacquart, Martin, Jastet, 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; Reichsgesetz passing on, 201, 202, 203; as affected by Civil Code, 201, by Art. 131 of the Weimar
INDEX—GOVERNMENTAL TORT LIABILITY

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.

Kawananakoa v. Polyblank, 187, 188.

Keifer & Keifer 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, 285, 296, 297; “active wrongdoing test” in New Jersey, 223-4, 226, 228, 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, 365-7; 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.


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, 280-1.


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.


PUBLIC TORT LIABILITY

concept of: appraised, 283, scope of, 285, 337; negligence as resulting in, 285, 291, 271; 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.
INDEX—GOVERNMENTAL TORT LIABILITY

RESPONDENT 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.


SOVEREIGNTY


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.


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.