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Compensatory damages and the role of 'loss' in actions for tort and breach of contract

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In analysing two appellate decisions involving the question of damages — one in the context of tort and the other for breach of contract — this article discusses the role of 'loss' in claims for compensatory damages. This article explores how tort and contract law engage with a plaintiff's loss differently and, in particular, how they respond to a situation where a plaintiff would in all probability have incurred a certain expense or suffered a particular detriment regardless of the wrongdoing. In doing so, this article proposes some guiding principles in each of the areas of law when ascertaining a plaintiff's entitlement to substantial compensatory damages.

Australian drug courts: From punishment to rehabilitation and reintegration

— *Amanda Clarke* 341

This article examines the issue of punishment following conviction by a court of law, and in particular punishment's influence on the criminal justice system and the manner in which punishment responds to criminal conduct committed by drug dependent offenders. This is undertaken in an effort to gain further insight into the social frameworks in which drug courts operate in Australia. The importance of understanding the social background and rationale for drug courts cannot be underestimated if they are indeed, as the author suggests, a possible template for the criminal justice system of the future.

'Third time's a charm': The historical development of contract law through the English forms of action

— *John Lidbetter*

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Understanding the origins of Australian and English contract law requires an analysis of the English forms of action which developed in Westminster Hall. The three main forms of action which were crucial to the development of modern contract law were debt, covenant and assumpsit. The writ of covenant and conditional bond (enforced through the writ of debt) possessed similar characteristics to the modern law of contract. However, the writ of covenant and debt were prevented from reflecting a system akin to contract law due to their respective jurisdictional and structural limitations. Nonetheless, both forms of action were important in catalysing the writ of assumpsit to establish the progenitor rules of contract. The writ of assumpsit incrementally developed the law of contract in three stages. That is, assumpsit developed contract law once the action became available for misfeasance, non-feasance and in lieu of debt. In doing so, the writ of assumpsit established a generally available remedial response to the breach of promissory obligations, resembling the modern law of contract.

Penalties in Australia, the United Kingdom and Singapore — Storm-warnings, statutes and style

— *Mark Leeming*

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An important aspect of the recent divergence in the law of penalties in decisions of ultimate appellate courts in three 'common law' jurisdictions reflects the pervading influence of statutes. 'Common law and statute are more fully integrated than has traditionally been thought', and in the area of penalties, the interaction is deep and operates in multiple dimensions. The main theme of this article is that rather than arguing which outcome is 'better', much that is of value may be observed from how the differences have emerged.

Book Review

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