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Editorial: Spring 2008

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Editorial

Bullying, in various guises and contexts, is the thematic thread which binds the patchwork quilt of articles in this issue of *The National Legal Eagle*.

Have you ever been bullied? What about someone you know? No doubt you will be reflecting on your own experiences as you read Senior Teaching Fellow Louise Parsons' meticulous article, *Beware of Bullies! Lessons in Liability from Cox v State of New South Wales*. Louise confirms that 'bullying' manifests as deliberate and repeated aggressive actions designed to harm, injure, embarrass or humiliate another person; and that bullies are typically bigger, stronger, older or more senior than their victims. The focus of her article is on bullying in schools, and Louise's detailed analysis of the *Cox* case provides a salutary reminder of the relevance of the law of negligence to the bullying conduct of school students towards their schoolmates.

Understanding the Dennis Ferguson Debate – Part 1, a very topical article by Assistant Professor Jodie O'Leary, chronicles key events leading to the recent public furore over convicted paedophile Dennis Ferguson. Jodie's balanced assessment of the situation invites us to consider the inherent patterns of intimidation that underpin not only the abhorrent abuse of defenceless children, but also the community's intolerance of punished sex offenders. This is a thought-provoking article, highlighting difficult issues in the ongoing debate about how to deal with people like Mr Ferguson, and Jodie will have more to say on the matter in the next edition of *Legal Eagle*.

Bullying in the corporate sphere is the concern of s 46 of the *Trade Practices Act 1974* (Cth), which prohibits corporations with a substantial degree of power in an Australian market from eliminating or substantially damaging their competitors, preventing would-be competitors from entering the market, or deterring or preventing competitive conduct in the market. In *Misuse of Market Power – Small*

Business versus Big Business, Rachel Mansted, a recent graduate of Bond University, and I outline the judiciary's approach to s 46 and consider recent recommendations for reform of the provision, against the backdrop of enduring tensions in the marketplace between big and small business.

Given the theme of this issue, and my well-documented interest in the *Trade Practices Act*, I could not resist adding a short article, *Protecting Consumers from Unconscionable Dealing*, to highlight the consumer protection side of the TPA – particularly the Act's underlying concern for disadvantaged and vulnerable consumers. The article concentrates on s 51AB of the TPA, which prohibits corporations from engaging in unconscionable conduct in consumer-type transactions. Central to determining whether this provision has been breached is the question of whether a corporation has taken advantage of a consumer who, though not deprived of an independent and voluntary will, is unable to make a worthwhile judgment as to what is in his or her best interests.

Associate Professor David Field's article, *Another Successful Mooting Season at Bond*, takes us full circle in this issue of *Legal Eagle*, reporting as it does on the 2008 Bond University High Schools' Mooting Competition, which revolved around bullying and the *Cox* case. Whether or not you mooted this year, you will definitely enjoy David's vivid account of the competition. David is the Bond Law Faculty's Mooting Master and sincere thanks are owed to him and everyone else who assisted with or participated in the High Schools' Mooting Competition this year. We look forward to the 2009 competition amid next year's 20th Anniversary celebrations at Bond University.

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DID YOU KNOW?

Legal Terminology

Deposition – a statement or declaration made by a witness under oath which is reduced to writing for subsequent use in court proceedings.

Judicial independence – freedom from direction, control or interference in the operation or exercise of judicial powers by either the legislative or executive arms of government.

Malicious prosecution – bringing a criminal action which is motivated by ill will or evil intent rather than to serve the interests of justice.

Non-delegable duty – a duty which cannot be passed on or delegated to another and so relieve the delegator of responsibility or liability.

Privity of contract – a contract law rule under which only parties to a contract are legally bound by and entitled to enforce it.

Recidivism – the phenomenon of habitual or repeated commission of offences.

Ultra vires – 'beyond the power'; an ultra vires act is beyond the legal power or authority of a person, institution, or legislation, and therefore invalid.

Waiver – an intentional relinquishment of a right or interest.

(Source: *Butterworths Concise Australian Legal Dictionary*, 2004.)