

JOURNAL OF BANKING AND FINANCE LAW AND PRACTICE

Volume 24, Number 4

December 2013

ARTICLES

Tracing value and the value of tracing: Three puzzles for the banking lawyer
– *Christopher Hare*

The divide between common law and equity has hampered the development of a coherent set of tracing principles, creating unnecessary confusion and complexity when a plaintiff seeks to trace the value in his property through even the most commonplace types of banking transaction. The judiciary has been surprisingly reticent to embrace the notion of a unitary set of tracing principles, despite long-standing and increasingly overwhelming academic support for such a development. Placed firmly within the tradition of such calls for reform, this article highlights (and criticises) three areas in which the inconsistency and internal incoherence of the current tracing principles has created “puzzles” for the banking lawyer. In particular, this article contends that common law tracing (like its equitable counterpart) should be capable of identifying value in funds that have been transferred to the recipient electronically or have passed through a clearing system (regardless of the precise payment mechanism employed). Furthermore, whilst payments made to discharge overdrafts or other liabilities should generally remain untraceable, this article argues that the nature, function and policy justifications underlying tracing militate in favour of a limited exception to that basic proposition.

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The legal status of online currencies: Are Bitcoins the future? – *Rhys Bollen*

Bitcoin has been described as a decentralised virtual currency. Virtual currencies are a form of money and a payment system. However, being a decentralised system, there is no central issuer, authority or register-keeper. Bitcoin is unique, not because it is a virtual currency, but because it is a decentralized non-issued electronic currency. Regulation of virtual currencies is at a very early stage. Most regulatory regimes are not well designed to cater for this type of payment system. However, creating and protecting trust is a crucial issue in the regulation and public acceptance of new payment services. It is generally accepted that adequate regulation is a key precursor to consumer acceptance of new payment methods, including mobile banking and payments. This article examines the legal and regulatory status of virtual currencies.

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FORUM ARTICLE

Crowdfunding: Recent international developments and its compatibility with Australia’s existing regulatory framework – *Matthew Vitale*

Crowdfunding has recently emerged as an alternative means of raising capital. This has the potential to challenge the existing regulatory framework for capital raisings and securities regulation, and has resulted in different responses from regulators in the European Union and the United States. However, there has been only a limited response

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| by Australian regulators to this emerging industry. This article considers the emergence of crowdfunding through the convergence of the two distinct concepts of crowdsourcing and microfinance. The various crowdfunding models that have emerged are considered and the Australian regulatory issues associated with each are identified. Finally, an assessment of whether Australia's current regulatory framework is compatible with crowdfunding is made, with recommendations for regulatory action. | 300 |
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