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In the Interests of Commercial Certainty – Is It Time to Reconsider the Application of Key Provisions of the Australian Consumer Law? – *M Scott KC*

This article raises a question for debate. Does the intrusion of ss 18 and 21 of the Australian Consumer Law into complex commercial settings sit uneasily with the factors which shaped commercial law over two centuries? Put another way, are these provisions reflective of norms of conduct or more accurately seen as being discordant with recognised international norms such as party autonomy and freedom of contract? 184

The Misuse of Discrete Choice Experiment Surveys in Product Liability Cases – *Christopher Pleatsikas*

In at least two recent vehicle product liability cases applicant experts have utilised analyses based on so-called Discrete Choice Experiments (DCE) as evidence of harm to buyers of allegedly defective products. The harm is expressed in terms of the “reduction in value” – in other words, essentially a claimed reduction in the equilibrium market price at the point of initial sale – attributable to product defects. This article discusses certain foundational issues that underpin the DCE methodology and its application to estimating damages associated with product defects. The author demonstrates that there are fundamental economic and survey design problems that are inherent in the DCE methodology when used for this purpose. These problems are so profound that the methodology does not provide reliable, economically sound estimates of “reduction in value” attributable to product defects. 193

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