FOREWORD

THE HON JUSTICE JULIE WARD*

As someone schooled in the principles of equity with the benefit of *Meagher, Gummow and Lehane's Equity: Doctrines and Remedies*[1] at hand, it should come as no surprise that equity has been dear to my heart since my university days. I was therefore delighted to be asked to write the foreword for this thematic collection of articles on 'Equity, Conscience and Commercial Morality'.

While I do not subscribe to the view that equity is the most misunderstood area of the law,[2] I certainly agree that it is a pervasive aspect of the law, touching upon various aspects of domestic and commercial life; as illustrated by the issues addressed in the articles in this edition of the *University of New South Wales Law Journal* ('*Journal*'). In their respective articles, there is an adroit examination of the evolution of equity (the genesis of which is to be found in the Aristotelian tradition of ἐπιείκεια, or *epiekeia*, and the Roman *aequitas*)[3] and its influence in the development of moral reasoning within commercial law. Aristotelian philosophy, which has influenced Western jurisprudence for over a millennium, saw equity as a corrective device, where strict adherence to the law (owing to its universality) is productive of injustice.[4] Hence the aptness of the title of this thematic edition of the *Journal*. In summary, the articles explore the following issues.

First, we see, in the article by Jamie Glister and Calida Tang, 'Corporate Alter Ego Liability in Equity', the tracing of the development of alter ego liability as a new form of equitable third-party liability. The authors' discussion of alter ego liability showcases the dynamic evolution of equity, challenging fundamental principles of corporate law (corporate separateness)[5] by permitting individuals to be held liable for the actions and gains of a corporation in circumstances where that corporation is simply (in the words of the majority in *Grimaldi v Chameleon Mining NL [No 2]* ('*Grimaldi*')),[6] the 'creature, vehicle, or alter ego of wrongdoing

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* President of the Court of Appeal, New South Wales. I am indebted to the invaluable assistance of the Court of Appeal Researcher, Miss Niki Nojoumian.

1 The commonly known 'Bible' of Equity, though I will not disclose what edition was then to hand.

2 Henry E Smith, 'Equity as Meta-Law' (2021) 130(5) *Yale Law Journal* 1050.

3 Catharine Titi, *The Function of Equity in International Law* (Oxford University Press, 2021) 17.

4 Mark Leeming, *Common Law, Equity and Statute: A Complex Entangled System* (Federation Press, 2023) 4; Aristotle, *Nicomachean Ethics*, tr Roger Crisp (Cambridge University Press, 2004) 100; Allan Beever, 'Aristotle on Equity, Law and Justice' (2004) 10(1) *Legal Theory* 33 <https://doi.org/10.1017/S1352325204000163>.

5 *Salomon v Salomon & Co Ltd* [1897] AC 22 ('*Salomon*').

6 (2012) 200 FCR 296, 357 (Finn, Stone and Perram JJ) ('*Grimaldi*').

fiduciaries who use it to secure the profits of, or to inflict the losses by, their breach'.[7] The authors have identified that, since the first reference by the Full Federal Court in *Grimaldi* to the concept of alter ego liability (within a discussion of differing manifestations of third party participation),[8] it has been recognised several times in Australian courts as a means of grounding liability, in circumstances where the orthodox knowing 'receipt and assistance' grounds under *Barnes v Addy*[9] may not have been made out (or, in addition to a finding of *Barnes v Addy* liability).[10]

That said, courts remain cautious in implementing the alter ego doctrine, cognisant of the potential heterodoxy in a departure from the established principles of third-party liability established in *Barnes v Addy*. As Leeming JA opined in *Murdoch v Mudgee Dolomite & Lime Pty Ltd (in liq)*[11] there are still questions surrounding the test of alter ego liability in Australia; namely whether such liability is based on piercing the corporate veil, agency, or the appreciation that a gain by the company is a gain by its sole shareholder. While the Australian development of alter ego liability is still in its infancy, the doctrine itself erodes the treatment of directors as discrete actors,[12] reinforcing that the law is not just a set of rigid principles but a living system that evolves to address new legal complexities over time.

Maxen Williams in 'Remedies and the *Baumgartner* Joint Endeavour Principle: Aspects of the Minimum Equity Rule' delves into a fascinating aspect of equity law, exploring the joint endeavour principle developed from *Muschinski v Dodds*[13] and cemented in *Baumgartner v Baumgartner* ('*Baumgartner*').[14] The author explores the significant role that moral reasoning plays in shaping legal outcomes, arguing that, integral to the application of the principle established in *Baumgartner*, was the minimum equity rule[15] and exploring the intersection between joint enterprise agreements and the minimum equity rule as highlighting the significance of moral considerations in legal adjudication.[16] The author argues that, although the importance of equitable doctrines in resolving proprietary disputes has diminished with the grant of statutory powers to the Family Court and Federal Circuit Court in matters involving de facto and de jure couples,[17] the joint endeavour principle is still pertinent to contemporary legal practice, noting the practical importance of

7 Ibid; Jamie Glister, 'Diverting Fiduciary Gains to Companies' (2017) 40(1) *University of New South Wales Law Journal* 4, 9 <https://doi.org/10.53637/DSVY5123>.

8 *Grimaldi* (n 6).

9 (1874) LR 9 Ch App 244.

10 *Re Sirrah Pty Ltd (in prov liq)* (2021) 152 ACSR 212, 262 [154]–[155] (Black J); *Twigg v Twigg [No 4]* (2020) 147 ACSR 389, 422 [138], 446 [242]–[243] (Ball J); *Ultra Management (Sports) Pty Ltd v Zibara* [2020] FCA 31.

11 (2022) 398 ALR 658, 664 [28].

12 Max McHugh, 'Directors' Liability for Inducing a Breach of Trust or Fiduciary Obligation' (2024) 140 (April) *Law Quarterly Review* 223; Jamie Glister, 'Equitable Liability of Corporate Accessories' in Paul S Davies and James Penner (eds), *Equity, Trusts and Commerce* (Hart Publishing, 2017).

13 (1985) 160 CLR 583.

14 (1987) 164 CLR 137.

15 But see *Giumelli v Giumelli* (1999) 196 CLR 101 and *Van Dyke v Sidhu* (2014) 251 CLR 505, which discredit the minimum equity rule as a governing principle.

16 John Glover, *Equity, Restitution and Fraud* (LexisNexis Butterworths, 2004) 354.

17 JD Heydon and Mark Leeming, *Cases and Materials on Equity and Trusts* (LexisNexis Butterworths, 9th ed, 2018); *Family Law Amendment (De Facto Financial Matters and Other Measures) Act 2008*

that principle particularly in relation to issues that arise in consequence of 'death, bankruptcy and gifts or contracts involving third parties'.[18]

With *aequitas* in the Latin lexicon is the word *fiducia*, meaning trust and confidence. Fittingly, Jack Zhou's article, 'Terminating Fiduciary Obligations: Is There a Duty of Loyalty to Former Clients?', explores current tensions in the law regarding the disqualification of lawyers appearing against former clients, which hinge on the potential misuse of confidential information. As identified by the author, at the heart of both *Spincode v Look Software* ('*Spincode*')[19] and *Prince Jefri Bolkiah v KPMG* ('*Prince Jefri*')[20] is the question surrounding a solicitor's 'duty of loyalty' – an enquiry that touches on the very foundation of the legal profession.[21] As will be recalled, Lord Millett in *Prince Jefri* identified that the solicitor's only ongoing duty to the client, post-retainer, is to preserve confidentiality during the term of the retainer.[22] The late Honourable Paul Finn has observed that the language surrounding loyalty operates to 'overwhelm – but not to illuminate'.[23] The author similarly contends that the basis of equitable relief should depend on the nature of the use (or misuse) of confidential information over one's general understanding of loyalty.[24] Ultimately, a solicitor owes a multitude of duties to his or her client, those duties sourced in statute, contract, tort and equity,[25] the substance of which is drawn from innate moral values.[26] The author contends that technical practices, such as the implementation of information barriers, when framed in the context of a discussion of fiduciary duties,[27] reflect the utility of proper adherence to ethical standards in bolstering public confidence in the legal system[28]. It should be noted that the maintenance of public confidence, crucial for the effective functioning of the legal system and the administration of justice, is the starting point from which the United States authority on this issue has proceeded.[29]

Matthew Conaglen, in his perhaps provocatively titled article 'Proportionate Liability for Breach of Trust under the *Civil Liability Act*: An Opiate on the Conscience of Trustees', investigates how the proportionate liability scheme contained in part 4 of the *Civil Liability Act 2002* (NSW) has the potential to alter the internal workings of the office of trusteeship. The concept of a trust, as a legal

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(Cth); Ying Khai Liew, 'The Joint Endeavour Constructive Trust Doctrine in Australia: Deconstructing Unconscionability' (2021) 42(1) *Adelaide Law Review* 73, 75.

18 Heydon and Leeming (n 17) 903; Liew (n 17) 75.

19 (2001) 4 VR 501 ('*Spincode*').

20 [1999] 2 AC 222 ('*Prince Jefri*').

21 Paul Finn, 'The Fiduciary Principle' in Timothy G Youdan (ed), *Equity, Fiduciaries and Trusts* (Carswell, 1989) 2; *Dealer Support Services Pty Ltd v Motor Trades Association of Australia Ltd* (2014) 228 FCR 252.

22 *Prince Jefri* (n 20) 235.

23 Heydon and Leeming (n 17) 548.

24 In the absence of any High Court ruling, there is minimal consensus across Australian courts: see Lee Aitken, 'Chinese Walls and Conflicts of Interest' (1992) 18(1) *Monash University Law Review* 91, 91; Sandro Goubran, 'Conflicts of Duty: The Perennial Lawyers' Tale' (2006) 30(1) *Melbourne University Law Review* 88, 89.

25 *Legal Professional Uniform Law Australian Solicitors' Conduct Rules 2015* (NSW) r 10.

26 Goubran (n 24) 89.

27 *Asia Pacific Telecommunications Ltd v Optus Networks Pty Ltd* [2007] NSWSC 350.

28 *Myers v Elman* [1940] AC 282, 319 (Lord Wright).

29 *EF Hutton & Co Inc v Brown*, 305 F Supp 371, 394 (Noel DJ) (1969).

and fiduciary institution, has evolved significantly over centuries – established in medieval England, under the feudal doctrine of seisin.[30] In 15th century England the Court of Chancery acted on the conscience of the trustee (or the *feoffe*) to carry out accepted terms of use.[31] Over time, the concept of trusteeship became characterised by stringent obligations, grounded in defined principles of good faith and prudence, 'looking to the intent rather than to the form'.[32] This evolution is particularly noteworthy when considering the development of proportionate liability in cases which involve a breach of trust. In a brief timespan, proportionate liability has transitioned from a traditional 'all or nothing' attitude to a system of what one could call shared responsibility.[33] While the concept of proportionate liability in New South Wales is focused on claims of economic loss or property damage, as discussed by the author, the application is far less straightforward on the subject of trusteeship. The drift in common law jurisdictions away from systems of joint and several liability towards proportionate liability allows for an equitable distribution of liability between concurrent wrongdoers, according to their proportionate share of fault in damages claims.[34] As mentioned by the author, this burden now sits with the plaintiff, who is prevented from selecting specific defendants to recover from and must bear the risk of a defendant's insolvency. The author posits that this statutory regime may serve as a 'Trojan horse' – while considered ostensibly fair, the scheme may erode foundational principles that once compelled trustees to adhere to rigorous standards of care and responsibility.

Mark Giancaspro's 'Pushing Equity's Envelope: Probing the Arbitrary Distinction between Immoral and Unconscionable Commercial Behaviour' both traces the emergence of equity and surveys the contemporary doctrine of unconscionable dealings. In so doing, the author considers how various forms of seemingly 'immoral' commercial behaviour have been deemed to fall short of the threshold for unconscionability. Notably, the Roman jurist Papinian famously said equity 'is the law developed in [Chancery] to support, amend and correct the common law'.[35]

Lord Ellesmere's judgment in *The Earl of Oxford's Case* reflects the Roman (and traditionally Greek) understanding of a function of equity as correcting, or filling the lacunae, of the common law through the application of propositions derived from conscience.[36] This premise allowed the Lord Chancellor to make

30 Although many historians suggest that the formalised concept of trusts emerged in medieval England, there is evidence indicating that analogous trust-like principles were also present in ancient Greek and Roman legal systems: see David Johnston, *The Roman Law of Trusts* (Clarendon Press, 1988); WW Buckland, *Equity in Roman Law* (William S Hein & Co, 2002).

31 *Sambach v Dalston* (1634) Tot 188; 21 ER 164; Gino Dal Pont and Tina Cockburn, *Equity and Trusts in Principle* (Lawbook, 2nd ed, 2008) 290.

32 *Parkin v Thorold* (1852) 16 Beav 59; 51 ER 698; Dal Pont and Cockburn (n 31) 290, 299.

33 Tony Weir, 'All or Nothing' (2004) 78 *Tulane Law Review* 511.

34 Kit Barker and Ross Grantham, *Apportionment in Private Law* (Hart Publishing, 2019) 1.

35 E Koops and WJ Zwalve, *Law and Equity: Approaches in Roman Law and Common Law* (Brill, 2013) v.

36 (1615) 1 Ch Rep 1; 21 ER 485; Leeming (n 4) 6; AWB Simpson, *A History of the Common Law of Contract: The Rise of the Action of Assumpsit* (Oxford University Press, 1975) 397; Willard Barbour, 'Some Aspects of Fifteenth-Century Chancery' (1918) 31(6) *Harvard Law Review* 834 <https://doi.org/10.2307/1327708>.

decisions based on subjective moral judgment, effectively acting as a court of conscience. Over time, the notion of conscience as the object of equity has been tempered somewhat – shifting to established principles and precedent.[37] By way of example, the recent case in the Court of Appeal of *Mao v Bao*[38] demonstrates that mere intuitive unfairness, as that term may be understood from a strict moralistic sense, is not sufficient in itself to justify the exercise of equitable set-off. So too in *Australian Broadcasting Corporation v Lenah Game Meats*.[39] This is a reflection of the broader principle that equitable doctrines cannot be invoked simply to achieve idiosyncratic fairness on the facts.[40] Conscience has become a metaphor, or a term of conclusion, for the application of equitable doctrine, but that is not to deny that it is still an animating principle of equity.[41] The author demonstrates that equity's evolution has been characterised by a nuanced understanding of the difference between unconscionable and immoral conduct, resulting in a more coherent and consistently applied framework that allows for a clear explanation of its principles.

Jordan Tutton and Vivienne Brand, in their article 'Corporate Whistleblowers and Financial Incentives', focus directly on the intersection of commerce and moral principles. They argue in favour of an award-based approach to the implementation of future whistleblower-based reform in Australia. As discussed by the authors, the Australian legal framework surrounding whistleblowers has evolved significantly. They note the robust protection provided by statute (the *Corporations Act 2001* (Cth) and the *Treasury Laws Amendment (Enhancing Whistleblowers Protections) Act 2019* (Cth)) for individuals who come forward with information concerning corporate misconduct, and point to the critical role of independent oversight bodies such as the Australian Securities and Investments Commission and the Australian Competition and Consumer Commission in the impartial investigation of whistleblower complaints. One might view the current approach in Australia through a deontological lens, focused on acting in accordance with what is considered 'good' in itself, rather than being motivated by financial rewards (see Immanuel Kant's concept of 'good will', namely that 'good will is good not because of what it effects, or accomplishes, not because of its fitness to attain some intended end, but good just by its willing').[42]

The authors concentrate on the potential benefits of what they conceive of as a new financial 'carrot' based approach, to incentivise reporting that may uncover large and more significant cases of corporate misconduct. One could contend that the North American approach prioritises consequential outcomes, suggesting that, if the overarching outcome is the enhancement of reporting levels, then the action is right – the end justifying the means.[43] Similarly, the authors of this article argue

37 See *Cowcher v Cowcher* [1972] 1 WLR 425, 430 (Bagnall J).
38 (2023) 113 NSWLR 26 ('*Mao*').
39 (2001) 208 CLR 199, 227 [45] (Gleeson CJ).
40 *Mao* (n 38) 64 [184] (Ward P).
41 William Gummow and Aryan Mohseni, 'The Use and Misuse of Metaphors' (2024) 98(10) *Australian Law Journal* 738 746.
42 Immanuel Kant, *Groundwork of the Metaphysics of Morals*, tr Mary Gregor and Jens Timmerman (Cambridge University Press, rev ed, 2012) 10 [4:394].
43 Niccolò Machiavelli, *The Prince*, tr Daniel Donno (Penguin Books, 2003) xvii, 71.

in favour of an incentive-based approach from a utilitarian perspective, contending that the morality of incentive-based schemes is determined by the outcome that creates the greatest overall good to society.[44] Nevertheless, while incentive-based schemes for whistleblowers, like those in North America, present an opportunity to promote an increased level of accountability in corporate law, they must strike a balance between practical benefits and ethical considerations.

In 'The Reality of Shareholder Ownership: For-profit Corporations as Slaves', Duncan Wallace asserts that modern day corporations, while owing their inception to their directors, shareholders, and executives, like Frankenstein's monster, can take a life of their own, engaging in anti-social behaviour, causing harm in ways that their 'creators' may not have intended. The author's description of corporate personhood engages with a key theoretical dispute: whether corporations are entities of legal fiction, or whether they are pre-existing entities that merely attain legal status upon registration.[45] While such debates may be observed largely as a 'truth seeking' activity, one's perspective of the matter is likely to inform whether he or she ascribes any moral character towards a corporation. The author of this article appears to adhere to the latter view, ascribing moral character to corporate entities. In the context of Australian law, registered corporations are separate legal entities – capable of rights and responsibilities[46] and, generally, a corporation can own property, enter contracts, and carry out many activities that a natural person can.[47] The author's reference to Frankenstein's monster underscores the potential dangers of unchecked corporate power and the need for directors and shareholders to be cognisant of their ethical responsibilities. Our contemporary society is shaped by corporations and, as such, it is essential that corporations and their 'creators' are governed by regulations that reflect societies' evolving values and ethical standards.[48]

In a departure from the *Journal*'s thematic coverage, Reece Blackett in 'Ending Segregated Employment for Persons with Disabilities: The Case for Federal Social Cooperative Legislation in Australia' explores general principles of commercial morality in the context of a new federal legislative scheme applicable to persons with disabilities. Primarily, the author addresses a case for the phasing out of Australian Disability Enterprises ('ADEs') by highlighting the efficacy of a social cooperative business model, which the author argues is a viable and more appropriate alternative to the current scheme. While open employment is available to all, the ADE, funded by the National Disability Insurance Scheme ('NDIS'), provides closed vocational opportunities for those who need assistance with workforce integration. It is estimated that around 20,000 NDIS users are employed in an ADE.[49] Drawing from article 27(1)(b) of the *Convention on the Rights of*

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44 See generally John Stuart Mill, *Utilitarianism*, ed Roger Crisp (Oxford University Press, 1998).

45 Sarah Constable, 'A Corporate Conscience...?' [2015] 15 *University of New South Wales Law Journal Student Series* 1:1–22, 13.

46 *Salomon* (n 5); *Corporations Act 2001* (Cth) s 119 ('*Corporations Act*').

47 *Corporations Act* (n 46) s 124.

48 Wim Dubbink and Jeffery Smith, 'A Political Account of Corporate Moral Responsibility' (2011) 14(2) *Ethical Theory and Moral Practice* 223, 224 <https://doi.org/10.1007/s10677-010-9235-x>.

49 'Supports in Employment', *NDIS* (Web Page) <https://www.ndis.gov.au/understanding/supports-funded-ndis/supports-employment>.

Persons with Disabilities, the author advocates for equal opportunities, equal say and the remuneration for work of equal value.[50]

The author contends that, as illustrated by the success of the Nundah Community Enterprises Co-operative ('NCEC'), moving away from an ADE based model can ensure access to integrated employment opportunities for people with disabilities. In a social cooperative model, workers are both employees and participants in decision-making processes. As each member in a social cooperative holds equal voting rights, the structure is particularly suited to organisations that seek to promote member contribution and responsibility.[51] The author presents the NCEC as a workable and effective blueprint to which the federal legislature may turn towards, should it decide to enact such a model.

Also with a focus on those with disabilities, Elpitha Spyrou and Marianne Clausen, in 'Disability Discrimination in Education: Investigating the ADR Experiences of Parents and Practitioners', examine the effectiveness of Alternative Dispute Resolution ('ADR') in providing for disability related education complaints. As recognised by the authors, the parallel operation of education schemes such as the *Anti-Discrimination Act 1977* (NSW) and *Children (Education and Care Services National Law Application) Act 2010* (NSW) signifies that all children should have access to an education that is free from discrimination. The navigation of disability related disputes can present as a daunting task, and as such, the authors canvas an overreliance on ADR (which includes processes such as mediation or assisted negotiation) to resolve education related conflicts. Given that conciliation processes are often confidential, the authors aim to fill this knowledge gap by exploring participant satisfaction with ADR outcomes. The authors recognise that there are many known advantages of ADR, which include its informality, lack of legalism and perceived advantages of costs in comparison to litigation.[52] However, the authors argue that ADR processes often exacerbate power imbalances between education boards and parents, contending that although many ADR practitioners have positive experiences with conciliation, parents often feel dissatisfied with results, leaving the question as to how ADR practitioners can best address existing power imbalances. The authors suggest that on some occasions it may not be enough for a neutral mediator to treat parties equally.[53] This investigation is both timely and essential as it offers a pathway to evolving dispute resolution processes, ensuring that all parties can achieve equitable outcomes that are in the best interest of each student's education.

Finally, in a title that borrows no doubt from the fascination of the Harry Potter series of books, 'Fantastic Precedents and Where to Find them: An Argument for Limiting the Operation of Common Law Binding Precedent Rules When

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50 *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008) art 27.

51 'Cooperative', *Australian Government Business* (Web Page) <https://business.gov.au/planning/business-structures-and-types/business-structures/co-operative>.

52 Robert Altmore, 'Alternative Dispute Resolution and People with Disabilities' (2005) 24(2) *Arbitrator and Mediator* 41, 43.

53 Ibid 45.

Interpreting the *UN Sales Convention* (*CISG*)', Benjamin Hayward analyses the way in which the goal of the *CISG* (to harmonise international trade law through universal application) may be thwarted when interpreted by reference to domestic contract law. Notwithstanding the wide implementation of the *CISG* at a domestic level through its implementation via state and territory legislation,[54] many argue that the *CISG* finds itself navigating in Australia's 'legal outback',[55] with Australian courts often defaulting to domestic contract principles. The author points to cases such as *Perry Engineering Australia Ltd v Bernold AG*[56] to highlight the apparent unawareness among contracting parties and their legal counsel regarding the *CISG*'s applicability.[57]

In a thorough analysis of case law, the author advocates for a jurisprudential shift, in favour of the wider acceptance and application of article 7(1) of the *CISG*, to ensure a more consistent application of international trade law. While a lack of *CISG*-related case law is not unique to Australia, as globalisation continues in step with the proliferation of multi-jurisdictional commerce, Australia's 'opt out' culture may expose parties to an unfamiliar legal environment, thereby placing parties less-versed in domestic legislation at a comparative disadvantage relative to those from pro-*CISG* counterparts.[58] A consistent approach to international trade law, reflective of the purpose of article 7(1), may foster predictability for Australian legal professionals in future cross border disputes.

As can be seen from this (necessarily brief) survey of the articles in the *Journal*, the respective authors have, by delving into various facets of equity, from its historical roots to modern applications, provided valuable insight into the interaction between equitable principle and commerce (where the concept of commercial morality can be sometimes not in evidence). The editors and authors are to be commended for presenting such a systematic and thought provoking exposition of equitable principle.

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54 *Sale of Goods (Vienna Convention) Act 1987* (ACT); *Sale of Goods (Vienna Convention) Act 1986* (NSW); *Sale of Goods (Vienna Convention) Act 1987* (NT); *Sale of Goods (Vienna Convention) Act 1986* (Qld); *Sale of Goods (Vienna Convention) Act 1986* (SA); *Sale of Goods (Vienna Convention) Act 1987* (Tas); *Sale of Goods (Vienna Convention) Act 1987* (Vic); *Sale of Goods (Vienna Convention) Act 1986* (WA).

55 Lisa Spagnolo, 'The Last Outpost: Automatic *CISG* Opt Outs, Misapplications and the Costs of Ignoring the Vienna Sales Convention for Australian Lawyers' (2009) 10(1) *Melbourne Journal of International Law* 141, 142; Benjamin Hayward, 'Way Out West? Understanding the *CISG*'s Application in Australia', *Conflict of Laws.Net* (Blog Post, 9 May 2024) <https://conflictoflaws.net/2024/way-out-west-understanding-the-cisgs-application-in-australia/>.

56 [2001] SASC 15.

57 Spagnolo (n 55) 175.

58 Peng Guo and Shu Zhang, 'Is the *CISG* an Appropriate Option for Australian and Chinese Businesses? A Good Faith Perspective' (2019) 23(1) *Vindobona Journal of International Commercial Law and Arbitration* 81, 82; Spagnolo (n 55) 159.

THEMATIC
EQUITY, CONSCIENCE AND COMMERCIAL MORALITY

Artwork by Claudia Mills