

THE QUEENSLAND LAWYER

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COMMERCIAL LAW

How the court determined fair market value of shares after rejecting the valuers' evidence.....	289
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CONVEYANCING AND PROPERTY LAW

"Attaching" warning statements by facsimile transmission	292
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CRIMINAL LAW

Collateral finality	294
Out of court statements by co-offender.....	296
The new law of fresh complaint.....	298

INSURANCE LAW

Liability insurance and the advancement of defence costs.....	302
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TORT LAW

High Court continues to surprise	305
High Court refuses to abolish immunity.....	306
Recovery for lost chances: An update.....	308

ARTICLE

Intentional torts and the Civil Liability Act 2003 (Qld) – Tina Cockburn and Bill Madden

The Ipp Report indicates that its reform recommendations are limited to negligence claims. This is consistent with public policy; wrongdoers should accept full responsibility for intentional acts and their consequences, particularly intended consequences. However, unless a narrow meaning is ascribed to “claim” in the application section, the *Civil Liability Act 2003* (Qld) applies to intentional torts. Although s 52 seems to facilitate the award of aggravated and exemplary damages for intentional torts, uncertainty now arises as to the preconditions to such awards, compared with well-established common law tests and as to the onus of proof in intentional torts cases. The corresponding New South Wales legislation does not apply to intentional torts (it excludes actions arising out of intentional acts done with intent to cause injury or death). As the statutory prohibition on aggravated and exemplary damages is limited to negligence actions only, the common law continues to apply to such damages awards. The authors recommend that the Queensland legislation should be amended so as to align it with the corresponding New South Wales provisions. This would meet the Ipp Report recommendation that civil liability legislation should be uniform across Australia. 310

BOOK REVIEWS 322

REPORTS OF THE DISTRICT COURT OF QUEENSLAND

MNM Developments Pty Ltd v Gerrard	327
NLK v CSP	332

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