

# THE AUSTRALIAN LAW JOURNAL

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## **ARTICLES**

### **SIR LEO FINN BERNARD CUSSEN: THE CENTENARY OF A HIGH COURT TRAGEDY – PART 2**

#### **Paulina Fishman**

Sir Leo Finn Bernard Cussen did not become a Justice of the High Court of Australia. Nonetheless, he is regarded as one of the greatest judges ever produced in our country. An earlier Part 1 article traced Cussen’s journey from engineering to law, from colonialism to federalism, from the Victorian Bar to Victoria’s Supreme Court Bench, and from peace to World War I. But his final 10 years were far from banal. The Acting Chief Justiceship, his adult children, cricket, art, and the Great Depression were among his many cares. This Part 2 article concludes Cussen’s extraordinary story and looks somewhat beyond it. .... 600

## THE EVOLUTION FROM STRICT LIABILITY TO NEGLIGENCE: WHEN AND WHY? – PART 1

**Anthony Gray**

Tort law has, viewed through a long lens, moved generally from strict to fault-based liability. This move is not (yet) complete; pockets of strict liability remain. It is important to understand this move. Why, and when, did it occur? The questions, and so the answers, may be related. This article attempts some answers. Part 1 charts the gradual but perceptible shift in common law thinking away from “act at peril” philosophy to one where liability lies where it falls, unless fault of another is shown. While of historical interest, this shift is also of contemporary interest. Given that pockets of strict liability remain in our law, what rationale, if any, supports them? If most tort law is now fault-based, why persist with any strict liability? In that context, Part 2 considers application of these trends in the context of the tort of private nuisance, traditionally a tort of strict liability. .... 614

## THE LAND AND ENVIRONMENT COURT OF NEW SOUTH WALES: A VERY SHORT HISTORY OF AN ENVIRONMENTAL COURT IN ACTION

**Hon Justice Brian J Preston**

The Land and Environment Court of New South Wales was established in 1980 as a specialist environmental court bringing together a superior court of record and an administrative tribunal in the one institution. Over the next four decades, the Court has adapted and evolved in response to changes in the natural and built environment and in society, and in the laws that regulate management of those environments. This comment briefly recounts the establishment and evolution of the Court. .... 631

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