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# THE AUSTRALIAN LAW JOURNAL

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**ARTICLES****UNITED STATES SUPREME COURT AND THE GUANTÁNAMO BAY PRISONERS****Manuel José García-Mansilla**

Two Australians, David Hicks and Mamdouh Habib, were captured by the United States Army in Afghanistan, and taken to Guantánamo Bay, Cuba. They are kept there as prisoners pending hearings before military tribunals. They, and other foreign prisoners, filed habeas corpus petitions in United States federal courts, claiming that their detention violated the United States Constitution and international law. The federal courts rejected the petitions, relying on Supreme Court precedents. The United States Supreme Court has now reversed these decisions. This article examines the precedents, which many outside the United States would find surprising, given that its legal system has always held itself out as championing the rights of the individual against the state. The article also examines the Supreme Court decision in *Rasul v Bush* 124 S Ct 2686 (2004) which overturned or distinguished them. ....

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**PUBLIC LIABILITY FOR NEGLIGENTLY-INFLICTED ECONOMIC LOSS****Kenneth Warner**

This article examines the modern history of liability in the law of negligence concerning claims for pure economic loss brought against public authorities. Key difficulties in the modern law on the subject are then elucidated. In doing so the author compares the approach to these claims in the jurisdictions of Australia, England and Wales, New Zealand and Canada. The author concludes that important issues remain unresolved and suggests a direction which might satisfy the courts' policy concerns and provide for an outcome to these claims which can be viewed as fair and equitable. ....

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## RESETTLEMENT: FINDING THE NEW CHARTER OF RIGHTS

**Darrell Barnett**

The author examines the concept of “resettlement” in the context of Australian revenue law and particularly CGT Event E1 and suggests that the “whole substratum of the trust” test developed by Megarry J in *Re Ball’s Settlement* [1968] 2 All ER 438 should not be applied in that context. The author then examines recent High Court authority and applicable principles of trust and property law as the foundation for a suggested new test to form the touchstone of whether an amendment or alteration to the terms of a trust deed amounts to a resettlement. Finally, the author applies the suggested test to CGT Event E1 and identifies the difficulties emerging from the Australian Tax Office’s statement of principles in light of that test. .... 254

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