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Articles

Misappropriation of personality: A case for common law identity protection

— *Nikki Chamberlain*

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There is a gap in the law in Australia and New Zealand. Australia, while ahead in many jurisprudential fields, is lagging behind in privacy law protection. New Zealand, although adopting two common law privacy torts, recently refused to develop a third privacy tort based on the American tort of misappropriation of personality. In light of global technological advances, and in the age of social media, there is a need to develop the tort of misappropriation of personality to protect an individual's right to identity privacy. This article addresses the merits of adopting the privacy tort of misappropriation of personality in the context of other common law actions and their shortfalls — and, in particular, why the tort of passing off is inadequate at protecting an individual's right to identity privacy.

Towards a control-centric account of tort liability for automated vehicles

— *Jerrold Soh Tsin Howe*

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Existing motor vehicle accident laws are generally described as 'driver-centric', since regulatory, liability, and insurance obligations revolve around drivers. This is sometimes taken to imply that they cannot apply to automated vehicles. This article seeks to re-centre the liability discussion around the tortious doctrine of control. It argues centrally that properly understanding legal control as influence over metaphysical risks, rather than physical objects, clarifies that automated vehicles are both legally controllable in theory, despite having no human drivers, and legally controlled in practice, despite their reliance on machine learning. Examining today's automated driving technology and businesses, this article demonstrates how manufacturers, software developers, fleet operators, and consumers participate in vehicular risk creation. Finally, how control could illuminate courts' analyses of automated vehicle liability is illustrated by a hypothetical application to recent automated vehicle accidents. In this light, this article concludes that existing tort principles are better-equipped to resolve liability issues arising from the use of automated vehicles than initially apparent.

Case Notes

Dimensions of loss in negligence: *Lee v Strelricks*

— *Stephen Puttick*

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Navigating hypothetical worlds — High Court guidance on counterfactuals in *Berry v CCL Secure*

— *Samuel Castan Blashki*

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Counterfactual analysis and the ‘but for’ test are a source of perennial uncertainty for practitioners and the judiciary alike. Misleading conduct claims are particularly fertile ground for such thorny causal complexities. This case note examines the recent decision of *Berry v CCL Secure*, in which the High Court has provided welcome clarification around the use of counterfactuals and the burden and standard of proof applicable to the assessment of loss caused by intentional misleading or deceptive conduct. The Court’s analysis is practical and illustrative, such that it will usefully inform the determination of future claims.

Vicarious liability: No longer ‘on the move’ — *Barclays Bank plc v Various Claimants*; *Wm Morrison Supermarkets plc v Various Claimants*

— *Jessica Gracie*

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In the recent judgments *Barclays Bank plc v Various Claimants* and *Wm Morrison Supermarkets plc v Various Claimants*, the United Kingdom Supreme Court has, once again, handed down guidance on the controversial doctrine of vicarious liability. Whilst any guidance on the matter is welcome, it is argued in this note that the judgments are not without controversy and have again left much open to interpretation. The judgments seek to bring an end to the rapid expansions to vicarious liability. However, it is possible that as novel work arrangements continue to emerge, the cogency and elasticity of the doctrine will continue to be tested at appellate level.

Book Reviews

The Humanity of Private Law. Parts I and II by Nicholas J McBride

— *NA Tiverios*

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Andrew Robertson and James Goudkamp (eds), *Form and Substance in the Law of Obligations*

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