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A Class Act

In a first for the [Australian Academy of Law](#), the annual essay prize has gone international.

An Oxford University Law Professor and his former student have jointly won the 2023 Competition – by arguing against what might be thought to be the premise of the question.

This year's competition addressed the issue of the increase in mass torts and class actions in Australia.

The question asked entrants to consider whether the growth of such private litigation in Australia and elsewhere *could 'be described as an evolutionary form of "privatised regulation", gap-filling where the state and its regulators have not fully or properly controlled or deterred behaviours, or protected and compensated affected person. To what extent is it successful in that regard? Should it be encouraged? Why or why not? Give examples.'*

The winning essay disagreed with the possible premise of the question and sought to 'clear the field' to make a different argument.

While accepting that the description of class actions as 'privatised regulation' has gained traction in Australia and elsewhere, the authors rejected the idea:

'The description is inaccurate and distorts the true relationship between regulation, tort law and procedural law tort law cannot be described as a form of regulation because the two are different modalities of law and the class action procedure does not change this.'

The authors are [Professor Andrew Higgins](#) and his former student, John Yap.

Andrew is a practising barrister in Victoria and Oxford University Professor of Civil Justice Systems at the Law Faculty and a Fellow in Law at Mansfield College. He teaches and convenes the BCL/MJur Principles of Civil Procedure course and FHS Civil Dispute Resolution course.

John Yap has just completed his Oxford Bachelor of Civil Law. He currently teaches contract law at Mansfield College, while going through the arduous process of qualifying as a barrister in London.

John says, during his studies he developed a keen interest in private law remedies and the principles of civil procedure and when he saw the AAL essay question, it seemed like the perfect opportunity to explore his ideas in more depth with his teacher:

'Andrew taught me in these areas and I hoped that my thoughts on the current academic debates would complement his expertise and experience in class actions and mass torts litigation. I am honoured that he agreed to co-author the essay with me.'

Professor Higgins says John is an extraordinarily bright student who always has useful insights into whatever area of law he turns his mind to, so he had no hesitation in joining forces with him:

'My main areas of academic research and teaching are civil justice systems and tort law. Also, as a practising barrister, I specialise in mass tort litigation so the question for this year's competition felt like my lucky numbers had come up. Because I've spent a lot of time thinking and writing about what class actions are designed and not designed to do, I felt almost professionally obliged to submit an entry.'

Their winning 8-thousand-word essay works as both a critical response to the question and a fresh way of viewing the issues.

The judging panel of former High Court Justice, William Gummow AC KC, Federal Court Judge Catherine Button and ANU Emeritus Professor Peta Spender praised the high quality of the essay submissions:

'All the essays demonstrated interesting perspectives on the question and a good command of the literature and debates about class actions. However, the winning entry was sophisticated, original, and provocative and is sure to generate further debate about this controversial area.'

Both Professor Higgins and John Yap are delighted to have won the competition and for John, the shared \$10 000 award is particularly helpful:

'Needless to say, as a current bar course student in London, the generous prize from the AAL is welcome support along what can sometimes feel like a never-ending journey to qualifying as a barrister.'

The winning essay is on the AAL website and will be published in an upcoming edition of the Australian Law Journal.

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