THE TORT LAW REVIEW

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NOTES

Fear of disease and psychiatric injury in Ireland – Peter Handford .......................................................... 61

A duty to provide insurance? – Keith Stanton .......................................................... 65

ARTICLES

Proximity as principles: Directness, community norms and the tort of negligence – Adam Kramer
This article argues that the recent trend towards explaining duty of care cases by way of policy reasoning is unwelcome and largely unnecessary. An account of the legal requirement of proximity is proposed, this account treating the requirement as a set of legal norms of responsibility that are derived from social norms of responsibility. The proximity inquiry looks to normatively significant factors that relate to the relationship between the parties and the way that the harm was caused: “directness”, for want of a better term. General normatively significant factors give rise to categories (the pockets of liability approach) such as manufacture or misstatement, but special normatively significant factors (the so-called “assumption of responsibility” or “special relationship”) can alter the outcome that would be suggested by examining the general factors alone. Most cases can be explained by a directness view of proximity, focusing, as it often does, on whether the claimant’s behaviour exculpated the defendant’s behaviour, and under this account policy factors play a secondary role in determining liability for careless action or inaction. All jurisdictions utilising the proximity and duty of care concepts are discussed. ........................................70

The property torts? – Letitia Crabb
The author argues that the qualification to sue in nuisance and the other “property torts” is not exclusively based upon property. Those with effective control of the land, whether or not this is accompanied by a title, sue on the basis of that effective control. Effective control
is a public policy concept, not a property concept. The recognition that public policy has a direct role in determining who may sue may enable the “property torts” to expand and to protect a wider class of claimant, including the mere licensee.
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