

# JOURNAL OF BANKING AND FINANCE LAW AND PRACTICE

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## ARTICLES

### **The legal nature of international payments – Rhys Bollen**

This article reviews the law of international payments, being payments where at least two of the major players in the payment transaction are in different countries. The law in this area relies heavily on the law of agency and contract. Each institution acts as agent for its customer and within the confines of its customer and inter-bank contracts. Industry and the courts have built on this to establish the rights and responsibilities of each party to an international payment, and to deal with risk allocation, payment completion and finality issues. This article reviews the key cases on payment completion and finality, and its associated issue of revocation or countermand. The article then looks at the practical implications for some common business models using international payments. .... 85

### **Expanding the equitable doctrine of wife's special equity – Angela Stavrianou**

The equitable doctrine of wife's special equity has been criticised by many courts and commentators as being sexist, outdated, and both too narrow and too broad, by protecting many wives who are not in need of protection, while failing to protect many other parties having a special vulnerability. This article submits that the current doctrine of wife's special equity should be extended to protect a broader group of plaintiffs. It contends that the basis of the doctrine is the trust and confidence operating between people in domestic relationships, and as such should not be restricted to the relationship of husband and wife. The proposed solution focuses on the nature, rather than type of relationship. Specifically, it considers whether the surety and debtor are in a relationship characterised by a high level of trust and confidence, and the lender's knowledge of this relationship. .... 105

### **Crimes at ATMs: An examination of the redress mechanism for ATM users – Kalavathy Maruthavanar**

This article examines the legal redress available to ATM patrons who are physically hurt by criminals in the vicinity of an ATM. Historically, in Malaysia such crimes are regarded as crimes against the State and there is no record of any civil action against the bank. The main hurdle a civil litigant faces is compliance with the rigours of the common law principles of occupiers' liability; which impose various standards of care for different entrants to the premises. The only jurisdiction that has addressed civil redress for victimised ATM patrons is the United States. The United States courts have used the principles of premises liability and formulated three tests to examine this issue. Generally the trends of United States court decisions have not been in favour of the victim. As a result, certain states have enacted banking codes to provide redress to patrons attacked at ATMs which do not adhere to the safety standards imposed by the code. The author suggests similar legislative intervention in Malaysia to protect ATM patrons. .... 123

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Editorial inquiries:  
**Tel: (02) 8587 7000**

**HEAD OFFICE**  
100 Harris Street PYRMONT NSW 2009  
Tel: (02) 8587 7000 Fax: (02) 8587 7100



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