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AUSTRALIAN BANKRUPTCY CASES (NEW SERIES) VOLUME 19, PART 1

Jones v Porter [2022] FCA 1219

Bankruptcy – Trustee in bankruptcy – Enquiry into conduct of trustee – Dismissal of application for enquiry – Whether interlocutory or final order – Nature of application for enquiry – Test for whether final or interlocutory – Legal effect of judgement or order – Leave to appeal – Whether leave required – No application made for leave – Competency of appeal – Appeal dismissed – Bankruptcy Act 1966 (Cth), s 30(2), Sch 2, s 90-10; Federal Court of Australia Act 1976 (Cth), s 24(1)(d), (1A).

Rutherford (Bankrupt) v Inspector-General in Bankruptcy [2022] FCA 1469

Bankruptcy – Judicial Review – Inspector-General review decision – Review of trustee's decision – Administrative Appeals Tribunal review power under s 139ZF of the Bankruptcy Act 1966 (Cth) – Where Inspector-General has refused to review a trustee's income contribution assessment – Where "or" in s 139ZF of the Bankruptcy Act 1966 (Cth) read as a conjunct – Bankruptcy Act 1966 (Cth), ss 139W, 139ZA, 139ZC, 139ZD, 139ZE, 139ZF – Administrative Appeals Tribunal Act 1975 (Cth), ss 25, 43, 44 – Judiciary Act 1903 (Cth), s 39B – Administrative Decisions (Judicial Review) Act 1977 (Cth) – Veterans' Entitlement Act 1986 (Cth).

Kimber v Clark [2022] FCAFC 198

Bankruptcy – Property of bankrupt – Orders for sale of property – Bankrupt's interest in property – Creditors – Proof of debt – Priority debts – Legal costs – Appeal – Identification of error – Natural justice – Procedural fairness – Adequacy of findings and reasons – Appeal – Conduct of case below – Relief – Nature of relief – Bankruptcy Act 1966 (Cth), ss 5, 30(1), 77, 90-15, 109(1)(a), 116 (2), (3), (4), Sch 2, s 90-15; Bankruptcy Regulations 2021 (Cth), reg 25.

Do v Sijabat [2023] FCAFC 6

Bankruptcy – Section 128B(5) of the Bankruptcy Act 1966 (Cth) – Meaning of "business carried on by the transferor" – Whether "business carried on by the transferor" should be construed narrowly – Whether rebuttable presumption in s 128B(5) of the Bankruptcy Act 1966 (Cth) established – Whether primary judge failed to consider whether the presumption was rebutted – Whether primary judge failed to consider whether rebuttable presumption had been discharged – Bankruptcy Act 1966 (Cth), s 128B, subs (1)(c), (2), (3), (5) – Bankruptcy Legislation Amendment (Anti-avoidance) Act 2006 (Cth) – Bankruptcy Legislation Amendment (Superannuation Contributions) Act 2007 (Cth).

Re Jones (No 2) [2023] FCA 271

Costs – Entitlement to costs of application for judicial advice by trustee – Where proceedings of adversarial nature – Whether trustee costs should be paid from bankrupt estate – Where application would ordinarily be ex parte – Interested parties participating to protect self-interest – Where trustee acted reasonably throughout proceedings.

Smith v Trustee of the Property of Richard John Smith [2023] FCA 300

Bankruptcy – Validity of notice of objection – Whether notice of objection contained evidence – Sufficiency of reasons in notice of objection – Where reasons replicate objection ground – Where multiple notices of objection made after automatic discharge date – Bankruptcy Act 1966 (Cth), ss 30(1), 54, 120, 121, 122, 149(4), 149A, 149B, 149C, 149D(1)(aa), 149D(1)(ab), 149N.

