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ARTICLES

The Law of Penalties and the Question of Breach – Anthony Gray

This article revisits the law of penalties in the light of recent pronouncements by the High Court of Australia and the United Kingdom Supreme Court. The High Court substantially departed from settled principle in this area in its *Andrews* decision, and its most recent decision in *Paciocco* continues to reflect this departure. The author has been critical of the High Court decision in *Andrews*, and nothing in *Paciocco* causes reconsideration of this position. The façade of unanimity in *Andrews* regarding whether the penalties doctrine belongs in the context of a breach of contract has apparently cracked in *Paciocco*, however, with different positions evident. The author agrees with the United Kingdom Supreme Court’s criticisms of the *Andrews* decision. While a prime objective of the law of contract is to provide certainty to those dealing in contracts, demonstrably the High Court decisions in *Andrews* and *Paciocco* do not provide this certainty. The policy underlying the High Court’s reform in this area remains a mystery, particularly when existing doctrine already exists elsewhere, in particular statutory and common law notions of unconscionability, if it is the case that the High Court sought more scope to deal with “unfairness” in contracts. There was no need for it to enjoin the penalties doctrine to achieve this. One can only guess at what the policy rationale was, because none was articulated, beyond a claim that this was the historical English position, a claim substantially refuted by the United Kingdom Supreme Court.

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Overseas Buybacks on the ASX: Disclosure Requirements and Signalling Impact – Mark Holub and Jason Mitchell

This article investigates the extent to which disclosure requirements, price reaction and the signalling impact of overseas buybacks are different to ASX domestic buybacks. It finds that overseas buybacks in some cases are not required to, and often do not, provide the same level and quality of formal disclosure as domestic buybacks. This reduced disclosure of overseas buybacks is particularly evident for the initial buyback announcement. This article shows that the immediate market response to both initial and final buyback notifications varies depending on whether or not the buyback is conducted overseas. Moreover, identification of overseas buybacks can be used as a signalling mechanism having a distinct and more negative longer-term abnormal price reaction. This variation in initial market reaction as well as the longer term signalling properties confirms the inherent value of such information and provides support for the overseas nature of the buyback to be disclosed.

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