Research Research projects in law are few and far between. Subject to correction I am doubtful whether more could be stimulated by the small grants which is all that the Trust could offer.

Courses and Conferences Every few years BILA runs a successful seminar which is self-financing. It might be possible to develop more frequent courses or conferences. The Trust might provide a guarantee against loss or subsidise student fees. There are a number of bodies (for example, the College of Insurance or AIRMIC) with whom joint courses could be run.

Grants to Libraries Law publications are increasingly expensive. Many libraries of educational institutions cannot buy all the publications they would like. Grants would be a help.

Hugh Cockerell

## PEOPLE TO PEOPLE INTERNATIONAL TORT INSURANCE LAW DELEGATION TO EUROPE

### Meeting on 3rd April 1985 at the Offices of Barlow, Lyde and Gilbert

Sir Denis Marshall welcomed everyone on behalf of BILA. He explained to the delegates that BILA was founded over 20 years ago and that the Association had at present over 300 members, both individual and corporate, with a common interest in insurance and its problems.

The day's programme commenced with a talk on contingency fees and legal aid given by Sir Denis Marshall. He illustrated how, in contrast to the American legal system, the English system prevented the legal profession from acting on a contingency fee

basis. Solicitors were barred from acting on this basis by the Solicitors' Practice Rules and were therefore barred as a matter of professional conduct. Furthermore, it was difficult to envisage how in a system which firmly embraced an indemnity rule for costs, whereby the successful party could only recover the proper legal costs of proceedings, a contingency fee basis could ever apply. Sir Denis did however acknowledge that today, in the light of the heavy expense of civil litigation, vague noises were being made by various parties about the case for contingency fees in this country. Legal Expenses Insurance was also being introduced. Sir Denis then went on to explain the mysteries of the legal aid system to the delegates.

Mr. John Butler, a Barrister and Legal Officer of the Mercantile and General, then spoke on the subject of extra-contractual obligations and punitive damages. Mr. Butler contrasted the United States with the United Kingdom and explained that "excess verdicts" were more or less unknown in the UK. The fact that the level of damages was much more predictable in this country than in the United States was largely attributable to the absence of juries in civil cases in the United Kingdom. He went on to illustrate that whilst the concept of punitive damages had originated in this country in the mid-eighteenth century its use in the United Kingdom had been greatly restricted. The concept was now almost entirely confined to libel cases and it was clear that the files in which it could be utilised were unlikely to grow in the future.

Mr. Andrew Pincott, a Partner of Messrs. Elborne Mitchell and Co., reviewed the subject of discovery in the UK. After outlining its historical development he went on to explain that it was governed by the Rules of the Supreme Court, particularly Order 24, and how discovery could be avoided if legal professional privilege could be involved. The use of subpoenas, pre-trial depositions and interrogatories in this country were covered by Mr. Pincott who also described the effect of Order 70 of the Rules of the Supreme Court relating

to the taking of evidence for use in the conduct of foreign proceedings.

Mr. Stephen Lewis, a Partner of Messrs. Clifford-Turner, followed with a talk on the subject of limitation. He explained that the Doctrine of Limitation, whereby the remedy for a civil wrong was barred or extinguished by the passage of time, had in the past been strictly adhered to by the Courts. However, Mr. Lewis felt that it was possible to discern a new trend to soften time limits, as the Courts increasingly used their discretion to disapply the limitation point in the case of old but otherwise meritorious claims in personal injury cases. Recent case law on the subject was then discussed, with particular reference to the case of Pirelli v. Oscar Faber where by contrast it had been held that in the case of damage to property, time started to run from the date when the damage came into existence and not when it was discovered. Mr. Lewis referred to the recent recommendations of the Law Reform Committee which had agreed that the present state of the law on latent damage was unsatisfactory and had tabled proposals for reform.

Mr. Jonathan Mance, QC of 7 King's Bench Walk, addressed the delegates on the subject of General Tort Principles and in particular Economic Loss. Mr. Mance explained that recoverability for economic loss had been a part of the common law since at least the eighteenth century. By way of explanation of how the principles of recoverability had been developed in tort by the Courts, Mr. Mance analysed the effect of the decisions in Donoghue v. Stevenson (1932), Hedley Byrne and Company Limited v. Heller (1964), Spartan Steel and Alloys Limited v. Martin and Co. (1973), Ross v. Caunters (1980), Anns v. Merton London Borough (1978), Lambert v. Lewis (1982), Junior Books v. Veitchi Company Limited (1982), and most recently Leigh and Sullivan Limited v. Aliakmon Shipping Company Limited (1985). Mr. Mance brought his speech to a close by summarising the policy factors which affect the way in which the law is applied.

Guests and Hosts then adjourned for an excellent buffet lunch. Afterwards, the Honourable Sir Christopher Staughton, in the true tradition of after-dinner speaking, gave a witty and engaging speech on the subject of jurisdiction (or how to avoid it). Sir Christopher related his experiences in two recent cases where he had to decide whether it was more appropriate for the matters to be heard in England or in the United States. Sir Christopher highlighted the difficulties of deciding the appropriate jurisdiction, and candidly admitted that both his decisions had been reversed on appeal.

Mr. Ken Davidson (Honorary Secretary of BILA) commenced the afternoon's business by handing the delegates details of BILA's 1984/85 programme together with a BILA tie (with special apologies to Ms. Beth Hoffman for the inappropriateness of the gift!).

Mr. Tim Scorer, a Partner of Barlow Lyde & Gilbert, then gave the delegates a brief resume of Product Liability Law in England. Mr. Scorer stated that in contrast to many States in the US there was no strict liability for products in this country, but that liability rested on the ordinary rules of contract and tort. He explained that there were significant differences between bringing actions in contract and in tort especially in terms of priority and the extent of damages. The effect of the Sale of Goods Act 1979 and the Unfair Contract Terms Act 1977 was then discussed with particular reference to the relevant case law on exclusion clauses and the test of reasonableness.

Professor Hugh Cockerell of The City University Business School, speaking on Uniform Products Liability Laws, commenced his talk by identifying where the pressure for uniform laws originated. In the United States producers and suppliers were generally most active and it was in their interests that liability for defective products be restricted. In Europe pressure came largely from consumer organisations anxious to

promote the rights of consumers. The Professor felt that this difference explained why the pressure for uniform products liability was so feeble in Europe. He explained the respective parts that the Council of Europe and the European Economic Community had played in pressing for uniform laws. The Council, made up of 21 Western European countries with the long term unity of Europe as their common aim, had issued the 1977 Strasbourg Convention on products liability with regard to personal injury and death. This Convention had to date been signed by only four countries and no country had as yet ratified it. The European Economic Community has as one of its aims the approximation of laws in its member states. In 1975 the Commission of the EEC had produced a proposal for a Council Directive on liability for defective products. However, the EEC aims to work by consensus and the "working group of experts" were still working at it. The Professor highlighted the fact that in 1973 a Royal Commission had been set up in the United Kingdom to look into compensation for personal injuries. The Pearson Commission had not viewed products liability as a particularly serious problem because out of the 3,000,000 accidents in the United Kingdom in 1977 only about 1% could be attributed to defective products other than drugs. The Commission had however come down broadly in favour of strict liability, but no further steps along that route had yet been taken.

Mr. Nicholas Hughes, a Partner of Barlow Lyde & Gilbert, concluded the meeting by dealing with jurisdiction and the enforcement of judgments. Mr. Hughes outlined the principle of service in England and explained that, as a general rule, provided a Defendant could be served with a Writ in this country there would be jurisdiction. He described the procedure whereby jurisdiction could be assumed and Writs served outside England by virtue of Order 11 of the Rules of the Supreme Court. Far-reaching changes were in store. As a result of membership of the EEC the Civil Jurisdiction and Judgments Act 1982 had been passed in the UK. It would shortly

come into force and would for most civil and commercial matters introduce the concept of domicile both for individuals and Companies as the basis of jurisdiction. Important special provisions applied to insurance contracts. It would also tend to promote a "free movement of judgments" about the EEC when enforcement was called for.

The meeting was closed by Sir Denis Marshall who thanked all the speakers on behalf of BILA. The leader of the People to People Tort Insurance Law Delegation, Mr. Douglas G. Houser, responded by congratulating all the speakers on their "interesting and informative speeches" and thanking the British Insurance Law Association for its "wonderful hospitality".

The major work of organising the meeting fell upon Colin Croly. Congratulations to him for his great contribution towards a most successful meeting. Thanks for his hard work.

A.D.

## THE AMERICAN BAR ASSOCIATION

1985 saw the American Bar Association (ABA) plan its fourth annual meeting for London (the others being held in 1924, 1957 and 1971). This was a two-centre meeting, the first half in Washington July 8/11 and the second here July 16/19. Well reported in the Press, less so in Lloyd's Log July 1985. BILA members can take their pick from 12,000 or 15,000 or 20,000 delegates and spouses and from £30m to £50m as total spending.

What follows is subjective for BILA and your reporter who had what now seems the real (but at the time doubtful) privilege of being the first non-US Chairman of an ABA Committee. This is the tip of the iceberg but anyone with 3 hours and £20 to spend at the Wig and Pen may learn what really sank the Titanic and, nearly, GWS.