

THE TORT LAW REVIEW

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ARTICLES

Tort Law Reform: An Overview – *The Hon J J Spigelman AC*

This article traces the evolution of legislative and judicial approaches to tort law reform from the mid 20th century to the present day, following the initial expansion of liability to the subsequent focus on personal responsibility and repudiation of the “compensation culture”. Key features of the recent legislative changes enacted after the Ipp Report are considered. The article concludes with discussion of the effect of developments in the Australian insurance market upon public policy. 5

Harm suffered by children in immigration detention: Can tort law provide redress?

– *Anita Mackay*

This article outlines the findings of the Human Rights and Equal Opportunity Commission report in relation to harm suffered by children as a result of being held in immigration detention. Focus is placed on psychological harm suffered by children, in addition to physical harm, or in the absence of physical harm. The question then posed is whether the law of torts can provide any redress for this harm and achieve three goals – corrective and distributive justice, and providing a check on the violation of community norms. Both intentional torts and negligence are considered. Following a discussion of the application of the principles of vicarious liability and non-delegable duties, it is concluded that the Commonwealth should owe non-delegable duties to children in immigration detention. 16

Emmanuel Levinas and the philosophy of negligence – *Desmond Manderson*

This article introduces the work of the great ethical philosopher Emmanuel Levinas as a way of understanding in a new light ideas of responsibility, proximity, and duty of care in the law. Two small case studies, taken from broader work, follow, each built on Levinasian themes: the first uses joint illegality to explore the legal implications of the foundational of nature of the duty of care to human subjectivity; the second uses the duty to rescue as an example of the legal implications of the asymmetric nature of our responsibility for others. In the process, the word “proximity”, a key term for both Levinas and the High Court of Australia, is reconsidered. 33

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