

TORT LAW REVIEW

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Attwells v Jackson Lalic Lawyers: Will the High Court re-draw the boundary of advocates' immunity? – Alister Abadee

In the 2005 case of *D'Orta-Ekenaike v Victoria Legal Aid* (2005) 223 CLR 1; [2005] HCA 12 (*D'Orta-Ekenaike*), the High Court of Australia re-affirmed the immunity for advocates at common law. It did so after a thorough review of a range of public policy considerations adverted to in earlier cases, including *Giannarelli v Wraith* (1988) 165 CLR 543. The plurality in *D'Orta-Ekenaike* decided to retain the test delineating the boundary for the immunity, extending from work performed "in court" to work done out of court leading to a decision affecting the conduct of the case in court. Subsequent decisions in intermediate appellate courts have indicated that there is no necessary (or even logical) correlation between the application of this boundary and the finality principle justifying the immunity. The High Court will soon decide whether it should reconsider the existing boundary of advocates' immunity, and, if so, determine whether the existing "intimate connection" test should be re-interpreted, or some other test be substituted.

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Finding common law duty of care from statutory duties: All within the Anns framework – Gary Chan Kok Yew

This paper examines the relationship between statutory duties and the common law duty of care in the tort of negligence. There are apparently divergent judicial statements on the general approach towards the duty of care to be owed by persons under a statutory duty. One central question arises: must the plaintiff show that the Parliament intended, through the statute, to confer a private right of action thereby imposing a common law duty of care, or should the courts treat the common law duty as subsisting generally unless it is excluded by the statute? This article argues that the two approaches may be properly accommodated within the two-stage duty of care test in *Anns v Merton London Borough Council* [1978] AC 728, which has been applied in Canada, New Zealand and Singapore. It further discusses how statutory duties may impact on the specific elements (proximity and policy considerations) within the *Anns* framework. The analysis will promote greater legal coherence in this complex area of tort law and thereby assist courts to better tailor their decisions in a more consistent and principled manner.

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Liability of police in negligence: A comparative analysis – Professor Anthony Gray

A recent decision of the United Kingdom Supreme Court confirms the general reluctance of the law to impose a duty of care on police officers. While confirming the status quo, two judges dissented in the result, suggesting that there might, over time, be a re-calibration of the existing approach which places serious obstacles in the path of those suffering injury through police action or inaction being able to claim compensation for their losses. This article will summarise the existing position regarding the liability of police officers to various kinds of plaintiff in the United Kingdom, Canada and Australia, before critically considering existing rationales for the reluctance to find that a duty of care exists, and ways in which the law in this area might develop. It concludes that the policy rationales for reluctance to find that police owe a duty of care are highly questionable, and that Canadian law in this area has often balanced various considerations better than the other jurisdictions studied.

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