

THE TORT LAW REVIEW

Volume 13, Number 3

November 2005

NOTES

- Accident compensation in personal injury scenarios and the function of appellate courts in civil trials by jury – Martin Vranken**153
- Work stress: Retreat or revolution? – Peter Handford**159

ARTICLES

Privacy: A missed opportunity – Jonathan Lewis

This article argues that English law does not provide sufficient direct protection of privacy. It surveys recent case law to illustrate how the breach of confidence tort, even when bolstered by the *Human Rights Act 1998* (UK), cannot provide such protection. It proposes an independent common law tort based on the concept of dignity as an alternative and argues that this tort must be judicially developed. Such a tort would circumvent difficult conceptual issues that the courts have been reluctant to tackle. The South African case law on privacy is explored to demonstrate that such a tort can be successfully employed. Further, many of the principles underpinning South African privacy law would be of use in English law. A general theme of the article is that judges should take more initiative in the development of torts generally.166

Are you experienced? “Playing cultures”, sporting rules and personal injury litigation after *Caldwell v Maguire* – David McArdle and Mark James

This article considers the impact on the development of the law of negligence of a series of recent cases involving injured sports participants. In particular, it focuses on the perceived and potential influences on this area of law of the English Court of Appeal’s decision in *Caldwell v Maguire* [2002] PIQR 6. It revisits two rulings from cases involving rugby union, locating them within the context of *Caldwell*, before analysing the impact of the court’s decision on three more recent judgments arising out of sports injuries. As a result of *Caldwell* there is now a requirement that

courts take into account the “playing culture” of a sport when determining a defendant’s liability, with the playing culture being the manner of playing the game that is accepted as reasonable by a sport’s participants. Consequently, the defence of *volenti non fit injuria* is no longer applicable to sports torts and *Caldwell* has introduced a variable standard of care dependent upon the level at which a game is being played within its organisational structure.193

Volume 13 2005

Table of Authors	215
Table of Cases	217
Index	223

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5. Austin, n 4, p 56.

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6. Sheehy EA, Stubbs J and Tolmie J, “Defending Battered Women on Trial: The Battered Woman Syndrome and its Limitations” (1992) 16 Crim LJ 220.
7. Sheehy et al, n 6 at 221.

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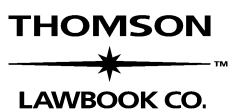
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