

ENTERPRISE LIABILITY AND THE COMMON LAW

Theories of enterprise liability have, historically, had a significant influence on the development of various aspects of the law of torts. Enterprise liability has impacted upon both statutory and common law rules. Prime examples would include laws on workmen's compensation and products liability. Of late, in a number of jurisdictions, enterprise liability has been a powerful catalyst for change in the employer's responsibilities towards third parties by prompting changes to the law on vicarious liability. The results have been seen most dramatically where the employer's responsibility for the intentional torts of employees is concerned. Recent common law reforms have not been without controversy and have raised difficult and challenging questions about the appropriate scope of an employer's responsibility. In response to this, Douglas Brodie offers a critique of the employer's common law obligations, both in tort and under the law of contract of employment.

DOUGLAS BRODIE is one of the UK's leading labour lawyers. He is Professor of Employment Law and Head of School at Edinburgh University's School of Law.

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PREFACE

The sexual abuse cases of *Bazley v Curry* and *Lister v Hesley Hall* led to considerable changes in the law of vicarious liability in Canada and the UK. In *Bazley* this expansion of liability was legitimised by reference to the doctrine of enterprise liability. In the author's view recourse to enterprise liability is of particular significance given contemporary concern over the proper extent of corporate social responsibility; the invocation of enterprise liability can be seen as the common law's response. Leaving aside changes to the law of vicarious liability, how else might the common law respond and how pivotal is enterprise liability likely to be? This book seeks to provide a critique of recent developments and an assessment of the further changes that are likely to take place where the employer's common law obligations are concerned (whether in tort or under the law of contract of employment). The author hopes that the book will have considerable appeal to scholars of both tort and labour law in the UK, Australia and Canada, all being jurisdictions where enterprise liability has been invoked.

ABBREVIATIONS

| | |
|---------------------------------|--|
| AJLL | Australian Journal of Labour Law |
| Ariz. St. L.J. | Arizona State Law Journal |
| Can. J. L. & Soc'y | Canadian Journal of Law and Society |
| CLJ | Cambridge Law Journal |
| Colum. L.R. | Columbia Law Review |
| Conn. L. Rev. | Connecticut Law Review |
| Edin. LR | Edinburgh Law Review |
| Harv. L.R. | Harvard Law Review |
| ILJ | Industrial Law Journal |
| Ind. L.R. | Indiana Law Review |
| JBL | Journal of Business Law |
| J. Legal Studies | Journal of Legal Studies |
| LQR | Law Quarterly Review |
| Man. L.J. | Manitoba Law Journal |
| Me. L. Rev. | Maine Law Review |
| MLR | Modern Law Review |
| Mich. L. Rev. | Michigan Law Review |
| Minn. L. Rev. | Minnesota Law Review |
| QUTLJJ | Queensland University of Technology Law and Justice Journal |
| SAcL | Singapore Academy of Law Journal |
| S. Cal. L. Rev. | Southern California Law Review |
| S. Cal. Rev. L. & Women's Stud. | Southern California Review of Law and Women's Studies |
| Syd. L. Rev. | Sydney Law Review |
| Tenn. L. Rev. | Tennessee Law Review |
| TLJ | Tort Law Journal |
| TLR | Tort Law Review |
| U. Chi. L. Rev. | University of Chicago Law Review |
| U. Colo. L. Rev. | University of Colorado Law Review |

LIST OF ABBREVIATIONS

xi

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|---------------|---|
| UNSWLJ | University of New South Wales Law Journal |
| UTLJ | University of Toronto Law Journal |
| Vand. L. Rev. | Vanderbilt Law Review |
| WMLR | William and Mary Law Review |
| Yale L.J. | Yale Law Journal |