# 'Proper Law of a Tort' and Victory over 'Acquired Rights' Theory in England (Summary)

Yusuke TANEMURA
Associate Professor of Law, Tokyo Metropolitan University

When J. H. C. Morris used the term 'proper law of a tort' in 1949, his aim was that the connecting factors involved in tort should be weighed in view of the circumstances of the individual case because the traditional rule of lex loci delicti commissi (the law of the place where the tort was committed) sometimes led an inappropriate result. In England, the adoption of this doctrine meant not only the 'softening of connecting factors', but also the victory over the 'acquired rights' theory suggested by A.V. Dicey.

In this paper, the present writer tries to identify the doctrine of 'proper law of a tort' with a reaction to 'growing complexities of social and economic life'.

Chapter 1 deals with the background of this doctrine including an attack on the Dicey's acquired rights theory. In this chapter, the present writer compares Dicey's original view with G. C. Cheshire's critical consideration about acquired rights, and he shows that Cheshire had accepted the views of American revolutionary scholars such as W. W. Cook.

Chapter 2 analyzes the relationship between the interpretations of the locus delicti and 'proper law of a tort'. It has been argued that the protection of vested rights which have been acquired in other countries has led the rule of lex loci delicti commissi. However, this is no longer a major consideration because English writers have already abandoned the 'acquired rights' theory at that time.

Simultaneously, there were active discussions concerning the interpretations of the locus delicti accompanying with the appearance of the cases where the facts and events that were said to constitute the tort occurred some in one country, some in another. The dominant argument of English writers was that preferred the country in which the harm ensued.

These circumstances surrounding tort in England were like to those in United States. In United States, Cook has effectively destroyed the vested rights theory and the 'last event' doctrine suggested by J. H. Beale. This was Cook's great contribution to the discussion. Agreeing with this Cook's observation, Morris suggested that the tort problems needed to be broken down into smaller groups and dealt with so as to meet the needs of society (proper law approach).

Taking account of all observations, the present writer tries to reconsider the Morris'

methodology in the contemporary contexts (Chapter 3). In Japan, The application of Article 20 of Act on General Rules for Application of Law potentially becomes more flexible like proper law approach by the interpretation of 'the law of the place with which the tort is obviously more closely connected'. The present writer suggests that such possibility should not be denied in terms of the variety of tort types in the modern world.