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Reviewing the Citibank securitisation case: Did it really challenge the integrity of equity? – *Helen M Dervan*

Despite the global financial crisis, securitisation remains an important form of corporate financing. Following the English decision in *Citibank NA v QVT Financial LP*, there has been academic criticism of these types of arrangements on the basis that they reduce the trustee's fiduciary burden, cut beneficiaries' rights to vanishing point and even challenge the integrity of equity. This article argues that the trustee in Citibank retained clear discretions and sufficient fiduciary burden to justify the recognition of the arrangement as a valid trust. It contends that, provided trustees of commercial trusts retain some clear discretions that must be exercised in the beneficiaries' interests, they should be recognised as valid. Where decision-making within a trust is diffused through the granting of powers, it argues that the pertinent issue is whether the equitable principles regulating the exercise of powers are adequate given the commercial context in which these trusts are being used. 279

Reforming insolvent trading to encourage restructuring: Safe harbour or sleepy hollows? – *Jason Harris*

The threat of personal liability for insolvent trading is often cited as a limitation on Australia developing a thriving culture of business restructuring and turnaround. Despite several prior calls from the business community to reform Australia's draconian insolvent trading laws, previous governments have resisted the push for law reform. The current government has agreed to adopt the Productivity Commission's recommendations from 2015 to introduce a new safe harbour defence for company directors during a period of restructuring outside of formal insolvency. This article critically examines the Government's proposed models for potential reform (Model A and Model B) and compares Australian law on this issue with director liability regimes operating in England and New Zealand, which have (in the author's view) provisions that strike an appropriate balance between managerial risk-taking and creditor protection. This article argues that the new safe harbour defence has the potential to be a sleepy hollow if not drafted carefully. 294

Minimising the risk of shadow directorship: Advice for distressed debt investors – *Adam Watterson*

While the courts have not yet dealt with a test case regarding the shadow directorship of an investment fund, prudent funds should no doubt have these risks in the back of their minds when engaging in their investment activities. In order to minimise potential liability as a shadow director, funds that seek to implement aggressive restructures of insolvent or financially distressed companies should be aware of the case law surrounding shadow directorship, and mitigate their behaviours that may potentially generate liability as a shadow director of a target company. 310

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