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Managing Editor's note

The protection afforded to personal security and tangible property interests has long been regarded as 'elementary in all legal systems'. Thus, the primary function of the law of torts is to compensate those who have suffered loss or damage to their personal and property interests as a consequence of the fault of others, whether intentional or negligent.

In *Skelton v Collins* [1966] 115 CLR 94, Justice Windeyer held that '(t)he one principle which is absolutely firm, and which must control all else, is that damages for the consequences of mere negligence are compensatory'. And in *De Sales v Ingrilli* [2002] HCA 52 Justice Callinan said:

'Assessments of damages ... are all necessarily imprecise because they have to be predictive about notoriously unpredictable matters, human affairs. In the interests of finality ... the law requires that damages be assessed and paid once and for all, as a lump sum, even though the future ... might falsify the assumptions underpinning it.'

Tracey Carver considers the *De Sales* decision, which held by majority that a separate discount for the prospects of remarriage is not justifiable. Following this, Sarjeant and Thomson explain discount rates and life tables and recent legislative changes.

Anforth and Gibson discuss social security recovery and preclusion provisions and highlight the importance of personal injury lawyers keeping up with amendments to social security legislation.

Now that structured settlements are tax exempt, Jane Campbell outlines the practical implications. As lawyers now ought to advise clients of the possibility of structured settlements, financial advice is desirable, as explained by Young and Wakim, who conclude that the choice is not determined simply by taxation, financial calculations and investment projections, but 'ultimately comes down to how people feel about things'. This is exemplified by Judi Stephens' personal perspective.



Pending the High Court's determination in *Melchior*, Penelope Watson considers policy factors and competing views in the assessment of damages in wrongful life cases. She notes that 'negligence law, by its very insistence on fault, is fraught with moral judgements and issues of fairness'. This discretionary remedialism is both the law of torts' greatest strength and its achilles heel, as it reflects the 'contest between precision and predictability in the law and what is seen as individualised and substantive justice rooted in broad values of society'.

TINA COCKBURN, QLD

ENDNOTES:

¹ Fleming JG, *The Law of Torts*, 9th ed, LBC, 1998 at 6

² Discussed in another context by Hayne J 'Commercial Law - Private Business/Public Concern' Centre for Commercial Law Conference 2002, Australian National University.