

TORT LAW REVIEW

Volume 27, Number 3

2020

ARTICLES

Judicial Law-Making and the Common Law of Negligence – *Kumaralingam Amirthalingam*

Drawing on the jurisprudence of the tort of negligence, this article examines the importance of, and challenges inherent in, judicial law-making. It proposes a taxonomy of judicial law-making to develop an analytical framework to explain when and how judges should make law, and what effect this may have on precedents and general principles. The core argument is that judges should openly acknowledge their law-making role and carry out this function transparently, developing appropriate guidelines and protocols. Courts should not shy away from policy considerations in shaping legal principles but should remain mindful of the boundary between the judiciary and the legislature. 155

Assessing Potential Liability Regimes for Autonomous Vehicle Technologies in Singapore – *Terence Yeo*

Autonomous vehicles (AVs) will be the future of transportation. They have the potential to radically transform the way we live, work and play. Singapore currently stands at the forefront of this veritable technological race because of her policies, innovation and infrastructure. But as with most great technologies, the development of AVs would be hamstrung eventually if regulatory changes are not made on time. This article examines how traditional liability regimes may be applied to AVs, focusing specifically on the principles of negligence and product liability. It also considers the concept of granting legal personhood to AVs. The article ends with the conclusion that existing liability frameworks could struggle to cope with the unique challenge presented by AVs, and that regulators should first focus on ensuring victim compensation through a no-fault compensation scheme. 172

A Longitudinal Analysis of “Obvious Risk”: The Elucidation of Principle and Process – *Andrew Clarke and John Devereux*

This article examines Australian catastrophic personal injury accidents, in particular, their analysis of the concept of “obvious risk” attaching to recreational activities. The cases primarily involve events which occurred in New South Wales over a period of some 40 years and collectively provide a longitudinal survey. The cases give rise to various legal principles and processes. First, there is a narrative connection between the cases, given that water and watercourses have been central to the development of doctrine and themes within the domain of obvious risk. Second there is the process-related issue in which several of the cases deployed juries to determine questions of fact. Third, there are the resulting provisions in the legislative context which were enacted in the early part of this century. This article argues that judge and jury trials in catastrophic injury cases have performed an important role, and consideration should be given to restoring the use of judge and jury trials in recreational activity cases. 191

BOOK REVIEW

Compensation Funds in Comparative Perspective, by *Thierry Vanswevelt and Britt Weyts* (eds) – *Reviewed by Dr Tina Popa* 206

VOLUME 27 – 2020

Table of Authors 213
Table of Cases 215
Index 225