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ARTICLES

Articulating the Concept of Vulnerability in the Duty Question – *Francine Rochford*

The modern tort of negligence has struggled to set conceptual limits on its articulation of the duty of care in novel cases. Australian courts have settled on articulation of “salient features” of the subject relationship and the “vulnerability” of the plaintiff has carried additional weight. Although the concept has been developed most rigorously in cases existing in a contractual matrix, it is of particular interest in claims against public authorities and intersects with demands that the vulnerability of the plaintiff take a central position in law, politics and ethics. Conversely, the rational, autonomous subject in law has been reasserted in legislative reform to act as an encumbrance on the development of vulnerability as a coherent concept. 245

The Gendering of Future Loss of Earnings Damages in New South Wales, Australia: An Empirical Analysis, 2002–2023 – *Christine Forster, Jennifer Schulz and Jeni Engel*

In negligence actions in New South Wales, future loss of earnings is a category of monetary damages for which plaintiffs can seek compensation and refers to the potential income that injured persons might have earned, but for the negligence that caused their injuries. The awards offer a narrative on the value of different societal activities. Qualitative content analysis was used to analyse *New South Wales (NSW)* negligence cases from 2002 until 2023, in which damages for future economic loss were claimed under s 13 of the *Civil Liability Act 2002 (NSW) (CLA)*. This article argues that gender continues to be a significant factor in how NSW courts calculate these awards for injured girls and women. Those factors include predicted gender pay disparities based on actuarial tables, assumptions about women’s capacity to progress to higher paid occupations, and assumptions that women, but not men, will work part-time, or leave the workforce, to care for children. 257

Liability for Injuries Caused by Autonomously-Driven Vehicles – A Comment on Matters of Principle and Policy – *Martin Allcock*

There is a growing body of scholarly literature concerning the potential legal issues which may arise as a result of the increasing use of automated vehicles (AVs). Of particular interest is the issue of who should be liable for injuries caused by such vehicles. The use of AVs presents a significant new challenge to long-established legal principles concerning accessing compensation for injuries, with the potential that many may be arbitrarily locked out of existing compensation schemes. There are a range of potential solutions to this problem, including the implementation of no-fault social insurance schemes and enterprise liability models of compensation. This article considers the legal issues surrounding the question of liability in relation to injuries caused in accidents involving AVs, along with commenting upon how the schemes advanced to address this problem meet principle and policy goals. 277

The Liability of Public Authorities in Negligence: Does *Sharma v Minister for the Environment* Break New Ground? – *Samantha Climie and Jan McDonald*

The circumstances in which public authorities owe a common law duty of care in the exercise of their public functions have long been contentious. Courts have declined to find a duty that would intrude upon the policy functions of the executive arm of government. *Sharma v Minister for the Environment* (*Sharma*) is the most recent consideration of these issues. The plaintiffs in *Sharma* argued that the Commonwealth Environment Minister owed a duty of care in respect of climate harm. The implications of *Sharma* for climate litigation have been widely considered. Here, we examine how the case furthers the common law on the liability of public authorities. *Sharma* confirms the proper approach for determining whether a public authority owes a duty of care, provides further guidance on the salient features of control, vulnerability, coherence, and indeterminacy, and considers how the common law ought to take into account the public nature of public authorities in a negligence claim.

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