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ARTICLES

The human genome: Lessons for life, love and the law – *David Weisbrot*

In 2003, the Australian Law Reform Commission and the Australian Health Ethics Committee (of the National Health and Medical Research Council) completed a major inquiry into the Protection of Human Genetic Information, focusing on privacy protection; protection against unlawful discrimination based on genetic status; and the establishment and maintenance of high ethical standards. The joint inquiry considered these matters across a wide range of contexts, with the final report, *Essentially Yours*, making 144 recommendations in such diverse areas as medical research; clinical genetic services; genetic research databases; employment; insurance; immigration; sport; parentage testing; and law enforcement. This article discusses some of the major themes that emerged in the course of the inquiry and underpinned the broad-based strategy adopted to prepare Australia for the challenges of the “New Genetics”. 428

Survey of methods for the rating of psychiatric impairment in Australia – *George Mendelson*

One of the enduring clinical issues in the assessment of plaintiffs in personal injury and workers’ compensation claims, as well as applicants for social security and disablement benefits, is that of the evaluation of impairment and work incapacity. Many writers on this topic confuse the concepts of impairment and disability, and similar confusion is reflected in a number of the rating methods that purport to evaluate impairment but in reality assess disability. In Australia there are 20 distinct statutory schemes for workers’ compensation, motor accident compensation, and social security and other benefits, which utilise a variety of methods for the rating of psychiatric impairment. Recent legislative changes designed to restrict access to personal injury compensation at common law, which in two Australian State jurisdictions require the use of impairment rating scales, also specify the rating methods to be used in the assessment of psychiatric impairment. This article discusses the concepts of impairment and disability as defined by the World Health Organisation, and reviews the various methods for the rating of psychiatric impairment that are specified by statute in the federal and State jurisdictions in Australia. 446

Judging capacity: Paternalism and the risk-related standard – *Malcolm Parker*

There is a strong academic and medical consensus on judging patients’ decision-making capacity in accordance with the seriousness of consequent risks, and this is supported in certain areas of the law. Supporters of the risk-

related standard perceive an asymmetry between the level of capacity required for consent to a treatment, and the level required to competently refuse the treatment, particularly if the probable outcome of refusal is death. Despite the intuitive appeal of the risk-related standard, its opponents propose that when the risks of treatment or treatment-refusal are high, we should not require a higher standard of capacity, but be scrupulous in ensuring that a procedural standard is observed. This article considers both standards, from the point of view of the persons, interests and principles which ethics and the law seek to protect. It argues that a risk-related standard is incoherent, that a rigorously applied procedural standard will minimise paternalistic medical interventions, and that this should be reflected in the law. 482

Australian tort law reform: Statutory principles of causation and the common law – Danuta Mendelson

By mid-2004, Parliaments in each Australian jurisdiction will either complete or will be in the process of partial codification of the law of torts. The reforms, including those to the law of negligence, are extensive. This article focuses on codification of the law of causation as an element of the cause of action in negligence. It examines the background to “tort reform”, as the process has been labelled, and discusses the common law paradigm of negligence and various approaches to causation. It then analyses and compares the causation provisions in each jurisdiction. 492

Abortion in Australia: Access versus protest – Rebecca Elizabeth Dean and Susie Allanson

Currently in Australia anti-choice protesters’ right to freedom of speech and freedom to protest is privileged over a woman’s right to privacy and to access a health service safely, free from harassment, intimidation and obstruction. This article considers how this situation is played out daily at one Victorian abortion-providing clinic. The Fertility Control Clinic was thrown into the spotlight after the murder of its security guard by an anti-choice crusader in July 2001. Australian common law appears not to offer women protection from anti-choice protesters. By contrast, United States and Canadian “bubble” legislation sits comfortably with key constitutional rights. It would be a useful development if Australian governments passed legislation to ensure the rights, wellbeing and safety of Australian women accessing health services. Such legislation would be another step away from the misogynistic and androcentric values once central to our legislative framework. 510

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