

# TORT LAW REVIEW

Volume 16, Number 2

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## NOTES

**Sexual abuse and personal injury limitation law – Order restored?** – *Peter Handford* .... 61

**Negligence law, blame culture and deconstruction** – *Richard Mullender* ..... 65

## ARTICLES

**Suicide and the law of intervening causation** – *Douglas Hodgson*

Causation issues in the civil law context have long perplexed judges and scholars alike, a fortiori in the case of intervening causation issues in particularly difficult contexts such as the suicide cases. In the case of catastrophically injured victims of negligently caused accidents, should the defendant also be made liable for the suicide of the victim following upon the accident and its aftermath? The development of the relevant case law of five common law jurisdictions is examined with a primary focus on novus actus interveniens and a secondary focus on remoteness of damage issues. Now that the long-held distinction between a sane and insane state of mind is gradually falling into judicial disrepute in this context, this article considers what future directions the law might take in terms of law reform against the backdrop of the most recent pronouncements of the House of Lords on these issues. .... 69

**Negligence law and the concept of community** – *Richard Mullender*

On the analysis offered in this article, negligence law reflects and serves to sustain the life of a community. The starting point for this analysis is HLA Hart's discussion of reasonableness in negligence law. In *The Concept of Law*, Hart identified negligence law's addressees as being under an obligation to think through and act on the reasonably ascertainable implications of existing doctrine. This article develops Hart's point by reference to the writings of, inter alios, Fuller, Wittgenstein and Hegel. The idea of community that emerges from this analysis is normatively appealing. To the extent that a commitment to "community" informs negligence law, it is not an uncritical celebration of "the way we do things around here". Rather, it has to do with fashioning a body of law that adequately accommodates the interests of all relevant persons. In the context of Commonwealth negligence law, judges have recognised that this may involve the specification of norms attuned to the practical life of those who live in particular jurisdictions. Assuming that the problem of incommensurability (the inability to rank values on a common scale) arises in negligence law, the pluralist approach to the elaboration of negligence law adopted by Commonwealth judges has appeal. .... 85

**Personal injury liability in sport: Emerging trends** – *Jack Anderson*

Violent play during the course of a game or sport is not a new phenomenon; accompanying legal proceedings are. This article considers personal injury liability for injuries inflicted by a participant upon an opponent during a sporting pursuit. The jurisdictional focus is on England and Wales. The sporting emphasis of the article is on competitive, body contact games. The legal emphasis is on the tort of negligence. Analogous to the law of criminal assault, breach of "implied sporting consent" or the

volenti of the claimant will be seen as central in application, as assessed through a number of objective criteria, including the skill level of the injuring party and whether that defendant was acting in “reckless disregard” of the claimant’s safety. These criteria or evidential guidelines, which emerge from a careful doctrinal analysis of the relevant case law, are seen as crucial to the examination of the appropriate degree of care in negligence within the prevailing circumstances of sport. The article also searches for some theoretical coherency within the case law, premising it on Fletcher’s idea of reciprocal risk-taking. In addition, the underlying policy-related issue of sport’s social utility is discussed, as are practical matters relating to vicarious liability, insurance and the measure of damages for “lost sporting opportunity”. Moreover, it will be shown that personal injury claims relating to sports participant liability now extend to a consideration of the duties of coaches, referees, sports governing bodies and schools. Finally, this article is set against the backdrop of an apparently spiralling “compensation culture” and the concomitant threat that that “blame culture” poses for the future promotion, operation and administration of sport. ....

95

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