



The University of Southern Queensland

Course Specification

Description: Advanced Insolvency Law and Practice II

Subject	Cat-Nbr	Class	Term	Mode	Units	Campus
LAW	8111	14244	2, 2002	EXT	1.00	TWMBA

Academic Group:	FOBUS
Academic Org:	FOB010
HECS Band:	3
ASCED Code:	090901

STAFFING

Examiner: Colin Anderson
Moderator: Rosalind Mason

PRE-REQUISITES

Pre-requisite: LAW 5503

OTHER-REQUISITES

Pre-requisite: LAW5503 or an understanding of Australian Legal Principles.

SYNOPSIS

Insolvency is a factor which many businesses have to confront. Modern approaches to insolvency mean that a business does not necessarily terminate as a result. This unit seeks to build on an understanding of bankruptcy and liquidation by considering administrations which can be invoked in an attempt to reconstruct the financial position of an insolvent person or company. Those insolvency administrations examined include Part X arrangements, receiverships, voluntary administrations and deeds of company arrangement.

OBJECTIVES

On successful completion of this course students will be able to:

- Describe the various administrations available to insolvents and assess their comparative advantages and disadvantages.
- Explain the procedure to be adhered to in order to establish the following administrations: - Part X arrangement; receivership voluntary administration deed of company arrangement; scheme of arrangement under the Corporations Law.
- Articulate the effects which occur if the administrations referred to above are established.

- Explain the role, powers, duties and liabilities of the practitioner who administers the administrations referred to above.
- Describe the nature and aims of the various administrations.
- Recognise how the various administrations can be terminated.
- Identify the major issues which face an administrator in administering the various administrations.
- Assess the role of the courts in relation to the various administrations.
- Explain in what circumstances an informal arrangement could be implemented in relation to a company suffering financial difficulties and describe the major issues which must be addressed by practitioners involved in such arrangements.
- Apply the legal principles which are discussed in this course to issues arising out of factual situations in order to determine the likely outcome.

TOPICS

Description	Weighting (%)
1. Part X Arrangements	18.00
2. Corporate Receiverships	25.00
3. Voluntary Administrations	27.00
4. Deeds of Company Arrangement	16.00
5. Schemes of Arrangement Under the Corporations Law	7.00
6. Monitoring and Informal Workouts	7.00

TEXT and MATERIALS required to be PURCHASED or ACCESSED:

Books can be ordered by fax or telephone. For costs and further details use the 'Book Search' facility at <http://bookshop.usq.edu.au> by entering the author or title of the text.

NOTE: LATEST EDITIONS OF TEXTS ARE REQUIRED.

Bigmore, G., Butterworths, Chatswood, New South Wales 'Bankruptcy Act 1966 Regulations and Rules' (Available: electronically on Bankruptcy Law & Practice, Butterworths Online, USQ Library DB Services) .

Butterworths, Chatswood, New South Wales 'Australian Corporation Law - Legislation' (Available: electronically on Butterworths Online, USQ Library Database Services) .

CCH Aust Ltd, North Ryde, New South Wales 'Australian Bankruptcy Legislation' (Available: electronically on CCH Electronic Libraries, USQ Library Database Services)

CCH Aust Ltd, North Ryde, New South Wales 'Australian Corporations and Securities Legislation' (Available: electronically on CCH Electronic Libraries, USQ Library Database Services) .

Keay, A. & Murray, M. 2002, *Insolvency: Personal and Corporate Law and Practice*, 4th edition, Lawbook Co, Rozelle, New South Wales.

REFERENCE MATERIALS

Reference materials are materials that, if accessed by students, may improve their knowledge and understanding of the material in the course and enrich their learning experience.

Bevan, C. 1994, *Insolvent Trading*, Federaton Press, Sydney.

Blanchard, P. & Gedye, M. 1994, *The Law of Company Receiverships in Australia and New Zealand*, 2nd edition, Butterworths, Wellington.

CCH Aust Ltd, North Ryde, New South Wales 'Australian Corporations and Securities Law Reporter' (Available: electronically on CCH Electronic Libraries, USQ Library Database Services) .

CCH Aust Ltd, North Ryde, New South Wales 'Australian Insolvency Management Practice' (Available: electronically on CCH Electronic Libraries, USQ Library Database Services) .

Crutchfield, P. 1997, *Corporate Voluntary Administration Law*, 2nd edition, LBC Information Services, North Ryde, New South Wales.

Farmer 1986, *Creditor and Debtor Law in Australia and New Zealand*, 3rd edition, CCH Australia, North Ryde, New South Wales.

Ford, H., Austin, R. & Ramsay, I. 2001, *Ford's Principles of Corporations Law*, 10th edition, Butterworths, Sydney.

Irlicht, T. 1986, *Assignments, Arrangements and Compositions by Debtors*, 2nd edition, Butterworths, Sydney.

Keay, A. 1998, *Bankruptcy Proceedings Handbook*, 3rd edition, John Libbey & Co, Sydney.

Keay, A. (ed) 1999, *The Law of Company Liquidation*, 4th edition, LBC Information Services, Sydney.

Lessing, J. & Corkery, J. (eds) 1995, *Corporate Insolvency Law*, Bond University, Gold Coast, Queensland.

Lindwall, R., Butterworths, Chatswood, New South Wales 'Australian Corporation Law: Principles & Practice' (Available: electronically on Butterworths Online, USQ Library Database Services) .

Lipton, P. & Herzberg, A. 2001, *Understanding Company Law*, 10th edition, Lawbook Co, Sydney.

McDonald, E., Lawbook Co, Sydney 'McDonald, Henry & Meek's Australian Bankruptcy Law & Practice' (Available: Bankruptcy & Insolvency Law Library) .

(available on campus only as at January 2002, on Library CD Databases network. Online access may become available later in year ... check Lawbook Online on USQ Library's Database Services website)

O'Donovan, J., Lawbook Co, Sydney 'Company Receivers and Administrators' (Available: Bankruptcy & Insolvency Law Library) .

(available on campus only as at January 2002, on Library CD Databases network. Online access may become available later in year ... check Lawbook Online on USQ Library's Database Services website)

Rose, D. 1999, *Lewis' Australian Bankruptcy Law*, 11th edition, LBC Information Services, North Ryde, New South Wales.

Tomasic, R. & Whitford, K. 1997, *Australian Insolvency and Bankruptcy Law*, 2nd edition, Butterworths, Sydney.

Tunstall, I. 2000, *Trading or Insolvency? Risk Management and the Company Administration Scheme*, Thomson Legal & Regulatory Asia Pacific, Sydney.

STUDENT WORKLOAD REQUIREMENTS

ACTIVITY	HOURS
Assessment	35
Directed Study	55
Private Study	75

ASSESSMENT DETAILS

Description	Marks Out of	Wtg(%)	Required	Due Date
ASSIGNMENT PROPOSAL	5.00	5.00	Y	16 Aug 2002
ASSIGNMENT	35.00	35.00	Y	18 Oct 2002
EXAMINATION (3 HOURS)	60.00	60.00	Y	END S2 (see note 3)

NOTES:

- Students will be advised of the official examination date after the timetable has been finalised.

OTHER REQUIREMENTS

- To be assured of a passing grade in this course, students must attempt all of the assessments, achieve at least 50% in the examination and at least 50% of the available marks for the course. Final grades for the course will be determined by the addition of the marks obtained in each assessment item, weighted as in the Assessment Details.
- Students must retain a copy of all pieces of assessment which must be produced if/when required by the lecturer.
- LATE ASSIGNMENTS** (i) All assessments submitted after the due date (and not approved for extension) in accordance with university policy will be penalised 20% per working day. (ii) If students submit assignments after the due date and wish to claim extenuating circumstances then they shall provide validated documentary evidence with the assignment, explaining the circumstances. (iii) The

course examiner shall consider the statement accompanying a late assignment and decide on the outcome.

4 Assignments not submitted in the appropriate assignment folders will be deemed as not being received.

5 **DISHONEST ACTIONS** (i) Any student who is alleged to having performed a dishonest action relating to any assessment in the course will have a course of action taken against him/her as outlined in the Academic Regulations. (ii) Pieces of assessment should be the work of individual students. Joint pieces of assessment are not permitted unless written approval has been obtained from the course leader. (iii) Dishonest action in relation to assessment includes: copying or attempting to copy the work of others; use of or attempting to use information prohibited from use in that form of assessment; submitting the work of another as your own; consciously committing acts of plagiarism, ie taking and using another's thoughts or writings as one's own with intent to deceive, which occurs when paragraphs, sentences, a single sentence or significant parts of a sentence which are copied directly, are not enclosed in quotation marks and appropriately footnoted or referenced in the text; direct quotations are not used, but text is paraphrased or summarised, and the source of the material is not acknowledged by footnoting or other reference in the text. (i) Any student who is alleged to having performed a dishonest action relating to any assessment in the course will have a course of action taken against him/her as outlined in the Academic Regulations. (ii) Pieces of assessment should be the work of individual students. Joint pieces of assessment are not permitted unless written approval has been obtained from the course leader. (iii) Dishonest action in relation to assessment includes: copying or attempting to copy the work of others; use of or attempting to use information prohibited from use in that form of assessment; submitting the work of another as your own; consciously committing acts of plagiarism, ie taking and using another's thoughts or writings as one's own with intent to deceive, which occurs when paragraphs, sentences, a single sentence or significant parts of a sentence which are copied directly, are not enclosed in quotation marks and appropriately footnoted or referenced in the text; direct quotations are not used, but text is paraphrased or summarised, and the source of the material is not acknowledged by footnoting or other reference in the text. (i) Any student who is alleged to having performed a dishonest action relating to any assessment in the course will have a course of action taken against him/her as outlined in the Academic Regulations. (ii) Pieces of assessment should be the work of individual students. Joint pieces of assessment are not permitted unless written approval has been obtained from the course leader. (iii) Dishonest action in relation to assessment includes: copying or attempting to copy the work of others; use of or attempting to use information prohibited from use in that form of assessment; submitting the work of another as your own; consciously committing acts of plagiarism, ie taking and using another's thoughts or writings as one's own with intent to deceive, which occurs when paragraphs, sentences, a single sentence or significant parts of a sentence which are copied directly, are not enclosed in quotation marks and appropriately footnoted or referenced in the text; direct quotations are not used, but text is paraphrased or summarised, and the source of the material is not acknowledged by footnoting or other reference in the text.

- 6 DEFERRED EXAMINATIONS (i) Deferred examinations will be granted at the Dean's discretion based on non-attendance for medical, compassionate or employment-related reasons having regard to item 1. If a deferred examination is granted, students shall sit the deferred examination in the next semester examination period. If, for whatever reason, this deferred examination is not taken then the student will be graded 'F'. (ii) To be eligible for consideration for a deferred examination, students must have submitted a genuine attempt at all mandatory assessment items. (iii) Deferral of an examination CANNOT be granted on an existing deferral in that course. (iv) Requests must be in writing to the Faculty Operations Manager clearly stating student name, student number, current address, course alpha-numeric identifier and name for the examination not attended. (v) Requests MUST BE supported by original or suitably authenticated documentation. (vi) Requests and documentation must be submitted to the Faculty Operations Manager within ten (10) calendar days of the missed examination date. (vii) Requests based on medical reasons must be supported by medical evidence on the appropriate University of Southern Queensland medical certificate or doctor's certificate. A medical certificate must be dated with the same date as the period of illness for which the absence from examination is being sought and clearly indicate the student's name and, if possible, student number (retrospective medical certificates will not be accepted for either assignment work or examinations). Only original or authenticated medical certificates will be accepted. A student's medical condition must be stated clearly (IN ENGLISH). (Certificates stating a student has a 'medical condition' may not be sufficient grounds for deferment of examination). Medical evidence must cover the student for the day(s) of the missed examination(s). (viii) Requests based on family/personal reasons must be supported by a clear statement (IN ENGLISH) from a medical practitioner, counsellor or independent member of the community. (ix) Requests based on employment-related reasons must be supported by a clear statement (IN ENGLISH) from the student's employer. (x) Students who have a medical condition or genuine compassionate or employment-related problems on the day of the examination are advised to obtain the relevant documentary evidence and NOT attempt the examination. If a student makes an attempt at the examination, the assessment item will be marked and a grade awarded. In these cases, a student cannot, after receiving a 'fail' grade, request a deferred examination or special consideration. (xi) Students who have been granted deferred examinations will not be granted a waiver of prerequisites, without the permission of the Heads of Department, in subsequent semesters (if they do not have a passing grade).
- 7 Course weightings of topics should not be interpreted as applying to the number of marks allocated to questions testing those topics in an examination paper. The examination may test material already tested in assignments.
- 8 Mechanised erasers are not permitted in exam venues.
- 9 The examination will be OPEN. Any material may be taken into the examination room. Students will be allowed to bring a quiet, battery-operated non-programmable calculator into the examination.
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