

Presenter:

Lang Thai

Lecturer, School of Law, Deakin University; BSc, LLB (Mon), Grad Dip Ed (Melb), LLM (Mon). Barrister and Solicitor of the Supreme Court of Victoria and High Court of Australia. Corresponding author - Tel: +61 3 9244 6060, Email: Lang.Thai@deakin.edu.au

Title:

Fixed and floating charges: The latest conflicting law and how to address the gaps.

Abstract:

Can book debts be subject to a fixed charge? This question was considered by the House of Lords in *National Westminster Bank v. Spectrum Plus Limited* [2005] UKHL 41 where the full House was against the idea of a fixed charge on book debts and insisted that only a floating charge had been created. The law in this area is still vague and uncertain in Australia. This paper argues that the financiers and the companies should be given the freedom to decide how they wish to structure their charge documents. The paper sets out to argue that, in respect to the use of book debts as security for a loan, the only way for both the financiers and the companies to do business is to create a sustained workable fixed charge or even multiple fixed and floating charge on book debts. The author explains how this could be possible and how the proposed model would not deny the statutory priority rights of the preferential creditors.