

# Torts Law Journal (TLJ)

## Volume 27 Part 1

(articles and book review included in this part are linked to the LexisNexis platform)

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#### Articles

##### [The concept of publication in defamation law](#)

— *David Rolph*

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Publication is an element of the tort of defamation. Increasingly, internet technologies raise difficult issues of publication. Because mass media technologies did not present doctrinal problems about the concept of publication on a similar scale, internet technologies have exposed how poorly understood the basic principles of defamation law are. The principled application of defamation law to resolve novel issues presented by rapidly developing internet technologies require a sound understanding of these fundamental principles. Yet recent case law suggests that there is significant confusion about the basic principles of publication in defamation law. This article examines the role of fault and strict liability in publication, the proper relationship between innocent dissemination and publication, and publication by omission. It argues that the organising question about publication in all cases should be: What is the precise conduct constituting the communication of the defamatory matter, whether the conduct is an act or an omission, for which the defendant is responsible? By focusing on the basic principles of defamation law specifically and the general principles of tortious responsibility, such an approach will facilitate the principled resolution of difficult issues of publication in defamation law as they arise in the future.

##### [Reforming the action for breach of statutory duty in the 21<sup>st</sup> century: Reconsidering the 'limited class of the public' rule](#)

— *Neil Foster*

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The common law action for breach of statutory duty lies at the intersection of private law and systems of public regulation, by allowing an individual to sue where rights created by statute have been infringed. Some courts and commentators have argued that an element of the action, however, is the requirement that the relevant legislation protect a 'limited class of the public', and not the public at large. This article explores the origins and nature of this suggested rule, argues that it has never been good law, and that it is now time to clarify that this requirement should not be regarded as a part of the tort action.

##### [Factual causation in cases of market-based causation](#)

— *Henry Cooney*

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Causation serves as a requirement for the imposition of liability in a multitude of private law contexts. Recently, when dealing with requirements of causation imposed by statutory schemes proscribing misleading or deceptive conduct, Australian courts have considered the possibility of a plaintiff arguing a 'market-based' theory of causation. This article aims to explore and clarify the factual causation enquiry in a case of market-based causation. Particular attention is given to the appropriate

test of causation in a case of market-based causation. This article argues that, when considering whether a plaintiff's loss was caused by a defendant's conduct through a market-based causal chain, the appropriate test of causation is the 'a factor' test. In doing so, this article challenges the approach taken in recent cases involving market-based causation and misleading or deceptive conduct.

## **Book Review**

Elise Bant and Jeannie Marie Paterson (eds), *Misleading Silence*

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— *Christian Witting*