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THE DEFAULTING EXECUTOR

Hon Peter W Young AO QC

An executor who fails to do his or her duty in a proper and timely manner is a nuisance to everyone. This article, which is the text of a speech given to a seminar held by the Law

Society of South Australia in November 2013, highlights the problems, and notes how solicitors and the judiciary might deal with them.	869
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EQUITY’S OBLIGATION TO PERFORM: EFFICIENT BREACH AND THE
INADEQUACY OF COMMON LAW DAMAGES

Samuel Kang and James Nguyen

The theory of efficient breach holds that a promisor is free to breach a contract provided the promisor pays damages. This consequentialist approach to contract law ignores or downplays the availability of equitable remedies including specific performance, injunction and account of profits. This article explores equity’s role in the operation of the common law of Australia and the United States in providing contracting parties with recourse to compel performance where a counterparty seeks to breach. While all equitable remedies are discretionary, in a wide range of circumstances, these remedies amount to an obligation to perform in direct contradiction to the theory of efficient breach.	874
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