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(articles and book review included in this part are linked to the LexisNexis platform)

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Articles

Conflicts and coherence in the charities sphere: Would a conflict by any other name proscribe the same?

— *Rosemary Teele Langford*

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Proscriptions on conflicts of interest have long been a core component of governance regimes. In the charities sphere such proscriptions arise from a number of sources, including general law, statute and governance standards articulated by the regulator. Unfortunately the wording of relevant conflicts duties varies extensively, giving rise to acute incoherence and uncertainty. This article undertakes detailed critical analysis of the myriad conflicts duties in order to provide certainty and comprehensive guidance. This resolution is relevant beyond the charitable sphere given the multitude of ways in which conflicts proscriptions are expressed in other governance contexts.

Tracing and associated claims in Australian law

— *Pauline Ridge*

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This article considers how the law of tracing and associated claims (that is, claims that rely sometimes or always upon tracing to establish an element of the claim) should be understood in Australia in light of the High Court's jurisprudence, and questions the acceptance by Australian lower courts of the English model represented by *Foskett v McKeown*. It first discusses the four most relevant High Court authorities. Two modes of identifying trust property and four distinct ways in which an entitlement to property, leading to a proprietary remedy, can be claimed are identified. It then evaluates within the context of Australian law five propositions that underlie the English model. It argues that almost all of these propositions are inconsistent with Australia's nascent law of tracing and associated claims and are not defensible on principled grounds. This clears the way for principled development of the Australian law.

Deconstructing the equitable doctrine of undue influence: Insights from a genealogy

— *Robyn Honey*

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The state of the law of undue influence has become a cause for despair. Professor Bigwood has declared that it is now 'virtually impossible ... to provide a universally stable and agreeable conceptual account of the equitable jurisdiction to relieve against "undue influence"'. This article looks to the doctrine's origin for a foothold amidst this uncertainty, on the basis that some knowledge about the 'conceptual roots' of undue influence might be gleaned from a close and careful examination of the cases in which it was formed and those that informed it in its inception. To this end, it presents a 'genealogy' of the doctrine of undue influence *inter vivos*, which uses as its starting points the seminal cases of *Huguenin v Baseley* and *Allcard v Skinner*. The genealogy reveals that, in fact, undue

influence had no single point of origin; it was formed by ‘drawing together’ several discrete lines of case law, each of which had its own character and justificatory bases. For this reason, it is submitted that attempts to understand undue influence by reducing it — such as, the pursuit of a single underlying (or overarching) rationale and efforts to isolate, or pare it back to, a ‘core’ principle — are misconceived. It is contended that a pluralistic account of undue influence would have greater fidelity to its several origins. Thus, it might be preferable to abandon the struggle to hold this doctrine together and instead allow to ‘fall apart’, so that its constituents can be reformed within the architecture of 21st century private law.

The modern doctrine of relief against forfeiture: Equity in flux?

— *William Gummow*

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Any assumption that the jurisdiction of Equity to relieve against forfeiture was primarily, if not exclusively, concerned with leases and mortgages has been challenged since the speech of Lord Wilberforce in *Shiloh Spinners Ltd v Harding* in 1973. The subsequent decisions in England and Australia have re-characterised the Equity jurisdiction. However, the decisions display tension between the selection as the starting point the need for ‘commercial certainty’ and, on the other hand, the alleviation by Equity of strict application of rules of law.

Book Review

Company Directors’ Duties and Conflicts of Interest by
Rosemary Teele Langford

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