

# Newsletter

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## What must the Bank give you if they wrongly pay your cheques.

It has happened to all of us from time to time that a bank breaches its duty in regard to paying cheques. The problem of how the damages should be calculated remains uncertain. Should the damages be the face value of the cheques? The face value of the cheques plus the interest that could have been earned if there was no breach of duty? Or the face value of the cheques plus damages for business loss because the money was not available in the account.

These questions were examined by the Victorian Supreme Court in the case of Nemur Varsity Pty Limited v NAB. The case proceeded to the Victorian Court of Appeal before three Judges.

The case involved the payment of insurance premium monies. The Court accepted that the monies were like trust monies and therefore of a special nature.

The error occurred when the account number of the recipient was not the same account number as that of the intended recipient.

### **Bank may have to pay for loss of business when they wrongfully pay cheques.**

When clients of Nemur found out that, for a time, they were uninsured they took their business elsewhere.

The Trial Judge found that because the monies were of a special nature the bank had to take reasonable care to ensure the funds were received by the intended beneficiary. The Judge at the trial granted Nemur damages for loss of business stemming from the breaches of duty by the bank.



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## **Jackson Smith**

Solicitors  
Level 3  
48 Hunter Street  
SYDNEY NSW 2000

GPO Box 3645  
SYDNEY NSW 2001

DX 10134 SSE

Tel: (02) 9233 5355  
Fax: (02) 9233 2839

[www.jacksonsmith.com.au](http://www.jacksonsmith.com.au)  
[info@jacksonsmith.com.au](mailto:info@jacksonsmith.com.au)

What the judge said was that when the customers of Nemur found out that they had been uninsured because of the premiums going to the wrong account the loss of business that occurred was caused by the default of the bank. On appeal this was overturned and the bank was able to successfully argue that they had committed no wrong.

The Appeal Judges made a number of comments on the circumstances that would permit a customer to receive wider damages from a bank. They said that the usual damages in such a bank case is the face value of the cheques. They accepted that wider or consequential damages should sometimes be awarded. The question is when those business losses should be awarded.

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**Professional advice should be sought before applying the information in this newsletter to particular circumstances.**

It was accepted that if the bank had special knowledge or notice it may then be responsible for the consequential damages. Batt JA said:

*“There must be knowledge on the part of the defendant that in the nature of things inconvenience beyond the loss of the goods must have been occasioned to the plaintiff.”*

What was absent in the Nemur case was knowledge on the bank’s part that there was a rogue involved who kept the money.

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***For any further information or assistance contact Peter Jackson, at Jackson Smith, free call, 1800 687 217.***