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(articles and case note included in this part are linked to the LexisNexis platform)

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Articles

[Neither too hot nor too cold: correctly characterising 'risk' in negligence claims after *Tapp v Australian Bushmen's Campdraft & Rodeo Association Ltd*](#)

— *William Nash*

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The appropriate approach to characterising risk for the purposes of ss 5B, 5L and other provisions of the Civil Liability Act 2002 (NSW) (CLA) is a significant contemporary issue in Tort law. This article considers the High Court's guidance as to 'the correct approach to the characterisation of the risk' under the CLA (see *Tapp v Australian Bushmen's Campdraft & Rodeo Association Ltd* (2022) 273 CLR 454; 96 ALJR 337; [2022] HCA 11). The consequences of that approach is analysed, with discussion as to the 'degree of generality or precision' that is required when construing the statute (see Bryson JA's comments in *C G Maloney Pty Ltd v Hutton-Potts* [2006] NSWCA 136 at [173]).

[Liability of public authorities for failing to confer a benefit in the provision of professional services](#)

— *Christine Beuermann*

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This article compares the facts of cases in which public authorities are held liable in negligence for failing to 'confer a benefit' in the provision of professional services to those in which such liability is not imposed. It argues that the general analogy drawn between the private and public provision of professional services can only be maintained in respect of services where the public authority is vested with authority to direct the physical behaviour of the claimant or where the public authority can reject or redirect the need for service provision to another service provider. Significantly, the nature of the damages recoverable from a public authority's failure to 'confer a benefit' when providing the two types of services differs.

[Exemplary damages and police wrongdoing: An empirical analysis](#)

— *Michael Fielding*

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An important recent empirical study of exemplary damages found that compared to other categories of defendant, Australian courts most frequently award exemplary damages against the police. This article provides a tailored empirical study of exemplary damages claims against the police in all Australian jurisdictions between 2000 and 2021, analysing the incidence of claims and the frequency and quantum of awards in light of various features of those claims. The study concludes that courts are more likely to award exemplary damages against the police for torts with a malice component or where the plaintiff has suffered actual, specifically identifiable harm beyond an infringement of his or her rights. The study also confirms that the variation in incidence of awards across jurisdictions is

likely caused by the detail of statutory interventions limiting state liability for police wrongdoing and queries whether the generally modest quantum of awards is likely to be effective in serving their deterrent purposes.

Case Note

Clarifying the distinction between continuing damage and continuing nuisance: the former does not always equal the latter

— Connor Wright

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This note considers the recent decision of the Supreme Court of the United Kingdom in *Jalla v Shell International Trading and Shipping Co Ltd*. It examines the reasoning of the Court in finding that oil pollution of land and waterways caused by an offshore oil spill did not constitute a continuing private nuisance against affected landowners.