A Common Law of Tort? Is there a European Rift in the Common Law Family?

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The relationship between English and Commonwealth tort law is well known. In a system where the test for remoteness in the torts of negligence and public and private nuisance derives from a dispute in Sydney Harbour and the development of its rules of vicarious liability are strongly influenced by a ruling involving sexual abuse in a Vancouver residential care home, it is difficult to deny the ongoing influence of Commonwealth law on English tort law. And yet the United Kingdom is part of the European Union and thus subject to European Union law. Further, the Human Rights Act 1998, introduced in 2000, requires the English courts to take account of decisions of the European Court of Human rights when relevant to proceedings (section 2). Courts must equally, so far as it is possible to do so, interpret legislation in a way which is compatible with the Convention rights (section 3). A similar interpretative obligation exists under EU law.

This paper will examine the ongoing relationship between English tort law and its common law family and the extent to which this is changing due to the intrusion of ‘European’ influences from EU and European human rights law. Is there divergence in the common law family, or is this simply part of the natural evolutionary process which legal systems undergo over time?