

TORT LAW REVIEW

Volume 22, Number 3

November 2014

ARTICLES

Evergreen? The environmental law of torts – *Lynda Collins*

The law of toxic torts – those arising from toxic pollution and products – has often been viewed as an application of old doctrine to new problems. While it is true that tort law existed long before the widespread dissemination of toxic chemicals, the common law of nuisance has, since its inception, protected a range of environmental rights and interests. This article will argue that the law of nuisance is a species of environmental law, has always functioned as a form of environmental regulation, and ought to be applied and interpreted as such in the modern era. 107

Public authority liability and the chilling effect – *Jef De Mot and Michael Faure*

According to some, the imposition of liability on public authorities would lead them to adopt defensive practices. Others are much more sceptical and believe that chilling effects may be illusory. Empirically, some studies seem to confirm that chilling effects exist, while other studies do not find such an effect. In the authors' judgment, the ambiguity in the existing literature is fuelled by the lack of a theoretical model which analyses the cause of chilling behaviour and the various elements that may influence it. The article examines under what circumstances a chilling effect is more likely. Such an analysis can help to delineate the types of cases for which a restrictive approach towards public authority liability is justified. Furthermore, the article discusses the available empirical research on the existence of chilling effects due to the liability for public authorities. The authors' argue that the economic criteria are useful in explaining the contradicting findings in the existing empirical literature. 120

Known knowns and known unknowns: The mysteries of intentional torts against the person – *John Devereux*

Though much has been written on the concept of negligence in Australian law, significantly less is available on intentional torts. This article focuses on intentional torts against the person. After first outlining the elements of the different torts, the article focuses on the different meanings ascribed to the term "intentional", within intentional torts. 134

Googols of liability and censoring the internet – the liability of internet intermediaries for defamation: Part I – Andrew Row

The law of defamation and the internet have collided. In this article, which will be published in two parts, the author examines how courts in the 21st century have applied the tort of defamation to the internet. It focuses on the way in which traditional defamation doctrine has been and, more importantly, should be applied to key internet intermediaries (internet access providers (IAPs), third-party content hosts, and search engines). This article traverses the common law concept of “publication” in defamation law and the various defences afforded around the world that are relevant to the protection of internet intermediaries. This article also examines an IAPs’ liability for defamation produced or accessed by their subscribers online. The author argues that classification of IAPs as “mere facilitators” rather than publishers is erroneous, and that the current New Zealand framework incentivises IAPs to block access to content upon notice of a complaint. The author argues this framework may have potentially significant chilling effects on the internet. In the next volume of *The Tort Law Review*, the subsequent article will examine the liability of intermediaries who host and control third-party content and search engines for defamation. 144

VOLUME 22 – 2014

Table of Authors	163
Table of Cases	165
Index	173