like to take this opportunity of thanking the market for all its help and assistance.

CHOICE OF LAW IN TORT

A special meeting of BILA members and guests, chaired by Sir Maurice Bathurst, Q.C., was held at the Institute of London Underwriters, 40, Lime Street, London, EC3 at 5.30 p.m. on Monday 15th April to hear Professor Aubrey Diamond's comments on the Law Commission's Working Paper and the Scottish Consultative Memorandum on the law to be applied in actions arising out of torts committed in the U.K. and overseas.

Professor Diamond began by stressing that a case for domestic change had already been made in proposals to rationalise English and Scots. Law. The position could be complicated further: for example an English serviceman driving a private car in Malta injures a Scottish colleague on a motor scooter. Should suit be brought in England, Scotland or Malta? Comparable examples would be an action for defamation in Guernsey and injury to a British employee in Libya. Furthermore, the effect of EEC Law within the original six Member States had complicated the questions of jurisdiction, enforcement and choice of law.

The Brussels Convention of 1968 on judgements and subsequent pronouncements had blurred the border between contract and tort. When the U.K. joined in 1973 argument continued on choice of law whilst in terms of the Rome Convention of 1980 proposals for fresh rules were ratified by France, but the U.K. abstained because of preference for statutory control. In the speaker's view these problems were being repeated in the field of tort.

Professor Diamond went on to point out the wide variations in such areas as land, title, property, trespass and even the Unfair Contract Terms Act. In spite of the Convention was the U.K. willing to negotiate? Cost was a factor both in Brussels and for the Law Commission. In the U.K. all tort cases were governed by the "Lex Fori" principle and hence there was no problem with jurisdiction. In other countries, civil law had developed to set domestic standards and tort was the natural counterpart of contract, property and family law. The first extreme example of conflict came before the Privy Council in 1868. The negligence of a Belgian pilot had caused a collision between a British ship, "The Halley", and a Norwegian vessel in Flushing harbour. Under Belgian Law the shipowner was liable whilst under English Law the pilot was responsible in tort; but since it was outside British waters a tort could not have been committed and therefore contract law applied.

Professor Diamond then cited Phillips v. Eyre in which the rule of "The Halley" case was applied. During a rebellion in Jamacia in 1865 Phillips was arrested and flogged, but it was held that any action taken by the Governor was justified under martial law and he was given an indemnity for himself and his associates. Phillips questioned the retroactive nature of the indemnity but the Court of Exchequer Chamber held that it must take account of Jamaican law. Hence the rule: the wrong must be actionable in England and must have given rise to a civil action in the territory where it was committed i.e. "Lex Loci". But in McElroy v. McAllister in 1949, fellow employees

of a Glasgow firm were driving in England when the passenger was killed. The widow through the executrix sued the driver but no action in Scotland would lie because the right to sue in that country dies with the person concerned. Because of the "Lex Loci" principle an action in England was unsuccessful and 7 judges were involved in a verdict which was illogical.

Professor Diamond repeated the circumstances of Boys v. Chaplin in 1969. A British serviceman driving a car in Malta collided with a scooter ridden by a fellow serviceman. Under Maltese Law only special damages could be claimed, whereas under English Law general damages could also be awarded. The House of Lords decided that pain and suffering should be included - a notable and illogical exception to the principle of double liability. In view of this and other prospective exceptions, the Law Commission considers the present situation to be unjust and uncertain and is inclined to favour application of the "Lex Loci". Action would be justified by reference to the law of tort (with no criminal aspects) and rules governed by the place with the closest connection to the incident - as in contract law.

The Chairman then invited questions from the floor and these were resolved by the Professor as follows:

(Q) Are we making any useful contribution to harmonisation?
(A) We should decide on our own preference and then seek harmonisation.

(Q) As a first step towards unification would it be easier if all courts applied the same substantive law to the same parties?
(A) Variation in judgements on contract law indicates little hope of this, but academics might assist.

(Q) What about application of rules outside the EEC?

(A) The rules of International Law applied. There was much pre-exisiting contract law and strict liability in the field of tort.

(Q) Is the rule in Phillips a problem in England and does choice of law cause injustice?

(A) Perhaps in relation to Scottish cases.

(Q) Because of the conflict of laws in the U.S.A. itself and in the wider maritime field, is not Europe being squeezed into a corner?

(A) In the U.S. Common Law (and some Statute Law) differs between individual States and a dispute between parties from different states can produce a conflicting or a wrong decision. The Working Party considered this problem.

(Q) What would be the position of a hitch-hiker causing damage to his benefactor's vehicle?

(A) The place where it occurred - unless it was a ship or aircraft when the "law of the vessel" would operate.

(Q) As Insurers prefer certainty in decisions, is any change likely to produce such a result?

(A) We would like to see a sensible alternative to the current position.

A. McCrindell