§ 750.46 Applicable law.

(a) Claims arising within the United States, Territories, Commonwealth, and Possessions. The law of the place where the act or omission occurred will be applied in determining liability and the effect of contributory or comparative negligence on claimant’s right of recovery.

(b) Claims within foreign countries. (1) Where the claim is for personal injury, death, or damage to or loss or destruction of real or personal property caused by an act or omission determined to be negligent, wrongful, or otherwise involving fault of DON personnel acting within the scope of their employment, liability of the United States will be assessed under general principles of tort law common to the majority of American jurisdictions.

(2) Apply the law of the foreign country governing the legal effect of contributory or comparative negligence by the claimant to determine the relative merits of the claim. If there is no foreign law on contributory or comparative negligence, apply traditional rules of contributory negligence. Apply foreign rules and regulations on operation of motor vehicles (rules of the road) to the extent those rules are not specifically superseded or preempted by U.S. Armed Forces traffic regulations.

(c) Principles applicable to all MCA claims. (1) “Scope of employment” is determined in accordance with Federal law. Reported FTCA cases provide guidance on this determination:

(2) Claims for emotional distress will be considered only from the injured person or members of the injured person’s immediate family. Claims from the injured person’s immediate “zone of danger” (i.e., immediate vicinity of the incident) and the claimant substantiates the claim with proof of the physical manifestation(s) of the emotional distress; and

(3) Claims under the MCA do not include the principles of absolute liability and punitive damages.

(d) Clarification of terms. Federal law determines the meaning and construction of the MCA.