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ARTICLES

Market-based Causation after TPT Patrol Pty Ltd v Myer Holdings Ltd – *Corey Byrne and Michael Legg*

The much anticipated decision of Justice Beach in *TPT Patrol Pty Ltd v Myer Holdings Ltd* is the first judgment in a shareholder class action in Australia. However, to the frustration of many class action participants who seek certainty in this area of law, despite finding that the theory of market-based causation is applicable in Australia, Beach J concluded that the group member shareholders had suffered no loss, leaving many questions unresolved. This article examines the contentious questions of causation and loss in shareholder class actions and considers the extent to which Beach J’s judgment in Myer resolved them. 295

Delegation by Superannuation Fund Trustees – *M Scott Donald*

The trustee is the fulcrum of a superannuation fund, responsible and ultimately accountable for its prudent and proper administration. However, the need for a wide range of specialist skills inspires most trustees to retain third parties to assist them. Both the general law and the legislative and regulatory regimes curtail this, restricting the types of decisions that can be delegated to others. The law also has things to say about the way decisions within the trustee are made, given that most are incorporated entities. The analysis in this article demonstrates that it is crucial to distinguish these “delegations”, made within the trustee as a matter of internal organisation and governance and which derive from corporations law, from the first type of delegations, which are governed by trust law. It also highlights the way in which these rules affect the matrix of accountabilities in and around two key aspects of the administration of a modern superannuation fund: the investment of trust assets and the determination of insurance claims made by members. 319

Competition and Efficiency at the Mercy of Equality: Balancing the Equal Opportunity Principle and Maintaining a Competitive and Efficient Market – *Vanessa Murphy*

Australia’s takeovers regime reflects a set of statutory purposes largely based on the Eggleston Principles. While each of these purposes has an important and relevant place in takeovers regulation, there is tension in the way that the *Corporations Act 2001* (Cth) addresses the interaction between providing shareholders with an equal opportunity to participate in the benefits of a significant transaction, and the need to have change of control transactions taking place in an efficient and competitive market. The regulatory landscape currently addresses this tension by preferring shareholder interests over market efficiency. This is an approach that should be reconsidered. 341

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