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EDITORIAL 69

ARTICLES

Fixed charges over receivables and the Personal Property Securities Act – *David Turner*

The jurisprudence concerning the legitimacy of fixed charges over receivables is significant relative to the priority position of unsecured preferential creditors in insolvency. The law on the subject underwent great change throughout the last 30 years consequent upon numerous priority contests between secured creditors and unsecured preferential creditors. Now, the advent of the *Personal Property Securities Act 2009* (Cth) about for the first time a detailed statutory regime for the resolution of such contests. This article examines the new regime by reference to the existing legal position, considering the extent to which the legislation reflects the existing law or else gives rise to a new landscape. It will be argued that the new legislative regime largely reflects the existing law, and that for this reason and others, the legislative treatment of the subject is problematic. 71

The XII Tables as part of bankruptcy's narrative: Identifying creditors' collective rights – *Michael Quilter*

The importance of the creditors as a collective is fundamental to any analysis of the history and development of bankruptcy. Managing creditors' expectations and entitlements is a recognisable characteristic of what bankruptcy is, and what it seeks to do. This focus on creditors' collective rights in insolvency is identifiable from as early as the Roman Republic, and whereas the Roman law of the XII Tables may at first glance seem too distant and primitive to warrant a place in bankruptcy's narrative, on closer examination it is a fitting beginning. 91

The certainty of tax in insolvency: Where does the ATO fit? – *Catherine Brown*, *Colin Anderson* and *David Morrison*

There are several ways that the Commissioner of Taxation may indirectly obtain priority over unsecured creditors. This is contrary to the principle of pari passu, a principle endorsed by the 1988 Harmer Report as one that is a fundamental objective of the law of insolvency. As the law and practice of Australia's taxation regime evolves, the law is being drafted in a manner that is inconsistent with the principle of pari passu. The natural consequence of this development is that it places at risk the capacity of corporate and bankruptcy laws to coexist and cooperate with taxation laws. This article posits that undermining the consistency of Commonwealth legislative objectives is undesirable. The authors suggest that one means of addressing the inconsistency is to examine whether there is a clearly aligned theoretical basis for the development of these areas of law and the extent that alignment addresses these inconsistencies. This forms the basis for the recommendations made around such inconsistencies using statutory priorities as an exemplar. 108

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