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ARTICLES

The Quincecare Quagmire: Clarifying the Duty in Australian Law – Anna Kretowicz

In the 1988 decision in *Barclays Bank plc v Quincecare*, Steyn J held that a bank has a duty of care to its customers, in both contract and in tort, that it “should refrain from executing an order if and for so long as it was put on inquiry by having reasonable grounds for believing that [a customer’s] order [to pay] was an attempt to misappropriate funds”. Since then, the English and Australian courts have developed the so-called Quincecare duty differently, and not without residual uncertainty. By reference to that case law, this article aims to clarify the state of the law and propose a principled basis for the source and content of a bank’s duty to protect its customers from fraudulent transactions. 39

Caught in the Act: The Case for Organisational Corporate Criminal Liability for Banks and Financial Institutions – Gareth Kerr

Events like the Global Financial Crisis, the bank bill swap reference rate scandal and the Royal Commission into Misconduct in Banking, Superannuation and Financial Services have brought into sharp focus the ability to criminally punish banks and financial institutions for corporate wrongdoing. This article explores the methods by which criminal liability can currently be imposed on a bank or financial institution and ultimately proposes that the theory of organisational liability is the most appropriate method through which such liability should be imposed. Such an approach is intended to finally hold banks and financial institutions accountable for their criminal conduct. 52

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