

TORT LAW REVIEW

Volume 16, Number 3

November 2008

NOTES

Negligence, breach of duty and judicial discretion – <i>Richard Mullender</i>	125
Three proximities, public policy and the discarded Page: The Singapore approach – <i>Gary Chan Kok Yew</i>	127

ARTICLES

Toxic battery: A tort for our time? – *Lynda Collins and Heather McLeod-Kilmurray*

The tort of battery exists to protect personal sovereignty over the body. Because the battery cause of action is concerned primarily with the autonomy of the individual, it is not necessary to show actual harm in order to recover for non-consensual contact of any kind. Even the administration of a life-saving substance may, in the absence of consent, give rise to liability in battery. When a plaintiff's body is involuntarily invaded by particles of a toxic substance, her or his bodily integrity is compromised and individual autonomy violated. This article argues that a prima facie claim in battery arises whenever a defendant exposes a plaintiff to a poorly understood or potentially dangerous chemical. Such a defendant may exculpate itself by showing that it obtained explicit or implicit informed consent from a plaintiff with the capacity to choose. With this reasonable limitation, the battery cause of action is singularly well equipped to vindicate the individual's right to bodily autonomy in contemporary industrialised society. 131

Civil liability in Canada's courts for torture committed abroad: The unsatisfactory interpretation of the State Immunity Act 1985 (Can) – *Jennifer Besner and Amir Attaran*

The Canadian case of *Bouzari v Iran (Islamic Republic)* (2004) 243 DLR (4th) 406 is illustrative of the problems that common law state immunity statutes pose in providing victims of torture with the access to civil remedies to which they are entitled under international law. An analysis of international legal developments including judgments that reinforce universal civil jurisdiction, as well as the duties flowing from the jus cogens designation of the prohibition on torture, suggests that in order to comply with Canada's international law obligations and enable victims to enforce their rights, the *State Immunity Act 1985* (Can) must be amended. 150

VOLUME 16 – 2008

Table of Authors – Articles	171
Table of Authors – Sections	173
Table of Cases	175
Index	185

Guidelines for Contributors

Submission and licence agreement instructions

All contributions to the journal are welcome and should be sent, with a signed licence agreement, to the Production Editor, *The Tort Law Review*, Lawbook Co., PO Box 3502, Rozelle, NSW 2039 (mail), 100 Harris St, Pyrmont, NSW 2009 (courier) or by email to lta.tortlrev@thomsonreuters.com, for forwarding to the Editor. Licence agreements can be downloaded via the internet at http://www.thomson.com.au/support/as_contributors.asp. If you submit your contribution via email, please confirm that you have printed, signed and mailed the licence agreement to the attention of the Production Editor at the mailing address noted above.

Letters to the Editor

By submitting a letter to the editor of this journal for publication, you agree that Thomson Legal & Regulatory Limited, trading as Lawbook Co., may edit and has the right to, and may license third parties to, reproduce in electronic form and communicate the letter.

Manuscript

- Manuscript must be original, unpublished work that has not been submitted for publication elsewhere.
- Personal details (name, qualifications, position) for publication and a delivery address, email address and phone number must be included with the manuscript.
- Manuscript must be submitted electronically via email or on disk in Microsoft Word format.
- Manuscript should not exceed 10,000 words for articles or 1,500-2,000 words for section commentary or book reviews. An abstract of 100-150 words is to be submitted with article manuscripts.
- Proof pages will be sent to contributors. Authors are responsible for the accuracy of case names, citations and other references. Excessive changes to the text cannot be accommodated.
- This journal complies with the Higher Education Research Data Collection (HERDC) Specifications for peer review. Each article is, prior to publication, reviewed in its entirety by a suitably qualified expert who is independent of the author.

Style

- 1 **Levels of headings should be clearly indicated (no more than four levels).**
- 2 **Cases:**
 - Case citation follows case name. Where a case is cited in the text, the citation should follow immediately rather than as a footnote. Give at least two and preferably all available citations, the first listed being the authorised reference.
 - Australian citations should appear in the following order: authorised series; Lawbook Co./ATP series; other company series (ie CCH, Butterworths); media neutral citation.
 - “At” references should only refer to the best available citation, eg: *Mabo v Queensland [No 2]* (1992) 175 CLR 1 at 34; 66 ALJR 408; 107 ALR 1.
 - Where only a media neutral citation is available, “at” references should be to paragraph, eg: *YG v Minister for Community Services* [2002] NSWCA 247 at [19].
 - For international cases best references only should be included.
- 3 **Legislation should be cited as follows:**
Trade Practices Act 1974 (Cth), s 51AC. The full citation should be repeated in footnotes.
- 4 **Books should be cited as follows:**
Macken JJ, O’Grady P, Sappideen C and Warburton G, *The Law of Employment* (5th ed, Lawbook Co., 2002) p 55.
 - In footnotes do not use *ibid* or *op cit*. The following style is preferred:
 4. Austin RP, “Constructive Trusts” in Finn PD (ed), *Essays in Equity* (Law Book Co, 1985).
 5. Austin, n 4, p 56.
- 5 **Journals should be cited as follows:**
Odgers S, “Police Interrogation: A Decade of Legal Development” (1990) 14 Crim LJ 220.
Wherever possible use official abbreviations not the full name for journal titles.
 - In footnotes do not use *ibid* or *op cit*. The following style is preferred:
 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.
- 6 **Internet references should be cited as follows:**
Rickatson S, *The Law of Intellectual Property: Copyright, Designs and Confidential Information* (Lawbook Co., subscription service) at [16.340], <http://subscriber.lawbookco.com.au> viewed 25 June 2002. Underline the URL and include the date the document was viewed.

For further information visit <http://www.thomson.com.au/legal/> or contact the Production Editor.

SUBSCRIPTION INFORMATION

The Tort Law Review comprises three parts a year.

Customer service and sales inquiries:
Tel: 1300 304 195 Fax: 1300 304 196
Web: www.thomsonreuters.com.au
Email: LTA.Service@thomsonreuters.com

Editorial inquiries:
Tel: (02) 8587 7000

HEAD OFFICE
100 Harris Street PYRMONT NSW 2009
Tel: (02) 8587 7000 Fax: (02) 8587 7100



THOMSON REUTERS

©Thomson Reuters (Professional) Australia Limited ABN 64 058 914 668
Lawbook Co. Published in Sydney

ISSN 1039–3285

Typeset by Thomson Reuters (Professional) Australia Limited, Pyrmont, NSW

Printed by Ligare Pty Ltd, Riverwood, NSW