

INSOLVENCY LAW JOURNAL

Volume 30, Number 1

2022

EDITORIAL – *General Editor: Dr David Morrison* 3

ARTICLES

Revisiting the Amerind Appeal – Consequences for Insolvent Trustees of More than One Trust – *Christopher Chiam*

This article considers three issues that may arise in applying insolvency laws to a company which is the trustee of more than one trust, or where the company is both a trustee and trades in its own capacity. They are as follows: first, which trust should bear the costs of the winding up? Second, how should statutory references to the “property of a company” be construed when there are multiple trusts, particularly in the context of applying s 441A of the *Corporations Act 2001* (Cth)? Finally, how can preferences recovered from trust creditors be applied if the creditors of that trust have already been satisfied before the recovery is received? While the High Court’s seminal judgment in *Carter Holt Harvey Woodproducts* did not directly answer these questions, this article necessarily draws heavily on the Court’s analysis and exposition of the relevant principles. 4

Disclaiming Hazardous Property: The Crown, the Insolvent Company, and the “Occupier” Liquidator: Who Will Claim It? – *Dr Maria Dolhare*

Insolvency and environmental protection legal regimes both pursue commendable public interest aims. However, some of the legal mechanisms deployed to achieve these objectives may operate inconsistently and consequently require judicial intervention. This article examines an underexplored aspect of the intersection between insolvency and environmental protection legal regimes, namely the operation of general property law principles vesting in the Crown title over “ownerless” hazardous property disclaimed in the context of insolvency proceedings. The article discusses relevant judicial decisions and notes that the balancing of competing interests around the topic requires cautious legislative change. 23

RECENT DEVELOPMENTS – *Editor: Dr David Morrison*

Resolving Problems with Insolvent Corporate Trustees – Some Suggestions for Consideration – *Dr Garry J Hamilton and Dr David Morrison* 43

NEW ZEALAND REPORT – *Editor: Professor Lynne Taylor*

The Fit and Proper Person Standard under the Insolvency Practitioners Regulation Act 2019 (NZ) – *Lynne Taylor* 59

BOOK REVIEW – *Editor: Dr David Morrison*

Special Leave to Appeal (3rd ed), by David O’Brien – *Reviewed by David Morrison* 64

