

INSOLVENCY LAW JOURNAL

Volume 27, Number 2

2019

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The Impact of Retention of Title Security on Unfair Preference Actions – *Stewart Maiden QC and Brendon Watkins*

A right to retain title in goods supplied under a trading account constitutes security for the purposes of the unfair preference provisions found in s588FA of the *Corporations Act 2001* (Cth). This article addresses five questions concerning timing, valuation and procedure that arise from the interaction of retention of title and the unfair preference regime, the answers to which have not been clearly articulated in the authorities to date. 57

Australia’s Safe Harbour Law – A Better Outcome for Restructuring and Entrepreneurship? – *Craig Edwards*

On 19 September 2017, s 588GA of the *Corporations Act 2001* (Cth) became law providing company directors a “safe harbour” from liability for trading while insolvent in certain circumstances. The policy behind the safe harbour law seeks to promote a culture of entrepreneurship and restructuring. Whether the safe harbour law will have the desired effect is a critical issue because Australia’s insolvency laws are among the strictest in the world. Directors of companies in the zone of insolvency attempting a restructure face the prospect of being liable for trading while insolvent under the current strict liability provisions if a restructure does not succeed. This article analyses how the safe harbour law may interact with other laws, in particular directors’ duties under ss 180–181 of the *Corporations Act*, tax laws and disclosure laws for publicly listed companies. It is argued that while the new law is a step in the right direction, further reforms will be necessary to achieve a culture of restructuring and entrepreneurship in Australia. 66

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