



The University of Southern Queensland

Course specification

Description: Insolvency and Restructuring Law						
Subject	Cat-nbr	Class	Term	Mode	Units	Campus
LAW	3110	45077	2, 2005	EXT	1.00	Toowoomba

Academic group:	FOBUS
Academic org:	FOB010
Student contribution band:	3
ASCED code:	090901

STAFFING

Moderator: Rosalind Mason

REQUISITES

Pre-requisite or Co-requisite: LAW2106

RATIONALE

The fact that persons and companies will, in a market economy, become insolvent is inevitable. The past decade has demonstrated the need for advisers and those involved generally in commerce to be aware of the issues which confront insolvents and what alternatives can be pursued. To be able to do this requires an understanding of the law as it applies to both personal and corporate insolvency.

SYNOPSIS

The course will provide a comprehensive coverage of the law of insolvency and restructuring as it affects both individuals and corporations. The course examines the major types of insolvency administration provided for by the law, for both individuals and corporations - bankruptcy, Part X arrangements, receivership, voluntary administrations and liquidations. Some emphasis is placed on the process of bankruptcy and liquidation and a major part of the course is a consideration of the provisions dealing with company rescue.

OBJECTIVES

Completion of this course should enable students to:

1. locate and analyse primary law materials and secondary materials (as relevant) while examining an issue relevant to insolvency and restructuring law;
2. explain the legal principles relevant to defining insolvency; to procedures for and effects of collective insolvency administrations (both bankruptcy and liquidation, as well as the alternatives such as Part X arrangements and voluntary administrations) and secured creditor administrations (that is, receiverships); to administration of the relevant estates, including recovery of property; and to insolvency administrators;

3. apply such legal principles to given fact situations in order to determine the likely outcome to issues raised; and
4. demonstrate satisfactory skills in communication.

TOPICS

Description	Weighting (%)
1. The Principles of Insolvency Law	8.00
2. Bankruptcy	16.00
3. Arrangements under Part IX and Part X	8.00
4. Liquidation	24.00
5. Receivership	8.00
6. Voluntary Administration	20.00
7. Deeds of Company Arrangement	8.00
8. Cross Border Insolvency	8.00

TEXT and MATERIALS required to be PURCHASED or ACCESSED

ALL textbooks and materials are available for purchase from USQ BOOKSHOP (unless otherwise stated). Orders may be placed via secure internet, free fax 1800642453, phone 07 46312742 (within Australia), or mail. Overseas students should fax +61 7 46311743, or phone +61 7 46312742. For costs, further details, and internet ordering, use the 'Textbook Search' facility at <http://bookshop.usq.edu.au> click 'Semester', then enter your 'Course Code' (no spaces).

CCH Australian Bankruptcy Act, CCH Australia Ltd, North Ryde, New South Wales OR Butterworths Australian Bankruptcy Act 1966 Rules and Regulations Annotated, Butterworths, Chatswood, New South Wales.

CCH Australian Corporations and Securities Legislation, CCH Australia Ltd, North Ryde, New South Wales OR Butterworths Australian Corporations Legislation, Butterworths, Chatswood, New South Wales.

Key, AR & Murray, M 2005, *Insolvency: personal and corporate law and practice*, 5th edn, Law Book Co, Sydney.

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.

Anderson, C & Morrison, D 2003, *Crutchfield's corporate voluntary administration law*, 3rd edn, Law Book Co, North Ryde, New South Wales.

Austin, R & Ramsay, I 2005, *Ford's principles of corporation law*, 12th edn, Butterworths, Chatswood, New South Wales.

Fisher, R, Harmer, R & Mainsbridge, R 'Voluntary administration in Australian corporation law - principles and practice' (Available: Lexis Nexis AU, USQ Library Databases) .

Fletcher, I 2001, *Fletcher - the law of insolvency*, 3rd edn, Sweet & Maxwell, London.

(This is an English book which is useful for general principles, but care should be taken in referring to specific statutory provisions referred to in the book.)

Goode, R 1997, *The principles of corporate insolvency law*, 2nd edn, Sweet & Maxwell, London.

(This is an English book which is useful for general principles, but care should be taken in referring to specific statutory provisions referred to in the book.)

Insall, H, Robertson, D & Lovell, P 'Winding up by the court in Australian corporation law - principles and practice' (Available: Lexis Nexis AU, USQ Library Databases) .

Keay, A 1998, *Bankruptcy proceedings handbook*, 3rd edn, John Libbey & Co, Sydney.

Keay, A 1999, *McPherson's law of company liquidation*, 4th edn, LBC Information Services, Sydney.

Lindwall, R 'Receivers and controllers of corporate property in Australian corporation law' (Available: Lexis Nexis AU, USQ Library Databases) .

Lindwall, R 'Voluntary winding up in Australian corporation law' (Available: Lexis Nexis AU, USQ Library Databases) .

Lipton, P & Herzberg, A 2003, *Understanding company law*, 11th edn, Law Book Co, Sydney.

McDonald, E, Henry, H & Meek, H 'Australian bankruptcy law and practice' (Available: Law Book Online, USQ Library Databases) .

O'Donovan, J 'Company receivers and administrators' (Available: Law Book Online, USQ Library Databases) .

Robertson, D, Redmond, P & Lovall, D 'Recovery of property or compensation in Australian corporation law' (Available: Lexis Nexis AU, USQ Library Databases) .

Robertson, D & Lovall, D 'Winding up generally in Australian corporation law - principles and practice' (Available: Lexis Nexis AU, USQ Library Databases) .

Rose, D 1999, *Lewis' Australian bankruptcy law*, 11th edn, LBC Information Services, North Ryde, New South Wales.

Taylor, T, Ferrier, I & Hodgson, T 'Australian insolvency management practice' (Available: CCH Electronic Libraries, USQ Library Databases) .

STUDENT WORKLOAD REQUIREMENTS

ACTIVITY	HOURS
Assessment	20.00
Directed Study	52.00
Private Study	93.00

ASSESSMENT DETAILS

Description	Marks out of	Wtg(%)	Due date
ASSIGNMENT	30.00	30.00	12 Sep 2005
2 HOUR EXAMINATION	70.00	70.00	END S2 (see note 1)

NOTES

1. The examination is scheduled to be held in the end-of-semester examination period. Students will be advised of the official examination date after the timetable has been finalised.

IMPORTANT ASSESSMENT INFORMATION

- 1 Attendance requirements:
If you are an international student in Australia, you are advised to attend all classes at your campus. For all other students, there are no attendance requirements for this course. However, it is the students' responsibility to study all material provided to them or required to be accessed by them to maximise their chance of meeting the objectives of the course and to be informed of course-related activities and administration.
- 2 Requirements for students to complete each assessment item satisfactorily:
Students must submit assignments that represent a reasonable attempt as determined by the Examiner. Students must obtain at least 50% of the marks available for the examination.
- 3 Penalties for late submission of required work:
If students submit assignments after the due date without prior approval then a penalty of 20% of the total marks available for the assignment will apply for each working day late.
- 4 Requirements for student to be awarded a passing grade in the course:
To be assured of receiving a passing grade a student must attempt all of the summative assessment items, achieve at least 50% in the examination and achieve an aggregated mark of at least 50% of the available weighted marks for the summative assessment items.
- 5 Method used to combine assessment results to attain final grade:
The final grades for students will be assigned on the basis of the weighted aggregate of the marks obtained for each of the summative assessment items in the course.
- 6 Examination information:
This is an open examination. Candidates may have access to any material during the examination except the following: electronic communication devices (eg mobile phones, pagers), bulky materials, devices requiring mains power and material likely to disturb other students.
- 7 Examination period when Deferred/Supplementary examinations will be held:
Any Deferred or Supplementary examinations for this course will be held during the next examination period.
- 8 University Regulations:
Students should read USQ Regulations 5.1 Definitions, 5.6. Assessment, and 5.10 Academic Misconduct for further information and to avoid actions which might contravene University Regulations. These regulations can be found at the URL <http://www.usq.edu.au/corporateservices/calendar/part5.htm>. Students should also read

the Faculty of Business Guide to Policies and Procedures of the Faculty which can be found at the URL <http://www.usq.edu.au/handbook/current/buspolproc.html>.

ASSESSMENT NOTES

- 1 Assignments: (i) The due date for an assignment is the date by which a student must despatch the assignment to the USQ. The onus is on the student to provide proof of the despatch date, if requested by the Examiner. (ii) If requested, students will be required to provide a copy of an assignment submitted for assessment purposes. This should be despatched to the USQ within 24 hours of receipt of a request being made. (iii) In accordance with University's Assignment Extension Policy (Regulation 5.6.1), the Examiner may grant an extension of the due date of an assignment in extenuating circumstances. 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. The Examiner shall consider the statement accompanying a late assignment and decide on the outcome. (iv) Assignments are to be submitted in the appropriate assignment folders. (v) The Examiner will normally only accept assessments that have been written, typed or printed on paper-based media. (vi) The Examiner will not accept submission of assignments by facsimile. (vii) In the event that a due date for an assignment falls on a local public holiday in their area, such as a Show holiday, the due date for the assignment will be the next day. Students are to note on the assignment cover the date of the public holiday for the Examiner's convenience.
- 2 Course Weightings: 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.
- 3 Dishonest Actions: (i) Any student who is alleged to have 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 Examiner. (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, that is, 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.
- 4 Deferred Examinations: (i) Deferred examinations will be granted based on non-attendance for medical reasons, family/personal reasons, or employment-related reasons. Deferred examinations must be recommended by the Faculty Assessment Coordinator and approved by the Examiner or Moderator or Dean's Nominee. 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 Assessment Coordinator 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 Assessment Coordinator 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 Head of Department, in subsequent semesters (if they do not have a passing grade).

OTHER REQUIREMENTS

- 1 Learning Resources: Prescribed text and materials (see above); recommended reference materials (see above); printed Introductory Book, Study Book/s, and Book/s of Selected Readings; and course Website accessible via USQConnect
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