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Contractual Damages and the Supreme Court — Altimarloch and the Shifting Sands of “Reasonableness”
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In Marlborough District Council v Altimarloch Joint Venture Ltd the Supreme Court split 3:2 on whether the damages in a claim for a misrepresentation under s 6 of the Contractual Remedies Act 1979 should be analysed according to the cost of cure or diminution in value measure. This article analyses that decision and argues that the majority decision to award the cost of cure was the correct one. The majority rightly considered the plaintiff’s loss in light of the purpose for which it had entered the contract. The diminution in value alternative preferred by the minority would have undercompensated the plaintiff. Of further concern, the minority’s test of “reasonableness” for contractual damages was inherently uncertain, unprincipled and unsupported by authority.

Getting Lost in the Borderland of Theft: R v Gao and R v Hurring
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This article is an analysis of the District Court cases R v Gao and R v Hurring. These criminal proceedings arose out of an error of Westpac bank that attracted worldwide attention, namely the granting of an overdraft facility of $10 million when only $100,000
had been requested. The defendants were charged and convicted for their respective actions
following that error, including drawing on the facility and spending or transferring the
resulting funds. The principal charges against each were those of theft from Westpac under
s 219 of the Crimes Act 1961. It is the thesis of this article that such theft charges were not
available against either defendant. The article then proceeds to consider a range of
alternative possible offences on the facts. It concludes that, at least in relation to Gao,
charges of being an absconding debtor, or a party to defrauding creditors, might have been
more appropriate, carrying lesser maximum sentences. The near fortuity that it was Gao’s
company that applied for the overdraft may also have made theft from one’s own company
a possibility against Gao (under s 220 of the 1961 Act), but that too would have involved
very different charges from those brought.

Direct Enforcement of Security in Personal Property in New Zealand: Unhelpful
Differences Between Acts
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Direct enforcement of security in personal property by creditors is primarily governed in
New Zealand by three statutes, depending on the details of the security: the Personal
Property Securities Act 1999, the Property Law Act 2007 and the Credit (Repossession)
Act 1997. These statutes do not always fit together neatly, arguably without benefit, and
this article will critique some of the differences between the statutes, and suggest some
possible improvements that could be made. Some familiarity with the three Acts is
assumed.

Liquidation and Secured Creditors — The Purpose and Effect of Section 305 of the
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Most secured creditors and most liquidators are not lawyers, but their dealings with one
another are governed by a relatively complex provision in the Companies Act 1993, s 305.
The author considers the meaning of the section in light of its origins and cases in which its
principles have been applied.