

Extra-territorial accountability

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Overview

- Scope
- Issues & degrees of involvement
- Causes of action
- Jurisdiction
- Applicable law
- Defences
- Practicalities

Example cases



Extra-territorial issues

- Detention
 - Torture & mistreatment
 - Legality of detention
- Killing / use of force
- Transfer / rendition
- Discrimination
- Information / privacy
- Contracts / employment
- Immigration

Degrees of involvement

- Direct action
- Participation
- Direction
- Contribution
- Knowledge

Causes of action

- Human Rights Act 1998
- Other statutes (e.g. Data Protection Act 1998, Equality Act 2010, etc.)
- Common law torts (false imprisonment, assault, etc.) / Foreign law
- EU law
- Habeas corpus
- Judicial review

Jurisdiction

- Quasi-territorial exclaves
- In other extra-territorial cases – Different rules for different causes of action; for example:
 - HRA: state agents exercising authority and control (*Art 1 ECHR, Al Skeini, Smith v MOD*)
 - Tort claims: Defendant's domicile (Regulation (EC) No 44/2001 (“Brussels I Regulation”))
 - EA: context-dependant – e.g. employment: connection with UK (*Lawson & Ravat*)
 - Habeas: control (*Rahmatullah*)

Applicable law

- Applicable law in tort claims against UK public authorities: generally *lex loci delicti*:
 - Regulation (EC) 864/2007 (“Rome II Regulation”), Art 1(1) & Recital 9
 - Private International Law (Miscellaneous Provisions) Act 1995, Pt 3
 - *Al Jedda*
- Claimants to obtain expert evidence & plead foreign law (*Belhaj*)

Defences

- Crown Act of State (*Serdar Mohammed & Rahmatullah*)
- Foreign Act of State (*Belhaj*)
- Non-justiciability / respect (*Abbassi; Lord Carlile*)

Practicalities

- Funding
- Client contact
 - Access
 - Informed consent
 - Instructions
- Security
- Evidence gathering
- Interpreters

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