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ARTICLES

CAUSATION AND STATUTORY DETERMINISM: THE CIVIL LIABILITY ACT 2002 (NSW), s 5D

Justice M J Beazley AO

At the time that this paper was delivered at the Supreme and Federal Court Judges' Conference in January 2012, it seemed to me that understanding the statutory provisions relating to causation in personal injury litigation could be likened to standing on the deck of the Titanic: a dark and unfriendly abyss loomed ahead with life jackets, let alone lifeboats, in short supply. Nonetheless, I attempted to stroke through the deep and had hoped to emerge with a few indicators as to how the law may develop, in answer to the question as to when, in accordance with the statutory test under the Civil Liability Act 2002 (NSW), a wrong has caused damage suffered by a plaintiff. In doing so, I did not undertake an extensive excursus on existing case law. To do so was beyond the scope and

intent of the paper and there were no High Court authorities governing the question. That has changed and there are now two important decisions dealing with statutory causation. A consideration of those authorities has been added to this article and in large measure, provides the answers I was seeking. 591

THE INJURED PLAINTIFF: CONTEMPORARY CANTERBURY TALES

David Ashley

The author was a guest at the High Court Injured Plaintiffs Association’s annual meeting, where plaintiffs whose claims had been determined by the court discussed the topic, “Duty of Care, Breach, Contributory Negligence, and the Inconstant Place of Personal Responsibility”. This article surveys the proceedings of the meeting, discussing the stories and cases of the plaintiffs who spoke. The role of the concepts of “personal responsibility” and “obviousness” in the High Court’s determination of each plaintiff’s case is analysed, highlighting the increasing role of those concepts in denying negligence claims and the varying manner in which personal responsibility is considered at various stages of the negligence inquiry. Note is also made of the High Court’s emphasis on legal coherence in deciding negligence claims. 605

PRIVATE INTERNATIONAL LAW PROBLEMS IN SUCCESSION

Jane Needham SC and Pamela Suttor

People no longer live, work and die in the area in which they were born as a matter of course. Nor do they form relationships solely with people from their own State or country. Additionally, the incidence of blended families in different jurisdictions has created its own set of problems for the courts in relation to wills. The increasing mobility of the Australian population has been reflected in a number of succession cases in which domicile has been an important aspect. This article seeks to set out the circumstances in which the principles of private international law may be of some assistance in determining succession disputes. 620

ETHICS OF EXPERT EVIDENCE

Stephan Millett

The use of expert evidence in courts has been problematic for many years and a focus on the ethics of witnesses has given rise to the widespread introduction of rules governing how experts may behave. But, in addition to the ethics of witnesses, the ethics of expert evidence also encompasses the ethics of lawyers; the financial and other costs of using experts; the use, or misuse, of science; the way claims to truth are made; and the impact on the law itself. In short, despite recent clarification of rules for witnesses, there remain significant issues with how the legal system makes use of expert testimony. This article explores some of those issues. 628

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