

INSOLVENCY LAW JOURNAL

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How does s 588FA apply to the granting of a security interest over an unsecured debt? – <i>Peter Sise</i>	
Converting an unsecured debt into a secured debt instinctively seems like it could be an unfair preference since it advantages one creditor over others. However, one of the requirements for an unfair preference stipulated in s 588FA is that the preferential dealing be “in respect of an unsecured debt”. This may present a difficulty for the simple reason that the debt is no longer unsecured after it has been converted into a secured debt and hence the preferential dealing is not “in respect of an unsecured debt”. This article considers the history, text and policy of s 588FA and argues that the words “in respect of an unsecured debt” present no obstacle to the conversion of an unsecured debt into a secured debt constituting an unfair preference.	59
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This article considers the merits of alternative policy approaches to management of companies in insolvency administration, in particular from an identity economics theoretical perspective. The use of this perspective provides a novel assessment of the policy alternatives for insolvency administration, which can be characterised as either following the more flexible United States Chapter 11-style debtor-in-possession arrangement, or relying on the appointment of an external administrator or trustee to manage the insolvent company, who automatically displaces incumbent management. This analysis indicates that stigma and reputational damage from automatic removal of managers in voluntary administration leads to “identity loss” and that an insider alternative to the current external administration approach could be a beneficial policy change.	69
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