



**UNIVERSITY OF
TECHNOLOGY SYDNEY**

**Corporate Law Teachers
Association**

**Annual Conference 2009
Program**

Sunday 1st February 2009

3:00pm-5:00pm Teaching and Learning Workshop
Venue: UTS Haymarket Campus, Moot Court Ground Floor Building 5B

5:00pm-7:00pm Welcome cocktails
Venue: UTS Haymarket Campus, Law Courtyard, Level 1, Building 5B

Monday 2nd February 2009

8.15pm-9.00pm Registration and light breakfast
Venue: UTS Haymarket Campus, Law Foyer, Ground Floor Building 5B

9.00am-9.15am Conference opening – *"Welcome from the Dean of the UTS Faculty of Law
Professor Jill McKeough"*
Venue: UTS Haymarket Campus, Moot Court Ground Floor Building 5B

9.15am-9.25 am Administrative matters
Venue: UTS Haymarket Campus, Moot Court Ground Floor Building 5B

9.25am-10.25am Keynote Address
Venue: UTS Haymarket Campus, Moot Court Ground Floor Building 5B

Satyajit Das

Financial Crisis - Fairy Tale Endings?



The credit bubble is finally deflating. Excessive lending against over-optimistic asset valuations is the time honoured recipe for asset price bubbles. The early 2000s have been a period of "too much" and "too little" – too much liquidity, too much leverage, too much complex financial engineering, too little return for risk, too little understanding of the risk. In 2007, problems in the sub prime mortgage sector have quickly snowballed into a credit crisis of global dimensions. The current credit crunch is more than the bursting of a "bubble". It is the crucible in which theories of the "new money" and the financial "jiggery pokery" (more politely known as financial engineering) of the *structured credit markets*, financial innovation and global money will be tested. George Soros recently observed: *"The current crisis is the culmination of a super-boom that has lasted for more than 60 years"*. Satyajit Das anticipated much of what is now unfolding. In *Traders, Guns & Money: Knowns and Unknowns in the Dazzling World of Derivatives* (2006, FT-Prentice Hall), he exposed the sophistry of derivatives and the

structured credit market. He also highlighted the moral hazards and distorted incentive structures that posed major threats to market stability. In a 2006 speech – *The Coming Credit Crash* – Das argued that: "an informed analysis of the structured credit markets shows that risk is not better spread but more leveraged and (arguably) more concentrated amongst hedge funds and a small group of dealers. This does not improve the overall stability and security of the financial system but exposes it to increased risk of a "crash" during a credit downturn." Das exposed the problems that are now becoming readily apparent. *Financial Crisis - Fairy Tale Endings?* focuses on the current financial crisis. It looks at what created the credit bubble, how financial engineering exacerbated it, what brought it to an end, how the bubble is unwinding and how banks, risk managers, regulators, corporate lawyers and auditors all played their part in creating it.

Biography

Satyajit Das works in the area of financial derivatives and risk management. He has worked on the 'sell side' (Commonwealth Bank, CitiGroup, Merrill Lynch) and the 'buy side' (TNT). He has over 30 years experience in financial markets. He is the author of a number of key reference works on derivatives and risk management. His works include *Swaps/ Financial Derivatives Library – Third Edition* (2005, John Wiley & Sons) (a 4 volume 4,200 page reference work for practitioners on derivatives) and *Credit Derivatives, CDOs and Structured Credit Products –Third Edition* (2005, John Wiley & Sons). He is the author of *Traders, Guns & Money: Knowns and Unknowns in the Dazzling World of Derivatives* (2006, FT-Prentice Hall), an insider's account of derivatives trading and the financial products business filled with black humour and satire. The book has been described by the Financial Times, London as " *fascinating reading ... explaining not only the high-minded theory behind the business and its various products but the sometimes sordid reality of the industry*". He is also the author (with Jade Novakovic) of *In Search of the Pangolin: The Accidental Eco-Tourist* (2006, New Holland) Mr. Das holds Bachelors' degrees in Commerce (Accounting, Finance and Systems) and Law from the University of New South Wales and a Masters degree in Business Administration from the Australian Graduate School of Management.

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|------------------------|--|
| 10.25am-10.50am | Discussion on keynote
Venue: Moot Court Ground Floor Haymarket Campus Building 5B |
| 10.50am-11.20am | Morning Tea
Venue: UTS Haymarket Campus, Moot Court Ground Floor Building 5B |
| 11:20am-12:5pm | Plenary Discussion Panel on Conference Theme
Venue: UTS Haymarket Campus, Moot Court Ground Floor Building 5B
The panel members include:
Ewen Crouch, Chairman and Co-Head of Mergers & Acquisitions, <i>Allens, Arthur, Robinson</i>
Scott Farrell, Partner, <i>Mallesons, Stephen, Jaques</i> ;
Belinda Gibson, Commissioner, <i>ASIC</i> ;
Gwyn Morgan, Executive Director and Head of Asset Restructuring and Risk Management, <i>Westpac Banking Corporation</i> . |

Moderator: Professor John Stumbles (UTS Faculty of Law)

12:50-1.40

Lunch

Venue: UTS Haymarket Campus, Moot Court Ground Floor Building 5B

Parallel Sessions

1:40pm-3:20pm

Panel A

Venue: UTS Haymarket Campus, Third Floor Building 5b Room 3.17

- **John Farrar** (Bond University, Faculty of Law and University of Auckland, Business School)
The Governance of Superannuation Funds
- **Suzanne Le Mire** (University of Adelaide, Law School)
Independent Directors: When It Comes to the Crunch
- **Chris Noonan and Susan Watson** (University of Auckland, Department of Commercial Law)
Directorship Done Four Ways
- **Thomas Clarke** (UTS Centre for Corporate Governance)
The Causes of the Global Financial Crisis? The Impact of the Recurring crises in Anglo-American Corporate Governance.

Panel B

Venue: UTS Haymarket Campus, Third Floor Building 5b Room 3.18

- **Christian Witting** (Melbourne Law School)
Where the Buck Stops: Corporate Wrongdoing and the Attribution of Liability
- **Jenny Dickfos** (Griffith University Business School)
Corporate Groups: A Case for Protection of Unsecured Creditors
- **Marina Nehme** (UWS School of Law)
Long Tail Liability: Current System and Future Reforms

Panel C

Venue: UTS Haymarket Campus, Third Floor Building 5b Room 3.28

- **Michael Josling** (The University of Auckland Business School, Department of Commercial Law)
Differences between Voluntary Administration in New Zealand and Australia
- **Abe Herzberg, Mark Bender and Lee Brown** (Monash University, Department of Business Law and Taxation)
Characteristics of Companies that Enter into Voluntary Administration
- **David Morrison** (University of Queensland and, **Colin Anderson**) (QUT, School of Law) TC Beirne School of Law)
External Administration in Times of Financial Uncertainty

3:20pm-3:50pm

Afternoon Tea

Venue: UTS Haymarket Campus, Ground Floor, Building 5B

Parallel Sessions

3:40pm-5:20pm

Panel D

Venue: UTS Haymarket Campus, Third Floor Building 5b Room 3.18

- **Emma Armson** (ANU College of Law)
False Trading and Market Rigging
- **Hui Huang** (UNSW, Faculty of Law)
Redefining Market Manipulation in Australia: The Role of an Implied Intent Element
- **Janet Austin** (UNSW, School of Business Law and Taxation, Australian School of Business)
A Rapid Response to Questionable Trading – Moving Towards Better Enforcement of Australia's Securities Laws

Panel E

Venue: UTS Haymarket Campus, Third Floor Building 5b Room 3.17

- **Jean Du Plessis** (Deakin University, School of Law)
A Comparative Analysis of Directors' Duty of Care, Skill & Diligence in South Africa and in Australia
- **Julie Cassidy** (Deakin University, School of Law)
Models for Reform: A Comparative Analysis of the Duty of Care
- **Tan Lay Hong** (Nanyang Technological University, Singapore, Division of Business Law)
Recent Case Studies on Corporate Governance Best Practices in Singapore: The "Good", the "Bad" and the "Ugly"
- **Angus Young**
Frameworks in Regulating Company Directors: Rethinking the Concepts in Responsive Regulation

Panel F

Venue: UTS Haymarket Campus, Third Floor Building 5b Room 3.28

- **Helen Anderson** (Monash University, Department of Business Law and Taxation)
Theory and Reality in Insolvency Law: Some Contradictions in Australia
- **Anil Hargovan** (UNSW, School of Business Law and Taxation, Australian School of Business)
Mandatory Subordination of Shareholder Claims Under s 510(b) of Bankruptcy Code: Lessons for Australia"
- **Michael Duffy** (Monash University, Department of Business Law and Taxation)
The Perils of Calling the Bankers

- **Trish Keeper** (Victoria University of Wellington, School of Accounting and Commercial Law)
A Quantum of Certainty: Clarification of Reckless Trading Liability

7:00pm-late

Dinner

Venue: Zilver Restaurant, Level 1, 477 Pitt St (Cnr of Hay St) Haymarket, NSW
2000

Tuesday 3 February 2009

9:00am -10.30am

Plenary Discussion Panel

Venue: UTS Haymarket Campus, Moot Court, Ground Floor Building 5B)

Professor John Lowry *University College London,*

John Lowry joined the Faculty of Laws in 2004 having moved from the Centre for Commercial Law Studies at Queen Mary London. He has taught law in the USA (New Jersey) and practised in Canada specialising in corporate litigation. He has written widely in domestic and international journals on directors' fiduciary obligations, shareholder remedies and insurance law. He is a contributing editor to Gore-Browne on Companies, Company Law section editor for the Journal of Business Law and Case Review editor for International Corporate Rescue. He is also an editor of The Company Lawyer. During 2000-2002 he was an Associate Senior Research Fellow at the Institute of Advanced Legal Studies. In 2001 he was a Visiting Fellow at the University of Connecticut, Centre for Insurance Law Research.

10.30-11.00am

Morning Tea

Venue: UTS Haymarket Campus, Ground Floor, Building 5B

Parallel Sessions

11:00am-12.50pm

Panel G

Venue: UTS Haymarket Campus, Third Floor Building 5b Room 3.18

- **Sheikh Solaiman** (University of Wollongong, Faculty of Law)
Investor Confidence in the Primary Share Market: A Critical Appreciation of the Roles and Liabilities of Gatekeepers in Australia
- **Vicky Comino** (University of Queensland, TC Beirne School of Law)
The Challenge of Corporate Law Enforcement in Australia
- **Aishah Bidin** (Universiti Kebangsaan Malaysia, Faculty of Law)
A Review of Auditors' Duties in Malaysia

Panel H

Venue: UTS Haymarket Campus, Third Floor Building 5b Room 3.17

- **Michael Adams** (UWS, School of Law)
Comparative Corporate Governance from Australia to the Maldives - What are the Lessons?
- **Vivienne Bath** (Sydney Law School)
Developing country investors - the example of China
- **Alex Lau and Angus Young** (Hong Kong Baptist University, Department of Accountancy and Law)
The 2008 Declaration of Independence by Hong Kong Courts and Anomalies in the Hong Kong Company Law

Panel I

Venue: UTS Haymarket Campus, Third Floor Building 5b Room 3.28

- **Kym Sheehan** (University of Sydney, Discipline of Business Law)
Principled Regulatory Action: the Case of Short Selling
- **Michelle Welsh** (Monash University, Department of Business Law and Taxation)
Continuous Disclosure: Testing the Correspondence Between State Enforcement and Voluntary Compliance
- **Josephine Coffey** (University of Sydney, Discipline of Business Law)
If You Sell the Bearskin Before You Have Skinned the Bear, What Should You Disclose?
- **Jason Harris** (UTS Faculty of Law) and **Suzanne Webbey** (ANU, College of Business)
Personal Liability for Corporate Disclosure Problems

12.50pm-1.30pm

Lunch

Venue: UTS Haymarket Campus, Law Courtyard Building 5B

1.30pm-2.10pm

CLTA AGM

Venue: UTS Haymarket Campus, Moot Court, Ground Floor Building 5B

Parallel Sessions

2.10pm-4.00pm

Panel J

Venue: UTS Haymarket Campus, Third Floor Building 5b Room 3.18

- **Joan Loughrey** (University of Leeds, School of Law)
Watchdogs or Whistle-Blowers? The Corporate Lawyer as Gate-Keeper.
- **John Lessing** (Bond University, Faculty of Law)
Lawyers as Gatekeepers
- **Sulette Lombard** (University of South Australia, School of Law)
Credit Rating Agencies as Gatekeepers: What Went Wrong?

Panel K

Venue: UTS Haymarket Campus, Third Floor Building 5b Room 3.17

- **Phillip Lipton** (Monash University, Department of Business Law and Taxation)

A History of the Joint Stock Company before Companies Legislation: Does Regulation Matter?"

- **Neil Andrews** (Victoria University, School of Law)
The Unlearned Lessons of the English Commercial Crisis of 1866: a Nineteenth Century Example of the Failure of Decentred and Pluralist Self-Regulation in Capital Market Gatekeeping
- **John McGrath** (UWS, School of Law)
Some Lessons from Japanese History: The Proper Role of Regulators and Government Authorities in Facilitating Global Credit Markets.
- **Luke Nottage** (Sydney Law School)
Economics, Politics, Public Policy and Law in Japan, Australasia and the Pacific: Corporate Governance, Financial Crisis, and Consumer Product Safety in 2008

Panel L

Venue: UTS Haymarket Campus, Third Floor Building 5B Room 28

- **Larelle Chapple** (University of Queensland, UQ Business School) and **Liam Byrnes** (ANU, School of Accounting and Business Information Systems)
How Should Regulators Deal with Overpaid and Deeply Entrenched Company Executives?
- **Kym Sheehan** (University of Sydney, Discipline of Business Law)
"Performance" – the difficult concept in executive compensation
- **Grace Li and Sophie Riley** (UTS, Faculty of Law)
Disclosure Requirements and Investor Protection: the compatibility of Commonwealth, State and Territory Laws in Serviced Strata Schemes
- **Jenny Fu** (University of Canberra, School of Law)
The Chinese Milk Scandal the Role of the Government in Corporate Governance in China

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