

TORT LAW REVIEW

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ARTICLES

The Case for Negligence as the Mental Element of an Australian Statutory Privacy Tort – Normann Witzleb

This article explores the appropriate mental element of a future statutory Australian privacy tort. While the Attorney-General’s Department proposed in its recent Privacy Act Review a new statutory tort that should be confined to intentional and reckless invasions of privacy, this article advocates a fault standard that includes negligence. The more restrictive position currently favoured by the Australian Government sets the bar too high and would exclude some deserving claimants from redress. The article argues that adopting negligence as the requisite mental element would better align the privacy tort with other wrongs that protect dignitary interests and with the *Privacy Act 1998* (Cth). In support of its position, the article also engages in a detailed comparative analysis of the position in other common law jurisdictions.

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Deciphering the Toxic Tort Causation Problem: The Emerging Role of Genetic Susceptibility – Sara Golru

This article provides an original analysis of the case law and literature concerning genetic markers of susceptibility in Australian and United States toxic injury litigation. It suggests that genetic evidence can alleviate the issue of causal uncertainty in toxic torts, but this evidence does not provide a complete picture. More traditional methods, such as toxicology, epidemiology, and analysis of plaintiff’s medical records, will continue to play a significant role in illuminating toxic tort causation. The article maintains that we will only see a more complete picture of the plaintiff’s disease causation after all relevant medical and scientific evidence have been considered as a whole. It calls for the creation of a new “reference guide” to aid litigants and lawyers in understanding the benefits and limitations of genetic evidence. It is argued that such guidance is needed to ensure consistency and fairness across judgments, and across jurisdictions.

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Whose Fault? Allocating Liability between Cyclists and Pedestrians under Victorian Civil Law – Vanessa Johnston and Natalia Antolak-Saper

Cycling and walking rates are increasing within Victoria’s transport system amid worsening traffic congestion, health considerations, and the COVID-19 pandemic. While the *Transport Accident Act 1986* (Vic) creates a no-fault compensation scheme for injuries arising from collisions involving a motor vehicle, it does not apply comprehensively to collisions involving cyclists and/or pedestrians. Allocation of liability between these road users is key for injured cyclists and/or pedestrians to obtain compensation for injury and is an important indicator for road safety research and policymaking. This article considers allocation of liability between cyclists and/or pedestrians in negligence and considers the challenges posed by the increasing use of personal mobility and leisure devices. Gaps in the existing framework could be closed by adopting alternative liability paradigms, which this article considers in detail. In conclusion, it is suggested that a strict liability approach ought to be adopted as the foundation for future law reform.

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**Examining the Viability of Introducing a Blockbuster Tort of Privacy in Singapore –
*Chang Wen Yee***

Despite cursory judicial discussion of the protection of privacy interests in Singapore, the courts never had the opportunity to expound on the legal requirements of the tort. In 2020, the Singapore Academy of Law Reform Committee published the Report on Civil Liability for Misuse of Private Information, wherein the tort of disclosure of private information and the tort of serious misuse of private information were proposed. This article will explore the possibility of introducing a blockbuster tort of privacy instead, arguing that there are strong normative and practical reasons to do so. Through a comparative analysis with jurisdictions including the United Kingdom, Canada, and Australia, this article will discuss the elements required to establish civil liability under such a tort, as well as the possible defences and remedies. 70

BOOK REVIEW

**Vicarious Liability in the Common Law World, edited by Paula Giliker – *Reviewed by
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