

JOURNAL OF BANKING AND FINANCE LAW AND PRACTICE

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ARTICLES

Personal property securities reform: Implications for existing Australian finance laws – *Shaneel Mudaliar*

This article critically discusses the provisions and obligations of the proposed *Personal Property Securities Bill 2008* (Cth) and its impact on existing Australian finance laws, particularly the extent to which existing laws may be overturned and/or supplemented. The article defines personal property securities and discusses the current requirements for registering security interests in personal property, which vary depending on the type of personal property, where it is located and whether the property belongs to an individual or a corporation. The proposed Bill will apply to all securities, regardless of form or who the security provider may be, and intends to improve and minimise inconsistencies and complexities that currently exist in Australia. It will introduce a personal property securities register to bring together all personal property securities information in the one place. This article also includes practical analyses and comparisons with other jurisdictions which have successfully implemented personal property securities reforms.

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Knowledge and neglect in asset-based lending: When is it unconscionable or unjust to lend to a borrower who cannot repay? – *Dr Jeannie Marie Paterson*

There are a number of cases in which loans made to borrowers unable to conserve their own interests and secured on the family home have been challenged as unconscionable or unjust. One major hurdle for borrowers in such cases is that lenders have no knowledge of the borrowers' vulnerability. The problem arises because many such cases are arranged through brokers and the lenders have no direct dealings with the borrowers. This article considers whether and when the relevant degree of knowledge for the purposes of unconscionable dealing and other related doctrines may be attributed to lenders on the basis of information contained in loan applications. It further argues that these cases are best understood as raising an issue of "transactional neglect" on the part of lenders.

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The role of reputation in banking – *Ross P Buckley and Justen Nixon*

This article examines the fundamental importance of reputation generally to banks and considers its role specifically in letter of credit transactions. The need to maintain reputation acts as an incentive for banks to keep their promises. Specifically it means banks are very careful in the selection of customers for whom they will issue letters of credit, and this underpins the efficacy of these instruments. The historical examples of the Knights Templar as bankers in the 12th and 13th centuries and of the Maghribis as traders in the 11th century demonstrate the importance of reputation in these contexts. The article concludes that reputation acts as an informal enforcement mechanism in situations where formal institutions fail to enforce rights, or do so inefficiently.

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