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(editorial, opening address and articles included in this part are linked to the LexisNexis platform)

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As Lord Templeman remarked in *Attorney-General (Hong Kong) v Reid*, ‘bribery is an evil practice which threatens the foundations of any civilised society’. That there is a strict policy against bribes is best reflected in the liability of the fiduciary-bribee as the bribe recipient to hold that bribe on constructive trust for the principal. This article considers other forms of equitable relief that may be available for bribes, in particular relief against a briber or third parties implicated in a breach of fiduciary duty involving a bribe. These include the equitable remedies of rescission and disgorgement of profits against such a briber or third parties. This article makes two arguments. First, an accessory liability framework should be used to analyse rescission for bribes involving multiple parties. Second, despite the absence of a positive duty of fiduciary loyalty owed by an accessory to a principal, the same causal tools that equity uses to identify a fiduciary’s gains should also apply to disgorgement of the gains made by an accessory through his or her participation in a fiduciary’s breach. Both arguments, it is suggested, are consistent with a strong policy against bribes.

Undue influence as constructive fraud
— *Rick Bigwood* 144

Undue influence has long been branded as a species of ‘equitable’ or ‘constructive’ fraud — as comprising a ‘breach of the sort of obligation which is enforced by a ... Court of conscience’. Specifically, such fraud has been said to involve ‘the victimisation of one party by the other’, which in turn implies that what occurred inter partes to produce the transaction of which complaint is subsequently made was “an unconscientious use of the power arising out of the circumstances and conditions” of the ... parties’. While some modern courts have distanced themselves from conceptualising undue influence in terms of ‘a vague “public policy”’, in favour of an ‘actual victimisation’ approach, five members of the High Court of Australia in *Thorne v Kennedy* recently

asserted that, for undue influence to be established, proof of victimisation 'is not always required'. In this article, I present and assess three curial approaches to the setting aside of inter vivos transactions on the ground of 'undue influence': the 'public-policy approach', the 'actual-victimisation approach', and the 'impaired-consent approach'. I argue for a return to the public-policy approach, whereby the 'fraud' involved must be seen as 'constructive' in the fullest possible sense of that term, or else a credible rational rejection of that approach in favour of a (modified) actual-victimisation approach that absorbs the impaired-consent approach.

Estoppel, misleading conduct and equitable fraud

— *Elise Bant and Jeannie Marie Paterson*

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The ancient doctrines of equitable fraud now cohabit an environment in which statute is a growing presence. The doctrines of estoppel and statutory regimes that regulate misleading conduct provide striking examples of the increasingly complex ways in which equitable fraud and statute interact. This article will consider a series of cases which highlight the powerful gravitational influence that statute can bring to bear on such ancient equitable principles, guiding their operation and development in quite distinct ways, and inviting their divergence from traditional limitations. The article offers the opportunity to consider the potential of an increasingly integrated common law, equitable and statutory legal framework.

Remedying the abuse of organisational forms: Trusts and companies considered

— *Pey-Woan Lee*

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Both the trust and the company are organisational forms distinguished by their ability to facilitate affirmative asset partitioning. However, this feature is vulnerable to abuse by those whose purpose is to defeat creditor rights. This article considers recent developments in judicial doctrines aimed at countering such abuse and the extent to which they are explicable by, or coherent, with economic analyses drawn from the work of Hansmann and Kraakman.

Equitable fraud and double liability of a debtor following notice of equitable assignment of the debt

— *CH Tham*

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'Equitable fraud' is broader in its conception than fraud at common law. Notwithstanding ambiguities as to its precise boundaries, equitable fraud can help explain why a debtor who tenders payment to his or her creditor, despite having received notice that the money debt had been equitably assigned to an assignee, may be ordered to make payment to the assignee if the creditor-assignor were to abscond with the sums tendered, leaving the assignee out of pocket. Such liability can be explained on grounds of the debtor having committed a form of equitable fraud by dishonestly assisting in the creditor-assignor's breach of his or her duties (as an equitable assignee) to the assignee. Equitable fraud can also result in liability in the debtor at common law, given the court's power to bar a defendant to an action at law from pleading common law defences which would otherwise shield the defendant from liability at law. This article will sketch out how equitable fraud may be employed in these ways to render a debtor to be liable to pay a second time, and point out some of the implications of such reasoning.