

BUILDING AND CONSTRUCTION LAW JOURNAL

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PPSA and construction law – *Matthew Broderick*

The Personal Property Securities Act 2009 (Cth) came into operation on 30 January 2012. Undoubtedly, it will impact upon the building and construction industry because of its new registration requirements, enforcement provisions, and the recasting of the law of personal property. It will also influence the practice of construction law, the financing of construction projects, retention of title claims, retention funds, and the settlement of building disputes and litigation. This article addresses the potential changes invoked by the Act, areas of concern, and other topical issues. 298

Common exclusions to liability caps in construction contracts: Gross negligence, fraud and wilful misconduct – *Roman Rozenberg and Cameron Ross*

The terms “wilful misconduct”, “gross negligence”, and “fraud” are commonly used by parties to construction contracts to describe the type of conduct that is usually excluded from limitation of liability clauses. This article considers the common law interpretation of these terms, recognising that while the concepts of wilful misconduct and fraud are reasonably well understood by Australian courts, the meaning of “gross negligence” is unsettled and susceptible to differing interpretations. 311

Subsequent purchasers and defective buildings: Making a case for greater clarity in Australia – *Rami Marginean*

This article is concerned with cases where subsequent purchasers of buildings suffer pure economic loss as a result of latent defects in the property caused by the negligence of the original builder. It provides an overview of the main common law developments in this area in Australia and England, and expresses some criticism of the current Australian approach. The final part of the article briefly discusses some protection mechanisms that may be available to subsequent purchasers. 315

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