

Insolvency sound bites

Insolvency laws under the microscope

Australia's insolvency laws are currently undergoing a comprehensive bi-partisan review by a parliamentary inquiry (Parliamentary Joint Committee on Corporations and Financial Services). Formed in September 2022 and set to report by May 2023. The impetus for the review appears to be consideration of the effectiveness of our insolvency laws for the fallout from the COVID-19 pandemic, with the terms of reference being broad and far-reaching. ARITA has called for our laws to be redrafted under the SEE principles: simple, effective and efficient.

At the same time, on 3 February 2023 the government's Attorney-General announced that he will be convening a national roundtable of key stakeholders on 2 March 2023 to urgently look at reforms needed for Australia's personal insolvency regime.

No set-off

Set-off against a liquidator's voidable transaction claim is not permitted and a series of cases saying otherwise (including *Re Parker*, *Buzzle Operations v Apple Computer* and *Hall v Poolman*) were wrongly decided: *Metal Manufactures Pty Limited v Morton* [2023] HCA 1.

No cherry picking

A liquidator's ability to rely on the 'peak indebtedness rule' to maximise the recovery of unfair preference claims in the context of continuing business relationships has been abolished. Liquidators can no longer cherry pick the date the debtor is maximally indebted to a creditor as a starting point from which to identify preferences, but must now consider the broader relationship between the parties: *Bryant v Badenoch Integrated Logging Pty Ltd* [2023] HCA 2.

Dishonesty sticks

On discharge a bankrupt is usually released from all provable debts (S153(1) of the Bankruptcy Act 1966). An exception: a debt incurred by fraud (S153(2)(b)). Further, a judgment debt will be a debt incurred by means of fraud (for the purposes of S153(2)(b)) if the original debt on which the creditor sued was incurred by reason of the fraudulent conduct of the debtor: *Barodawala v Perinparajah* [2022] VSCA 198.

Adjudication abdication can cost

Liquidators must deal with a creditor's proof of debt within 28 days of receiving a written request. If they don't, a creditor may apply to court for a decision in respect of their proof of debt. Liquidators may decline to adjudicate on creditors' proofs of debt where there is a lack of funds, particularly when a creditor does not express a rationale for the necessity for such adjudication. However, if the creditor then applies to court to seek an adjudication, the creditor may be able to recover the costs of its application as costs in the winding up of the company: *Re Buildark Constructions Pty Ltd (in liq)* [2022] VSC 653.

Famous bankrupts Abraham Lincoln



Born into poverty in a Kentucky log cabin, in his early 20s Lincoln and a friend opened a general store in New Salem, buying other stores' inventories on credit, hoping to make a profit after re-selling the goods.

Sales were dismal, debts mounted and Lincoln sold his stake in the store. But his business partner (an alcoholic) later died and Lincoln became liable for US\$1,000 in back payments. With no modern bankruptcy laws in existence at the time, creditors sued, took his two remaining assets (his horse and some surveying gear), and Lincoln took 17 years to finally repay his creditors.

In 1860 (aged 51 years), Lincoln was elected 16th president of the USA.



FOREWORD

" Sometimes, lovely surprises come out of things going wrong."
Deborah Meaden

" Life is full of surprises. Why is that always surprising?"
Cathleen Schine

" The sign of intelligence is that you are constantly wondering. Idiots are always dead sure about every damn thing they are doing in their life."
Jaggi Vasudev

" Today is the oldest you've ever been and the youngest you'll ever be again."
Eleanor Roosevelt

" There are two ways to live your life. One is as though nothing is a miracle. The other is as though everything is a miracle."
Albert Einstein

CONTACT US

Level 9
40 St. George's Terrace
Perth WA 6000
PO Box Z5209
Perth WA 6831

T: (08) 9221 9339
F: (08) 9221 9340
E: general@sheridansac.com.au
W: www.sheridansac.com.au

Sheridans-Chartered-Accountants-104350958295804

@sheridansaccountants

sheridans-chartered-accountants

How long does a liquidation last?

There is no prescribed or set time within which a liquidation must be completed.

The time it takes to complete a company liquidation will vary depending on how complicated the company's affairs are, in particular the structure of the company, its dealings prior to liquidation and whether litigation is necessary.

The liquidation lasts as long as it needs to last for the liquidator to properly attend to the three main planks of the process: asset realisation, distribution to creditors and investigation.

Importantly, the liquidator is subject to a number of duties and tasks that must be performed, and properly performed, however the liquidator must act in a timely manner.

Rough timeframes: Unlikely to be less than 6 months, earliest likely to be 9 months, average probably 1 to 2 years, and can be longer than 5 years if it is a 'large' liquidation or there is some residual 'run off' matter or litigation.

Our Solutions

FINANCIAL DIFFICULTIES & INSOLVENCY

We provide help and support for companies and individuals under financial strain. We are specialists in corporate and personal insolvency services, financial and strategic advice and support, and turnaround and restructuring advice.

Recent work:

- Liquidation of two commercial construction companies.
- Liquidation of a Japanese restaurant.
- Informal assessments of current financial difficulties, including assessment of options and explanation of implications.
- New personal insolvency administrations including an electrician, a café owner, fish and chip shop operators and a financial assistance manager.

LITIGATION SUPPORT

Litigation support and forensic services can take many forms and we tailor our approach to the individual requirements of each assignment.

Recent work:

- Investigation regarding owners' personal and non-operational expenditure in a corporate entity.
- Advice on liability or potential exposure regarding distributions and loans from a family trust.
- Valuations of various entities including a café franchise, a sheep shearing business, a commercial plumbing business, a management consultancy business, a vehicle certification business and a bushfood harvesting business.
- Informal analysis of financial statements for a matter in litigation.



DID YOU KNOW?



Before Waterloo, Napoleon's most ignominious defeat was at the hands (or paws) of rabbits. The emperor was attacked by a relentless horde of 3,000 rabbits at a celebratory rabbit-hunting luncheon.

Swarming his legs and climbing up his jacket, the rabbits could not be shooed away. Napoleon was forced to beat a hasty retreat to his carriage, and to trundle away, the man dominating Europe was no match for a battle with bunnies.



EDITORIAL

Life was like a box of chocolates You never know what you gonna get

Life is full of surprises; you never know what will happen next. Sometimes good things will happen. Sometimes bad things will happen.

Can things be good all the time?

Hardly. But do some have it better than others? Is that why some people seem happier, more often, than others? Maybe some people have charmed, amazing lives (as advertised on social media), and some clearly have random, unfair issues or times. But surely for the most of us, sometimes it's good and sometimes, not so. That's just how life goes.

What if we accepted in our day-to-day lives the good and the inevitable bad?

Acceptance and allowance of the bad can reduce stress, pressure and the feeling of being overwhelmed. Accepting what's happening, can take some of the care away.

What's more, avoiding survival or panic brain means we can better access our thinking brain (pre-frontal cortex), to come up with feasible solutions and next best steps.

Developing this habit response to bad or difficult things can even lead to getting comfortable with being uncomfortable. This is something I've particularly had to try and learn (not entirely mastered yet) when starting significant new work assignments. If one can get comfortable being uncomfortable, apart from being able to actually get going and finding traction with a particular assignment, it generally helps handling even more challenging situations.

So don't feel so bad about feeling bad. Reframe life's realities, with acceptance and allowance. Imagine what the moment would be like if the challenge was ok, try viewing the situation from a relatively safe position and tell yourself you've got this.

"Life is full of surprises and serendipity. Being open to unexpected turns in the road is an important part of success. If you try to plan every step, you may miss those wonderful twists and turns. Just find your next adventure – do it well, enjoy it – and then, not now, think about what comes next." Condoleezza Rice

CONTACTS



Jennifer Low
Principal

B.Sc., FCA
Registered Liquidator
Bankruptcy Trustee



David Blanchett
Director

BMS (Hons), CA



Melissa Ledger
Manager

BCom, CA