



Quiz

What is Phoenix activity and how does the law (attempt to) regulate it?

1. What is Phoenix activity?
 - a. Rebirthing an enterprise by taking the assets from a company that is insolvent and moving them into another entity, where there has been inadequate consideration paid
 - b. Rebirthing an enterprise by taking the assets and debts from a company that is insolvent and moving them into another entity, where adequate consideration has been paid
 - c. Either A or B
 - d. None of the above
2. Who stands to incur the biggest loss from Phoenix activity?
 - a. The ATO
 - b. Competitors
 - c. Liquidators
 - d. Both A and B
3. What was the judgment of the court in *Australian Securities and Investments Commission v Franklin (liquidator), in the matter of Walton Constructions Pty Ltd* [2014] FCAFC 85?
 - a. The insolvency firm should be removed from its appointment as liquidator on the ground of actual bias

- b. The insolvency firm should be removed from its appointment as liquidator on the ground that a reasonable person would have cause for concern that the firm may be biased
 - c. The insolvency firm should be removed from its appointment as liquidator on the ground of illegality
 - d. As there was no apprehended bias or illegality, the insolvency firm should not be removed from its appointment as liquidator
- 4. What did the court hold in *Australian Securities and Investments Commission v Somerville* [2009] NSWSC 934 ?
 - a. That the letters of advice written by the lawyer to the directors of the company advising them to breach their duties as directors were "asset-stripping"
 - b. That the consideration created was illusory and a complete sham
 - c. That under s 79 of the *Corporations Act 2001* (Cth), the lawyer had aided and abetted the directors of the companies in breaching their duties
 - d. All of the above
- 5. Which of the following is *not* a reform proposed by the Government to target Phoenix activity?
 - a. Director Identification Number (DIN)
 - b. Cab rank liquidation model
 - c. Criminalisation of Phoenix activity
 - d. A more restrictive process for the issuing of ABNs

Answers:

1. A 2. D 3. B 4. D 5. C