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Articles

Company law and trusts law: The use and misuse of principle

— *Mark Leeming*

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Company directors have long been subjected to duties by statute and pursuant to the constituent corporate documents — originally royal charters, later deeds of settlement, still later memoranda and articles of association, and now for most Australian companies, corporate constitutions pursuant to federal statute. These might seem to be unpropitious foundations for equity. Yet this is equity's heartland. This paper inquires into various accounts of how 'modern' company law came into existence, with an emphasis on how directors were regarded as, or analogous to, trustees, using the example of claims to recover company property improperly disposed of by directors. It illustrates the need to read judgments contextually, especially when assessing submissions based on legal history.

Knowing receipt in Chinese trust law

— *Hui Jing and Siyi Lin*

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Article 22 of the Trust Law of the People's Republic of China (Chinese Trust Law) implements the knowing receipt rule, aiming to balance the interests between beneficiaries and third parties transacting with trustees. However, the knowledge requirement necessary to give rise to liability for the knowing receipt has never been thoroughly examined by scholars and practitioners since the introduction of the Chinese Trust Law in 2001. The ambiguities inherent in art 22 have resulted in inconsistent interpretations of the knowing receipt rule, thereby raising questions about how this rule can align with the bona fide acquisition rule under Chinese property law. In light of this, this article analyses the 'knowledge' component in the knowing receipt rule with two aims. First, it identifies the uncertainties surrounding the interpretation of the 'knowledge' component. These uncertainties emphasise the challenges of implementing art 22 and highlight potential conflicts that may arise between the application of the Chinese trust and property laws. Second, through an examination of the unconscionable receipt rule and equity's darling rule under English law, it underscores the reasons for Chinese law to draw insights from its English counterpart and proposes the lessons that could be incorporated into the future reform of art 22.

Are equitable remedies discretionary?

— *Timothy Liau and Alexander Georgiou*

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Equitable remedies are often said to be 'discretionary' by nature. This feature is said to distinguish them from common law remedies, such as orders to pay damages and orders to pay agreed sums, which are available 'as of right'. This paper explores what exactly is meant by 'discretion' in this context. It argues that simply describing equitable remedies as 'discretionary' may be misleading, for it conceals importantly distinct senses in which equitable remedies can engage discretion-like

considerations. The sense in which equitable remedies are 'discretionary' should not be overstated, and we should be slow to generalise about the distinctiveness of equitable remedies simply on the basis that they are 'discretionary'.

Book Review

Critical Trusts Law: Reading Roger Cotterrell, Nick Piška and Hayley Gibson (eds)

— *Hui Jing*

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