

# TORT LAW REVIEW

Volume 25, Number 3

April 2018

## ARTICLES

### **Are the Torts of Trespass to the Person Obsolete? Part 1: Historical Development – Dr Christine Beuermann**

This article re-examines the liability currently imposed by the courts for trespass to the person. It demonstrates that the process for imposing such liability has evolved so that the courts now both carefully scrutinise how the defendant engaged in the conduct which interfered with the plaintiff's personal security and finely balance a range of competing interests. To the extent that the process for imposing liability for trespass to the person is not dissimilar to the process for imposing liability in the tort of negligence, this article questions whether the torts of trespass to the person might now be viewed as obsolete. The article is in two parts. Part one examines the historical development of trespass to the person. Part two (to be published separately) explores whether it is possible to identify anything distinctive about the process for determining liability in trespass to the person (as it has continued to evolve) when compared with the process for determining liability in negligence. ....

103

### **Negligence, Discretion and the Liability of Municipalities for Building Regulation: The Case for Increased Deference – Jonathan de Vries**

Despite the substantive and procedural differences between public law and private law, the idea of deference by courts to decisions of government actors is a concept common to both fields of law. This article explores the contrasting approaches to deference taken by courts in the context of the public and private law treatment of Canadian building authorities. It argues that there is an undesirable misalignment between deference as expressed in the public and private law treatment of building authorities, and offers a proposal for how this misalignment may be corrected through the alteration of existing principles governing the private law liability of building authorities. ....

119

### **The Brave New World of Psychiatric Injury in Canada – Dr Peter Handford**

In *Saadati v Moorhead* [2017] 1 SCR 543, the Supreme Court of Canada has continued the restatement of psychiatric injury law begun in *Mustapha v Culligan of Canada Ltd* [2008] 2 SCR 114 by rejecting the need for damage in the form of recognisable psychiatric illness as a condition of liability. This is a major departure from the law as previously understood in Canada. In contrast, the need for recognisable psychiatric illness is an essential requirement of the law in Australia and England, though not in the United States. This article traces the history of the alternative approach in Canada and notes that deviations from the traditional orthodoxy can be found not only in Canada but also in other jurisdictions. It also explores some other significant aspects of the decision. ....

136

**Challenges in the Evolution of the Doctrine of Non-delegable Duty – Aaron Yoong**

This article embarks on a general examination of the doctrine of non-delegable duties. In particular, it seeks to show that the current approach and understanding of non-delegable duties is inadequate and fails to deal head-on with the underlying doctrinal gaps. Scrutinising major common law jurisdictions and developments in the case law, three main issues are dealt with, namely: (1) the broad justifications for the very existence and imposition of non-delegable duties; and (2) the scope of such duties and the relationship with other torts; and (3) the exact nature of such duties. This article then suggests alternative approaches to looking at the doctrine that may be adopted in the future. .... 143

---

**VOLUME 25 – 2017–2018**

Table of Authors .....	169
Table of Cases .....	171
Index .....	181