

THE SCOTTISH LAW COMMISSION
(SCOT. LAW COM. No. 29)

Third Programme of Law Reform

*Laid before Parliament
by the Lord Advocate
under Section 3(2)
of the Law Commissions Act 1965*

*Ordered by the House of Commons to be printed
11th June 1973*



EDINBURGH
HER MAJESTY'S STATIONERY OFFICE
8p net

The Scottish Law Commission was set up by section 2 of the Law Commissions Act 1965 for the purpose of promoting the reform of the law of Scotland. The Commissioners are:

The Honourable Lord Hunter, *Chairman*,

Professor A. E. Anton,

Professor J. M. Halliday, C.B.E.,

Professor T. B. Smith, Q.C.,

Mr. Ewan Stewart, M.C., Q.C.

The Secretary of the Commission is Mr. J. B. Allan. Its offices are at the Old College, University of Edinburgh, South Bridge, Edinburgh EH8 9BD.

SCOTTISH LAW COMMISSION

TO THE RIGHT HONOURABLE NORMAN WYLIE, V.R.D., Q.C., M.P.
Her Majesty's Advocate.

Section 3(1)(d) read along with section 6(2) of the Law Commissions Act 1965 imposes on the Scottish Law Commission a duty to prepare and submit to you from time to time programmes for the examination of different branches of the law with a view to reform, including recommendations as to the agency (whether the Commission or another body) by which any such examination should be carried out.

On 14th May 1968 we submitted to you the second of these programmes and now have the honour to submit the third with a brief explanatory memorandum.

4th May 1973

J. O. M. HUNTER,
Chairman of Scottish Law Commission

SCOTTISH LAW COMMISSION
THIRD PROGRAMME OF LAW REFORM

*15. Private International Law.

*The items in our First Programme were numbered 1 to 5
and in our Second Programme 6 to 14.

In terms of Section 3(2) of the Law Commissions Act 1965 this programme was
approved by the Lord Advocate on 9th May 1973.

Memorandum by the Commission

In September 1967 the Benelux countries invited the Commission of the European Community to undertake the unification of the private international law of the States who were then members, leading to the codification of their rules of conflict of laws. The Commission, while thinking that the unification of so much of the law would be too ambitious and lengthy an undertaking, agreed that at any rate in some sectors of private international law the harmonisation of the conflict rules of Member States would facilitate the working of the Common Market and would bring greater benefits in future as international legal (especially economic) relationships multiplied. Accordingly in January 1970 the six Member States charged the Working Group on Private International Law in Brussels with the task of preparing a series of Conventions designed to harmonise their private international law on certain subjects. In the summer of 1972 the Group settled the text of a preliminary draft of a Convention on the Law Applicable to Obligations both contractual and non-contractual. Moreover work has been started on the preparation of a Convention on the Law Applicable to Corporeal and Incorporeal Property. In January 1973 we received a request from the Lord Advocate to consider how this series of draft Conventions could best be subjected to a thorough examination. In December 1972 the Law Commission had received a similar request from the Lord Chancellor.

We recognise that these Conventions may have important implications for the law of Scotland with which we are concerned. We have considered a variety of ways in which these Conventions might be studied and the appropriate advice given to Ministers. We have come to the conclusion, however, that this function would best be undertaken by both Law Commissions acting together and accordingly we submit a Third Programme designed to permit us to examine rules of Private International Law in connection with matters which may be the subject of negotiations or agreements between Member States of the European Economic Community or of The Hague Conference on Private International Law.

Item No. 15—Private International Law

(To be examined by the Commission in co-operation with Law Commission)

The uncertainty of this branch of the law and the difficulty of applying it are notorious in relation to such topics as foreign delicts, the recognition of foreign marriages and decrees of nullity and cases in which the doctrine of renvoi has to be applied. These and other aspects of our conflict of laws rules stand in need of reform, preferably on an agreed international basis. We note in this context that Conventions have been produced and will be produced by the European Commission's Working Group on Private International Law and also by The Hague Conference on Private International Law.

Law Reform designed to minimise conflicts between the domestic systems of individual states can operate in a number of ways: for example by operating on the choice of court or the applicable law or, in certain cases, simply by bringing about a closer approximation of divergent legal systems.

We recommend that in co-operation with the Law Commission we take under review, when considered appropriate, rules of private international law, relating to Obligations, Property, Family Relationships, and to any other matter which may be the subject of negotiations or agreements between Member States of the European Economic Community or of The Hague Conference on Private International Law.

We consider that this subject should be examined by ourselves in co-operation with the Law Commission operating through a Joint Working Party.

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