

# INSOLVENCY LAW JOURNAL

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## ARTICLES

### **Legal practitioners and persons acting for those at risk of insolvency: In what circumstances will professional fees constitute unfair preferences? – Shirley Quo**

The issue of whether professional fees paid in advance to solicitors and accountants within the preference period constituted preferential payments was considered in *Higgins v GS Enterprises Pty Ltd (in liq)* (1989) 7 ACLC 410 and *V R Dye & Co (A Firm) v Peninsula Hotels Pty Ltd (in liq)* (1999) 150 FLR 307; 32 ACSR 27; [1999] VSCA 60 respectively, where similar circumstances arose. The character of the impugned transaction and its effect for the purposes of the preference provisions under the *Bankruptcy Act 1966* (Cth) and the *Corporations Act 2001* (Cth) are examined .....7

### **The “rule in Cherry v Boulton” and its application in the modern law of company liquidation – David Walter**

A recent decision of the Supreme Court of New South Wales in *Otis Elevator Co Pty Ltd v Guide Rails Pty Ltd (in liq)* (2004) 49 ACSR 531; [2004] NSWSC 383 explored the possible application of the ancient equitable principle termed the “rule in *Cherry v Boulton*” to a modern company liquidation. This article discusses that decision, analyses its efficacy in the light of authority, and attempts to formulate a principled approach to the applicability to, and operation of, the “rule in *Cherry v Boulton*” to modern company liquidations .....22

### **Liquidators, lenders and contaminated land in New South Wales – Stuart Cork**

Lenders and insolvency practitioners, such as receivers and administrators, should make allowance for potential liabilities attached to polluted land. The *Contaminated Land Management Act 1997* (NSW) seeks to balance a “polluter pays” approach with a deeming system where the “polluter” is dead, insolvent or unidentifiable. The Act provides for alternative “appropriate persons” who may be held accountable instead. The Environmental Protection Authority’s wide reaching powers can interfere with the ranking of creditors and place additional cost burdens on administrations. The Authority can direct “appropriate persons” to prepare costly reports and perform rectification. Failure to comply leaves one liable to significant fines. Provision is made for recovery of the costs of complying with such directions from polluters. In practical terms, where a lender has seized land or an insolvency practitioner has been appointed, the polluter may well be unable to meet those costs due to being insolvent itself .....33

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