

# AUSTRALIAN BUSINESS LAW REVIEW

Volume 50, Number 6

2023

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## ARTICLES

### **Hiring Agreements and the PPSA: Gold Valley Iron Pty Ltd (in liq) v OPS Screening and Crushing Equipment Pty Ltd** – *Anthony Duggan*

*Gold Valley Iron Pty Ltd (in liq) v OPS Screening and Crushing Equipment Pty Ltd* concerned the application of the *Personal Property Securities Act 2009* (Cth) to a series of agreements for the hire of mining equipment. The case turned mainly on the question whether the transactions in substance secured payment or performance of an obligation. The Western Australian Court of Appeal held that they did, predominantly on the basis that the agreements gave the hirer an option to purchase the goods coupled with financial incentives to exercise the option. This article provides a critical analysis of the judgments in the case, arguing that these features of the transactions were insufficient to justify the court’s conclusion. In the course of the analysis, the article explores the relationship between conditional sale (retention of title) arrangements, hire-purchase agreements and leases, which the court in the Gold Valley Iron case appears to have either glossed over or misunderstood. .... 388

### **Power Imbalance in the Sharing Economy Platform Technologies: Potential Solutions from Contract Law** – *Juan Diaz-Granados and Benedict Sheehy*

The so-called “Sharing Economy”, a business model based on the now ubiquitous technology of digital platforms, is a complex phenomenon from many perspectives, including the regulatory perspective. Companies such as Uber, Airbnb, and Menulog often do not fit into traditional legal categories and regulatory frameworks, creating both legal uncertainty and a power imbalance that leaves weaker parties at the mercy of the stronger actors. This article proposes addressing this power imbalance by exploring the potential offered by contract law. Specifically, it argues with examples how a contract approach using a combination of general principles, specific doctrines and rules, implied terms, and general consumer law goes a significant distance to solving the categorisation problem and redressing the power imbalance that pervades the “Sharing Economy” businesses. The article demonstrates how contract law can be used as an overarching tool to address the existing power imbalance without legislative or regulatory reform, achieving policies aimed at protecting the weaker actors of this contract-based, technology-driven model. ... 398

### **The ESG Proposition for Start-ups and Venture Capitalists** – *Laryssa Perkins*

Environmental, social and governance (ESG) themes permeate every business. In some way, every company affects, and is affected by, the environment; engages with a broad, diverse range of stakeholders to operate and deliver its goods and services; and, is a legal construct that requires governance. With increasing expectations by regulators, investors and society at large on businesses to do their part to address ESG issues, this article considers the scope by which directors of Australian companies can consider and respond

to ESG themes and then how early-stage companies and venture capitalists can be and should aspire to be at the forefront of responding to ESG challenges. .... 421

BOOK REVIEW

**Learning to Litigate: A Guide for Young Lawyers, by Neil Williams SC and Alison Hammond** – *Reviewed by Abinayan Thillainadarajah* ..... 429

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