Legal Profession
Admission Board
of New South Wales

Diploma in Law
16 Insolvency
Examinable Curriculum

Subject Description

The course deals with personal insolvency (bankruptcy) and corporate insolvency (covering both liquidation and non-liquidation arrangements). Insolvency law aims to recover funds for unsecured creditors, protect the insolvent during the course of administration and enquire into the circumstances of the insolvency.

The personal insolvency lectures include the following topics of solvency; acts of bankruptcy; bankruptcy notices; creditor's petitions; the effects of bankruptcy; the doctrine of relation back; exempt transactions; transactions void against the trustee; termination of bankruptcy; and voluntary personal insolvency.

The corporate insolvency component of this course deals with both liquidation and non-liquidation arrangements that have been brought about in consequence of company insolvency.

In relation to liquidation arrangements, particular emphasis will be placed upon: the distinction between voluntary and compulsory winding up; the grounds upon which a company can be wound up; procedure to obtain a winding up order including the use of statutory demands; provisional liquidation; the effects of winding up; liquidator's powers and duties and the administration of the winding up; assets available to the liquidator; voidable transactions; and insolvent trading actions.

In relation to corporate insolvency resulting in non-liquidation arrangements being entered into, emphasis will be placed on receivership, voluntary administration, and deeds of company arrangement.

Subject Objectives

At the completion of this subject, a student-at-law should be able to:

- Identify issues related to insolvency law.

- Demonstrate knowledge of the relevant insolvency law.
- Apply the law to factual scenarios.
- Organise and express clear, accurate, plain English written advice to a lay client on insolvency matters.

Prescribed Books and Materials

As updated by the LPAB Examinations Committee from time to time.

Prescribed Topics

Topic 1: Personal Insolvency – Bankruptcy

- What is Bankruptcy?
- Purpose and aims of Bankruptcy Law
- The history of personal and corporate insolvency
- Source of Bankruptcy Law
- Administration of Bankruptcy and Courts
- Determining Solvency
- Cross-Border Insolvency
- Typical Course of a Bankruptcy

Topic 2: Creditors Petitions, Sequestration Orders, Debtors Petitions and Effects of Bankruptcy

- Creditor's Petitions
- Dismissal of a Creditor's Petition
- Sequestration Orders – Power to Make and Stay
- Debtors' Petitions
- Effects of a Bankruptcy

Topic 3: Administration of the Bankrupt's Estate

- Administration of the Estate Generally
- Property Available for Payment of Debts
- Distribution and Priorities
- Sale of Bankrupt's Property

Topic 4: Transactions void against the Trustee and s 139ZQ Notices

- Transactions void against the trustee
- Notices under s 139ZQ

Topic 5: Termination of Bankruptcy, Annulment, Personal Insolvency Agreements and Cross-border insolvency

- Termination of bankruptcy
- Personal insolvency agreements
- Debt agreements
- Family Law and Bankruptcy Trustees
- Cross-Border Insolvency

Topic 6: Corporate Insolvency – External Administration

- Corporate insolvency
- The liquidation process and its consequences
- Provisional liquidation
- Liquidation

Topic 7: The Liquidation Process

- The liquidator
- The effects of winding up
- Assets available to the Liquidator
- Recovery by avoiding pre-liquidation transactions
- Assets available to the Liquidator – General Principles
- Assets available to the Liquidator – Unfair Preferences
- Assets available to the Liquidator – Uncommercial Transactions
- Assets available to the Liquidator – Defeating or Delaying or Obstructing rights of creditors
- Assets available to the Liquidator – Unfair Loans
- Assets available to the Liquidator – Creditor Defeating Dispositions
- Assets available to the Liquidator – Unreasonable Director-Related Transactions
- Assets available to the Liquidator – Voidable Transactions during Voluntary Administration and Deed of Company Arrangement
- Assets available to the Liquidator – Avoidance of Certain Circulating Security Interests (“Floating Charges”)
- Court may make orders about voidable transactions

- Transactions which are regarded as not voidable as against certain persons – section 588FG
- Other types of void dispositions (apart from Part 5.7B)

Topic 8: Directors Duties and Insolvent Trading

- Liability of directors and officers for breach of duty – Common Law, Equitable and Statute
- Insolvent Trading
- Elements of Insolvent Trading
- Defences to Insolvent Trading
- Criminal Offences

Topic 9: Liquidation and Non-Liquidation Arrangements

- Distribution of the estate by liquidator
- Stay or termination of the Winding-Up
- Deregistration
- Reinstatement
- Claims against insurers of registered companies
- Non-liquidation arrangements – Receivership
- General role of a receiver
- When can a receiver be appointed?
- Receivers – privately appointed or court-appointed
- Powers, duties and liabilities of a privately-appointed receiver
- Receivers appointed by the Court
- Effect of appointment
- Ranking of creditors
- Termination of receivership

Topic 10: Voluntary Administration and Deeds of Company Arrangements

- Voluntary administration
- Deeds of company arrangement

This subject is not designed to cover Priestley 11 Content.