



How safe is too safe? Understanding the Social Utility of Risk

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This paper considers the way in which the ‘calculus of negligence’, created by common law and now legislatively prescribed, deals with the ‘social utility’ of risk. Risk taking behaviour in play and social interaction are important parts of the learning process. It addresses the implications of risk averse policies in schools.

The law of negligence requires schools to comply with the standard of reasonable care to prevent injury to students. Whilst the standard is set by the common law and is independent of other standards and legislative prescriptions, it is both informed and influenced by those standards and prescriptions. The standard of reasonable care also changes as our own community standards alter. Typically modern schools are required to comply with a higher standard than in the past. However, the law of negligence also recognises countervailing factors which may balance perceptions of risk by accepting that risk is necessary for the physical, psychological and social development of children.

This paper will commence with an account of the modern ‘calculus of negligence’ in tort, which originated in common law but has been amended by legislation in all Australian jurisdictions. It will then consider cases in which the social utility of defendants’ behaviour has been balanced against the probability of the risk eventuating, the gravity of the harm that may occur and the burden of taking precautions. By considering the most recent judicial analyses of this balancing process this paper will provide insight and guidance as to the trajectory of current authorities.