

Providing  
legal solutions  
for life

Welcome to the Spring edition of Legal Insight.

## Dying to Win the Lottery

If you were to win the lottery and die the next day, who would keep the money from your winnings?

Believe it or not, this is the question recently faced by the Queensland Supreme Court in *Szanto v Aston* [2011] QSC 87 following Lajos Szanto winning more than \$1.8 million in the lottery on 13 February 2010. Mr Szanto unfortunately passed away the following day, unable to enjoy the proceeds of his windfall.

The winning lottery ticket was found in Mr Szanto's home, but legal difficulties surrounded his will. One clause of his will gave "all furniture and chattels" in the home to Mr Szanto's daughter and her husband, and another clause gave "the rest and residue of my estate both real and personal of whatsoever nature of any kind" to his other three children to be shared equally.

Mr Szanto's daughter claimed that the ticket was a chattel "in the home", and therefore she should be entitled to it. However, one of Mr Szanto's sons believed the lottery winnings should be

split between the other children because the lottery ticket did not constitute a chattel, or the winnings itself, but rather a chose in action, or a right to claim the winnings.

Unfortunately for the daughter, the Court agreed that the lottery ticket was a chose in action, and, since this right does not have a material body or form, it could not be considered to be located "in the home", and therefore the \$1.8 million dollars in winnings was distributed amongst the other children.

While winning the lottery isn't something which is normally considered when a will is drafted, this fascinating case does illustrate the necessity of careful drafting by a professional to ensure an individual's wishes are properly carried out.



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### Words to the Wise

**"Which one is the possessor of heaven and earth: He who has a thousand houses, or he who, with no house to call his own, has ten at which his knock arouses instant jubilation?"**

George McDonald

## How to Recover Bad Debts

Have you got any debts that are still outstanding? Are you about to write-off some bad debts? Hutchinson Legal has the solution. We offer an effective and efficient debt recovery service.

Firstly, we attempt to recover the debt by liaising between the creditor and the debtor, demanding on behalf of the creditor that the debt be paid. If the debtor still does not pay the debt within a specified time, we would issue legal or court proceedings on behalf of the creditor to recover the debt.

To commence legal proceedings, we draft a Statement of Claim. This is a document which states what the debt is for and how the debt arose. It is filed with the Court before being served on the debtor, after which the debtor has twenty-one days to respond. The debtor may pay the debt in full, object to pay the debt by filing a Notice of Defence or decide not to respond.

If the debtor objects to paying the debt and files a Notice of Defence, we then assist you in resolving the dispute with the debtor through the Court process including a mediation of the dispute.

If the debtor does not respond to the Statement of Claim, we then apply to the Court for judgment, that is, an order that the debtor is liable to the creditor for the sum specified on the Statement of Claim.

Once a judgment has been obtained from the Court, we then attempt to enforce the judgment, that is, to obtain the money from the debtor.

If you would like to receive an electronic version of Legal Insight, please:

- call Tristan Tottenham of our office on 9870 9870
- write to us at PO Box 450, Ringwood 3134
- send an email to [office@hutchinsonlegal.com.au](mailto:office@hutchinsonlegal.com.au)

# Personal Property Securities Legislation

New legislation is due to take effect starting October 2011 which will make groundbreaking changes to the registration of security interests in assets. This is a wholesale shake-up of the current system of ownership of assets, and you should be prepared for the changes. Our website provides further background on these changes which we would encourage you to review, especially if you:

- Sell goods on credit;
- Provide credit in any form;
- Locate assets on another's premises;
- Rent, lease or hire assets to others; or
- Have any other form of security arrangement in place regarding goods or assets.

These changes will affect a large number of businesses and many consumers, so familiarising yourself with the system early will ensure you properly protect your interests.

## Unwanted Marketing Calls

In today's busy world, meals with the whole family present are all too rare. Inevitably, on that evening when all the kids happen to be in, and neither parent has had to stay late at work, everyone will be sitting down to spend some quality time and the phone will ring with the person on the other end saying they "only want 5 minutes of your time to answer a few questions."

The good news for consumers is that marketing phone calls and faxes are regulated by a Federal Government regulatory body

ACMA under the *Telecommunications Act 1997* and the *Do Not Call Register Act 2006*. These acts provide specific limitations on the days and times at which telemarketing calls may be made, among other things.



Individuals who wish not to receive marketing calls may register with the national Do Not Call Register. While some callers such as charities, political parties, and research companies are exempt from the legislation, the majority of marketers will be barred from calling your number.

In a major win for consumers, in June of this year the Federal Court handed down the first ever court judgment in Australia for breach of the *Do Not Call Register Act 2006* against FHT Travel Pty Limited (FHT Travel), and its sole director Yvonne Earnshaw. FHT Travel was found to have breached the Act by making, or causing to be made, over 12,000 marketing calls to individuals who had placed their numbers on the Do Not Call Register. They were ordered to pay a hefty \$120,000 and, for a period of five years, restrained from making certain telemarketing calls without first notifying ACMA.

ACMA's Do Not Call Register also bars fax marketers from contacting you, saving you toner and paper. If you wish to be included on the list, we encourage you to sign up at <http://www.DoNotCall.gov.au>.

While you may not be able to remove all unwelcome marketing calls from your life, you have rights under federal legislation and by registering with the Do Not Call Register you can significantly minimise the likelihood of such disruption to your next family meal.

## Personal News

We welcome two new staff members to the team at Hutchinson Legal, Victoria Chiang and Joshua Reimer. You can check out their details at our website.

## Buying or Selling Real Estate?

If you are considering buying or selling real estate in the near future, we would encourage you to view an article we recently posted on the "What's New" section of our website outlining some of the common legal pitfalls you should look out for.

## Upcoming Seminar Neighbourhood Nuisances

A community Seminar will be conducted at Federation Estate on 29 November 2011 to provide useful and interesting information on resolving neighbourhood disputes, including noisy stereos, stray animals, broken fences, and more. Please contact our office to register.

## Can You Help?

We are in the process of updating our website and would like to include some comments from our clients; if you have feedback for us regarding the services we would be most appreciative if you could email [office@hutchinsonlegal.com.au](mailto:office@hutchinsonlegal.com.au) with any feedback or testimonials.

## FastFACTS

84,600

**Estimated number of those who died without a will in 2009, being 60% of the 141,000 registered deaths.**

2.6

**The average number of people per household in Australia, down from 3.31 in 1971.**

½ Tonne

**The average amount of cheese an Australian will eat in their lifetime.**

81.5

**Average life expectancy in Australia.**

13 Billion

**Amount in unclaimed and lost superannuation accounts around Australia.**

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