

## PRESENTERS

### **Christine French, French Burt Partners, Invercargill**

Christine is a former Rhodes Scholar. She appeared as counsel for the respondent in the landmark Privy Council negligence and time limitation decision in *Invercargill City Council v Hamlin*. Christine is co-author of “Contract” in the *Laws of New Zealand*. Her article “The Contract/Tort Dilemma” has been cited with approval by the House of Lords in a key torts decision *Henderson v Merritt Syndicates Limited* and by the Supreme Court of Canada in *Central Trust Co v Rafuse*. Christine is a member of the NZLS Ethics Committee.

### **Professor Stephen Todd, University of Canterbury, Christchurch**

Stephen is a barrister and professor of law at the University of Canterbury. His primary interest is in the law of torts, about which he has written extensively. Stephen is general editor and part author of *The Law of Torts in New Zealand*, the fourth edition of which is in preparation. In 2002 he was awarded an LLD degree by the University of Canterbury in recognition of his published works in the law of torts. His other main interest is in the field of contract. He is co-author with two colleagues of *The Law of Contract in New Zealand*, now in its second edition.

*The statements and conclusions contained in this booklet are those of the author(s) only and not those of the New Zealand Law Society. This booklet has been prepared for the purpose of a Continuing Legal Education course. It is not intended to be a comprehensive statement of the law or practice, and should not be relied upon as such. If advice on the law is required, it should be sought on a formal, professional basis.*

# CONTENTS

<b>INTRODUCTION .....</b>	<b>1</b>
<b>1. NEGLIGENCE .....</b>	<b>5</b>
Searching for a duty formula.....	5
<i>The two-stage test</i> .....	5
<i>Assumption of responsibility</i> .....	7
Barristers.....	9
<i>A divergence of principle</i> .....	9
<i>Appraisal</i> .....	13
Mental injury.....	15
<i>Accident compensation</i> .....	15
<i>Duty controls</i> .....	16
<i>Actionable injury</i> .....	17
<i>Normal fortitude</i> .....	18
<i>Sudden shock and direct perception</i> .....	19
Wrongful conception and wrongful birth.....	20
<i>Accident compensation</i> .....	20
<i>Common law principles</i> .....	20
<i>Appraisal</i> .....	23
Negligence in a contractual setting .....	23
<i>Concurrent liability</i> .....	24
<i>Contractual matrices</i> .....	26
<i>The Building Act 2004</i> .....	35
Public bodies .....	36
<i>Inspection of a building</i> .....	36
<i>Inspection of a ship</i> .....	37
<i>Third party fraud</i> .....	38
<i>Pollution of a lake</i> .....	39
<i>Child abuse</i> .....	41
<b>2. ABUSE OF PUBLIC OFFICE .....</b>	<b>45</b>
Misfeasance in a public office.....	45
Public law compensation.....	47
<b>3. RYLANDS v FLETCHER AND NUISANCE.....</b>	<b>51</b>
The rule in <i>Rylands v Fletcher</i> .....	51
Recent examinations of the rule.....	52
<i>Cambridge Water Company Limited v Eastern Counties Leather plc</i> .....	52
<i>Burnie Port Authority v General Jones Pty Limited</i> .....	53
<i>Autex Industries Limited v Auckland City Council</i> .....	55
<i>Hamilton v Papakura District Council</i> .....	57
Some further questions.....	59
<i>Non-natural user and unreasonable user</i> .....	59
<i>Negligence and nuisance</i> .....	61
<b>4. THE RULE IN WILKINSON v DOWNTON.....</b>	<b>63</b>
Intentional infliction of distress .....	63
Harassment.....	65
<b>5. QUALIFIED PRIVILEGE IN DEFAMATION .....</b>	<b>67</b>
The law prior to <i>Lange</i> .....	67
The <i>Lange</i> decision in 1998.....	68
<i>Lange</i> in the Privy Council and <i>Reynolds</i> in the House of Lords .....	72
<i>Lange</i> re-considered.....	73
The post- <i>Lange</i> scene.....	76
<b>6. INVASION OF PRIVACY .....</b>	<b>79</b>

A new tort.....	79
Breach of confidence.....	80
<b>7. CAUSATION AND REMOTENESS OF DAMAGE.....</b>	<b>83</b>
Causing a risk of loss .....	83
Causing a loss of a chance .....	84
Causing a loss of autonomy .....	87
Remoteness of damage.....	88
<b>8. VICARIOUS LIABILITY.....</b>	<b>91</b>
The Salmond test.....	91
The “close connection” test.....	91
New Zealand developments .....	94
<b>9. EXEMPLARY DAMAGES .....</b>	<b>97</b>
Exemplary damages for negligence .....	97
Vicarious and corporate liability .....	100
<b>10. LIMITATION OF ACTIONS.....</b>	<b>103</b>
Accrual of the cause of action .....	103
<i>The occurrence test</i> .....	103
<i>The reasonable discoverability test</i> .....	103
<i>Is reasonable discoverability of general application?</i> .....	105
Policy .....	110
Leave applications.....	112