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Articles

There is a paucity of legal literature on chatbots. Chatbots are interactive artificial intelligence that converse with users. The article begins by categorising chatbots into taskbots, social bots (sobots) and professional bots (probots). Categorisation helps identify the harm they may cause and possible legal analogies. While taskbots are relatively benign, sobots and probots pose dangers. Sobots build a relationship with users. Probots purport to provide advice that is normally the exclusive preserve of professionals. Psychology chatbots (psychbots) are one of the most advanced chatbots. This article argues that a psychbot's failure to identify a disclosure of child abuse may result in liability. It is based on a real-life scenario. Generally, it argues that a failure to exercise reasonable human oversight of a chatbot may result in liability.

Twenty years ago, the Civil Liability Act 2002 (NSW) was enacted to limit liability for negligence generally, with a particular focus on limiting the liability of professionals by means of s 5O of that Act. However, the course of authority on s 5O has run far from smoothly. In this article, I explain the presently accepted judicial understanding of s 5O, seeking to demonstrate exactly what is needed to successfully invoke s 5O as the standard of care in negligence litigation. I focus especially on the recent decision of *Dean v Pope* [2022] NSWCA 260, which has resolved some — though not all — extant questions as to the interpretation of s 5O. In that context, this article demonstrates the practical relevance of the various interpretative difficulties which I identify, and how they affect the pleading of s 5O.

By s 43A of the Civil Liability Act 2002 (NSW) public authorities have a qualified immunity in tort regarding special statutory powers. This is achieved through a Wednesbury-styled threshold that attenuates the standard of care. This article considers whether the provision is an improvement to the general law of negligence. In short, the view taken is no. The article first challenges the foundation of the provision by examining the circumstances in which it was legislated and the legal principle on which it is said to be supported. Most critically, however, it is argued that a Wednesbury-styled threshold is misplaced in the doctrine of negligence. There is no doubt that the peculiarities of public

authorities call for some special treatment in negligence. This is best achieved, however, through the pre-existing common law gateways of justiciability and the more potent consideration of whether there exists a duty of care. With these control mechanisms, the orthodox principles of negligence sufficiently address the peculiarities of public authorities exercising statutory powers. Section 43A is therefore superfluous.

Case Note