

Climate Change and Private Law

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Keynote address at the book launch for
The Oxford Handbook of Climate Change and Private Law
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15 July 2026

The annual State of the UK Climate Report has just been published. It tells us that, with data stretching back to 1884, Britain has never experienced a year as hot as 2025. England had its driest spring in a century.

Already in 2026, the UK has experienced three intense heat waves. Yesterday the Met Office reported that the UK has already seen as many days with temperatures of 30 degrees Centigrade and above as in the whole of the hot summer of 1976.

These are just statistics for the UK. The picture is alarming across the world. The El Nino event which is developing this year is interacting with climate change effects in a way not seen before. Scientists warn about major tipping points in relation to weather systems which are not well understood, save that it is recognised that the hotter the world becomes with climate change the greater the risk that they may be triggered. The prospect if they are triggered is frightening.

For example, there is estimated to be a one in six chance that increasing global temperatures will switch off the Gulf Stream. If that happened, the UK would experience arctic temperatures during winter, but would likely still have unstable heat spells in summer. The effect would be to destroy its capacity for arable farming.

Lawyers should be concerned to understand what is happening with climate change and what its effects are. They need to be thinking now about the impact climate change is having and may in future have on human society, because that impact will have major implications for how the law will need to work and the problems and disputes it will have to address and resolve. The book being launched this evening, edited by Doug Kysar and Ernest Lim with a strong team of subject area experts, is going to be an important resource for this.

These are matters which potentially affect very many areas of law, as the pressure on societies from climate change mounts up. That pressure is in turn putting pressure on our political and legal systems.

In international law, there is a growing set of cases which identify obligations on states to take action to combat climate change or mitigate its effects. In public law and human rights law, there is a growing trend to identify such obligations on governments and public authorities. And private law is increasingly having to find ways of responding to the growing challenges as well, as climate change creates new or increased risks of disastrous outcomes. Those risks have to be distributed and shared across society through contract and tort law, through the insurance market, and through state regulation of private actors.

For a long time, the world put the risks associated with climate change to the back of its mind, regarding them essentially as a future threat that would impact on later generations. But it is now clear that the risks posed by climate change can no longer be regarded as a problem which only

has to be confronted far in the future. They are coming to fruition now. Extreme weather events are becoming more common. Shifts in rainfall patterns and rising sea levels are altering ecosystems. Some species face extinction while others migrate, threatening biodiversity and food supplies. The environmental changes are in turn creating widespread physical and economic damage, including the destruction of property, personal injury, and financial losses from business and supply chain disruptions.

The effects of climate change are placing mounting pressures on human societies and their ways of life. This inevitably places pressure in turn on the legal systems which have developed over the *longue durée* to provide practical and conceptual resources to manage the fair distribution of responsibility for coping with losses arising from human interactions, including those associated with unexpected natural disasters, so-called ‘Acts of God’.

The Acts of God are impacting the world with increasing frequency and ferocity. Moreover, the very idea of an Act of God has come to be challenged by a sense that it is human agency which is driving the changes; not so much Act of God as Act of Man.

But the relevant human agency is very widespread and diffuse in nature, so again the established legal systems and concepts struggle to react to accommodate what is happening within conventional ideas of legal responsibility.

Techniques for the fair distribution of responsibility, in the sense of distribution of legal rights and legal liabilities, are the essence of private law. Therefore the mounting pressures on societies from climate change are posing challenges – increasingly severe challenges – for private law across the whole field of its operation. This is the context in which the present book has been produced, to give a comprehensive account written by experts in their fields of how private law is morphing and buckling under the general and increasing pressure of climate change.

This is work which all lawyers are going to find they are engaged in, be they academics, practitioners or judges. Judges like me, sitting in our ivory towers, will not be insulated from the legal impacts of climate change. We are already finding that the disputes coming before the courts are affected by what is happening in an alarming way in the physical world.

No longer are the risks from climate change something which can be pushed to the background. They are coming to fruition now. Societies need to find ways to live with them. The legal system, and the conceptual regimes it incorporates, need to develop ways to accommodate them and to absorb their impact while trying to maintain their intellectual coherence and sense of shape. What is the rule of law going to mean in a climate change world?

This is a prospect that calls, ultimately, for a huge collaborative effort to adjust to the new reality, on the part of academics, practitioners and judges. New thinking is required to address the new legal problems created by that new reality. Academic discussion can provide thoughtful reflection on the issues, to generate the ideas which practitioners and judges can then draw upon. The picture is changing rapidly. That is why I am here this evening to welcome the launch of this book.