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ARTICLES

The Liquidator’s Dilemma: Shutting the Gate After the Horse Has Bolted –
Matthew Broderick and David Morrison

This article considers the scenario of liquidators giving pre-insolvency advice to a company and then being called upon for appointment to that company in the event of insolvency. It is the first article in a series looking at simplification in the context of the Australian Securities and Investments Commission’s limited resources and response times, to test interest in whether there are other regulatory options that improve an aspect of the operation of the insolvency regime and reduce the pressure on the regulator. This article is confined to a general discussion on the idea of drawing a distinction between pre-insolvency and post-insolvency activity and recommending different appointees for practical reasons, including those arising around conflicts of interest. A subsequent article will consider particular aspects of that idea and make recommendations. 206

The Equity of Exoneration and Figments of the Trustee’s Imagination – *David Morrison and Patrick Quirk*

The equity of exoneration is an age-old doctrine, originally available to married women, who without recognised legal status, were accorded an equity in circumstances where they charged their own interest in an asset, usually the family home, for the purposes of promoting a business or venture conducted and owned by their husband and where their husband later became bankrupt. This article examines the equity in its current form and the ways that it is typically used today. Whether there is a need for such an equity in most circumstances is a moot point, given the considerable advancement of the legal status of women, and the development of the conduct and financing of business since the 17th century. Recent decisions, nonetheless, support the continued operation of the equity. 223

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