Corporate Conspiracy

By Professor Christian Witting

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VENUE: LEE SHERIDAN CONFERENCE ROOM, EU TONG SEN BUILDING

ABSTRACT

Professor Witting will present a paper concerned with the unsatisfied creditors of insolvent subsidiary companies within a group of companies. The project on which the paper is based has engaged with two main issues: extended recourse against shareholders in cases of personal injury; and a more general doctrine permitting corporate and non-corporate elements within a group to be bound together in place of the common law veil piercing doctrine.

Extended recourse: The first major finding is that it is appropriate to make all shareholders liable, pro rata, for personal injuries inflicted by companies in which they hold shares. Liability can be justified on the grounds that shareholders are company insiders who perform a distinct function – in arming companies with capital – and that the claims of personal injury claimants are of a higher order than any financial losses to be borne by the shareholders. Personal injury claimants have the better claim in a comparative contest over responsibility for loss. Modification of company law along these lines would entail alteration to the rule regarding priorities on a winding up of the company.

Binding together: The second major finding is concerned not with personal injuries, but with financial losses. It is not proposed that there should be any change to the rule of limited liability here. The question is how to extend liability (in appropriate cases) beyond the insolvent subsidiary to other elements in the group of companies. The paper presents a critique of corporate veil piercing doctrine, argues for its abolition and also rejects the application of ‘enterprise liability’. The liability of corporate controllers should, in general, be determined according to ordinary civil law rules. The paper argues in favour of the development of the common law of conspiracy to accommodate a greater range of actions by unsatisfied creditors against group elements. This argument is made upon the basis that courts need to adopt the ‘internal point of view’ when considering the nature of the company, including its separate legal personality. One consequence is the potential for the company to conspire to commit a wrong with no more than one of its controllers.

ABOUT THE SPEAKER

Christian Witting is Deputy Head and Professor in the Durham Law School, United Kingdom. He is a Barrister and Solicitor of the High Court of Australia and a Fellow of the European Centre for Tort and Insurance Law, Vienna. Christian's publications include Liability for Negligent Misstatements (Oxford, 2004), Pure Economic Loss (Springer, 2004)(co-editors van Boom and Koziol), Street on Torts (13th ed, Oxford, 2012)(with Murphy) and various papers on torts and company law published in Europe and Australia. His papers on tort law have been cited by the House of Lords, the Supreme Court of Appeal of South Africa and the High Court of Australia.

REGISTRATION

There is no registration fee for this seminar but seats are limited. To register, please click here and you will receive an automated message upon submission. For enquiries, please contact Ms Poova at Tel: 6516 3644 or email her at cemail@nus.edu.sg
Directions to the law school may be found at http://law.nus.edu.sg/faculty/Location.htm