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ARTICLES

POLICY AND THE SWING OF THE NEGLIGENCE PENDULUM

D A Ipp

The law of negligence is especially prone to influence by moral, social, economic and political values. As society becomes more complex and technologically advanced, novel circumstances giving rise to negligence claims arise. Policy then becomes determinative. It is this influence of policy that explains the uncertainty and changes to the law of negligence since 1932. However, judges are reluctant to confront the effect of policy on their decisions and to explain their reasons by reference to its influence. It is important that judicial reliance on policy be fully and transparently reasoned. There are two vexed questions inherent in the judicial application of policy; when are community values to be applied and how are they to be determined? This article discusses these issues, the changes that have been made and the capacity of the law to satisfy community needs as regards negligence and whether legislative change is appropriate. .......................... 732

MISUSE AND PROTECTION OF DIPLOMATIC AND CONSULAR TITLES

Dr Wilfried Bolewski

The dishonest sale and purchase of diplomatic and consular titles defrauds the public and attempts to parasitically take advantage of the considerable respect and confidence that such titles and offices invest in their holders. Australia’s concern is documented by the example of the “Hutt River Province” which tries to establish – on a worldwide basis – “Ambassadors at Large” or “Honorary Vice Consuls”. This article indicating the latest abusive practices in Germany and providing suggestions for countermeasures and protective action would like to open an international discussion on this topic. .................. 750

PRIVATIVE CLAUSES IN ADMINISTRATIVE LAW: RECENT DEVELOPMENTS

Mark Seymour

In light of recent legislative attempts to restrict judicial review, Australian courts are grappling with the content and effect of such privative clauses. The author contrasts a federal approach with that which applies to administrative law in the States. It is then submitted that the conflicting approaches to the interpretation of privative clauses in the two jurisdictions can be resolved by inquiry into the administrative actions covered by the Hickman principle. .............................................................. 757

CONTRACTS OF EMPLOYMENT: RENAISSANCE OF THE IMPLIED TERM OF TRUST AND CONFIDENCE

Kelly Godfrey

The implied term of trust and confidence is increasingly emerging as an important consideration in contracts of employment. While the High Court is yet to consider the issue by applying the test enunciated in Byrne v Australian Airlines Ltd (1995) 185 CLR 410, many have simply assumed its existence, with its potential utility being extremely broad. Whether the term’s potential can ever be fully realised remains uncertain. This is
largely dependent upon whether the implied term and the statutory unfair dismissal schemes can find harmony, and furthermore, whether Australian employment law can free itself from the shackles of Addis v Gramophone Co [1909] AC 488. Given the increasing deregulation of the labour market and recent amendments to the New South Wales unfair contracts jurisdiction, further judicial consideration of the implied term is likely to lead to its renaissance as part of Australian employment law.

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