

## *Article Summaries*

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### **Professional negligence in 2018: the year in review**

*Stephen Todd*

A number of significant developments during 2018 have raised issues concerning or which are relevant in the field of professional negligence. The Supreme Court certainly has been busy, determining questions relating to the nature of physical damage, the appropriate methodology in deciding whether a duty of care is owed in the circumstances of any particular case, the ambit of liability for negligent words causing either physical or economic harm, and liability for conduct causing economic and reputational harm. Developments in the Supreme Court of Canada also have made contributions which deserve to be considered. Turning to vicarious liability, the flow of decisions has not abated, and they show that the law continues to be on the move. And finally, the Court of Appeal has considered the impact of the plea of *ex turpi causa* in a negligence claim in the light of the seminal decision of the Supreme Court in *Patel v Mirza* in 2016.

### **Nonfeasance and the end of policy? Reflections on the revolution in public authority liability**

*Jonathan Morgan*

This article critically analyses the landmark case of *Robinson v Chief Constable* [2018] UKSC 4. The Supreme Court held that public authority negligence (hitherto a vexed area) can be reduced to a simple dichotomy. A claim that alleges inaction by a public authority will fail since the common law imposes no liability for omissions (subject to certain well-established exceptions). By contrast, a claim alleging direct negligent infliction of physical damage will succeed: as in *Robinson*. For this is an axiomatic liability situation. The controversial aspect is the majority's claim that this categorisation precludes the need for policy reasoning in public authority cases: the Court of Appeal in *Robinson* were wrong even to have entertained the defendant Chief Constable's policy arguments against liability. Lord Mance and Lord Hughes, although concurring in the result, were more sceptical about the disposal of controversial claims by 'established' categories. The article considers the questions of 'established' liability, policy reasoning, the 'omissions principle' and 'assumption of responsibility'. It concludes that Lord Mance and Lord Hughes were right to be wary of the majority's approach, which is a regrettable oversimplification of issues at the frontier of negligence liability.

## **A novel alternative dispute resolution procedure for professional negligence claims**

*Masood Ahmed*

In March 2018, the Civil Procedure Rule Committee approved the implementation of the Professional Negligence Adjudication Scheme following the successful completion of a pilot involving seven cases. The Scheme is a novel alternative dispute resolution procedure which forms part of the Professional Negligence Pre-action Protocol. This paper discusses the objectives, features, and structure of the Scheme; reviews the experiences of those who participated in the seven pilot cases; and makes proposals for procedural improvements to the Scheme.