

TORT LAW REVIEW

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ARTICLES

Are the Torts of Trespass to the Person Obsolete? Part 2: Continued Evolution –
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 (previously published) examines the historical development of trespass to the person. This part two 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.

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Punitive Damages: Time for Re-examination – *Anthony Gray*

While punitive damages have been known to the common law for a long time, their position as a remedy within the non-criminal law has always been precarious, given their clearly criminal overtones. While at one time they might have been justified, at a time when criminal law was undeveloped and when the state was seeking to encourage individuals to use the courts as a means of resolving disputes rather than resorting to self-help, arguably developments in our legal system and society more broadly have rendered them an anachronism. Not surprisingly, the English courts sought to wind them back, though they did not feel they could abandon them altogether. Today, they retain an awkward place in the civil law, straddling the civil-criminal divide which our legal system traditionally supports. It is highly doubtful they provide any deterrent effect, given the likelihood that a defendant would be insured against such a loss. When punitive damages are imposed as part of vicarious liability, their justification further weakens. Alternative solutions to the problems said to be addressed by punitive damages are readily available. The author argues it would be more intellectually coherent for punitive damages to exit the civil realm altogether.

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Defamation and the Misuse of Private Information: A Comparative Analysis –
Sarah Gale

This article considers the interrelationship between defamation and misuse of private information actions and whether the same set of facts might give rise to parallel actions. The starting point for the analysis is that privacy actions are tortious rather than equitable which removes a fundamental difference between the two. In comparing the two actions,

the author analyses whether corporations can rely on Art 8 of the European Convention on Human Rights and Fundamental Freedoms (ECHR) in privacy cases which has proved controversial. The application of Art 10 of the ECHR to natural and legal persons is however more straightforward in both cases. Central to the analysis in this article is how the Art 8 and 10 balance is struck, and the role played by public interest in this assessment. The Strasbourg decision in *Axel Springer* is crucial in this regard as it applies the same set of criteria to both actions. Once all these issues have been considered, then the availability of remedies and defences will be analysed and compared. The author will conclude by arguing that both torts protect different aspects of reputation and they should be seen as separate but overlapping. Recent developments are however bringing them closer together.

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