Description: Insolvency and Restructuring Law

Subject | Cat-Nbr | Class | Term | Mode | Units | Campus
---------|--------|-------|------|------|-------|--------
LAW | 3110 | 14135 | 2, 2002 | EXT | 1.00 | TWMB

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

STAFFING
Examiner: Colin Anderson
Moderator: Rosalind Mason

PRE-REQUISITES
Pre-requisite: LAW 1101

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 insolvencies 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 unit 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:
- explain the meaning of insolvency and identify the principles, aims and role of the law underlying this field;
- describe the various administrations available to insolvents and assess their comparative advantages and disadvantages;
• outline the procedure involved in invoking and terminating the various forms of insolvency administration considered in the course;
• articulate the procedures and actions able to be undertaken in the administration of bankruptcies and liquidations, including the international aspects of these administrations;
• describe the effects precipitated by a receivership, voluntary administration and Part X arrangement and articulate the role, powers, duties and liabilities of the practitioner who administers the respective administration;
• explain the circumstances which may precipitate the appointment of an interim receiver or provisional liquidator and explain the general effects of and issues relating to such appointments including the international aspects of these administrations;
• identify the transactions which may occur before bankruptcy or liquidation and which may be avoided under the Bankruptcy Act or Corporations Law and assess what provisions can be employed by trustees or liquidators in challenging such transactions;
• analyse the legal principles and issues which can be applied in relation to factual situations involving insolvency matters; and
• demonstrate satisfactory skills in communication.

TOPICS

<table>
<thead>
<tr>
<th>Description</th>
<th>Weighting (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The Principles of Insolvency Law</td>
<td>8.00</td>
</tr>
<tr>
<td>2. Initiating bankruptcy and its effects and termination</td>
<td>16.00</td>
</tr>
<tr>
<td>3. Part X Arrangements</td>
<td>8.00</td>
</tr>
<tr>
<td>4. Types of Liquidation. The winding up process and the effects of winding up</td>
<td>24.00</td>
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<tr>
<td>5. Receivership</td>
<td>8.00</td>
</tr>
<tr>
<td>6. Voluntary Administration</td>
<td>20.00</td>
</tr>
<tr>
<td>7. Deeds of Company Arrangement</td>
<td>8.00</td>
</tr>
<tr>
<td>8. Cross Border Insolvency</td>
<td>8.00</td>
</tr>
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</table>

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.


**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.


Fletcher, I. 1990, *Fletcher - The Law of Insolvency*, 3rd edition, 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 edition, 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: electronically on Butterworths Online, USQ Library Database Services).


**STUDENT WORKLOAD REQUIREMENTS**

<table>
<thead>
<tr>
<th>ACTIVITY</th>
<th>HOURS</th>
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<tbody>
<tr>
<td>Assessment</td>
<td>20</td>
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<tr>
<td>Directed Study</td>
<td>52</td>
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<tr>
<td>Private Study</td>
<td>93</td>
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</table>

**ASSESSMENT DETAILS**

<table>
<thead>
<tr>
<th>Description</th>
<th>Marks Out of</th>
<th>Wtg(%)</th>
<th>Required</th>
<th>Due Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>ASSIGNMENT</td>
<td>25.00</td>
<td>25.00</td>
<td>Y</td>
<td>20 Sep 2002</td>
</tr>
<tr>
<td>EXAMINATION (3 HOURS)</td>
<td>75.00</td>
<td>75.00</td>
<td>Y</td>
<td>END S2</td>
</tr>
</tbody>
</table>

**NOTES:**

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

**OTHER REQUIREMENTS**

1. 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.

2. Students must retain a copy of all pieces of assessment which must be produced if/when required by the lecturer.

3. **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.

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

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
referred 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.

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 is OPEN which means that students are permitted to bring into the exam room and use any written or printed material.