Proximity: Divergence and Unity
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The High Court of Australia has declared that the demise of proximity as a useful informing principle in the determination of duty of care questions is now complete. The cases show, however, that while the word ‘proximity’ has been abandoned, the principle has not. It has been utilised as a core determinant of duty questions by some of its strongest critics in some of the very judgments that have purported to discard it. The failed Australian attempt to abandon proximity evidences both the unity of this fundamental common law principle and the ways in which fundamental common law concepts can be strengthened through divergence and a diversity of approaches.