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GOOD FAITH AND AUSTRALIAN CONTRACT LAW: A PRACTICAL ISSUE AND A QUESTION OF THEORY AND PRINCIPLE

James Allsop

Good faith in the Australian law of contract has been the subject of discussion and some controversy for 20 years. Much has been written on it. The lecture will seek to examine both the intensely practical as well as the theoretical considerations attending the notion. The lecture will seek to show not only the elements of the notion already well known and part of Australian law, but also the forces operating that might be seen to require a more explicit recognition of the requirement in Australian contract law..... 341

A BRIEF OVERVIEW OF LAW AND GOVERNMENT IN PAKISTAN

Joanne Harrison

In December 2010, I had the privilege of visiting Pakistan as a member of an official delegation conducting a goodwill tour. I have taken the opportunity to observe first-hand and report on the current status of the law and government in that country. In doing so, it is necessary to be mindful of Pakistan's arguably turbulent political and legal history, for example, since February 2008, Pakistan has had a democratically elected government. In 2007, General Musharraf removed Chief Justice Iftikhar Chaudhry of the Supreme Court of Pakistan. A public campaign for Mr Chaudhry's reinstatement ensued and by 2009, he was reappointed as Chief Justice of the Supreme Court. During our visit, the Parliament enacted the 19th Amendment to its Constitution, which had the effect of bringing into force greater transparency to the method of judicial appointment making. 362

ALICE, HUMPTY DUMPTY AND THE LAW

Ken Barlow SC

The author Lewis Carroll is best known for two of his works – Alice's Adventures in Wonderland and Through the Looking Glass. In those and other works, Carroll has explored and played with the meaning of words and the absurdities to which some ways of using words can lead. Although Carroll was a mathematician, not a lawyer, his works have been cited in a large number of cases in support of, or against, a number of legal propositions. In particular, the philosophy of Humpty Dumpty and the propositions discussed with Alice during the Mad Hatter's Tea Party have often been referred to. This article explores some of the principles derived from Carroll's works and some of the cases in which they have been cited. 365

"PEAK INDEBTEDNESS" THEORY: AN ABUSE OF THE "RUNNING ACCOUNT" DEFENCE?

Dr A Keith Thompson

The "peak indebtedness" doctrine is often invoked by liquidators and their lawyers when trying to maximise recovery for unsecured creditors (and themselves) against creditors paid in the ordinary course of business during the six months before insolvency. Under this doctrine, it is alleged that the liquidator can choose any point during the six-month relation back period to calculate whether a trade creditor has received a payment that constitutes a voidable preference. But the "ultimate effect" interpretation of the "running account" defence suggests that liquidators are gilding the lily most of the time when they invoke "peak indebtedness" theory. A careful consideration of all the relevant case law in Australia suggests that the "peak indebtedness" doctrine only applies in bank overdraft cases. But clarification of this practical conflict may require legislative intervention since small creditors seldom have the money to fight intimidating liquidators in the courts. 374

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