

# The New Personal Property Securities Legislation

Wednesday, 17th November 2010

9.30 am - 1.00 pm

The *Personal Property Securities Act 2009 (Cth)* establishes a new national personal property securities system supported by a referral of legislative power from each of the States. The new system seeks to address the complexity of over 70 Commonwealth, State and Territory laws as well as common law and equitable rules currently governing personal property securities.

The new system is scheduled to begin operating in May 2011.

The new legislation governs the creation, priority and enforcement of security interests in personal property which is any form of property other than land and certain licences. It includes tangibles such as cars and machinery as well as intangibles such as shares, intellectual property, receivables and contract rights. The legislation covers security interests granted by individuals as well as corporations.

The legislation simplifies the use of personal property as security for loans through the creation of a single definitive register of personal property securities.


The legislation is modelled on personal property securities legislation from overseas including Article 9 of the *Uniform Commercial Code* in the United States.

The following topics will be covered in the seminar:

1. Key concepts in the creation of a security interest
  - a) Attachment of a security interest
  - b) Perfection of a security interest
2. Taking personal property free of security interests
3. Priority between security interests
  - a) General priority rules
  - b) Purchase money security interests

4. Enforcement of security interests
5. The personal properties securities register
  - a) The requirements for a validly registered security interest
  - b) Defects in registration
6. Conflict of laws
7. Transitional provisions

The seminar will introduce the key concepts used in the legislation and provide examples of its operation. Reference will be made to some of the leading authorities considering the overseas legislation that was used as a model for the Australian system.

 **MCLE field:**  
Substantive Law      Total units - 3.25

## About the Presenter

The presenter at this seminar will be Justin Hewitt. Justin is a barrister in New South Wales and has a commercial law practice principally in the areas of banking and finance, bankruptcy and insolvency, corporations and securities, equity and property. Prior to this, Justin worked for a number of years at a major New York law firm in the areas of banking and bankruptcy including transactions and litigation under Article 9 of the *Uniform Commercial Code*. He was previously an Associate to Justice Gummow of the High Court of Australia.

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# Restraint of Trade Clauses in Employment Contracts

Wednesday, 17th November 2010

2.00 pm - 5.30 pm

The general rule at common law is that a former employee is completely free to engage in competition against a former employer, subject to any valid restraint of trade clause that is expressly provided for in an employment agreement.

Contrary to popular opinion, such post-employment restraint clauses are commonly enforced by Courts, provided the employer has a genuine interest to protect and provided the clause goes no further than is necessary to protect that interest.

Consequently, such clauses have over time become more frequently included in employment agreements and have become the subject of a growing number of judicial decisions in recent years as employers seek to restrain their former employees from breaching their employment agreements.

This seminar will examine the law and procedure regarding the enforcement of post-employment restraint clauses.

Firstly, the seminar will discuss the issues that the courts consider when determining if the restraint is necessary, such as what interest is sought to be protected by the employer. It will also look at what types of restraints the courts consider are reasonable to protect that interest.


This part of the seminar will examine these issues by reference to a number of cases decided by the NSW Supreme Court dealing with the situation where employers have sought to enforce non-solicitation clauses, non-competition clauses and confidentiality clauses against their former employees. This will also include an examination of the operation of the *Restraint of Trade Act (NSW) 1976*.


Secondly, the seminar will discuss the process of enforcing these types of clauses in the NSW Supreme Court under the *Uniform Civil Procedure Rules*. This will include a discussion of how such actions are typically commenced in the Equity Division of the NSW Supreme Court, what is involved in

preparing for and obtaining an interlocutory injunction restraining the former employee, or his/her competing business, on an urgent basis, and preparing for and obtaining final relief at the trial.

This section of the seminar will also look at the issue of what final relief may be sought against a former employee, such as a final injunction, damages, equitable compensation or an account of profits and when those final remedies might be available to be pursued against a former employee.

Finally this seminar will briefly look at some issues relating to obtaining costs in this type of litigation.

 **Regulation 176 Compulsory Requirement**  
EEO, Discrimination, Employment and OH&S

 **MCLE field:**  
Substantive Law      Total units - 3.25

## About the Presenter

The presenter at this seminar will be Mark Cleary. Mark is a barrister at the NSW Bar and practises from 8th Floor Selborne ([www.eightselborne.com.au](http://www.eightselborne.com.au)). Prior to coming to the Bar he was a Senior Associate in the Litigation Division of Corrs Chambers Westgarth. He specialises in corporate, commercial and taxation law and appears regularly in all NSW and Federal Courts and Tribunals. Mark is also a contributing author of the LBC edition of P. Parkinsons's *The Principles of Equity*.

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# MCLE Information

## Mandatory Continuing Legal Education (MCLE)


The MCLE year begins on 1 April and ends on 31 March the following year. In each year, a practitioner in New South Wales who holds a practising certificate generally must complete a minimum of 10 MCLE units unless exempted. MCLE units can be attained through a variety of activities. Attending a CPDS seminar, practitioners will be able to claim 1 unit per hour of attendance (refreshment breaks not included).

## Compulsory MCLE Units

There are three compulsory MCLE units:

 **Ethics and Professional Responsibility**


 **Practice Management and Business Skills**

 **Professional Skills**


Practitioners must include at least one (1) MCLE unit in each of the above fields. Compulsory units count towards the annual unit requirement and are not an additional requirement.

The Legal Profession Act Regulations also require every three years that at least one MCLE unit must cover equal employment opportunity, discrimination and harassment, occupational health and safety law or employment law.

Seminars that qualify for this requirement are designed by CPDS as:

 **Regulation 176 Compulsory Requirement**  
EEO, Discrimination, Employment and OH&S

Seminars that do not include a compulsory field are usually designated by CPDS as:

 **Substantive Law**

## Enquiries

For all enquiries regarding application of MCLE units to individual seminars, please contact CPDS.

The above is provided for informational purposes and is based on information supplied by the Law Society of New South Wales at the time of publication. Practitioners should make their own enquiries before relying on the information supplied above.

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 **The New Personal Property Securities Legislation**

 **Property Law**

 **Restraint of Trade Clauses in Employment Contracts**

 **The New Australian Consumer Law**

**CPDS Seminars November 2010**

**Sydney**

The Grace Hotel  
77 York Street

Property Law  
or How Not to be Legally Robbed

Wednesday, 17th November 2010

9.30 am - 1.00 pm

“Possession is nine-tenths of the law”. It’s not true actually. If you measure these things by volume, the greater volume of law is about taking away your possessions and negating your property rights. This seminar looks at a range of laws that negate property rights. It identifies a range of legal hazards that can befall a property owner between acquisition and disposal of property.

In the ever-changing world of (broadly defined) property law, new winners emerge from time to time, as do new losers. Accordingly, the seminar will look at some of the most recent Supreme Court decisions that articulate the most up-to-date statements of the laws that can abolish property rights. Each topic begins with a theoretical discussion, but concludes wherever possible with the practical implications for the practitioner.

Topics to be covered in this seminar will include:

- 1. **Some Dangers of Torrens Title**
  - Caveats and fraudulent registration of title
- 2. **Bankruptcy**
  - The effect of “relation back” upon third parties
  - The powers and perils of the Trustee in Bankruptcy
- 3. **Insurance**
  - The *Insurance Contracts Act 1984*
  - Section 28 and the insurer’s reduction of liability for non-disclosure
- 4. **Section 66G of the Conveyancing Act**
  - Section 66G claims: right or privilege?
  - Prosecuting and defending s66G claims
- 5. **Intellectual Property Law**
  - The range of potential IP Claims
  - Avoiding and defending IP claims
- 6. **De Facto Relationships & Property**
  - Recent amendments to the Family Law Act and the current status of property in a de facto relationship
  - Acting in disputes and settlements

- 7. **Interlocutory Orders Against Property**
  - Interim injunctions against alienating property
  - Asset preservation orders
- 8. **Succession Act Claims**
  - The *Succession Act 2006*
  - Comparisons with the Family Provision Act
  - Resisting claims against your own estate
- 9. **Other Challenges to Wills**
  - Testamentary Capacity
  - Undue influence
- 10. **Nemo Dat**
  - The rule
  - The exceptions
  - The continuing problem
- 11. **Securities**
  - Charges
  - Guarantees to avoid
- 12. **Criminal Law**
  - NSW Crime Commission
  - Criminal Assets Recovery Act
  - Prohibited Goods
  - Proceeds of Crime Act



MCLE field:  
Substantive Law      Total units - 3.25

About the Presenter

The presenter at this seminar will be Eric Petersen, barrister. Eric was admitted to the NSW Bar in 1984 and has practised in many jurisdictions, including a period spent mainly in the Protective Division of the Supreme Court, as it then was, and another period practising mainly in personal injury. Presently his main areas of practice are civil law, commercial law, equity and probate.

www.cpbs.com.au

The New Australian Consumer Law: Legislative Developments in Trade Practices Law

Wednesday, 17th November 2010

2.00 pm - 5.30 pm

New Commonwealth legislation titled the Australian Consumer Law (ACL) will see the implementation of a single national consumer law for Australia, based on the consumer protection provisions of the *Trade Practices Act 1974* (TPA).

The Federal Government has decided to introduce the new law in 2 stages.

The first stage came into effect on 1 July 2010 although some provisions commenced on 15 April 2010. The focus of this stage of the ACL is the introduction of nationally consistent unfair contract terms rules, supported by a range of enforcement options. The new rules only apply to the conduct of corporations (due to constitutional limits), with the ACCC as the national regulator.

Legislation relating to unfair contract terms will only apply to standard form (i.e. non-negotiated) consumer contracts which involve the supply, by a corporation, of goods or services, or the sale or grant of an interest in land, to an individual whose acquisition of the goods, services or interest is wholly or predominantly for personal, domestic or household use or consumption. That is, the provisions will not apply to business-business transactions.

A number of new enforcement options will be available to the ACCC where breaches of the ACL occur. These new enforcement options significantly enhance the powers available to the ACCC.

The second stage of the ACL comprises the *Trade Practices Amendment (Australian Consumer Law) Bill (No. 2)*, which was introduced into the Australian Parliament on 17 March 2010 and was passed by both houses on 24 June 2010.

The second stage will see the TPA renamed the *Competition and Consumer Act 2010* and will include a range of amendments to other legislation which contains consumer protection provisions. Its main provisions include prohibitions against misleading and deceptive conduct, rules concerning unconscionable conduct, new rules concerning unfair

practices and consumer transactions, a new system of statutory consumer guarantees and a new standard consumer product safety law for consumer goods and product related services.

The States and Territories will also pass legislation adopting the ACL by the end of 2010 so as to extend the reach of the ACL beyond corporations (thereby overcoming constitutional limits). It is envisaged that the ACL will be fully implemented by 1 January 2011, will apply nationally and in all States and Territories and to all Australian businesses. This will see the repeal of all other State and Territory consumer protection laws.

The ACL will have various implications for business. In particular, standard form contracts used by businesses will need to be reviewed, staff will need to be trained and existing policies will need to be reviewed to ensure compliance with the ACL. The penalties for non compliance can be substantial.



MCLE field:  
Substantive Law      Total units - 3.25

About the Presenters

Michelle Painter has had extensive experience in the field of trade practices for more than 15 years, first as a solicitor and since 1998 as a barrister at the Sydney bar. She has expertise in restrictive trade practices as well as consumer protection, has appeared for the ACCC and for private clients.

Scott Nash is a barrister at Martin Place Chambers. Previously, he was a solicitor at Blake Dawson, practising in environmental, planning and local government law.

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Registration Form & Tax Invoice

Please Register me for:

- ☐ The New Personal Property Securities Legislation
- ☐ Restraint of Trade Clauses in Employment Contracts
- ☐ Property Law
- ☐ The New Australian Consumer Law: Legislative Developments in Trade Practices law

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Cancellations

Registrations may be cancelled up to 14 days prior to the seminar or workshop and a refund will be provided but an administrative fee of \$44 will be deducted. No refunds will be available within 14 days of the seminar or workshop. Should a seminar or workshop be cancelled by CPDS for any reason, a full refund of all fees paid will be made. CPDS reserves the right to cancel or reschedule courses, and to change speakers or revise content as necessary.

Mandatory CPD Schemes

If this particular educational activity is relevant to your immediate or long term needs in relation to your professional development and practice of the law, then you should claim one “unit” for each hour of attendance, refreshment breaks not included. Further Information is provided on the back of this brochure.

Enquiries

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