TORT LAW REVIEW

Volume 23, Number 2

July 2015

ARTICLES

Is harmonising tort law in the European Union possible? With comparative glimpses at the United States – *Helmut Koziol*

In an economic union of 28 very different legal systems and using 24 official languages that is aimed at the free movement of people, goods, capital and services, harmonisation is highly desirable. However, it seems doubtful whether it will be possible to overcome existing difficulties. Undoubtedly, the goal of harmonisation of tort law in the European Union can only reasonably be reached by intensifying the preparatory work on harmonisation, in particular, by first discussing, and secondly drawing up a general and consistent concept which is acceptable to all or at least most Member States and which can serve as a basis for all single provisions. Two drafts on European Tort Law constitute at least valuable first steps that seek to overcome these difficulties. 67

Rescuing Rylands: Strict liability and environmental protection in Canada – *Lynda M Collins* and *Laura J Freitag*

Since its inception and incorporation into Canadian tort law, the cause of action in *Rylands v Fletcher* (1866) LR 1 Ex 265 has functioned as a form of environmental regulation, allowing plaintiffs to recover for environmental harm resulting from "non-natural" use without the need to prove either negligence or a possessory interest in property. Recent appellate innovations in the Canadian law of *Rylands v Fletcher* have radically departed from the traditional formulation of the tort, rendering it both less coherent doctrinally and less effective as a mechanism for environmental protection. The authors argue for a return to the traditional articulation of *Rylands v Fletcher* in Canada, by reference to the origins, theory and instrumental utility of the tort. 85

Contamination as a chemical interference with land: Where the (private nuisance) truck should stop after Antrim – *Brandon D Stewart*

In light of the Supreme Court of Canada's recent recognition of a unified test for private nuisance in *Antrim Truck Centre Ltd v Ontario (Ministry of Transportation)*, [2013] 1 SCR 594; 2013 SCC 13, this article advances a two-step framework for assessing whether contamination constitutes a "substantial and unreasonable chemical interference with land". The first step requires the court to determine whether the chemical interference is substantial by asking if the contamination is beyond background levels. If this question is answered in the affirmative, the court must then determine whether a chemical interference is also unreasonable. This analysis should centre upon the principle of fairness, and the question of whether the contamination is more than the plaintiff should be expected to bear without compensation. The article argues that the court should engage in a brief reasonability analysis whenever a property is contaminated by a known environmental pollutant or chemical beyond general regulatory guidelines, or a new and poorly understood chemical at any level. In situations where a property is contaminated only beyond background levels, a more rigorous reasonability analysis is required. By assigning liability based on the type and level of contamination, this framework helps all Canadians enjoy a healthy environment regardless of where they live. 98

Limitation periods, constructive knowledge and the problem of corrective justice – *Keith Patten*

The balance to be struck between the interests of claimants and the interests of defendants arises in many areas of the law. One contentious area is the law of limitation. This article on a recent decision of the English Court of Appeal will suggest that the current balance is problematic in corrective justice terms. This is because the approach to limitation law means that claimants who are well able to prove the existence of a relationship of victim and wrongdoer, and the occurrence of loss, may be prevented from doing so because of relatively arbitrary rules about the passage of time. 120