

PRIVATE LAW RESEARCH GROUP SEMINAR

Tort and Regulation

Professor Donal Nolan

University of Oxford

Tuesday 5 October 2021, 5.30pm to 7.00pm (SGT) / 10.30am to 12.00nn (UK)

This paper considers the many and varied ways in which the law of tort interacts with regulatory law (by which I mean mandatory regulatory norms, rather than voluntary codes of practice and the like). Examples of these interactions include (1) the indirect influence of regulatory norms on substantive tort law, whereby for example regulatory norms inform decisions on breach of duty in negligence or substantial interference in private nuisance; (2) the more direct influence of regulatory norms on tort via mechanisms such as a tort of breach of statutory duty, a doctrine of negligence per se, a regulatory compliance defence or a rule of regulatory pre-emption; and (3) various other forms of potential or actual interaction. Although I draw on all areas of tort law in the paper, my particular focus is on the law of negligence, the law of private nuisance and the law of product liability. The overall message of the paper is twofold: first, that the relationship between tort and regulation is complex and multifaceted; and second, that as a matter of general principle tort law should not automatically defer to regulatory norms and outcomes but should instead incorporate them into its own analytical frameworks.



ABOUT THE SPEAKER

Donal Nolan is Professor of Private Law in the University of Oxford and Francis Reynolds and Clarendon Fellow and Tutor in Law at Worcester College, Oxford. He was educated at Brasenose College, Oxford (BA and BCL) and was previously a Lecturer in Law at King's College London. He is a Senior Fellow of the University of Melbourne, a founding member of the World Tort Law Society, and an elected member of the American Law Institute.

Professor Nolan's research is focused primarily on the law of tort, and in particular on the law of negligence, the law of private nuisance and the interface between tort law and public law. He has recently undertaken a major empirical study of the operation of the contributory negligence doctrine with Professor James Goudkamp, which has generated two books: *Contributory Negligence: Principles and Practice* (OUP, 2018) and *Contributory Negligence in the Twenty-First Century* (OUP, 2019). He is also an editor of Winfield & Jolowicz on *Tort and of Lunney & Oliphant's Tort: Text and Materials*.

Participation by invitation

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