

TORT LAW REVIEW

Volume 19, Number 3

November 2011

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Personal tortious cause of action: Assignment and champerty – *Ernest Lim* 119

ARTICLES

Rescue of persons and property in a comparative common law and civil law context – *Douglas Hodgson*

The rescue of persons and property raises controversial and finely balanced ethical and public policy considerations for both common law and civil law systems. This article examines the historical development of the common law across a number of such jurisdictions in this field and the factors which have influenced such development. In which circumstances today is a duty of care owed to a rescuer and is there a duty to rescue someone who has become imperilled through her or his own, or a third party's, negligence? What is the relevant standard of care to be applied to rescuers? To what extent does, or should, the law differentiate between professional and non-professional rescuers? Which causation issues commonly arise in the rescue context and how should the law deal with negligent rescue attempts? To what extent do the common law defences still operate within this sphere? To what extent does, or should, the criminal law inform the development of civil law norms? Should rescuers be entitled to compensation for, and reimbursement of, their damages and expenses? And how should the law address medical rescue cases? This article addresses these questions and concludes with a proposal that the law should recognise, in limited and exceptional but compelling circumstances, a positive duty to rescue if certain prescribed criteria are satisfied. 125

Liability of employers for inducing a breach of contract under employment law – *Sam Middlemiss*

This article analyses how the delict of inducing a breach of contract impacts on two areas of employment law. Analysis of this area of law in an employment law context is not unique; however, this article sets out to provide a detailed consideration of the topic in light of recent case law. 142

The law of intervening causation and children – *Douglas Hodgson*

Since 1959 when the United Nations General Assembly adopted the *Declaration of the Rights of the Child*, the human rights of children have been squarely placed on the international agenda. The legislation and policy-making of United Nations member states have been informed by international normative standards laid down in such instruments as the *United Nations Convention on the Rights of the Child*. The common law, however, has a much longer history of, and experience in, protecting children, extending over almost two centuries. In the realm of negligence, judges have been reluctant to allow pleas of *novus actus interveniens* and contributory negligence to succeed against children, considering their inherent traits of vulnerability and curiosity, their penchant for meddling with allurements, and their inexperience with identifying and appreciating risks to their own safety. This article examines on a comparative law basis how common law judges have historically addressed the application of *novus actus interveniens* and contributory

negligence to child plaintiffs, particularly in firearms and other potentially dangerous article and substance cases. The author argues that the judicial resolution of these issues will depend considerably on the facts and circumstances of each case as well as the age of the child plaintiff. Although children of tender years should rightly be made immune from novus actus interveniens and contributory negligence, adolescent children who possess relatively greater maturity and life experience should no longer be the beneficiaries of a benign judicial paternalism in light of the principle of personal responsibility as recently relied on by the High Court of Australia and the notion of “functional capacity” which permeates the *Convention on the Rights of the Child*. 149

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