

TRADE PRACTICES LAW JOURNAL

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ARTICLES

Multiple wrongdoers: One for the money – or something different? – *Nicholas Bender*

In actions for damages under s 82 IV of the *Trade Practices Act 1974* (Cth) each of several wrongdoers is often liable for the plaintiff's entire loss. The Act makes no provision for apportioning damages between contravenors. Defendants, therefore, must cross-claim for contribution against other wrongdoers. In some jurisdictions it is uncertain whether legislation providing for contribution between tortfeasors is available in these actions. If it is not, defendants must seek equitable contribution, which will be ordered on an equal, not just and equitable, basis. Legislative reform is required. CLERP 9, if enacted, will provide a solution by introducing proportionate liability for claims for misleading or deceptive conduct. However, defendants would not be liable beyond their level of responsibility for the plaintiff's loss. Therefore, CLERP 9 shifts the risk of a wrongdoer's impecuniosity from the defendants to the plaintiff. This is undesirable. Apportionment in s 82 claims should be reformed by a national scheme of statutory contribution instead.66

Most favoured nations clauses – bane or boon? – *Sharon Henrick and Catherine Penhallurick*

Most favoured nations clauses pose a dilemma for competition lawyers. The dilemma arises because there is a tension between a buyer's legitimate desire to obtain the lowest available price for an input and the likelihood that a most favoured nations clause will drive up prices by discouraging suppliers from lowering their prices. A recent decision of the Full Court of the Federal Court involving Safeway Stores, and United States case law, provide guidance for legal practitioners who are asked to advise on when a most favoured nations clause may result in a contravention of Pt IV of the *Trade Practices Act 1974* (Cth).78

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