

# JOURNAL OF BANKING AND FINANCE LAW AND PRACTICE

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**Bargain, value and notice under the Corporations Act: The three elements of secured credit** – *John Loxton*

The *Corporations Act 2001* (Cth) plays a central role in corporate securities and insolvency law in Australia. The purpose of this article will be to explore its role against the backdrop of general principle. It will focus on the three concepts of bargain, value and notice which have been adopted by Roy Goode and others as justifications, wholly or in part, for the law of secured credit and insolvency as it stands. After exploring some of the philosophies of insolvency (or bankruptcy) law which consider the role of the pre-insolvency bargain, two central questions will be addressed. To what extent do bargain, value and notice explain the current law of securities and insolvency as reflected in the *Corporations Act*? To what extent do bargain, value and notice actually justify the advantages secured creditors enjoy over unsecured creditors in an insolvency? It will be demonstrated that bargain, value and notice provide the major theme in the *Corporations Act* and other themes, such as the redistributive aspect of insolvency, represent minor themes only, although still significant. In addressing the second question, the views of Vanessa Finch will be considered. Her views provide some counterbalance to the views of Goode because Finch expresses doubts that bargain, value and notice provide sufficient justification for the privileged position secured creditors enjoy in an insolvency. Finally, the article will address an area where the author believes the *Corporations Act* can be judged to be deficient using bargain, value and notice as the yardsticks, namely its failure to regulate the all monies title retention arrangement. ....

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**A “duty to lend reasonably” – new terror for lenders in a consumer’s world?** – *Lee Aitken*

The intertwined problems of “asset lending” and economic duress in the granting of a finance facility, or the taking of new security, by the lender are likely to become increasingly important as the property market declines and those who entered it late find they face negative equity and seek to re-arrange their position. The New South Wales Court of Appeal, in two important recent cases, has sent a mixed message with respect to these issues. On the one hand, pure “asset lending” is likely to be stigmatised, particularly if the borrower is disadvantaged, and the asset is the family home. On the other, merely fortifying a weak financial position by requiring extra security will not immediately involve economic duress which affects the position of the lender in any enforcement. The interplay between the two doctrines will require further analysis in the cases. ....

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**A review of the history and operation of international payment systems** – *Rhys Bollen*

In many ways, international payments are similar to domestic payments. They involve a payer using the services of one or more intermediaries to transfer value to a payee. However, they tend to involve a number of additional complexities as a result of the distance between the parties, the different time zones and currencies, and the need for additional intermediaries. This has led to the development of unique payment facilities specially catering for the needs of users of international payments. This article will consider the history of international payments, and their current role and scope. It will describe a number of common retail, wholesale and institutional payment systems and examine their legal structure, before examining the inter-bank infrastructure supporting the international payment system. ....

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