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ARTICLES

Against conscience: Recovering mistaken Internet payments – *Darren Hexter*

Making payments via Internet Banking has become the preferred method of funds transfer for both customers and financial service providers alike. This article examines the various types of mistakes that cause Internet payments to credit to a wrong account, the right of recovery that exists at law for these mistaken Internet payments, and the financial industry's failure to provide practical remedies that reflect the legal right of recovery. Further, the article contends that the current review of the *Electronic Funds Transfer Code* provides the opportunity to implement practical solutions to allow customers to recover mistaken Internet payments. 83

Penalties in banking transactions – *Daniel Solomons*

The doctrine against penalties is one of equity's earliest innovations and one which continues to serve an important role in regulating banking transactions. At a high level of principle, the doctrine can be explained with some degree of simplicity and ease. Its application to specific factual circumstances, however, has proved to be a more perplexing exercise. This article attempts to navigate a number of areas where the doctrine can operate in banking transactions – including acceleration clauses, default interest, indemnities and withholding clauses. One of the article's chief objectives is to trace how the jurisprudence in these areas has developed over time, and to review some of the key authorities from first principles. 95

No margin for error: Regulation of retail margin lending and securities lending in Australia in the wake of recent corporate collapses – *Keturah Whitford*

This article examines the current position in relation to the regulation of retail margin loans in Australia. It considers the impact of the decisions in the cases of *Beaconwood Securities Pty Ltd v Australia and New Zealand Banking Group Ltd* [2008] FCA 594 and *Lift Capital Partners Pty Ltd v Merrill Lynch International* (2009) 73 NSWLR 404; [2009] NSWSC 7. It also considers the collapse of Storm Financial Ltd and its implications for the regulation of margin lending. The article goes on to argue that the amendments to the *Corporations Act 2001* (Cth) will not significantly improve the position of retail margin lending clients, and that the recommendations of the Parliamentary Joint Committee on Corporations and Financial Services in the *Inquiry into Financial Products and Services in Australia* do not go far enough. Finally, it is argued that Australia is out of step on this issue to the disadvantage of retail investors. 114

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