

# TORT LAW REVIEW

Volume 15, Number 1

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## NOTES

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- Condoning wrongful suffering** – *Harvey Teff* ..... 7

## ARTICLES

**Australia's anachronistic advocates' immunity: Lessons from comparative tort law** – *Thalia Anthony*

The House of Lords and the New Zealand Court of Appeal have recently recognised the futility in upholding a common law immunity for legal advocates. However, the High Court of Australia in *D'Orta-Ekenaike v Victoria Legal Aid* (2005) 223 CLR 1 reasserted Australia's need to uphold this archaic privilege for the legal profession, ruling out lessons from comparable jurisdictions. The basis of this decision was finality in the trial process. However, the experiences of England, Canada and the United States demonstrate how finality can be preserved without immunity. .... 11

**The liability of professionals to third parties for negligent misstatement under consumer protection legislation: Outflanking the neighbourhood principle** – *Norman Katter*

Over the past 40 years, the common law with respect to negligent misstatement has developed control mechanisms to limit the potential ambit of liability of professional advisers. These controls recognise the volatility of words and their ability to cause widespread financial harm leading to an indeterminate liability to third parties. These controls on third party liability have been negated by legislation the fundamental object of which was the protection of consumers or clients against a provider of goods or services in a specific commercial transaction. The result for professionals is to open a Pandora's box of potential indeterminate liability. This article discusses the decision of the High Court of Australia on the liability of accountants and auditors in *Travel Compensation Fund v Tambree (t/as R Tambree & Assocs)* (2005) 224 CLR 627. .... 31

**Civil litigation and repressed memory syndrome: How does forgetting impact on child sexual abuse cases?** – *Julia Werren*

This article focuses on civil child sexual assault cases and the complexities surrounding the contentious issues relating to repressed memory. It examines the concept of repression of memory from both an evidence and torts-based perspective. It argues that, even though there are dangers associated with repressed memories, this should not mean that the testimony is not admissible in civil trials. Rather, the court should make a determination as to admissibility in relation to prejudicial as opposed to probative considerations. Further, it argues that to make repressed memories inadmissible in tort cases would be unjust to genuine plaintiffs who have experienced repressed memories of childhood abuse. This argument is even more persuasive in the current litigation climate where the High Court of Australia is reportedly more defendant-friendly and in the light of recent tort reform. .... 43

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Editorial inquiries:  
**Tel: (02) 8587 7000**

**HEAD OFFICE**  
100 Harris Street PYRMONT NSW 2009  
Tel: (02) 8587 7000 Fax: (02) 8587 7100



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