

Torts Law Journal
Volume 29 Part 3
(Articles and Case Notes included in this part are linked to the LexisNexis platform)

CONTENTS

Articles

[A tort of misappropriation of culture](#)

— *Jayden Houghton*

215

Cultures are regularly misappropriated without legal recourse. Whilst the World Intellectual Property Organization is developing an international framework to protect culture, its progress is slow. This article proposes a tort of misappropriation of culture, using the tort of misappropriation of personality, which has been recognised in the United States, and judicially considered but not yet recognised in New Zealand, as a template for the tort. First, it identifies the legal gap by explaining how New Zealand's recognised torts and relevant statutes fail to protect culture from misappropriation. Secondly, it explains the tort of misappropriation of personality. Thirdly, it outlines elements, defences and remedies for a tort of misappropriation of culture. Finally, it applies the tort in two case studies. The article will be of particular interest to scholars and lawmakers in common law countries where Indigenous peoples are calling for enhanced protections for their knowledges and cultures.

[Section 4 Defamation Act 2013: A tale of two approaches](#)

— *Fiona Brimblecombe*

245

Over a decade has passed since libel reform in the Defamation Act 2013. There is a lacuna in the existing literature; a comprehensive evaluation of the 'new' public interest defence in s 4 is yet to emerge. In so doing, this article argues judicial interpretations of the defence have forked into two distinct pathways. The first interprets the statutory defence simply as one of responsible journalism. The second considers the defence to protect discussions of all types that are broadly public interest-worthy. This article therefore argues that not one, but two public interest defences now exist under s 4. Solutions are suggested.

Case Notes

[The liability of public authorities for mismanaging the delivery of public infrastructure: issues relating to private and public nuisance and s 43a Civil Liability Act 2002 \(NSW\)](#)

— *Connor Wright*

273

This case note considers the decision of the Supreme Court of New South Wales in *Hunt Leather Pty Ltd v Transport for NSW*. It examines the reasoning of the Court in finding that the government agency which planned, designed and managed the processes leading towards the construction of the CBD and South East Light Rail in Sydney, through its failures in these preparatory pre-construction

processes, committed a private nuisance against local business owners, by increasing the period of time over which these business owners were subject to the interferences caused by the construction of the project.

We all die — the UK Supreme Court on secondary psychiatric injury due to medical negligence: *Paul v Royal Wolverhampton NHS Trust* [2024] UKSC 1

— Fong Jun Yi

298

This case note examines the recent UK Supreme Court judgment of *Paul v Royal Wolverhampton NHS Trust*, in which the Court ruled that family members of victims of medical negligence may not claim for psychiatric injury caused by the witnessing of their loved ones' deaths. In so holding, the Court repudiated the many diverging approaches that have been used in lower courts in similar cases in recent decades and called for a return to the approaches in three seminal House of Lords cases in the 1980s and 1990s. Apart from analysing the effects of the Court's reasoning, it is argued that this judgment exemplifies the divides in approaches to liability for secondary psychiatric injury that has emerged in legal scholarship, as well as the current preference towards more conservative liability rules in negligence.