

# TORT LAW REVIEW

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EDITORIAL .....	57
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## NOTES

<b>Dangerous recreational activity in New South Wales – Pam Stewart and Chris Leahy ....</b>	<b>58</b>
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## ARTICLES

### **Twilight of the libel jury? – John Cooke**

This article is an analysis of the decline of the jury in libel actions in England and Wales. There is a brief history of the function and significance of the jury in libel actions and the constitutional importance of the jury in such actions. Two threads are analysed: the changes to civil procedure that have occurred, significantly the *Civil Procedure Rules 1998* (UK) and the summary procedure under the *Defamation Act 1996* (UK), and the development of “Reynolds privilege” by the courts. The procedural section looks at the tensions between the “right” to jury trial in defamation cases enshrined in primary legislation and the objectives of the new civil procedure. The section on privilege looks at the development of the new version of public interest privilege and the way in which the “responsible journalism” test has practically removed any role for the jury in this area other than fact finding. The article concludes that the use of the jury in libel actions has been eroded by these developments and may be in danger of being extinguished. .... 64

### **Breach of statutory duty and risk management in occupational health and safety law: New wine in old wineskins? – Neil Foster**

The tort action for breach of statutory duty has been used for many years in cases of workplace injury, disease or death, and is still being relied on. But in the workplace safety area the old regime of prescriptive regulation was replaced by a system of “general duty” laws, and in recent years there has been a further move to the model of “risk management”. Can the old wineskin survive the impact of the new wine? This article considers how the action has fared recently under successive changes in the workplace safety legislative regime in the United Kingdom and in Australia. .... 79

### **Consumer protection in respect of defective buildings – Eoin Quill**

The existence and scope of a builder’s duty in respect of latent defects in premises has been a matter of contention for decades in many common law jurisdictions. This article considers the position in England, Ireland, Canada and Australia. Looking at the underlying policy considerations in tort law, drawing a comparison to consumer protection laws and considering insurance factors, it argues that builders should be subject to a duty of care towards consumer purchasers of dwellings and small business purchasers of premises, but that larger commercial concerns should not be owed such a duty, absent a clear demonstration of vulnerability. The duty owed by builders should extend to significant quality defects and not be confined to dangerous defects. .... 105

