Lost in the Woodlands? Convergence and Divergence in the Law of Non-delegable Duties between Australia and the United Kingdom

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The law of non-delegable duties provides a mechanism whereby a principal who has engaged a contractor to carry out a specific task may be held strictly liable for harm committed to a third party by the negligence or (perhaps) some other tort of the contractor while executing the contracted task. This principle of strict liability has a long common law history, yet in recent years there has been a marked divergence between the superior courts of two major common law jurisdictions, Australia and the United Kingdom, as to the relationship that must exist between the principal and the victim of harm, before such strict liability will be imposed. In the UK roads authorities may be liable for the carelessness of contractors carrying out road works, but not in Australia. In Australia school authorities will be held liable for harm committed by contractors to pupils, but it seems that in the UK, following the Woodlands decision of the English Court of Appeal, not there. This paper explores the development of the tort in the two jurisdictions and attempts to explain the reasons for the divergence in legal reasoning from a shared foundation, and offers suggestions as to whether or not it would be advisable to bring the law into a more coherent shape across the two countries.