The Influence of Comparative Law on the English Law of Obligations

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This paper seeks to explore the influence on the English law of obligations of comparative law, with an especial emphasis on comparative common law. It looks first at the ‘one common law’ model and its demise in the second half of the 20th century. Until that demise, there was no scope for, for example, Australian common law influencing English law: they were one and the same. A second section looks at a fundamental, and sometimes unappreciated, oddity in the role of the UK’s Supreme Court judges which might be thought to make them particularly receptive to the influence of foreign law. The central part of the paper comprises a survey of the modern influence of other common laws – but also the law of mixed and civil law systems – on the English law of tort, contract, and unjust enrichment. Answers are sought to questions such as, how commonplace is the use of comparative law in the UK’s highest court?; and is it accurate to regard our Supreme Court judges as being more influenced today by civil law than by the law in common law (or mixed) systems?