

# THE TORT LAW REVIEW

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#### MIXED RESULTS FROM RECENT UNITED STATES TOBACCO LITIGATION

*Stephen D Sugarman*

The startling March 2002 decision of the Supreme Court of Victoria in *McCabe v British American Tobacco* [2002] VSC 73 opens up the possibility of a flood of pro-plaintiff victories in Australian tobacco tort litigation. In light of this development, the mixed results of United States tobacco litigation in the past two years may be illuminating. Although some plaintiffs in the United States have recently scored dramatic trial court victories against tobacco companies, the tobacco litigation war is far from over. The eventual outcomes of several successful individual smoker cases in California, Oregon and Kansas, one large class action on behalf of Florida smokers, and one Florida second-hand smoke case will remain

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| unclear until appeals are exhausted. In other States, tobacco companies continue to win individual tort cases, and prospects currently appear poor throughout the United States for claims by insurers seeking health care cost reimbursement, for lawsuits seeking to recoup from tobacco companies the taxes that are lost to cigarette smuggling, and for class actions on behalf of not-yet-ill smokers. .... | 94 |
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### DAMAGES FOR PUBLIC AUTHORITY NEGLIGENCE – PUBLIC INTERESTS AND THE HUMAN RIGHTS ACT

*Christopher Newdick*

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| In the United Kingdom the law on public authority liability in negligence has been subject to much upheaval. The concern arises from a need to balance the private rights that wrongs should be remedied with the public interest in encouraging statutory authorities to promote the best interests of communities of people, bearing in mind that discretion may be exercised in ways which advantage some but not others. This article considers a number of “techniques” for inhibiting private actions in the public interest. It also assesses the impact of the <i>European Convention on Human Rights</i> in this area and, in particular, the impact of the doctrine of “proportionality” on the rights of individuals..... | 127 |
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