

# Journal of Equity (JOE)

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*(editors' acknowledgement and thanks, articles and book review included in this part are linked to the LexisNexis platform)*

### CONTENTS

**Editors' Acknowledgement and Thanks** 239

#### Articles

[Confronting cryptomania: Can equity tame the blockchain?](#)  
— *Kelvin FK Low* 240

The concept of a blockchain was pioneered by Satoshi Nakamoto in his white paper on Bitcoin in 2008, igniting cryptomania by 2013. Despite growing skepticism, blockchain technology continues to be proposed for use in a wide range of activities implicating the law ranging from inter-bank transfers to land registries. The myth of perfect or near perfect security that surrounded early euphoria over the blockchain has transitioned to an invidious fable of improved security. Although many of the risks associated with blockchains are thought to be well-known, a deeper understanding of the role of cryptography underlying the technology is necessary to explode the fiction, which is invidious precisely because of its apparent plausibility. This article also examines the often overlooked implications of blockchain registries to traditional judicial remedies. Most obviously, rectification is effectively neutered but blockchain registries will also blunt other judicial remedies such as specific performance in relation to assets so recorded. Even litigation unrelated to blockchain assets will be implicated so long as they are required to be seized to satisfy a judgment debt. This article will thus also attempt to examine how the courts may respond to the inadvertent and unplanned arms reduction within the judicial armoury. Might the courts' response lie in equity's ancient jurisdiction in personam, in which orders are made directly against the defendant's person and compliance assured through judicial coercion? The extent to which equity's ancient in personam jurisdiction can ameliorate any inadvertent dulling of the judicial armoury will be considered as well as the limitations of this jurisdiction.

[Equitable property and the law of the horse: Assignment, intermediated securities, and data trusts](#)  
— *Nicholas A Tiverios and Michael JR Crawford* 272

From mortgages and floating charges to asset securitisation and intermediated securities, equity has, for several hundred years, enhanced autonomy by allowing people to raise credit and deal with assets and rights in ways not possible at common law. Given the inherently modular and distinctly 'second order' nature of equitable property, there is no analytical reason why equity will not be able to continue to allow parties to raise credit effectively and efficiently with either material or dematerialised 'assets'. This thesis is, however, subject to one important caveat: the principles of equitable property have an analytical structure which circumscribes how they can be deployed. In short, there are only so many

moves that the principles of equitable property can make. This article argues that equitable assignment and intermediated securities are two examples of innovations where the structure of equitable property allows commercial parties to achieve desirable outcomes that could not be accommodated by the architecture of the common law. However, equity is not endlessly flexible, nor is it capable of achieving any socially desirable end. Accordingly, we argue that the rules of equitable property provide an inelegant solution to the problems that purported trusts over data seek to solve.

### Algorithmic contracts and the equitable doctrine of undue influence: Adapting old rules to a new legal landscape

— *Marco Rizzi and Natalie Skead*

301

Recent scholarship engaging with the impact of digital technology on contract law has suggested that practitioners and researchers will need to give proper consideration to the ‘role of equitable remedies in the context of contracts drafted in whole or part in executable code’. More generally, a raft of challenges stem from the increasingly active role digital technologies play in contractual relations. Faced with these challenges, instinct may dictate attempting to tame the technological beast with a variety of regulatory responses spanning the full spectrum of possibilities, from legal requirements to voluntary codes of conduct or standards. While regulatory action may be a priority from a public policy perspective, the seeming trustworthiness of algorithms, and the consequent reliance placed on them by contracting parties carry the inherent risk of lack of autonomy and fully-informed independent decision-making that, in Australia at least, is addressed by equity through the doctrine of undue influence. This article explores whether this traditional doctrine can adapt to operate alongside regulation in dealing with some of the challenges presented by algorithmic contracting. Specifically, it focuses on those contracts where algorithms play an active role not only in the execution, but in the formation of the contract, as these are the ‘algorithmic contracts’ that challenge the very fundamentals of contract law.

### Book Review

Brian Sloan (ed), *Landmark Cases in Succession Law*

327

— *Fiona Burns*