

TORT LAW REVIEW

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ARTICLES

Concurrent liability: Where have things gone wrong? – Lord Justice Rupert Jackson

In his lecture to the Technology and Construction Bar Association and Society of Construction Law on 30 October 2014, the Right Honourable Sir Rupert Jackson of the Court of Appeal of England and Wales discussed the issue of concurrent liability within four different legal systems. Through his Lordship's comparative jurisdictional analysis he ultimately concluded that the common law has taken a wrong turn and that contracts should not and generally do not generate duties of care in tort.

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Qualified privilege in defamation and the evolution of the doctrine of reportage – Sarah Gale

This article looks at the evolution of the doctrine of reportage, which has emerged as a sub-species of *Reynolds v Times Newspapers Ltd* [2001] 2 AC 127 qualified privilege as a defence to defamation in English law. It argues that the relationship between these two types of qualified privilege is an uneasy one because although they have some features in common, the emphasis in reportage on the neutral reporting of disputes is quite distinct from Reynolds. The *Defamation Act 2013* (UK) does codify the defence to some extent but ignores this complex relationship. There is, however, scope for a limited form of the reportage in situations where the Reynolds defence would not be available.

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The ghost in the machine: Legal challenges of neural interface devices – Scott Kiel-Chisholm and John Devereux

Neural interface devices and the melding of mind and machine, challenge the law in determining where civil liability for injury, damage or loss should lie. The ability of the human mind to instruct and control these devices means that in a negligence action against a person with a neural interface device, determining the standard of care owed by him or her will be of paramount importance. This article considers some of the factors that may influence the court's determination of the appropriate standard of care to be applied in this situation, leading to the conclusion that a new standard of care might evolve.

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

In Part I of this article, previously published in the Tort Law Review, the author introduced the elements of defamation, particularly publication, and the relevant defences applicable to internet intermediaries. The author argued that the classification created in *Bunt v Tilley* [2007] 1 WLR 1243; [2006] EWHC 407 of some internet intermediaries as “mere facilitators” rather than publishers was erroneous. The author also examined the potential chilling effects of the current framework on the dissemination of legitimate speech on the internet. This article continues this examination and considers the liability of third-party content hosts and search engines for defamation. Staying faithful to the tort’s strict liability roots and its strict conception of who is considered a publisher of a defamatory publication, this article argues that the three main intermediaries examined should be held to be publishers of defamatory material they take part in communicating. This article suggests, however, that in order to protect legitimate speech online, the harshness of the strict liability tort should be ameliorated for certain gate-keeping internet intermediaries through the creation of statutory defences. 45

BOOK REVIEW

A critical review of The Canadian Law of Toxic Torts – *Brandon D Stewart* and *Alexandra Mogyoros* 60