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A Tort Law Response to Corporate Environmental Harms?

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Abstract: This article examines whether the English common law of torts can effectively address contemporary corporate environmental harms and whether such a role is normatively justified. While tort law initially appears unsuitable – due to its structural incompatibility with diffuse environmental damage, its retrospective focus, and litigation inefficiencies – this article proposes cautious optimism. First, drawing on lessons from the French Civil Code, the common law's historical adaptability, and a modern reassessment of causality, it contends that the doctrinal shortcomings of environmental tort law may be surmountable. Concurrently, it proposes that tort law's participation in a multi-dimensional legal response is justified through its capacity to complement environmental policy frameworks. Second, these claims are substantiated by recent Supreme Court jurisprudence from the United Kingdom (*Vedanta v Lungowe* and *Okpabi v Shell*) and New Zealand (*Smith v Fonterra*), which respectively recognise a duty of care owed by parent companies for environmentally harmful acts of their subsidiaries, and the potential for tortious liability in relation to corporate greenhouse gas emissions. Whilst conceding that imperfections remain, this article concludes that English tort law has an increasingly significant role to play in a holistic legal response to corporate environmental harms.

Keywords: *Tort Law; Corporate Environmental Harms; Parent Company Liability; Climate Change Litigation*.

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I. Introduction

Can the English common law of torts effectively respond to environmental harms emanating from private sector companies, and if so, *should* it? Although orthodoxy suggests otherwise, this article argues that contemporary tort law is accumulating potential to form part of an effective, albeit imperfect, multi-dimensional solution to corporate environmental harms (CEHs).

Much attention has been placed on the tortious liability of governments for their shortcomings in today's environmental crisis.[1] Yet, a more company-centred analysis warrants attention due to mounting evidence demonstrating the magnitude at which private enterprises are contributing to environmental degradation. Strikingly, 22.3% of all fossil fuel and cement CO_2 emissions since the Industrial Revolution stem from merely 75 investor-owned companies,[2] emphasising the disproportionate role of corporate responsibility in climate change's escalating costs to both humans and nature.[3] Beyond global warming, corporations, particularly those involved in multinational resource-extraction activities,[4] directly pollute the environments they operate in, often with devastating local consequences. The Ogoniland in Nigeria provides a particularly stark example of how chronic oil spills from corporate pipelines have impaired livelihoods and necessitated the "largest terrestrial clean-up operation in history".[5]

Although domestic and international regulations attempting to address modern CEHs exist readily, questions about their effective implementation subsist.[6] Partially, this explains

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[1] Joana Setzer and Catherine Higham, 'Global Trends in Climate Change Litigation: 2024 Snapshot' (Grantham Research Institute on Climate Change and the Environment, London School of Economics and Political Science 2024); see e.g. *Urgenda Foundation v State of the Netherlands* [2015] HAZA C/09/00456689, "*Affaire du Siècle"* Tribunal Administratif de Paris 3 févr. 2021 n°1904967-1904968-1904972-1904976, and *Minister for the Environment v Sharma* [2022] FCAFC 35.

[2] 'The Carbon Majors Database: Launch Report' (CarbonMajors 2024) <https://carbonmajors.org/briefing/The-Carbon-Majors-Database-26913> accessed 20 December 2024, 15.

[3] 'Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change' (IPCC 2023) <https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf> accessed 16 October 2024.

[4] Lisa Benjamin, 'Group Companies and Climate Justice' (2021) 74 Current Legal Problems 235.

[5] Daniel Leader, 'Human Rights Litigation against Multinationals in Practice: Lessons from the United Kingdom' in Richard Meeran and Jahan Meeran, *Human Rights Litigation against Multinationals in Practice* (Oxford University Press 2021), 59-60; see also United Nations Environment Programme, 'Environmental Assessment of Ogoniland' (United Nations Environment Programme 2011).

[6] United Nations Environment Programme, 'Environmental Rule of Law: First Global Report' (United Nations Environment Programme 2019), 3, describes environmental laws as existing "mostly on paper" as a result of "irregular, incomplete, and ineffective" enforcement. See also Michael Anderson, 'Transnational Corporations and Environmental Damage: Is Tort Law the Answer?' (2002) 41 Washburn Law Journal 399, 399; Maria Lee,

why victims now turn more frequently to tort litigation to hold private enterprises accountable.[7] Still, balancing the swift rise of such actions[8] with the urgent need for impactful solutions to today's environmental difficulties,[9] it is crucial to evaluate whether tort law can – and should – play a meaningful role. Without such an assessment, society risks expending valuable energy towards a solution that may be fundamentally inadequate from the outset.[10]

Section II of this article explores various doctrinal difficulties that tort law faces in addressing environmental harms, querying whether these are sufficient to exclude tort law from a multi-dimensional solution altogether. Simultaneously, it is contended that tort law's place within a wider legal toolkit to combat contemporary CEHs is justified by its complementary function to regulatory regimes at both the national and international levels. This is followed by Section III, where recent common law developments are analysed to highlight the extent to which tort law is already surmounting the hurdles identified in Section II. Notably, the emergence of a parent company's duty of care (DoC) for environmental harms caused by its subsidiary and the recognition of potential liability for corporate greenhouse gas (GHG) emissions illustrate tort law's increasing capacity to face humankind's greatest challenge.

Environmental tort law has a long tradition of addressing CEHs, dating back to the Industrial Revolution.[11] However, as business operations have globalised and climate change has become increasingly pervasive, environmental claims have multiplied and diversified – they are therefore best analysed through distinct subcategories.[12] This article focuses on two relatively recent types of environmental tort litigation involving corporate defendants: *transnational* tort litigation, characterised by the "presence of a transnational element, such as

'Climate Change Tort' (2015), 2; Daniel Bertram, 'Environmental Justice "Light"? Transnational Tort Litigation in the Corporate Anthropocene' (2022) 23 German Law Journal 738, 741; Caroline E Foster, 'Novel Climate Tort? The New Zealand Court of Appeal Decision in Smith v Fonterra Co-Operative Group Limited and Others' (2022) 24 Environmental Law Review 224, 227; Benjamin (n 4), 241.

[7] Bertram (n 6), 741; Geetanjali Ganguly, Joana Setzer and Veerle Heyvaert, 'If at First You Don't Succeed: Suing Corporations for Climate Change' (2018) 38 Oxford Journal of Legal Studies 841, 845-846; Lord Sales, 'Climate Change and the Future of Tort Law: Responding to Systemic Risk and Expanding Liability (Keynote Address Planning and Environment Bar Association Annual Conference 2025)' (2025) <https://supremecourt.uk/speeches/lord-sales-090525> accessed 9 May 2026, 2.

[8] Antonia Langford, 'Sharp Rise in Number of Climate Lawsuits against Companies, Report Says' *The Guardian* (27 June 2024) <https://www.theguardian.com/environment/article/2024/jun/27/sharp-rise-in-number-of-climate-lawsuits-against-companies-report-says> accessed 5 November 2024.

[9] IPCC, 'Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change' (Cambridge University Press 2022) <https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_FullReport.pdf> accessed 23 January 2025.

[10] Lee (n 6), 5.

[11] E.g. *St Helens Smelting Co v Tipping* [1865] 11 HLC 642; see Section II(B)(ii) for further discussion.

[12] See e.g. Setzer and Higham (n 1).

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a foreign party or evidence located abroad";[13] and *climate change* tort litigation, in which climate change itself forms a "key consideration in legal argumentation and adjudication".[14] Three apex court decisions from the United Kingdom and New Zealand – *Vedanta Resources v Lungowe*,[15] *Okpabi v Shell*[16] and *Smith v Fonterra*[17]– are examined in depth as indicative and authoritative case studies of how the contemporary common law is navigating the distinct challenges each subcategory presents. The doctrinal proximity of New Zealand and English tort law[18] permits meaningful conclusions to be drawn specifically about the English common law's capacity to respond to CEHs. Engagement with the wider body of comparable developments in other jurisdictions,[19] whilst acknowledged, falls beyond the scope of this article.

II. *Prima Facie* Limitations of Tort Law in Addressing Corporate Environmental Harms

This Section explores a non-exhaustive list of factors explaining why environmental tort law – as an overarching category – appears constrained in its capacity to counter CEHs (A). Nonetheless, it subsequently reveals why tort law's participation in a multi-dimensional solution to CEHs should not be so easily dismissed (B).

A. Tort Orthodoxy's Underlying Deficiencies in Addressing Corporate Environmental Harms

The proposition that tort law is unsuited to respond effectively to CEHs can be distilled into three principal objections: structural limitations, a retrospective purpose, and, finally, practical and ethical concerns inherent in litigation.

[13] Bertram (n 6), 740.
[14] Ganguly, Setzer and Heyvaert (n 7), 843.
[15] [2019] UKSC 20.
[16] [2021] UKSC 3.
[17] [2024] NZSC 5.
[18] Lord Sales (n 7), 7.
[19] For reference, see 'The Climate Litigation Database - The Climate Litigation Database' (*Columbia Climate School Sabin Center for Climate Change Law*) <https://www.climatecasechart.com> accessed 9 May 2026.

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(i) Structural Incompatibility of Tort Law and Corporate Environmental Harms

The "deep structure"[20] of tort law suggests it is poorly equipped to address CEHs. Tort orthodoxy generally requires "harm to recognised interests (…) held by one or a number of identifiable claimants, caused by one or a number of identifiable defendants".[21] This "correlative"[22] design underscores tort law's intrinsically *interpersonal* nature, necessitating a clear connection[23] between involved parties for liability to arise. At its core, therefore, lies what can be termed an element of "privateness".[24] It is undisputed that tort law effectively resolves straightforward situations where, for example, Company A has polluted a specific area, directly causing an identifiable injury to Person B's body or property. However, real-life CEHs rarely fit this well within this *private* framework of tort law;[25] often, there are "gradual release[s]" of toxic substances, multiple origins,[26] and harm to interests which may or may not be recognised in tort. Combined, these complexities expose tort law's structural limitations and threaten its ability to mitigate CEHs effectively.

A concrete hurdle stemming from the *privateness* of tort law is the difficulty of establishing causal connections between a defendant's actions and the environmental harm for which compensation is claimed.[27] For instance, Cane argued that it is commonly impossible to prove scientifically that a company's pollution has "increased the probability of the harm suffered by the amount" required by law.[28] Additionally, a multiplicity in the sources of pollution makes it unrealistic to discern one specific company's contributions as being significant enough to constitute *the* cause[29] of harm without "grossly distorting the meaning"[30] of the term. In fact, these concerns are reflected in a "primary wave"[31] of climate change tort

[20] Kim Bouwer, 'When Gist Is Mist: Mismatches in Small-Scale Climate Change Litigation' (2015) 27 Environmental Law & Management 11.
[21] Lee (n 6), 1.
[22] Bouwer (n 20).
[23] Lee (n 6), 1.
[24] ibid., 4.
[25] ibid.
[26] Mark Latham, Victor E Schwartz and Christopher E Appel, 'The Intersection of Tort and Environmental Law: Where the Twains Should Meet and Depart' (2011) 80 Fordham Law Review 737, 753.
[27] Monika Hinteregger, 'Civil Liability and the Challenges of Climate Change: A Functional Analysis' (2017) Journal of European Tort Law 238, 240.
[28] Peter Cane, 'Are Environmental Harms Special' (2001) 13 Journal of Environmental Law 3, 15.
[29] ibid.
[30] Latham, Schwartz and Appel (n 26), 761.
[31] Ganguly, Setzer and Heyvaert (n 7), 849.

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litigation, where courts were reluctant to acknowledge causation between corporate GHG emissions and harms for which claimants sought compensation. A notable example is *Kivalina v ExxonMobil,*[32] where Native Alaskans sought compensation for the threat climate change posed to their Arctic village. Their case was dismissed as they failed to prove that their injuries were "fairly traceable"[33] to ExxonMobil's GHG emissions. Per Judge Armstrong, there was "no realistic possibility of tracing any particular alleged effect of global warming to any particular emissions by any specific person, entity, [or] group at any particular point in time".[34] This finding accentuates how the interplay of various sources underlying CEHs complicates the establishment of clear causal links – an essential feature of the *privateness* of tort law.[35]

An equally prevalent barrier relating to *privateness* is that tort law necessitates harm to a "recognised private interest".[36] Tort law relies on an arguably reductive understanding of recognised interests, limited predominantly to property and the physical body.[37] Consequently, tort compensation is not only restricted to injuries suffered by recognised interests, but these interests are also critical in regulating a person's legal standing to bring a claim.[38] In the environmental context, this menaces the usefulness of tort because, in principle, it means that claims can only be brought by persons who have suffered identifiable harm to their property or body as a result of environmental harm. While some commentators have explored the possibility of achieving comprehensive environmental protection through the enforcement of proprietary rights,[39] the environmental challenges which the world faces today go far beyond the scope of this strategy. Notably, key parts of the environment which corporations damage do not actually belong to anyone and therefore cannot be beneficiary to any legally enforceable right in tort – for example, the atmosphere, oceans, or wild creatures.[40]

(ii) The 'Backwards-Looking' Nature of Tort Law

[32] 663 F. Supp. 2d 863 (N.D. Cal. Sept. 30, 2009).
[33] ibid.
[34] ibid.
[35] See, however, a rebuttal of Cane and Judge Armstrong's conclusions at Section II(B)(iii).

[36] Jenny Steele, 'Private Law and the Environment: Nuisance in Context' (1995) 15 Legal Studies 236, 245.
[37] Lee (n 6), 1.
[38] Latham, Schwartz and Appel (n 26), 80; see e.g. *Hunter v Canary Wharf Limited* [1997] AC 655.
[39] E.g. Elizabeth Brubaker, *Property Rights in Defence of Nature* (Earthscan 1995) and Richard A Epstein, 'Property Rights, State of Nature, and Environmental Protection' (2009) 4 New York University Journal of Law & Liberty 1.
[40] Cane (n 28), 9. Note however the growing scholarship on "rights of nature", addressing this very issue – see e.g. Ralf Michaels and Daniel Bonilla Maldonado, *Global Legal Pluralism and Rights of Nature* (1. Auflage, Mohr Siebeck, 2026).

Tort law's efficacy in the environmental context has also been criticised from the angle that its overarching purpose makes it incompatible with resolving CEHs. Particularly, Lee underlines that actions in tort are generally retrospective;[41] the primary objective of tort law is to react[42] to existing harms instead of stopping them from occurring in the first place. This logic is re-emphasised by Latham, Schwartz and Appel, stating that the fundamental purpose of tort law is to provide *corrective justice* and restore injured parties to their original condition.[43]

The focus on financially restoring[44] injured parties to their original conditions, rather than restoring the environment *per se*, suggests that environmental tort law is an inefficient way of funding the clean-up of the environment and that this might be better achieved through systems of taxation or criminal fines.[45] Furthermore, while claims in tort could provide compensation for CEHs which have occurred *in the past*, the long-term solution to today's environmental crisis lies in the future. To slow down the irreversible consequences of climate change and corporate pollution, the law must provide prospective answers[46] that emphasise *prevention*; thus, if tort law only views this as a secondary objective,[47] there is a discrepancy between what tort law can achieve and what the environment actually *needs*.

Related to this is the point that parties commonly avoid tort litigation by reaching settlement agreements.[48] From a social justice perspective, settlements are an inadequate solution to CEHs because, in essence, they constitute a form of "hush money" that denies victims "public recognition of their injury" and "fails to expose corporations' illegal and predatory practises".[49] The implication is that tort law inadequately fulfils the function of publicly condemning corporations engaging in environmental wrongdoing, a critical component of deterring future CEHs. Consequently, even if it were accepted that tort law does not serve an exclusively backwards-looking purpose, the frequency of settlements insinuates that tort law could never execute a sufficiently forward-looking one either.

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41 Lee (n 6), 1.
42 Steele (n 36), 247.
43 Latham, Schwartz and Appel (n 26), 746.
44 See the "primacy of reparative damages" in John Gardner, 'Torts and Other Wrongs' in John Gardner, *Torts and Other Wrongs* (1st edn, Oxford University Press 2019) <https://doi.org/10.1093/oso/9780198852940.003.0001> accessed 3 December 2024.
45 Cane (n 28), 11 and 14.
46 Lee (n 6), 3.
47 Latham, Schwartz and Appel (n 26), 754.
48 See e.g. *Vedanta* (n 15).
49 Bertram (n 6), 753.

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(iii) Impracticalities and Ethical Concerns Inherent in Tort Litigation

Moving away from theoretical difficulties, the process of tort litigation itself is often constrained by practical limitations, reducing its attractiveness in dealing with environmental issues. Steele describes tort litigation as extremely cost-burdensome, lengthy and unpredictable since courts are forced to establish liability based on rather ambiguous concepts such as "reasonableness".[50] With tort litigation relying on claimants coming forward, these factors may disincentivise victims from bringing claims to hold corporations to account in the first place.

Moreover, tort litigation's ability to resolve complex environmental disputes appears to have been hindered by insufficient judicial expertise. As acknowledged by the United States Supreme Court, judges, unlike policymakers, "lack the scientific, economic and technological resources" needed to achieve principled outcomes in cases of complex environmental harm.[51] Taking this further, the classification of diffuse environmental harms like climate change as "polycentric"[52] – requiring input from all stakeholders to balance various public policy objectives[53] – makes them particularly unsuitable for judicial resolution, where principally only the perspectives of the claimant and defendant are considered.[54] Thus, any attempts to address environmental harms of this kind through tort litigation seem overly simplistic,[55] bolstering the argument that deference towards the legislative and executive branches may be more appropriate.[56]

A final, moral argument against the involvement of tort litigation in response to CEHs relates to its potentially discriminatory effect on the world's poorest communities. Anderson[57] identified that damages awarded against tortfeasors are likely to be lower in poorer countries, given that factors such as wage levels – which reflect a lower "cost of human life" – are

[50] Jenny Steele, '11. Nuisance' in Jenny Steele, *Tort Law: Text, Cases and Materials* (5th edn, Oxford University Press 2022), 712.
[51] *Connecticut v American Electric Power Co.*, 131 S. Ct. 2527, 2540 (2011). This concern persists despite contemporary efforts to re-educate the judiciary on climate related topics – e.g. 'Climate Judiciary Project' (20 November 2025) <https://cjp.eli.org/> accessed 9 May 2026 – as evidenced by *Smith v Fonterra* [2021] NZCA 552, [26].
[52] *Smith* (n 51), [26].
[53] Latham, Schwartz and Appel (n 26), 758.
[54] *Smith* (n 51), [26]; *Sharma* (n 1), [249]-[250].
[55] Latham, Schwartz and Appel (n 26), 762-763.
[56] *Sharma* (n 1), (Allsop J); *Smith* (n 51); *Kivalina* (n 32).
[57] Anderson (n 6), 419.

routinely accounted for when calculating quantum. Consequently, if tort law were to become a prevalent mechanism in holding corporations accountable for environmental harms, the strategic advantage of paying reduced damages would incentivise multinational companies (multinationals) to move their most environmentally hazardous activities to developing countries, where the financial consequences of adverse judgments are reduced. The result is a race to the bottom, in which vulnerable communities bear a disproportionate share of the environmental costs of corporate activity – a problem further compounded by jurisdictional incompatibilities raised by tort law's application to multinationals, as is explored further in Section III(A). Whether tort law can provide an ethical framework for addressing CEHs in a globalised society is, therefore, genuinely questionable.

B. A Necessary Relegation of Environmental Tort Law?

Before the enactment of tailored domestic and international environmental statutes, tort law was a primary mechanism for mitigating CEHs.[58] However, following the logic proposed by Latham, Schwartz and Appel, the shortcomings discussed above seem to justify tort law's relegation in favour of customised regulatory regimes.[59] Despite this, a more optimistic perspective is advanced here. France is introduced as a comparative benchmark, offering an example of an existing jurisdiction with enhanced environmental tort law mechanisms. When considered alongside the common law's historical adaptability to environmental difficulties, and a modern reassessment of causality, a case can be made that the aforementioned challenges are surmountable. Moreover, a normative justification for tort law's response to CEHs is advanced, rooted in its ability to reinforce existing and future regulatory frameworks. Taken together, these factors suggest that tort law's ability to contribute to a multi-dimensional solution to CEHs is more promising than made out.

(i) France's Article 1246 Code Civil: A Modern Testament to the Viability of Environmental Tort Law

[58] Latham, Schwartz and Appel (n 26), 739.
[59] ibid., citing, *inter alia*, the Clean Water Act 33 U.S.C. §1251 et seq. (1972) (USA).

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The marginalisation of environmental tort law in common law jurisdictions can be contrasted with the French civil law jurisdiction.[60] In 2016, the French Parliament introduced a novel cause of action in civil responsibility in Article 1246 of its Civil Code,[61] symbolically legitimising tort law's response to CEHs.[62] Article 1246 dramatically stretched the frontiers[63] of French environmental tort law by recognising "ecological harm" ("*le préjudice écologique*") as a legally protected interest, independent from harm to the physical body or property.[64] Moreover, the eligibility to bring environmental tort claims was widened to include "any person who has the standing and interest to bring proceedings",[65] followed by a non-exhaustive list of recognised governmental and environmental protection entities. In terms of remedies, the reform prioritises specific performance of environmental restoration over the payment of compensatory damages[66] and allows for preventative measures.[67]

These elements have significantly broken down the barriers of *privateness* in tort law and challenged its retrospective nature. While it is beyond the scope of this article to consider whether similar legislative reform in common law jurisdictions is warranted, the French Civil Code is nevertheless instructive in tempering the general scepticism directed at environmental tort law's capacity to address CEHs. Despite the fundamental differences between the two legal traditions, the French jurisdiction exemplifies that, with appropriate adaptations, tort law can indeed be meaningfully reconfigured to respond to environmental degradation. Ultimately, the English common law may not follow an identical path; yet, as Section III demonstrates, doctrinal evolution of this kind is neither imaginary nor unprecedented.

(ii) Lessons Learned from the Past: Previous Environmental Tort Successes at Common Law

[60] Maria Hook et al., 'Tort to the Environment: A Stretch Too Far or a Simple Step Forward?' (2021) 33 Journal of Environmental Law 195, 206-207.
[61] See Article 1246 Code Civil (FR), translated by Simon Taylor, 'Extending the Frontiers of Tort Law: Liability for Ecological Harm in the French Civil Code' (2018) 9 Journal of European Tort Law 81, 85: "any person responsible for ecological harm is liable to repair that harm."
[62] G.J. Martin, 'Réflexions autour du nouveau Régime de Réparation du Préjudice Écologique introduit dans le Code Civil par la Loi "Biodiversité"', *Mélanges en l'honneur de F. Collart-Dutilleul* (Dalloz 2017), 505.
[63] Taylor (n 61).
[64] Laurent Neyret, 'La Consécration Du Préjudice Écologique Dans Le Code Civil' [2017] Recueil Dalloz 924.
[65] Article 1248 Code Civil (FR); translated by Taylor (n 61), 86.
[66] Article 1249 Code Civil (FR).
[67] Article 1251 Code Civil (FR).

A revival of tort law in response to CEHs need not be restricted to France, for the common law has the equal potential to reanimate itself in the environmental sector. Tort law is not "isolated from social change"[68] and has already once contributed to addressing one of the toughest environmental crises in human history: the Industrial Revolution.[69] Throughout the 19th and 20th centuries, nuisance law developed to assist in tackling British industrial pollution:[70] outcomes in litigation, and the fear thereof, incentivised corporations to invest millions of pounds towards cleaner technologies, making Britain the first "broadly green industrial […] economy the world has known".[71] While the gravity of today's environmental crisis may well be more burdensome than that of the Victorian era, the underlying difficulties are similar in nature.[72] Ultimately, if the common law has navigated this terrain before, there is reason to believe that today's environmental challenges might too be addressable, at least in part, by tort law.

(iii) A modern reappraisal of causation in environmental tort law

Although an extensive discussion of causation lies beyond the scope of this article,[73] it is worth mentioning how advancements in attribution science have improved our ability to draw causal links between environmental harms and the actions of specific corporate actors. Modern scientists are not only able to pinpoint the amount of historical GHG emissions which are attributable to a single company, but also map probabilistically the cause-and-effect relationships between anthropogenic climate change and specific, quantifiable harm resulting therefrom.[74] In response to the concerns highlighted in Section II(A)(i), it follows, therefore, that tort law's *private* structure might no longer hinder it from mitigating CEHs to the same extent as initially believed.

[68] Lee (n 6), 3.
[69] *Smith* (n17), [156].
[70] Ben Pontin, 'Nuisance Law and the Industrial Revolution: A Reinterpretation of Doctrine and Institutional Competence' (2012) 75 The Modern Law Review 1010.
[71] Ben Pontin, 'The Common Law Clean Up of the "Workshop of the World": More Realism About Nuisance Law's Historic Environmental Achievements' (2013) 40 Journal of Law and Society 173, 197.
[72] David Bullock, 'Public Nuisance and Climate Change: The Common Law's Solutions to the Plaintiff, Defendant and Causation Problems' (2022) 85 The Modern Law Review 1136, 1159-1160.
[73] See instead e.g. Lisa Benjamin and Sara Seck, 'Causation' in Margaretha Wewerinke-Singh and Sarah Mead, *The Cambridge Handbook on Climate Litigation* (1st edn, Cambridge University Press, 2025).
[74] Sophie Marjanac and Lindene Patton, 'Extreme Weather Event Attribution Science and Climate Change Litigation: An Essential Step in the Causal Chain?' (2018) 36 Journal of Energy & Natural Resources Law 265 and 'The Carbon Majors Database: Launch Report' (n 2).

Equally significant is tort law's tendency to accept alternative causal tests to the 'but-for' standard where issues of multiple causation arise. For example, it has been suggested that the "material contribution to the risk of injury" test, as advanced in *Fairchild v Glenhaven Funeral Services*,[75] could inspire future environmental tort claims.[76] For climate change tort litigation specifically, there is a case to be made for a "market-share"-based test following *Sindell v Abbott Laboratories.*[77] Overall, continued improvements in attribution science and future adjustments in causal standards could drastically lower the evidential barriers faced by litigants in proving causation, paving the way for tort law to play a more active role in addressing CEHs.

(iv) The positive case for tort law's contribution to the legal response to CEHs

So far, Section II(B) has sought to challenge the proposition that tort law is ill-suited to respond to CEHs. Now, however, a normative argument as to why tort *should* in fact contribute to mitigating CEHs is proposed.

As Kysar observes, academic debate tends to oversimplify the possible responses to CEHs by viewing tort law and regulatory regimes as mutually exclusive alternatives.[78] This article rejects that framing. The argument advanced here is not that tort law is better positioned to address CEHs than other sources of law; rather, it is that tort law should participate in a multi-dimensional legal solution to CEHs, acting as a complement to existing and future regulatory regimes.

Two justifications support this position. The first is that tort law effectively provides a safety net for victims of CEHs where regulatory regimes fail to deliver effective justice.[79] Unfortunately, domestic environmental regulations and international treaties have not, by themselves, proven capable of effectively curbing CEHs. At the international level, the 2015 Paris Agreement is illustrative: while 195 countries agreed to use best endeavours to limit the

[75] [2002] UKHL 22.
[76] Ganguly, Setzer and Heyvaert (n 7), 857.
[77] 26 Cal 3d 588 (1980); see Daniel Grimm, 'Global Warming and Market Share Liability: A Proposed Model for Allocating Tort Damages among CO2 Producers' (2007) 32 Columbia Journal of Environmental Law 209.
[78] Douglas A Kysar, 'The Public Life of Private Law: Tort Law as a Risk Regulation Mechanism' (2018) 9 European Journal of Risk Regulation 48, 63.
[79] Jim Rossi and JB Ruhl, 'Adapting Private Law for Climate Change Adaptation' (2022) 76 Vanderbilt Law Review 827, 842; Keith N Hylton, 'When Should We Prefer Tort Law to Environmental Regulation?' (2001) 41 Washburn Law Journal, 534; Lord Sales (n 7), 17.

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global temperature increase to 1.5C° above pre-industrial levels,[80] not a single country is currently on track to meet this commitment.[81] Exacerbating this is the absence of any effective accountability mechanism for countries that fall short of their targets,[82] seriously undermining the prospect of meaningful implementation. In fact, countries retain the capacity to simply withdraw from the Agreement entirely where this conflicts with national policy.[83]

Similarly, domestic regulatory mechanisms are equally susceptible to political volatility. For example, the number of civil lawsuits filed against polluters by the U.S. Department of Justice reached a historic low in the first year of President Trump's second administration – declining by 76% compared to President Biden's first year – despite continued instances of air and water pollution.[84] This must be viewed alongside sustained budget cuts to the U.S. Environmental Protection Agency,[85] which may further threaten the institutional capacity required for effective enforcement. More systemically, policymakers are subject to sustained lobbying pressure[86] from corporate interest groups, a pressure to which individual litigants are not exposed in the same way. As a result, well-intentioned regulations to mitigate CEHs are often watered down during the legislative process.[87]

These observations are not intended to suggest that regulatory approaches are inappropriate. Instead, they merely serve to show that the existing frameworks are imperfect and could benefit from supplementary enforcement mechanisms. Tort law is well-placed in this regard. By nature, tort law adapts incrementally over time[88] and may therefore prove a more stable form of recourse for victims than regulatory regimes that remain vulnerable to political fluctuations. Furthermore, tort law provides a "decentralised and citizen-empowering means of

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[80] Article 2(1)(a).
[81] 'Countries' (*Climate Action Tracker*) <https://climateactiontracker.org/countries/> accessed 11 May 2026.
[82] Imad Antoine Ibrahim, Sandrine Maljean-Dubois and Jessica Owley, 'The Paris Agreement Compliance Mechanism: Beyond COP 26' (2021) 11 Wake Forest Law Review Online 147.
[83] See e.g. the United States' departures under both Trump administrations; Dharna Noor, '"Abdication": Trump Takes US out of Paris Climate Agreement for a Second Time' *The Guardian* (27 January 2026) <https://www.theguardian.com/us-news/2026/jan/27/trump-withdraws-paris-climate-agreement> accessed 13 May 2026.
[84] Keene Kelderman, Vincent Bregman and Jen Duggan, 'Declining Environmental Enforcement in Trump's Second Term' (Environmental Integrity Project 2026) <https://environmentalintegrity.org/reports/declining-environmental-enforcement-in-trumps-second-term/> accessed 14 May 2026, 1.
[85] ibid., 9.
[86] Hylton (n 79) 520-524; Pamela Carina Tolosa, 'Advantages and Restrictions of Tort Law to Deal with Environmental Damages' (2014) 38 Revue générale de droit 111, 119.
[87] See e.g. 'Preliminary Legal Analysis – From Ambition to Erosion: How Omnibus I Rolls Back the CSDDD' (European Coalition for Corporate Justice 2026) <https://corporatejustice.org/publications/preliminary-legal-analysis-from-ambition-to-erosion-how-omnibus-i-rolls-back-the-csddd/> accessed 11 May 2026 for a description of how the EU Corporate Sustainability Due Diligence Directive has been diluted by the Omnibus I reform.
[88] Rossi and Ruhl (n 79), 855.

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formulating and addressing regulatory goals",[89] enabling individuals to act as enforcers of their own rights rather than "passive beneficiaries"[90] of public law. This could prove especially valuable in contexts where enforcement of public laws and international treaties is waning.

The second justification for tort law's participation in a broader legal response to CEHs relates to the indirect benefits derived by regulatory regimes from tort litigation. As purported in Section II(A)(i), tort law is generally viewed as a *private* form of law, concerned predominantly with the bilateral relationship between injured party and wrongdoer, and therefore inappropriate for addressing societal problems such as CEHs. Again, however, this characterisation is overly simplistic. Despite its private law foundations, tort law leads a "public life" of its own,[91] generating spontaneous spillover-benefits for public law regulations. In particular, tort litigation can serve as a "catalyst for and even inform future public law solutions" to CEHs.[92]

At its core, environmental tort litigation represents a one-of-a-kind information-gathering exercise. Compared to public agents, private litigants have considerably stronger incentives to amass the information needed to vindicate their rights when these have been infringed.[93] Moreover, a claimant generally "knows more about his injury than any other party", while a "defendant knows more about his burden of precaution than anyone else".[94] At trial, courts therefore draw on a wealth of accumulated evidence – for example, disclosed documents, expert testimony and witness accounts – to determine which account of events is more convincing.[95]

Naturally, one might ask how this is relevant to the mitigation of CEHs. Although the main output of tort litigation is an adjudicative decision of the merits of a claim between the parties, its effects extend far beyond the individual dispute. In the first instance, environmental tort litigation draws public attention to specific problems and inspires regulators to act.[96] More importantly, the information generated throughout the litigation process can subsequently be leveraged to shape the designs of future environmental regulation. For example, Kysar explains

[89] Kysar (n 78), 54.
[90] ibid., 57.
[91] ibid., 50.
[92] Rossi and Ruhl (n 79), 843.
[93] Kysar (n 78), 54; Tolosa (n 86), 118.
[94] Hylton (n 79), 525.
[95] ibid.
[96] Kysar (n 78), 62.

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how the expertise amassed throughout the *Renken v Harvey Aluminium Inc*[97] litigation directly informed the subsequent creation of modern air pollution legislation in the United States.[98] Consequently, by serving as a "laboratory for policy experimentation",[99] the common law earns a defensible place within the broader legal response to CEHs. Indeed, the development of the most effective environmental regulations may ultimately depend[100] on tort law.

III. Rethinking Modern Tort Law's Response to Corporate Environmental Harms

Drawing on three Supreme Court decisions, this Section demonstrates how contemporary tort law is overcoming the barriers discussed in Section II and, therefore, might contribute meaningfully to addressing CEHs. The argument is developed by reference to the two subcategories of environmental tort law identified in the introduction – *transnational* and *climate change* tort litigation against corporations – examining, in turn, the emergence of a parent company DoC for environmentally harmful acts committed by its subsidiary (A) and the potential recognition of tortious liability for corporate GHG emissions (B).

A. Transnational Tort Litigation in Action: The Parent Company Duty of Care for Environmentally Harmful Acts of Subsidiaries

Modern company law's principles of separate personality and limited liability treat companies as distinct legal entities from their shareholders[101] and shield shareholders from personal liability for corporate debts.[102] While these principles promote entrepreneurialism and investment,[103] they also provide the "ingredients for a cocktail of externalising environmental

[97] 226 F Supp 169 (D Or 1963).
[98] Kysar (n 78), 58-64.
[99] Rossi and Ruhl (n 79), 879.
[100] Kysar (n 78), 63.
[101] *Salamon v A Salomon & Co Ltd* [1897] AC 22.
[102] Ben Pettet, 'Limited Liability - A Principle for the 21st Century?' (1995) 48 Current Legal Problems 125; John Armour and others, 'What Is Corporate Law?' in Reinier Kraakman and others, *The Anatomy of Corporate Law: A Comparative and Functional Approach* (3rd edn, Oxford University Press 2017).
[103] Pettet (n 102), 142.

[…] harm, moral hazard and a catalogue of corporate irresponsibility".[104] This statement applies particularly to multinationals which tactically organise themselves in group structures.[105] By setting up subsidiaries for undertaking environmentally dangerous activities, parent companies may[106] reap the financial benefits from those activities while simultaneously insulating themselves from any liability. To hold the parent liable in such circumstances would require piercing the corporate veil,[107] a remedy which the courts allow only in the most limited circumstances.[108] The corporate veil is supplemented by a "jurisdictional veil"[109] since home-state courts of multinational parents lack jurisdiction over subsidiaries' foreign activities, while, simultaneously, host-state courts in which the subsidiaries operate lack jurisdiction over the parent.[110] In addition, subsidiaries are often incorporated in countries with weaker governance structures, where victims' hopes of obtaining justice locally for CEHs are often paralysed[111] by delays in the court system, corruption, claim-funding difficulties and/or undercapitalised subsidiaries.[112] Cumulatively, these factors make it practically impossible for foreign victims of CEHs to obtain any effective remedy against multinationals. Two recent UK Supreme Court (UKSC) decisions demonstrate, however, that transnational tort litigation may provide a solution to this difficulty.

(i) The Decisions in Vedanta and Okpabi

In *Vedanta,*[113] Zambian citizens brought proceedings against Vedanta Resources (Vedanta), a UK-domiciled company, and its subsidiary Konkola Copper Mines plc (KCM), incorporated in Zambia. The claimants alleged that their livelihoods were damaged by the discharge of toxic materials into local watercourses from KCM's copper mine. Consequently, the claimants argued that Vedanta owed them a DoC for the environmentally harmful acts of its subsidiary,

[104] Carrie Bradshaw, 'Corporate Liability for Toxic Torts Abroad: Vedanta v Lungowe in the Supreme Court' (2020) 32 Journal of Environmental Law 139, 139-140.
[105] Benjamin (n 4), 252.
[106] This strategy's permissibility was confirmed in *Adams v Cape Industries plc* [1990] (Slade LJ).
[107] Bradshaw (n 104), 140.
[108] *Prest v Petrodel Resources Ltd* [2013] UKSC 34, [35].
[109] Peter Muchlinski, 'Limited Liability and Multinational Enterprises: A Case for Reform?' (2010) 34 Cambridge Journal of Economics 915, 920.
[110] Anderson (n 6), 402.
[111] Leader (n 5), 60.
[112] Bradshaw (n 104), 140.
[113] *Vedanta* (n 15).

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since Vedanta professedly exercised a "high level of control and direction"[114] over KCM's mining operations and compliance with environmental standards. In asserting that there was "nothing special" about the parent/subsidiary relationship,[115] Lord Briggs rejected that parent company liability constituted a "novel and controversial extension of the boundaries of the tort of negligence".[116] Rather, parent company liability for the actions of its subsidiaries was traceable to duties arising towards third parties.[117] Therefore, whether a parent company DoC would arise depended not on the traditional *Caparo*[118] three-limbed test, but on "the extent to which […] the parent availed itself of the opportunity to take over, intervene in, control, supervise or advise the […] the relevant operations […] of the subsidiary".[119] The UKSC inferred from Vedanta's environmental group-wide policies that it assumed responsibility "for the maintenance of proper standards of environmental control"[120] over KCM's activities. Therefore, it was held to be arguable that Vedanta owed the claimants a DoC for the environmental pollution caused by its subsidiary.

In *Okpabi,*[121] the Ogale and Bille communities in Nigeria brought claims against Royal Dutch Shell (RDS), a UK-domiciled parent company, and its subsidiary, Shell Petroleum Development Company of Nigeria (SPDC), incorporated in Nigeria, in respect of widespread oil spills originating from pipelines operated by the latter. Similar to *Vedanta*, the claimants alleged that RDS owed them a DoC since it exercised control over and/or assumed responsibility for SPDC's operations by promulgating and imposing mandatory environmental policies.[122] The UKSC validated that the liability of parent companies should not be approached as a novel category of DoC,[123] and that instead, the true test resided in the extent to which the parent took over and/or shared with the subsidiary the management of the oil-pipeline operation.[124] Most importantly, the UKSC overturned the Court of Appeal's[125] finding that the promulgation of environmental group policies was in itself insufficient to demonstrate

[114] ibid., [3].
[115] ibid., [54].
[116] ibid., [46].
[117] ibid., [49]; reference made to *Home Office v Dorset Yacht* [1970] AC 1004.
[118] *Caparo Industries v Dickman* [1990] (Lord Bridge).
[119] *Vedanta* (n 15), [49].
[120] ibid., [61].
[121] *Okpabi* (n16).
[122] ibid., [7].
[123] ibid., [151].
[124] ibid., [147].
[125] *Okpabi v Shell* [2018] EWCA Civ 191, [89].

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control and thereby give rise to a parent DoC since this would be inconsistent[126] with *Vedanta*. Applying these principles, the court relied on internal documents to find that the parent was not only aware of the environmental damage caused by its subsidiary, but also that the promulgation of group-policies evidenced the parent's assumption of responsibility in managing its subsidiary's oil-pipelines. On this basis, the court held that a parent DoC could indeed be warranted.[127]

(ii) The Parent Company Duty of Care: A Justified Response to Corporate Pollution

Although the decisions above were jurisdictional in nature,[128] they cemented the proposition that a UK-domiciled parent company may be liable, via the tort of negligence, for environmentally harmful acts committed by its foreign-incorporated subsidiaries. This development marks a significant step forward in transnational tort law's ability to meaningfully respond to CEHs because it grants foreign victims a unique opportunity to obtain economic compensation, which otherwise would be hindered by the corporate and jurisdictional veils. As indicated by Bradshaw, the decisions lay the foundations for claimants to outmanoeuvre the traditional constraints of company law by "skirting"[129] the corporate veil – as opposed to piercing it – in instances where the parent company has exercised sufficient control over the relevant subsidiary activity.

This alternative route to compensation via tort law is defensible. First, given that the decision-making nucleus in multinationals often resides at the parent level, a rigorous application of separate personality seems artificial when subsidiaries are clearly carrying out the former's instructions.[130] The artificiality of separate personality is further encapsulated when accounting for the anomaly that financial gains are transferable within the group while legal liability is not. Second, the appropriateness of limited liability in the context of environmental pollution is questionable. According to Benjamin, "limited liability does not eliminate business risk, but instead transfers it [from entrepreneurs] to creditors."[131] While a contract creditor, for example a bank lender, will be compensated through the payment of

[126] *Okpabi* (n 16), [143].
[127] ibid., [153]-[159].
[128] Relating to a determination under Civil Procedure Rules Part 6 Practice Direction B para 3.1(3)(a).
[129] Bradshaw (n 104), 141.
[130] Muchlinski (n 109), 922.
[131] Benjamin (n 4), 250.

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interest for taking on risk when transacting with a limited liability company, this does not apply to victims of environmental harm. They are "involuntary creditors"[132] who have not bargained with the company for shouldering the consequences of a company's environmental pollution.[133] The fact that tort victims bear the costs of CEHs without receiving anything in return demonstrates how the economic justifications advanced in favour of limited liability in respect to contract creditors do not carry the same weight – if any at all – in respect to involuntary tort victims.[134] For the law to allow companies to externalise their environmental risk onto involuntary victims and avoid any resulting liability via group structures is, therefore, not only economically but also morally dubious.[135] As such, the solutions in *Vedanta* and *Okpabi* signal a much-needed shift in attitude by the courts, whereby companies could be compelled to internalise[136] the environmental costs of their ventures.

Although the remedies sought in *Vedanta* and *Okpabi* consisted of monetary damages, the cases illustrate tort law's ability to serve not only a corrective function but also act as prophylaxis, thereby aligning tort law's overarching purposes with the necessities of preventative solutions to the modern environmental crisis. In the aftermath of the decisions, multinationals must reconsider similarly hazardous environmental practices to avoid the legal risk their parent companies may incur for damage caused by their subsidiaries. Following the logic proposed by Anderson, *Vedanta* and *Okpabi* "send out what are effectively price signals to deter or discourage similar polluting or degrading activities by other actors in the market".[137] Even so, the practical consequences of *Vedanta* and *Okpabi* in respect to modern corporate governance transcend the legal risk of an adverse judgment.

Beyond litigious risk, multinationals also face a variety of financial, reputational and transactional risks when similar ESG claims are brought against them.[138] Defendant companies find it harder to access financing and will see their valuations negatively impacted. For example, stock prices of Carbon Majors[139] on average took a hit of -0.57% following a case

[132] Muchlinski (n 109), 918.
[133] Pettet (n 102), 153.
[134] ibid.
[135] Benjamin (n 4), 251; Andrew Sanger, 'Parent Company Duty of Care to Third Parties Harmed by Overseas Subsidiaries' (2019) 78 The Cambridge Law Journal 486, 489-490.
[136] Monika Hinteregger, 'Environmental Liability' in Emma Lees and Jorge E Viñuales, *The Oxford Handbook of Comparative Environmental Law* (Oxford University Press 2019), 1042; Rossi and Ruhl (n 79), 854.
[137] Anderson (n 6), 408.
[138] Neil Blake and Keillor Joanne, 'Webinar: Transnational Torts and Parent Company Liability' (*Herbert Smith Freehills*, 28 January 2022) <https://www.herbertsmithfreehills.com/notes/litigation/2022-01/webinar-transnational-torts-and-parent-company-liability> accessed 22 December 2024.
[139] For a comprehensive list, see 'Entities' (*CarbonMajors*) <https://carbonmajors.org/Entities> accessed 20 December 2024.

filing and -1.50% following an unfavourable judgment in climate litigation.[140] Similarly, the reputational damage a defendant company suffers may impact its ability to complete corporate transactions, as is best exemplified by Unilever's difficulties in divesting its black-tea business.[141] Together, these factors constitute an effective mechanism to deter multinationals from engaging in environmentally harmful activities since there are real consequences they risk facing if involved in related tort litigation. Per analogy to the Industrial Revolution as discussed in Section II(B)(ii), companies are incentivised to invest in cleaner technologies[142] to avoid the adverse consequences above, demonstrating that the common law of torts is not only useful in *responding* to but also shows potential in *preventing* future CEHs.

Further, the cases illustrate that tort law's response to CEHs may not be as constrained by its interpersonal structure. Particularly, the UKSC's emphasis on parental control and/or responsibility over the subsidiary in assessing whether a parent company DoC emerges could expand the geographical frontiers in which duties arise.[143] Originally, a DoC was restricted to situations where the claimant and defendant were in a sufficiently proximate relationship to fall within the "neighbourhood" principle.[144] However, *Vedanta* and *Okpabi* confirm that whether a parent company DoC arises depends not on the direct proximity between a parent company and victim, but rather on the extent to which the parent exerts control/responsibility over the subsidiary.[145] Henceforth, once sufficient correlativity between a parent and subsidiary is made out,[146] a parent company DoC may arise *indirectly* towards any third parties who suffer detriment as a result of the subsidiary's environmentally harmful activities, provided that detriment flows from the parent's assumption of responsibility over those activities.[147] Crucially, this holds true despite victims of transnational harm being distantly located *in space*

[140] Misato Sato et al., 'Impacts of Climate Litigation on Firm Value' (Grantham Research Institute on Climate Change and the Environment, London School of Economics and Political Science 2023) Working Paper 421/397, 1.
[141] Andres Schipani and others, 'Bidders for Unilever's Tea Business Pulled out on Plantation Concerns' *Financial Times* (19 November 2021) <https://www.ft.com/content/5c7bbed1-c0ce-4767-a275-530b8ab9a1fc?syn-25a6b1a6=1> accessed 22 December 2024.
[142] Rossi and Ruhl (n 79), 854; Lord Sales (n 7), 10-11.
[143] Dalia Palombo, 'Business, Human Rights and Climate Change: The Gradual Expansion of the Duty of Care' (2024) 44 Oxford Journal of Legal Studies 889, 902.
[144] *Donoghue v Stevenson* [1932] AC 562 (Lord Atkin); ibid., 901.
[145] Focussing on the parent company and subsidiary relationship instead of the parent company and tort victim relationship when determining whether a DoC arises was first proposed in *Chandler v Cape Plc* [2012] EWCA Civ 525; see Palombo (n 143), 896.
[146] See "Vedanta routes" in Leader (n 5), 68-69.
[147] Palombo (n 143), 898.

from parent companies,[148] accentuating the nascent potential of tort law in achieving environmental justice on a global stage.

Finally, the UKSC alleviated some procedural difficulties of transnational tort litigation. Condemning the extensive evidence presented at a jurisdictional stage, it suggested that the resulting costs and time of litigation were overly disproportionate.[149] To avoid “beating its head against a brick wall”,[150] the court stressed the need to avoid a “mini-trial” and reserve factual determinations for the merits stage.[151] This signals a possible reduction in the evidential burden for claimants at the interlocutory stage, which would in turn decrease litigation costs and length. Expanding upon this, the commitment to render trial more accessible resurfaced in the latest *Okpabi* ruling, where the Court of Appeal[152] dismissed the application of a “Global Claims” test, which would have required the claimants to attribute 100% of the respective environmental harm to RDS.[153] Acknowledging the “inequality of arms and asymmetry of information” between victims of CEHs and multinationals like RDS, the court considered itself under a duty to ensure that the “parties are on an equal footing”.[154] This reflects a wider effort by the courts to alleviate the power imbalances inherent in transnational environmental tort litigation,[155] ultimately empowering victims with more realistic chances at justice.

(iii) Challenges Associated with the Parent Company Duty of Care

Although these developments have been described as a “victory”[156] for claimants seeking compensation for CEHs, challenges subsist. First, the UKSC’s heavy reliance on group-wide policies to conclude that Vedanta and RDS may owe parent company DoCs could have unintended consequences. Particularly, the rulings create a “perverse incentive” for parent

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[148] ibid., 902. In fact, geographical distance as a defence to liability under German civil law for transnational CEHs was expressly rejected by Oberlandesgericht Hamm, I-5 U15/17, 39.
[149] ibid., 904-905.
[150] *Vedanta* (n 15), [14].
[151] *Okpabi* (n 16).
[152] *Alame v Shell* [2024] EWCA Civ 1500.
[153] ‘Full Trial of Nigerian Communities’ Claims against Shell to Finally Go Ahead in 2025’ (*Leigh Day*) <https://www.leighday.co.uk/news/press-releases/2024-news/court-of-appeal-ruling-clears-the-way-for-full-trial-of-nigerian-communities-oil-pollution-claims-against-shell-to-finally-go-ahead-in-2025/> accessed 13 May 2026.
[154] *Alame* (n 152), [86].
[155] Benjamin (n 4).
[156] Leader (n 5), 72.

companies to "pull back from [their environmental] commitments"[157] and disassociate themselves from control over subsidiaries' environmentally hazardous activities to avoid tortious liability.[158] In fear of this, proposals have been made to place mandatory environmental due diligence requirements for multinationals on a "statutory footing"[159] or establish an "enterprise liability"[160] regime. While such measures are welcomed, the anxiety of such a change in corporate behaviour could be overstated. It is strategically unwise for directors of parent companies to create an impression to investors that they no longer control their group-wide operations, as effective governance requires parent companies to monitor their subsidiaries and implement changes in cases of underperformance.[161] Any failure to do so might suggest that "the directors [of parent companies] do not take their duties seriously."[162]

A second concern stems from the international dimension of transnational environmental tort litigation. Specifically, the English courts asserted jurisdiction over the UK-domiciled parent companies (Vedanta and RDS) through Article 4.1 Brussels I Recast Regulation 1215/2012 (Recast). Jurisdiction was guaranteed through *Owusu v Jackson*,[163] confirming claimants' right to sue EU-domiciled companies in their respective domiciles without facing jurisdictional challenges under *forum non conveniens (FNC)*,[164] even if another, more appropriate jurisdiction had been available.[165] This position has, however, dramatically shifted since Brexit, because the Recast no longer applies in the UK, and *Owusu* no longer offers "a safe jurisdictional haven for victims" of environmental harm.[166] Instead, parent companies have regained the ability to contest the jurisdiction of English courts under *FNC*, adding additional litigious risk to victims of environmental harm seeking recourse before English courts. Per Grušic, "many alleged [environmental] abusers will benefit from this and, thus, collect a handsome 'Brexit dividend'."[167] In fact, this risk temporarily materialised in

[157] ibid., 84.
[158] Marilyn Croser and others, 'Vedanta v Lungowe and Kiobel v Shell: The Implications for Parent Company Accountability' (2020) 5 Business and Human Rights Journal 130, 134.
[159] Bradshaw (n 104), 149; see e.g. the Code de Commerce (FR) at Article L225-102-4.
[160] Benjamin (n 4), 266.
[161] Cees Van Dam, 'Breakthrough in Parent Company Liability: Three Shell Defeats, the End of an Era and New Paradigms' (2021) 18 European Company and Financial Law Review 714, 741.
[162] ibid.
[163] (Case C-281/02) 2005 QB 801.
[164] William Day, 'Piggyback Jurisdiction and the Corporate Veil' (2019) 135 Law Quarterly Review 551; see *Spiliada Maritime v Cansulex Ltd* [1987] AC 460, 476, for an authoritative explanation of *FNC*.
[165] E.g. the Zambian forum in *Vedanta* (n 15), [75].
[166] Uglješa Grušić, 'Dyson Collects a "Brexit Dividend" in a Business and Human Rights Case in England' (*European Association of Private International Law*, 30 October 2023) <https://eapil.org/2023/10/30/dyson-collects-a-brexit-dividend-in-a-business-and-human-rights-case-in-england/> accessed 22 December 2024.
[167] ibid.

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Limbu v Dyson Technology[168], where the English High Court stayed negligence proceedings against Dyson, a UK-domiciled company, relating to business-related human rights violations on *FNC* grounds; the Malaysian forum was deemed to be more closely connected to the dispute's factual matrix and there was no reason to believe that its courts could not provide substantial justice to the parties. If followed in future environmental tort claims, this approach may "jeopardise the encouraging steps that [*Vedanta*] and *Okpabi* took in terms of lowering the jurisdictional burden on victims and limiting the cost and time of transnational litigation against UK parent companies."[169] Although the Court of Appeal eventually overturned the High Court's *FNC* analysis for failing to recognise Dyson UK's role as the "principal protagonist"[170] in the claim, *FNC* remains an extremely fact-sensitive test.[171] Hence, jurisdictional battles remain a genuine threat in future transnational tort claims against English multinationals.

Thirdly, Bertram is sceptical of the effectiveness of monetary compensation as a remedy to flagrant instances of environmental pollution such as in *Vedanta* and *Okpabi*: "no amount of monetary compensation can do justice to the livelihoods lost, the trauma caused and the health impaired."[172] While there is truth to this, damages awarded for the breach of a parent company DoC appear to be the only currently available, effective remedy[173] at the disposal of foreign victims of environmental harm who wish to sue UK-domiciled parent companies. As outlined above, piercing the veil remains judicially near-impossible, and other areas of company law have fared no better. In fact, the English High Court in *ClientEarth v Shell* recently dismissed the derivative claim[174] as an inappropriate vehicle for advancing environmental protection,[175] implicitly confirming that the duty to "have regard" to the environment within UK corporate governance[176] may still be undercut by the overarching objective of shareholder wealth maximisation.[177] Hence, with other avenues seeming prospectless, the selection of remedy *per*

[168] [2023] EWHC 2592.
[169] Palombo (n 143), 906.
[170] [2024] EWCA Civ 1564.
[171] Ardavan Arzandeh, 'Should the *Spiliada* Test Be Revised?' (2014) 10 Journal of Private International Law 89.
[172] Daniel Bertram, 'Transnational Experts Wanted: Nigerian Oil Spills before the Dutch Courts' (2021) 33 Journal of Environmental Law 423, 434.
[173] Anderson (n 6), 424.
[174] Companies Act 2006, ss260-264.
[175] *ClientEarth v Shell* [2023] EWHC 1897 (Ch), [92]-[93].
[176] Companies Act 2006, s172(1)(d).
[177] Nicholas Grier, 'Directors Deliver - Just Not Very Much: Further Reflections on Section 172 of the Companies Act 2006' (2022) 4 Juridical Review 212. This is especially true if courts continue to defer to directors' underlying discretion on how to manage environmental risks associated with business operations – see [2023] EWHC 1137 (Ch), [19].

se should not diminish the overall importance of the parent company DoC. Afterall, "imperfect justice is better than no justice at all."[178]

Although difficulties remain, *Vedanta* and *Okpabi* illustrate that, generally, tort law is capable of overcoming many of the traditional barriers faced in the environmental context. This development underscores not only tort law's increasing effectiveness[179] in responding to CEHs but also justifies its participation in a multi-dimensional solution to the issue.

B. Climate Change Tort Litigation Reignited: Towards Recognition of Tortious Liability for Corporate Greenhouse Gas Emissions

The second area where tort law shows increased potential to address CEHs relates to anthropogenic GHG emissions. Climate change tort litigation in this sense is inherently controversial. Simply by existing, every human contributes to global warming through their own GHG emissions. Nonetheless, claimants target specific corporate defendants and argue that they have acted *wrongfully* by emitting GHGs.[180] Kysar has summarised GHG emissions as constituting the "paradigmatic anti-tort" since they pose "a collective action problem so pervasive and so complicated as to render at once both all of us and none of us responsible".[181] Faced with this contradiction, courts have often dismissed climate change tort actions under the pretext that climate change is an "inherently political" issue that cannot be effectively resolved through the common law and should therefore be addressed through democratic processes.[182] Summarised by the New Zealand Court of Appeal in *Smith v Fonterra*, "climate change simply cannot be appropriately or adequately addressed by common law tort claims pursued through the courts. It is quintessentially a matter that calls for a sophisticated regulatory response at national level supported by international co-ordination."[183]

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[178] Bertram (n 6), 755.
[179] See *Municipio de Mariana v BHP Group* [2025] EWHC 3001 TCC for a more recent saga of cases building on the principles developed in *Vedanta* (n 15) and *Okpabi* (n 16).
[180] Latham, Schwartz and Appel (n 26), 767.
[181] Douglas Kysar, 'What Climate Change Can Do about Tort Law' (2011) 41 Environmental Law 1, 3-4.
[182] Ganguly, Setzer and Heyvaert (n 7), 848; see e.g. *Kivalina v ExxonMobil* 696 F.3d 849, 2012 WL 4215921 (9th Cir 2012), cert. denied, 133 S. Ct. 2390 (2013). Note, however, that this view is not universally shared and, e.g., has been bluntly rejected in *Lliuya* (n 148), 59.
[183] *Smith* (n 51), [16]; see also *Sharma* (n 1), [246]-[266].

Nevertheless, a potentially global[184] reversal of this trend has been kick-started by the New Zealand Supreme Court (NZSC), which, on appeal in *Smith*, embraced tort law's capacity to confront corporate GHG emissions.

(i) The decision in Smith v Fonterra

Mr Smith, an elder of the Ngāpuhi and Ngāti Khu people, brought claims against the seven largest corporate GHG emitters in New Zealand. By materially contributing to climate change, the companies had supposedly "damaged, and will continue to damage, his whenua [land] and moana [ocean], including places of customary, cultural, historical, nutritional and spiritual significance to him and his whānau [family]".[185] In this respect, Smith pleaded three causes of action in tort: public nuisance, negligence and a newly "proposed climate system damage tort".[186] The defendants applied to strike out all three causes of action and succeeded before the Court of Appeal due to the policy reason, *inter alia*, above. However, the NZSC unanimously overturned this ruling, reinstating all three of Smith's claims and allowing "what may be the first full climate tort claim in a common law jurisdiction"[187] to proceed to trial.

The NZSC's decision is "deceptively simple".[188] Instead of discussing the issue of corporate GHG emissions through a public policy lens, as done in the Court of Appeal, the NZSC simply engaged with the individual elements of public nuisance, asking whether the defendants' GHG emissions could satisfy the legal test in a strike-out-motion.[189] Cautiously approaching the strike-out threshold,[190] the NZSC relied on public nuisance jurisprudence from the Victorian era to deduce through analogy that Smith's claim was reasonably arguable.[191] While the NZSC did not comment on the merits of the two remaining claims, these were also reinstated since they were unlikely to produce additional, disproportionate burdens on the trial

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[184] 'Tortious Claims for Climate Change Damage to Proceed in Common Law Courts' (*Debevoise & Plimpton*) <https://www.debevoise.com/insights/publications/2024/02/tortious-claims-for-climate-change-damage> accessed 3 January 2025.
[185] *Smith* (n 17), [3]; translations provided by Sam Bookman, 'Smith v Fonterra and the Climatisation of Tort Law' (2024) 88 The Modern Law Review 192, 193.
[186] *Smith* (n 17), [4].
[187] Sam Bookman, 'Smith v Fonterra: A Common Law Climate Litigation Breakthrough' (*Climate Law A Sabin Center blog*, 12 February 2024) <https://blogs.law.columbia.edu/climatechange/2024/02/12/smith-v-fonterra-a-common-law-climate-litigation-breakthrough/> accessed 3 January 2025.
[188] Bookman (n 185), 192.
[189] ibid., 195.
[190] *Smith* (n 17), [83]-[85].
[191] ibid., [143]-[171].

court's resources.[192] Hence, that the defendants' GHG emissions could theoretically amount to a public nuisance in law was enough for the NZSC to deem that Smith's action was deserving of a trial. In the NZSC's words, "the common law must develop, if at all, in the fertile fields of trial, not on the barren rocks of a strike out application."[193]

(ii) Climate Change: A Shared Regulatory Domain between Parliament and the Common Law

Although the practical effect of the NZSC's decision in *Smith* remains entirely procedural, it represents a turning point in tort law's potential to contribute to a response to CEHs. Not only does the decision mark an increased judicial receptiveness to hearing climate change tort actions against corporate GHG emitters, but it also legitimises the common law's role in contributing alongside policymakers to a combined effort in the response to climate change.

By allowing Smith's claims to proceed to trial, the NZSC implicitly rejected the Court of Appeal's assertion that the issue of climate change was incapable of being addressed at common law.[194] While acknowledging that the common law has never dealt with an environmental crisis of the same magnitude,[195] the NZSC underlined tort law's historical credentials in dealing with issues involving a "mix of public and private harm and […] good".[196] As such, the court presumed that the difficulties posed by climate change were qualitatively[197] comparable[198] to those faced in the Industrial Revolution, so that there was "no reason why the challenges posed by climate change [could not] be tried on the basis of traditional tort law doctrine".[199] Therefore, by underscoring "the common law's robustness"[200] in adapting to environmental challenges generally, the NZSC confirmed as a starting point that, in theory, tort law could be capable of dealing with climate change-related harms.

192 ibid., [175].
193 ibid., [173].
194 ibid., [154].
195 ibid., [156].
196 ibid., [157].
197 Bookman (n 185), 193.
198 *Smith* (n 17), [157].
199 Bookman (n 185), 192.
200 'Tortious Claims for Climate Change Damage to Proceed in Common Law Courts' (n 184); see similarly Hook and others (n 60), 203.

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The NZSC's decision is equally important because it resets the boundaries of competence over New Zealand's national GHG emissions policy. To meet international obligations of reducing the threat of climate change,[201] the New Zealand Parliament has enacted numerous climate change-related statutes.[202] Initially, the High Court believed that the mere existence of this statutory framework excluded the application of the common law. By imposing tortious liability on the defendants for their GHG emissions, the judiciary would supposedly "compromise Parliament's response"[203] to climate change, a finding with which the Court of Appeal agreed.[204] However, the NZSC clarified that the regulatory response towards climate change-related issues did not fall within the exclusive competence of Parliament. Instead, tort law may equally contribute to a multi-dimensional solution. First, while the enactment of climate change statutes may reduce the need for climate change tort litigation,[205] the existing legislation neither "cover[s] the entire field"[206] nor takes away from tort law's complementary role to regulatory regimes as outlined in Section II(B)(iv). Second, the mere existence of climate change-related legislation does not automatically prohibit the operation of the common law, unless a parliamentary intention to this effect was visible within the statutory text.[207] In fact, the NZSC pointed to s.23(1) of the Resource Management Act 1991 to prove that Parliament expressly preserved the possibility for the law of torts to operate within the environmental domain.[208] Accordingly, despite having legislated within the "realm of climate change", Parliament has not excluded the operation of the common law – rather, it has retained a "pathway" for the common law to simultaneously "operate, develop and evolve … amid a statutory landscape".[209]

The notion that tort law can contribute towards a solution to corporate GHG emissions *in addition to* a legislative framework is justified since a common law participation in the solution towards climate change would not undermine the policies implemented by Parliament.

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201 (n 80).
202 *Smith* (n 17), [31]- [48].
203 *Smith v Fonterra* [2020] NZHC 419, [98].
204 *Smith* (n 51), [116].
205 *Smith* (n 17), [95].
206 ibid., [101]. Note that the interplay between the common law and statute in highly regulated areas is a reoccurring debate, see e.g. *Marcic v Thames Water Utilities* [2003] UKHL 66 and *Manchester Ship Canal Company v United Utilities Water (No2)* [2024] UKSC 22.
207 *Smith* (n 17), [98].
208 ibid., [96].
209 ibid., [101]. Note that the NZSC's reasoning on this point finds resemblance in both *Milieudefensie v Shell* [2024] Gerechtshof Den Haag 200.302.332/01, [7.53], and *Lliuya* (n 148), 79-80, where the courts equally rejected the proposition that the existence of climate change related legislation ousted the possibility of private law civil liability.

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Of relevance here is the Emissions Trading Scheme (ETS),[210] New Zealand's primary tool for reducing the GHG emissions of economic actors in intensive CO2-emitting sectors.[211] The defendants suggested that, although the ETS scheme regulated GHG emissions, Parliament had not thereby "prohibited" them and thus allowed emitting activities to continue as a matter of law.[212] Thus, if they were to be found tortiously liable despite complying with the ETS, this would create a "parallel, and inconsistent, regulatory regime".[213] Dismissing this line of reasoning, the NZSC clarified that the ETS "neither authorises nor immunises GHG emissions"; instead, it merely introduces a market-based GHG emissions trading scheme based on behavioural incentives.[214] If Parliament, therefore, does not legally endorse GHG emissions *per se*, tortious liability for GHG emissions cannot contradict Parliament's implemented climate policy. Conversely, as suggested in Section II(B)(iv), tort law actually *strengthens*[215] Parliament's overall ambition of reducing GHG emissions domestically[216] by allowing private individuals to contribute to an already existing regulatory framework.[217]

The remedies sought in *Smith* illuminate this point. Instead of monetary damages, Smith demanded, *inter alia*, an injunction requiring the defendants to "produce or cause a peaking of their emissions by 2025" or "immediately cease emitting (or contributing to) net emissions".[218] The complaint in *Smith* has therefore embraced a "forward-looking regulatory" purpose since these remedies would require the defendants to "change their future course of conduct" and deter "other similarly-situated companies"[219] from emitting GHGs. Hereby, *Smith* again illustrates tort law's capacity to serve not only a *corrective* justice function but also a *preventative* function towards corporate GHG emissions, which aligns with existing legislative goals. Besides, as alluded to in Section II(B)(iv), the existing domestic and international statutory framework has not adequately reduced New Zealand's GHG emissions and, therefore, might require additional "stimulus"[220] from climate change tort litigation.

[210] ibid., [40]-[45].
[211] ibid., [40].
[212] ibid., [45].
[213] ibid., [91].
[214] ibid., [99].
[215] Foster (n 6).
[216] See e.g. Climate Change Response Act 2002 (NZ).
[217] Steele (n 36), 240; Anderson (n 6), 409.
[218] *Smith* (n 17), [4].
[219] Bookman (n 185), 203.
[220] Foster (n 6), 231.

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(iii) Public Nuisance's Viability in Curtailing Corporate Greenhouse Gas Emissions?

Recognising tort law's legitimacy in contributing to a multi-dimensional solution to climate change was only the first step. Building on this, the NZSC expanded tort law's capacity to address CEHs by enhancing the viability of public nuisance in restraining GHG emissions. Specifically, the NZSC decision hints towards a more "*climatised*"[221] understanding of public nuisance, whereby its structural components may be reconciled more neatly with the all-encompassing nature of climate change. This is significant because it exemplifies how tort orthodoxy's *private* framework is necessarily being redesigned to "survive"[222] the "legally disruptive"[223] features of climate change.

The first area of public nuisance that shows signs of *climatisation* is the 'special damage rule' (SDR), requiring a claimant to demonstrate that he/she "suffered greater hurt"[224] than the public to obtain standing to sue. This condition has proven itself to be paradoxical[225] in the climate change context: since the issue is globally so pervasive, and since, to a certain extent, its impacts are universally experienced, claimants have difficulties proving that their damage is sufficiently unique. To illustrate, the High Court and Court of Appeal dismissed Smith's claim in public nuisance because the harm to his coastal property was not deemed to be sufficiently "different in kind"[226] or worse "in degree"[227] than the harm suffered by other coastal landowners in New Zealand or globally. Consequently, the SDR has often barred public nuisance from responding to GHG emissions.[228]

To mitigate this, the NZSC applied the SDR in a way that makes public nuisance more compatible with the "ubiquitous"[229] consequences of GHG emissions. Particularly, the NZSC advanced a more nuanced conceptualisation of climate change, suggesting that its "precise impact is distributed and different".[230] Bearing this in mind, it concluded that Smith's damage

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[221] Bookman (n 185).
[222] For the proposition that climate change is an existential threat to tort law, see Kysar (n 181), 7, and Bookman (n 185), 198.
[223] Elizabeth Fisher, Eloise Scotford and Emily Barritt, 'The Legally Disruptive Nature of Climate Change' (2017) 80 The Modern Law Review 173.
[224] *Anonymous* (1535) YB Mich 27 Hen 8, f 26 pl 10.
[225] Denise E Antolini, 'Modernizing Public Nuisance: Solving the Paradox of the Special Injury Rule' (2001) 28 Ecology Law Quarterly 755, 761.
[226] *Smith* (n 203), [62].
[227] *Smith* (n 51), [82].
[228] Bullock (n 72), 1140.
[229] Bookman (n 185), 198.
[230] *Smith* (n 17), [152].

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to coastal land – including harm to fisheries and cultural interests – went "beyond a wholly common interference with public rights".[231] Because the language used by NZSC reflected the distinctively *individual* impacts of climate change more realistically, the actionability of Smith's public nuisance claim became less threatened by the widespread effects of GHG emissions.

Furthermore, the climate change context encouraged the NZSC to doubt the very existence of the SDR.[232] It is unsatisfactory that a claimant's action in public nuisance could be dismissed because many others suffered similar harm from GHG emissions. Simply put, this contradicts society's "renewed consciousness for safeguarding the environment and the desirability of encouraging private initiative against polluters".[233] At the same time, the *raison d'être* of the SDR has faded; per the NZSC, the scientific implications of climate change are now better understood so that the courts' existing class action and case management systems allow it to efficiently counter the risk of "an oppressive multiplicity of actions".[234] Implicitly then, the NZSC welcomed structural reconsideration[235] of the rule, or possibly even its abandonment, to allow public nuisance to grow more resistant to the omnipresence of climate change.

Compounding the effects of the SDR is the problem of causation, which has arguably been the most significant[236] hurdle preventing public nuisance from responding to corporate GHG emissions. Climate change has developed via GHG emissions from millions of sources over hundreds of years,[237] making it nearly impossible for a claimant to "single out" a specific corporation's emissions as constituting the direct "cause of [his] harm".[238] The High Court decision exhibits this difficulty, rejecting Smith's public nuisance claim for failing to establish a 'but-for' causation.[239]

Still, following the logic advanced in Section II(B)(iii), the NZSC was equally willing to attune public nuisance to climate change's non-linear causal pathways. First, it distinguished

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231 ibid.
232 ibid., [151].
233 ibid., [149], citing Carolyn Sappideen and Prue Vines *Fleming's The Law of Torts* (10th ed, Thomson Reuters, Sydney, 2011).
234 ibid., [151].
235 Bookman (n 185), 198.
236 Kysar (n 181), 29.
237 *Smith* (n 17), [135].
238 Kysar (n 181), 30-31.
239 *Smith* (n 203), [67].

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public nuisance from the stricter ‘but-for’ standard normally used in negligence claims.[240] In finding that Smith’s public nuisance claim plausibly established causation, the NZSC instead relied comparatively on river-pollution precedents[241] where a defendant’s mere “*contribution* to a common interference with public rights” was sufficient,[242] notwithstanding that other polluters were involved (for example, householders and other industrial users).

Second, the NZSC justified why an analogous application of the ‘contribution test’ from the river-pollution cases was feasible in the GHG context. Initially, the Court of Appeal sought to differentiate the two situations. Per Bullock, it wrongly[243] concluded that the ‘contribution test’ only applied to river-pollution instances since there was allegedly a “finite number of known contributors to the harm, all of whom were before the Court”. Meanwhile, in the GHG context, there is “no identifiable group of defendants that can be brought before the Court to stop the pleaded harm”.[244] However, this analysis was rightfully rejected by the NZSC. In reality, numerous river-pollution precedents existed where the ‘contribution test’ still applied, despite there being an undefined number of polluters, many of which were not before the court.[245] While the NZSC ultimately left the question of how public nuisance should deal with the issue of cumulative causation in the GHG context of a policy consideration at trial,[246] the NZSC’s selection of river-pollution cases implicitly reveals its belief that more “conventional” approaches to causation deserve reconsideration in the climate change context, especially when forward-looking equitable relief is sought.[247] In these circumstances then, a reduction in the required causal threshold in GHG-related public nuisance actions is not only accessible but also suitable.[248]

Although this guidance certainly improves public nuisance’s potential in responding to corporate GHG emissions, its prospects should not be exaggerated.[249] The NZSC’s *climatised* construal of public nuisance definitely helped Smith overcome the strike-out threshold. Still, any significant amendment of the law of public nuisance as a response to GHG emissions has been reserved for trial. As a result, he still faces a huge task in pleading public nuisance at the

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240 *Smith* (n 17), [165].
241 ibid., [160]-[163].
242 ibid., [164].
243 Bullock (n 72), 1166.
244 *Smith* (n 51), [92].
245 *Smith* (n 17), [164]; Bullock (n 72), 1166.
246 *Smith* (n 17), [166].
247 ibid., [171]; Bookman (n 185), 199.
248 Bullock (n 72), 1165-1167.
249 Bookman (n 187).

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merits stage, not to mention the remaining two actions. Ironically, the case may even become a victim of its own success, as the New Zealand government has recently threatened legislative amendments to impede future *Smith*-esque claims under the pretext of legal certainty.[250] While it is therefore possible that this particular action may eventually fail and that prospective climate change tort litigation could be thwarted by democratic processes, the effects of the NZSC decision should not be understated either. Notably, the judgment marks the start of a process whereby climate change becomes integrated[251] into public nuisance's structural framework. This proves that the *privateness* in tort orthodoxy is malleable and that, where there is a will, it can be further *climatised*. Recognising this in itself amounts to a noteworthy improvement in tort law's potential to counter contemporary CEHs.

IV. Conclusion

As today's environmental challenges intensify, the search for effective remedies to CEHs has never been more acute. Deficiencies in current domestic and international regulations have compelled society to think outside the box and recognise that a successful resolution to these issues might lie beyond the stand-alone capacities of policymakers. Against this backdrop, it was queried whether the English common law of torts *could*, and *should*, contribute to solving contemporary CEHs. This article has neither contended that tort law alone can resolve the CEH crisis nor sought to downplay the importance of existing regulatory mechanisms. Instead, the argument advanced here is that English tort law increasingly holds a place within a broader legal toolkit to address CEHs, and that its potential in this respect has too easily been dismissed.

Section II explored why, *prima facie*, tort law appears as a suboptimal solution for mitigating environmental degradation. Nevertheless, it concluded more hopefully by suggesting that the picture painted by critics is overly draconian – at least in theory. Subsequently, Section III identified *Vedanta*, *Okpabi* and *Smith* as authoritative illustrations within both the *transnational* and *climate change* tort litigation contexts to show how, in

[250] Hon Paul Goldsmith, 'Government Brings Certainty to Climate Change Tort Law' (*The Official Website of the New Zealand Government*, 12 May 2026) <https://www.beehive.govt.nz/release/government-brings-certainty-climate-change-tort-law> accessed 10 June 2026.
[251] Fisher, Scotford and Barritt (n 223), 196.

practice, modern environmental tort law is overcoming the identified shortcomings and participating positively in a response to CEHs.

Although these Supreme Court judgments lay the foundation for English tort law's contribution to the response to modern CEHs, doctrinal imperfections remain. Likewise, any progress made hangs in limbo as the outcomes were purely procedural and could be overturned on the merits[252] or via legislative interventions. Clearly, numerous steps still need to be taken before environmental tort law can be considered a serious player in the mitigation of CEHs. Nevertheless, the key takeaway from this article is that a future where this becomes the *status quo* is increasingly realistic and that a serious normative argument can be made in this respect.

Corporation-induced climate change and environmental pollution will never be solved exclusively through tort law. Yet, thanks to the unwavering efforts made by the claimants in *Vedanta*, *Okpabi* and *Smith*, it has most certainly "change[d] the air".[253]

[252] Save for *Vedanta* (n 15), which was already settled.
[253] Kysar (n 181), 71.

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