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Value judgment in company law cases – *R I Barrett*

Under many provisions of modern corporations legislation, courts are required to exercise discretions and to apply evaluative criteria. This article explores some of the ways in which they have approached such tasks. 219

Corporate law, the courts and corporate personality – *J C Campbell*

Courts perform a variety of different tasks in administering the law that governs corporations. One group of tasks involves fitting the law that governs corporations into the rest of the fabric of the law. This involves both fitting corporations law into the general law, and deciding whether particular statutory provisions apply to corporations. In doing this, courts construe the statutes that govern the operation of courts using principles of interpretation that apply to all statutes. Another important group of tasks involves rescuing corporations from administrative messes. Consideration of the detail of the tasks that courts perform concerning corporations casts light on the sort of juristic entity a corporation is. 227

Independence of directors affiliated with substantial shareholders: Issues of law and corporate governance – *Pamela Hanrahan* and *Tim Bednall*

Lively debate continues over the impact on corporate performance of rules that require or encourage a preponderance of independent directors on listed entities' boards. In Australia, the definition of independence adopted by the Australian Securities Exchange (ASX) Corporate Governance Council is concerned both with independence from management, and independence from substantial shareholders. About one-quarter of ASX Top 200 entities currently have directors affiliated with substantial shareholders on their boards. This article examines the development of the definition of independence and the possible rationales for limiting the number of these directors of listed entities. It argues that, given the various strategies adopted by corporate law to manage any conflict that may arise between a director's interest resulting from their affiliation and their duty to the entity, protecting against the risk of partisan behaviour is not sufficient justification for treating directors affiliated with substantial shareholders as not independent in all cases. To do so has a chilling effect on participation as directors by people who might bring to the board table the focus and commitment of those with "skin-in-the-game". However, the article does propose an alternative rationale, based on the dynamics of corporate decision-making, for continuing to treat directors affiliated with controlling shareholders as not independent in this context. 239

How should regulators deal with entrenched company executives? – *Liam Brynes* and *Larelle Chapple*

The regulatory framework for corporate governance, both in Australia and internationally, shifts between rules based regimes and principles based approach. The rules based regimes are typified by legislation that imposes mandated compliance based rules, such as the *Sarbanes-Oxley Act of 2002* 15 USC § 7201. Other regimes, such as the *Corporate Law Economic Reform Program (Audit and Disclosure) Act 2004* (Cth) (CLERP 9) and the Australian Securities Exchange Corporate Governance Council's principles, have opted for a disclosure approach. This article examines these approaches in the context of the non-binding vote rule, which arguably combines aspects of both. The study's methodology empirically considers evidence relating to actual voting patterns as well as case study examples of the non-binding vote's effectiveness. Significantly, the authors' analyses show that from its inception, the non-binding vote was effective in motivating management to change the remuneration package to one they perceived as more acceptable to shareholders and that the non-binding vote is an effective regime to manage chief executive officer remuneration (and by extension) executive remuneration. 266