

Research Workshop Series

Abstract

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Presentation by:

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Trusts, Powers and Liens: An Exercise in Ground-Clearing

Australian courts routinely award different –and mutually incompatible –proprietary remedies on materially identical facts. This is contrary to the fundamental principle of justice that like cases must be treated alike. If the law of proprietary remedies in Australia is to be brought back to order, there must first occur a significant exercise in ground-clearing to identify the crucial differences between the major forms of imposed proprietary remedies and explain why those differences matter. That is the aim of this paper. The hope is that by repositioning the debate over the award of proprietary remedies onto more secure foundations, the real business of distilling a coherent and principled Australian law of imposed proprietary remedies can commence.