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ARTICLES

JUDICIAL ETHICS AND JUDICIAL MISBEHAVIOUR: TWO SIDES OF THE ONE COIN?

Ronald Sackville AO QC

The catalyst for the relatively recent interest in judicial ethics in Australia was the series of allegations against judicial officers in the mid-1980s. One outcome of the upheavals was legislation creating mechanisms for dealing with complaints against judicial officers. Another was the formulation and publication of ethical guidelines for judicial officers, under the auspices of the Council of Chief Justices. It is evident that there is considerable overlap between ethical guidelines and standards of conduct that may be enforceable by disciplinary sanctions. Over time it is likely that some voluntary guidelines will harden into binding rules of conduct.	244
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INVESTOR CLAIMS AND THE REACH OF PROPORTIONATE LIABILITY

Alister Abadee

The State and federal regimes of proportionate liability were enacted in response to a perceived crisis in the cost of liability insurance, particularly, for professionals. It was hoped that, by limiting the liability of defendants, whose conduct contributed, with other persons, to a claimant's losses, to accord with their responsibility for a claimant's loss, the regime would facilitate greater predictability for underwriters in assessing the maximum exposure of an insured; without the vagaries of the insolvency of other wrongdoers affecting the ultimate outcome. However, recent decisions in the Federal Court of Australia, concerning the operation of the doctrine in claims by investors, have frustrated this hope and indicated that the forensic decisions of claimants and even the defendants themselves, as to joinder, and the way that a claim is framed, continue to generate uncertainty. In relation to two conflicting decisions, concerning the issue of whether apportionment applies to multiple causes of action arising from the same facts, the High Court is expected to resolve that uncertainty. 260

FUTURE REPRESENTATIONS AND THE GROUNDS THAT MAY BE RELIED ON TO ESTABLISH REASONABLENESS

Andrew Eastwood

Since the decision of the Full Court of the Federal Court in *Sykes v Reserve Bank of Australia* (1998) 88 FCR 511, courts have held that, in misleading conduct claims concerning future representations, the representor (in seeking to establish reasonableness) can only rely on matters which the representor in fact relied on at the time of making the relevant representations. This article contends that such a requirement should be discarded. The question of reasonableness should be determined objectively, having regard to all the relevant facts and circumstances, whether or not known or relied on by the representor at the time. 270

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