

JOURNAL OF BANKING AND FINANCE LAW AND PRACTICE

Volume 23, Number 3

September 2012

ARTICLES

New bottle for old wine? The characterisation of PPSA security interests – *Diccon Loxton*

In Australia, the Personal Properties Securities Act 2009 (Cth) (PPSA) became effective on 30 January 2012. It follows similar legislation in Canada and New Zealand, and in turn might be the inspiration for similar changes elsewhere. The PPSA sweeps up a wide variety of transactions that are treated as security interests on a substantive test, or simply “deemed” to be security interests. In most ways it treats all such transactions alike so that differences between traditional forms become irrelevant. This has led overseas courts and commentators to treat the legislation as replacing the traditional forms of transaction with one new form of statutory security interest, at least in some respects. This article examines whether Australian courts are likely to follow that view. It lists the circumstances in which it may still be relevant to enquire into the attributes of a particular PPSA security interest. Some of those circumstances or the underlying concerns are peculiar to the Australian legislation. The article suggests it is unnecessary to give PPSA security interests a unitary characterisation. It is more appropriate and consistent to retain flexibility by recognising that the PPSA covers a wide variety of interests that retain their character, or at least their different attributes. It suggests Australian courts may come to a different conclusion from overseas commentators if they proceed by closely analysing the actual words of the Australian statute and consider the differences. 163

The duties of bank customers: W(h)ither Tai Hing? – *Christopher Hare*

For almost a century now, the common law (in almost every Commonwealth jurisdiction) has expected little of bank customers in terms of operating and monitoring their bank accounts so as to minimise the risk of fraudulent or unauthorised account transactions. This position was confirmed by the Privy Council in the seminal case of *Tai Hing Cotton Mill Ltd v Liu Chong Hing Bank Ltd* [1986] AC 80. This article’s central thesis is that the position established in *Tai Hing* is no longer tenable: not only is the decision itself flawed in conceptual, historical and economic terms, but its application leads to inconsistent results. Accordingly, this article proposes a direct reversal of *Tai Hing* by the imposition of enforceable duties on bank customers or, at the very least, provides encouragement to courts to have recourse to other doctrines (such as estoppel, contributory negligence or vicarious liability) to circumvent the worst excesses of *Tai Hing*. 182

Cheques and conversion: Five different categories of fraud – *Dr Vicky Priskich*

Cheque fraud can take a variety of forms. This article classifies cheque fraud into five different categories for the purpose of analysing the legal issues arising in an action for conversion. Leading authorities are examined. 214

The High Court’s decision in Equuscorp: Standing clear of the poisoned fruit
– *Mathew Briggs and Kanaga Dharmananda*

The High Court of Australia’s decision in *Equuscorp Pty Ltd v Haxton; Equuscorp Pty Ltd v Bassat; Equuscorp Pty Ltd v Cunningham’s Warehouse Sales Pty Ltd* (2012) 86 ALJR 296 has serious implications for lenders or assignees taking on loans that form part of a broader investment scheme. The High Court found that loan agreements were part of a scheme, in breach of the Companies Code 1982 (NSW). This resulted in the assignee being left without a cause of action against borrowers owing money under the loan agreements. This article considers the risk to lenders of being precluded by the actions of a promoter from recovering the debt, the uncertainty as to the circumstances when there will be preclusions, and identifies steps that lenders can take to minimise the risk of being left to bear the losses flowing from the tainted scheme. 225

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