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EDITORIAL 3

ARTICLES

No more Mr Nice Guy: The implied duty to cooperate and remedying another party's mistaken breach – Matthew Lees

The limits of the implied duty to cooperate are starkly illustrated by two appeal court decisions: *Wolfe v Permanent Custodians Ltd* [2013] VSCA 331 and *Famestock Pty Ltd v Body Corporate for No 9 Port Douglas Road Community Title Scheme 24368* [2013] QCA 354. In both cases, one party could have assisted to remedy the consequences of a mistaken breach of contract by the other party. Despite the grave consequences, both courts did not wish to impose a positive duty (or a duty to be “nice”) in relation to something that was ultimately the other (mistaken) party’s responsibility under the contract. However, the courts were also reluctant to go so far as saying that no positive action was required in this situation, and did not endorse a dispositive principle. As such, the limits of the implied duty will remain contested. 7

Corporate law reform in Australia: An analysis of the influence of ownership structures and corporate failure – Vivien Chen, Ian Ramsay and Michelle Welsh

Recent studies that have measured the levels of shareholder protection in Australia and compared them internationally have highlighted the relative strength of Australian shareholder protection. However, the question as to why this is so remains unanswered. Theories suggest that the development of corporate law is influenced by corporate ownership structures. Several scholars argue that this can occur when corporate ownership structures provide the means for interest groups to exercise political power and thereby influence law reform or when inefficiencies arising from corporate ownership structures result in changes to corporate law. This study seeks to determine whether there is any evidence of corporate ownership structures contributing to the development of Australian corporate law. The factors that have led to changes in Australian corporate law over time are examined, first by drawing from the leximetric data that measures changes in the strength of shareholder protection in Australia from 1970 to 2010, and secondly by examining three significant reforms occurring over a period of three decades. The results of this study provide little support for the proposition that corporate ownership structures have influenced the development of Australian corporate law. Several possible alternative explanations for the shape corporate law in Australia are suggested. 18

Section 92 of the Australian Constitution: The next phase – Anthony Gray

This article considers the possible application of s 92 of the *Constitution* to terms of contracts. While traditionally s 92 has been applied to legislative provisions, the article considers, in principle, its possible application to provisions of contracts that might inhibit the free flow of goods across interstate borders. In doing so, larger questions are asked about the current test for considering whether an impugned measure is consistent with s 92, and a comparison is made with equivalent provisions in the United States and European Union. 35

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