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Articles

[Bad advice upon bad advice: Negligent misstatements and independent inquiries in New Zealand](#)

— *Marcus Roberts*

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If A gives incorrect advice to B, will the presence of independent subsequent advice to B mean that A does not owe B a duty of care? This article will seek to answer that question and the broader questions arising from a negligence claim by B in these circumstances. Drawing on case law from New Zealand and England it will show that the presence of independent subsequent advice should not necessarily negate a duty of care. Instead, A's knowledge that B will receive such advice may negate a duty only when it can be demonstrated that A foresaw that B would reasonably rely on that subsequent advice only. The relative authority, expertise and experience of the two advisors will be factors to be considered in the duty analysis. Further, this article will show that independent subsequent advice can be relevant for questions of causation and contributory negligence.

[Re-examining *Miller v Miller*: A search for rationality and coherence in Australia's illegality defence](#)

— *Aiden Lerch and Yvonne Apolo*

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While it has long been accepted that a 'confirmed criminal is as much entitled to redress as his most virtuous fellow citizen', the defence of illegality has the potential to entirely divest plaintiffs of private law remedies. In light of the anomalous approach to the illegality defence adopted by the High Court of Australia in *Miller v Miller*, this article considers whether Australia's illegality defence in the general law of torts requires reformulation. In adopting a comparative approach, the article demonstrates that although Australia's duty-based illegality defence is criticised for being unusual and indeed unjust, the discretionary-based approach implemented within the United Kingdom is denounced as 'intolerably uncertain' and the rule-based approach formulated in Canada is condemned for its narrow scope and rigidity. In seeking to propose a future direction for the development of Australia's illegality defence in the context of tort law, this article articulates and deploys a legal coherence framework within which the various formulations of the illegality defence can be appraised.

Availability of vicarious liability for intentional abuse
committed by foster carers against foster children
— *Pearl Davidson*

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Australian common law vicarious liability principles can justifiably be extended to hold relevant state and territory governments vicariously liable for foster carers' intentional abuse against children in their care. Although the government and foster carers are not in an employment relationship, the government's level of control over foster carers' activities means their connection is sufficiently akin to an employment relationship to justify imposing vicarious liability. Deliberate abuse by foster carers is closely connected with foster carers' duties as the government gives foster carers high levels of power and authority over foster children in situations encouraging them to develop close relationships with foster children and assist in or supervise intimate activities in private homes. It is fair, just, and reasonable to hold governments vicariously liable because the duties they assign to foster carers materially increase the risk of abuse being committed.

Infants and fatality claims — A critique of the decision in
Grosso v Deaton [2012] NSWCA 101 and the need for
judicial reform
— *Craig Hobbs*

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This article focuses on the anomalies, which have developed over the years, where infants have sought redress for the loss of care and domestic services formerly provided by a deceased parent. The article then outlines a comprehensive argument advocating for judicial reform. Kirby J once commented in *De Sales v Ingrilli* that: 'The law on the subject [addressed by this article] is full of anomalies and fine distinctions. ... Sometimes, the only apparent justification for the lines drawn by judicial decisions in this area has been that of a policy choice. The logic of several of the decisions is questionable, a fact recognised by this and other courts.' Professor Harold Luntz also observes in his textbook *Assessment of Damages for Personal Injury and Death* that 'in this area logic is conspicuous by its absence', referring to particular instances of inconsistency. However, the comment is capable of general application, given the anomalies/inconsistencies discussed.