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EDITORIAL 395

ARTICLES

Retention of old titles: Pre-PPSA retention of title agreements and unfair preferences – *Chris Pearce*

The *Personal Property Securities Act 2009* (Cth) (PPSA) introduced significant and sweeping changes to the classic understanding of a “security interest”. Gone are the days of merely charges or liens; in their place is now an expanded concept of what can constitute a security interest. As the Act remains in its infancy, questions continue to arise as to its proper interpretation and operation. One such question that has come before the courts is the effect of pre-PPSA transactions – particularly retention of title agreements or Romalpa clauses – and their interaction with the unfair preference provisions of the *Corporations Act 2001* (Cth). This article examines the two contrasting views reached by the Victorian Supreme Court in *Blakeley v Yamaha Music Australia Pty Ltd* and the Federal Court of Australia in *Hussain v CSR Building Products Ltd*. It discusses the approaches taken in each decision, while ultimately positing that the decision in *Blakeley* strikes the most appropriate balance between the changing role of PPSA security interests and the unfair preference provisions of the *Corporations Act*. 397

Injunctions restraining the enforcement of letters of credit and performance guarantees: The Australian experience – *Thanuja Rodrigo*

This article examines the grounds upon which Australian courts intervene in the enforcement of letters of credit and performance guarantees by granting injunctions. A review of cases indicates that whilst an applicant may raise fraudulent conduct and unconscionable conduct as grounds for interlocutory relief restraining a beneficiary’s call under a letter of credit or performance guarantee, an additional reason known as a negative stipulation in the contract may also be available for restraining a beneficiary calling under a performance guarantee. This article concludes with a policy perspective of fraud and unconscionability as established grounds upon which injunctions are granted. 404

Data and information collected by genetically modified organism suppliers: For whose benefit? – *Charles Lawson*

The suppliers of agricultural equipment, inputs and services are likely to increasingly collect data and information about their equipment, inputs and services; such information has great potential to improve their businesses and agricultural competitiveness. This article reviews the current arrangements in Australia concerning collecting data and information in the supply of plant genetically modified organisms (GMOs) as inputs to agriculture under the *Gene Technology Act 2000* (Cth), the *Agricultural and Veterinary Chemicals Code Act 1994* (Cth) and a GMO supplier contract. It provides a case study on the ways that regulation empowers and validates suppliers collecting data and information from their customers. The article concludes by stating the necessity of a comprehensive assessment and review of whether these regulatory impositions are unfairly favouring

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