

TORT LAW REVIEW

Volume 17, Number 1

March 2009

NOTES

Variable standards of care in negligence – <i>Judy Allen</i>	5
Burying the dead: Developing a modern approach to vicarious liability – <i>Keith Stanton</i>	9
Negligence, problem gambling and the ethics of sympathy – <i>Richard Mullender</i>	12

ARTICLES

The role of vindication in torts damages – *Normann Witzleb* and *Robyn Carroll*

The award of every judicial remedy, whether in the nature of declaration, coercion, compensation, restitution or punishment, can be said, in general terms, to vindicate the legal rights of the plaintiff. At the same time, remedies awarded in civil actions sometimes serve a more pronounced vindicatory purpose, particularly where the action is to protect important rights and dignitary interests. Despite frequent references to vindication in defamation and trespass cases, there is much uncertainty about the role of vindication in an award of damages. In recent times, a growing interest in the remedial role of vindication can be detected. This article aims to bring greater clarity to use of the word “vindication” in the law of remedies, to develop a framework for understanding the vindicatory role of remedies and to explore the role that vindication plays in tort damages. To do this, the following questions will be examined. First, what does vindication mean? Secondly, what does it mean to attribute a vindicatory purpose to a remedy? Thirdly, in what way and to what extent do tort damages achieve a vindicatory purpose? Fourthly, are there torts that by their nature require vindication as a distinct remedial purpose? 16

Granting salmon standing: Modernising public nuisance to serve the public interest in environmental protection – *Meghan Murtha*

Salmon farms are placing Canada’s wild Pacific salmon under tremendous environmental pressure, and recent studies show that some regional wild salmon runs are consequently at imminent risk of extinction. The doctrine of public nuisance has been proposed as a weapon in the fight against environmental degradation, but more often than not, public interest litigants who seek to bring public nuisance actions are denied standing by Canadian courts applying a historically strict test. The public interest standing test in public nuisance torts is a historical anomaly, particularly because the Supreme Court of Canada has liberalised the test for public interest standing in constitutional and administrative law over the past several decades. Recent Canadian legal trends suggest that the Supreme Court of Canada may look favourably on an environmental test case. This article argues that the environmental crisis caused by commercial salmon farming creates an ideal opportunity to modernise the rules of standing in public nuisance litigation and thereby revitalise the tort for deployment in environmental protection work. 45

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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

© 2009 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