

**From:** [Kit Barker](#)  
**To:** [Campbell, David \(campbeld\)](#)  
**Subject:** An Invitation - "The Many Faces of Negligent Misstatement Liability: 50 Years on from Hedley Byrne v Heller"  
**Date:** 08 April 2014 00:39:53

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Dear Dave (if I may),

I hope you are well and send you greetings from sunny Queensland! Please forgive this e-mail 'from the blue'. I am currently putting together a proposal for an edited collection of essays in (slightly belated) celebration of the 50<sup>th</sup> anniversary of the case of Hedley Byrne v Heller. I would like to include in the work a chapter which looks at the topic of misstatement liability from a broader socio-economic perspective – perhaps an angle which looks again at the economics of advisory liabilities in the C21st, which interrogates the broader social effects of such liabilities, or which says something about the relationship between advisory liabilities and insurance markets. The book definitely needs something like this to counter-balance what I suspect will be a very Kantian approach to the topic from Allan Beever (!). It also seems to me that many of the legislative moves towards proportionate liability systems in places like the US and Australia have been driven by auditors and other professional advisory groups on the assumption that the joint and several liability of 'peripheral' wrongdoers such as advisors has contributed to driving up the price of liability insurance cover and somehow threatened the health of insurance markets. I find that particular claim a bit hard to believe, but I am not qualified to make the call.

All of this (particularly the economics) is obviously well beyond my own capacities and I wondered whether I might interest you in joining the project. Your expertise would be invaluable and I would personally be delighted to have you on board. The ideas set out above are obviously not prescriptive, just designed to give a general feel for the sort of thing I was hoping you might be able to provide. If you'd rather come at the thing from a different angle, that would also, of course, be fine.

The deadline for receipt of any contribution is likely to be a bit later in the year. If you were interested, I'd probably need your chapter by the end of September, though I could perhaps string it out a little longer than that if need be, provided I don't lose the faith of the other contributors.

Here are some details for the project, which might spark your interest:

**Proposed title: "The Many Faces of Negligent Misstatement Liability: 50 Years on from Hedley Byrne v Heller"**

**Summary and Rationale:** The purpose of the work is to look again at the seminal case of *Hedley Bryne v Heller* and assess its significance, with the benefit of hindsight, from a number of complimentary perspectives. These perspectives include (but are not confined to) legal history; legal theory; legal reasoning; tort law doctrine; interactions between misstatement liability in tort and contract; interactions between misstatement liability in tort law and equity'; interactions between misstatement principles in tort and statutory consumer-protection provisions; and remedial aspects of misstatement likability (such as the quantification of damages, distribution of liabilities between multiple parties liable for the same economic loss

etc). Although the work is inspired by Hedley Byrne itself, its broader purpose is to highlight and attempt to resolve contemporary legal issues relating to misstatement liabilities and the actionability of associated pure economic losses in modern private law. There are clearly many uncertainties regarding the appropriate boundaries and form of such liabilities, their containability and insurability and the way in which legal principles should operate across discrete domains of the law. A particularly glaring question is whether the introduction of stricter forms of liability in some jurisdictions has effectively rendered negligent misstatement liability obsolete in the modern day, but there are other obvious questions relating to the effect of misstatement liabilities on the affordability of liability insurance and the efficient provision of information to the market.

**Contributors:** To date, I have firm undertakings to contribute from the following:

- Paul Finn (on equitable angles);
- Dr Warren Swain (UQ) (Legal history- the historical reception of Hedley Byrne in a number of commonwealth jurisdictions)
- Professor Allan Beever (University of South Australia) (Theory).
- Professor Andrew Robertson (Melbourne) (on doctrine and concepts- in particular the concept of an 'assumption of responsibility')
- Professor Christian Witting (Exeter, UK) (is there such a thing as a separate principle of liability for misstatement in tort in UK law?)
- Professor Bruce Felthusen (Ottawa)(Canadian developments, with some analysis of the US Restatement project)
- Professor Kit Barker (UQ) (me!) (Australian developments, with a focus on difficult 3-party cases)
- Professor Elise Bant and Dr Jeannie Patterson (Melbourne) (on the interaction between misstatement liabilities and strict regimes of liability under the Australian consumer law for misleading and deceptive conduct)
- Professor Sirko Harder (Monash) (on the way in which liabilities are distributed in the UK between a contracting plaintiff's advisor and other parties).

Many of these contributors will be participating in a symposium on the topic hosted here by the Australian Centre of Private Law at UQ in July. I intend to approach a number of others, including a contributor from the US. It would be good, for example, to have something on the way in which (and the extent to which) disclaimers operate.

**Publisher:** It is proposed in the first instance to approach Hart Publishing, OUP or CUP. Once I have firm commitments from all of the proposed contributors, I will submit a formal proposal.

If you could let me know your initial reaction in the next week or so, that would be very much appreciated, only because I am trying to move things along as fast as I can out of fairness to everyone else involved in the project.

With very best wishes to you,

Kit Barker.