

# TORT LAW REVIEW

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## ARTICLES

### **The relationship between the host state and non-citizens through the lens of the duty of care – *Sasha Baglay***

This article explores the theoretical and practical implications of recent Canadian jurisprudence on immigration-related torts, with particular emphasis on judicial analysis of the duty of care in cases of alleged negligence in immigration processing. Although tort claims in immigration context have not enjoyed much success, this article argues that: (1) tort law could usefully complement existing remedies in immigration context by offering a new avenue to promote accountability of government officials and to provide recourse to non-citizens who have suffered harm as a result of negligent actions; and (2) insight from tort theory (specifically Desmond Manderson's writings on the duty of care as ethical responsibility) can offer a new way of thinking about the relationship between non-citizens and host states. ....

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### **Deconstructing directness in Canada: A critical evaluation of the role of directness in the tort of battery – *Alexandra Mogyoros***

Battery is a promising cause of action for toxic tort plaintiffs. Nevertheless, there remains substantial controversy as to whether battery can only be applied in the case of direct interferences. Building on the principles of corrective justice, this article undertakes a critical exploration of the directness element in the tort of battery. The analysis begins by considering how the directness ought to be treated where the battery committed occurred via an environmental vector, such as wind or water. Then, using a series of thought experiments, the article ultimately argues that Canadian law should abolish the distinction between direct and indirect acts in battery in response to pragmatic and doctrinal considerations. ....

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### **A realistic route to vicarious immunity: Third parties, exclusion clauses and voluntary assumption of risk – *Jai Singh***

The ability of exclusion clauses to confer defences on third parties has long vexed the common law. This article argues that the tort defence of voluntary assumption of risk provides a simple and credible solution to the problem. An assumption of risk can be evidenced by a clause agreed between the plaintiff and another party or a clause agreed between the defendant and another party. The ordinary rules of voluntary assumption of risk must be satisfied: the plaintiff must have freely consented to the clause and the clause must, in its ordinary meaning, protect the defendant. This analysis can apply to clauses that negate the defendant's duty of care and also to those that exclude or limit the defendant's liability. In neither situation does the doctrine of privity of contract apply, because the clause is merely being used as evidence of the voluntary assumption of risk. ....

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