

TORT LAW REVIEW

Volume 27, Number 1

2019

ARTICLES

Defamation Law Reform in Australia: The Multiple Publication Rule – Anthony Gray

Australian Attorneys-General are currently conducting a major review into the law of defamation. Australia’s uniform defamation laws were enacted in 2005, and much has changed in the past generation in the media and publishing landscape. This is the first of three articles that will consider possibilities for substantive reform of defamation law. This article will suggest that Australia should abandon the multiple publication rule, whereby a new cause of action and new limitation period generally applies on each occasion that defamatory material is “published”. Other jurisdictions have reformed this rule, and it is argued that Australian law should do the same.

3

The Liability of Search Engines and Tech Companies in Defamation Law – Anthony Gray

In this second in a series of three articles, I consider another possible substantive change to the law of defamation, that relating to the liability of tech companies such as search engines for defamatory material. It is argued here that tech companies which merely allow others to access conduct created by another should not generally be regarded as publishers for the purposes of defamation law. The focus will be on the possible liability of search engines for such liability, given that internet service providers are provided some explicit statutory protection from such actions. The principles discussed would also be applicable to cases where it is claimed that those operating a public Facebook page are liable in defamation for material posted to that page by others, which is the subject of current Australian litigation.

18

Medical Professionals and the Erosion of the “Ordinary” Practitioner Standard – Carolyn Sappideen

In torts law, the standard of care in negligence is the objective standard of the “ordinary” or “reasonable” person exercising that skill not the most experienced or qualified. This article examines the standard of care applying to medical professionals who have greater knowledge, experience and skills than the “ordinary” or “averagely” competent member of the profession. It argues that the “ordinary practitioner” rule has been very seriously eroded through adapting the standard of care to every narrowing fields of medical expertise, or as part of the circumstances relevant to determining negligence, or in determining whether the practitioner has the required competency to perform procedures requiring special skills. Although corrective justice and outcome responsibility theories might support the strict application of the objective standard, these approaches do not accord with how courts apply the law in practice.

37

Distinguishing Duties of Care of Sports Coaches in a UK Context – Neil Partington

The concept of duty of care is under unprecedented scrutiny in the context of sport, and more specifically, with regard to sports coaching. Existing academic scholarship offers limited detailed analysis of the duty of care incumbent upon coaches, the majority of whom are volunteers. Moreover, Baroness Tanni Grey-Thompson’s recent and impressive

“Duty of Care in Sport: Independent Report to Government” adopts “a deliberately broad definition of ‘Duty of Care’”. However, should the concept of duty of care assume both a legal and extra-legal meaning, it is contended that this may result in conflation of moral and legal duties of care. The impact of this when defining the standard of care may expose coaches to a greater risk of legal liability by potentially extending the legal obligations of amateur coaches beyond current limits. Accordingly, by analysing the duty of care incumbent upon modern-day sports coaches, within the context of the classic jurisprudential debate surrounding the relationship between law and morality, this article uncovers serious unintended ramifications of failing to more precisely distinguish between legal and moral duties of care in this area. Furthermore, at a time when the concept of duty of care appears ever more deeply engrained in everyday language, the insights revealed here appear likely to transcend the specific circumstances of sports coaching and be of more widespread legal relevance, not least, in the burgeoning field of professional negligence. 62