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# Australian Law Journal

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# THE AUSTRALIAN LAW JOURNAL

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**ARTICLES****PROBLEMS AND PREJUDICES FOR THE SEXUALLY ABUSED CHILD****Professor Kim Oates**

When a child is sexually abused there are usually no witnesses other than the child and the offender. In contrast to a widely held view that young children have difficulty distinguishing fact from fantasy and have unreliable memories, there is good evidence that children over six years are no more suggestible than adults and are as reliable as adults in their ability to recall events in which they were involved. When errors of truth occur in child abuse cases it is much more likely to be the error of the child not revealing what has happened, or only revealing part of what has happened, rather than a fictitious account. Professionals often over-estimate the linguistic abilities of young children, which can lead to confusion on the part of the child and false conclusions on the part of the interviewer. It is important that those who seek to obtain information from young children develop skills which will enable them to assist the child to give an accurate account of what has happened to them without confusing them, or forcing answers which may be incorrect. ....

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**FROM TEXT TO CONTEXT: CONTEMPORARY CONTRACTUAL  
INTERPRETATION****Hon J J Spigelman AC**

Over the last two to three decades there has been a paradigm shift in the interpretation of all legal texts, including statutes and contracts, from text to context. The purpose and surrounding circumstances of agreements are increasingly being considered under the rubric of ‘commercial construction’. This article charts the emergence of this approach in English and Australian jurisprudence and identifies the risk of undermining commercial certainty as a consequence of this development. ....

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BREACH OF CONFIDENCE: DIVIDING THE CAUSE OF ACTION ALONG  
PROPRIETARY LINES

**Jeremy Birch**

Breach of confidence is a cause of action that courts have traditionally grounded in a broad principle of good faith. As a result, the cause of action has aimed to protect relationships of trust and confidence. A competing view has been that courts protect a proprietary interest in the secrecy of information. This article argues that neither approach is entirely correct. Rather, there are two distinct types of information that breach of confidence protects and that, on this basis, the cause of action should be split. One cause of action should focus on protecting proprietary information, with the other focusing on protecting relationships of trust and confidence. .... 338

CONFLICT OF LAWS: ENFORCING A JUDGMENT ON A JUDGMENT?

**P St J Smart**

This article analyses the question of whether an Australian court may enforce a foreign judgment which is itself founded upon the judgment of another, different foreign court. The enforceability of a so-called “judgment on a judgment” has been canvassed by academic writers and has the support of at least one recent case (albeit not in an Australian court). Yet this commentator suggests that an Australian court should not enforce the judgment of an intermediary foreign court because such judgment will not meet the requirement that it is a decision on the merits of the parties’ dispute. .... 349

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