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# **LAW OF INSOLVENCY & WINDING-UP OF COMPANIES 2010**

**LECTURER: PROF NMI GOOLAM**

## **1 INTRODUCTION**

### **1.1 Acknowledgement**

This study guide is used with the permission of Ms Sarah Driver who compiled it and presented the course previously. However, a few changes have been made to the structure of the course outline.

## **1.2 Overview**

The *Law of Insolvency* is a compulsory final year LLB semester course. The course will facilitate a systematic study of the law of insolvency, focusing on the legal principles which apply to insolvent individuals and corporate entities.

The purpose of the course is to familiarise students with the scope, procedure and effects of insolvency and winding-up.

## **1.3 Credit value**

10 credits

## **1.4 Assumptions of prior learning**

Students would need to know and be able to do the following in order to benefit from this course:

- Be capable of communicating in written and spoken English;
- Be capable of critically analysing and extracting relevant legal principles from case law, legislation and other source material;
- Have a working knowledge of matrimonial property law and corporate law; and
- Be capable of independent learning.

## **2 OUTCOMES**

### **2.1 Critical cross-field outcomes**

It is intended that successful participation in the course will assist students in developing the following competencies:

- Identifying and solving problems;
- Organising and managing themselves;
- Collecting, analysing and evaluating information;
- Communicating effectively;
- Participating as responsible citizens.

## **2.2 Intended specific outcomes**

It is intended that students will be able to do the following on successful completion of the course:

- Apply the relevant legal principles applicable to insolvency and winding-up;
- Communicate the legal position as well as their own point of view;
- Demonstrate an understanding of the procedural aspects applicable to sequestration and liquidation.

## **3. TEACHING METHODS**

A detailed course outline including a reading list (cases and relevant articles) and bibliography are provided for this course. Students are expected to read ahead of the next lecture in order to acquire a basic familiarity with the relevant topic.

There are no tutorials in this course and there are two compulsory lectures per week for the duration of the semester, although students may be absent without leave for a total of three lectures during the course.

## **4. STUDENT ASSESSMENT**

<b>Specific Outcomes</b>	<b>Assessment criteria</b>	<b>Assessment tasks</b>
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<ul style="list-style-type: none"> <li>• Apply the relevant legal principles applicable to insolvency and winding-up</li> </ul>	<ul style="list-style-type: none"> <li>• Identify and distinguish between the legal principles applicable to insolvency and winding-up with reference to factual situations</li> <li>• Apply statutory and common law principles to given sequestration and winding-up issues</li> </ul>	<ul style="list-style-type: none"> <li>• Class discussion and questioning (formative)</li> <li>• Problem and theory questions in test and examination (summative)</li> </ul>
<ul style="list-style-type: none"> <li>• Communicate the legal position as well as their own point of view</li> </ul>	<ul style="list-style-type: none"> <li>• Demonstrate the ability to critically reflect on what has been read and learnt with reference to a given context</li> <li>• Describe, explain and argue the relevant legal principles with reference to case law and legislation in a given context</li> <li>• Critically evaluate the current law of insolvency and winding-up with</li> </ul>	<ul style="list-style-type: none"> <li>• Class discussion and questioning (formative)</li> <li>• Problem and theory questions in test and examination (summative)</li> </ul>

	reference to a given context	
<ul style="list-style-type: none"> <li>• Demonstrate an understanding of the procedural aspects applicable to sequestration and liquidation</li> </ul>	<ul style="list-style-type: none"> <li>• Describe and explain the statutory procedures followed in liquidation and sequestration</li> </ul>	<ul style="list-style-type: none"> <li>• Class discussion and questioning (formative)</li> <li>• Problem and theory questions in test and examination (summative)</li> </ul>

The class work component for the course amounts to 30% of the final mark and the remaining 70% comprises a two-hour examination which will be written in November 2010.

Students are assessed for the class work component on the basis of two tests each of which counts 15% of the final mark.

The dates of the tests and the prescribed work for each will be announced in due course.

The test and examination will contain:

- problem questions which require the application of statute and common law to solve practical issues; and
- theory-type questions in which students are required to define and describe fundamental concepts in the law of insolvency as well as to explain and critically evaluate the current law.

## 5. BIBLIOGRAPHY

The following book is **prescribed** for this course:

- Sharrock *et al Hockly's Insolvency Law* (2006), 8<sup>th</sup> ed, Juta & Co: Cape Town

This text contains the Insolvency Act as well as precedents of documents and liquidation and distribution accounts which you will need to have at hand throughout the course.

The following books are highly recommended and will be referred to during the course:

- Sharrock *et al Hockly's Insolvency Law Casebook* (1999) Juta Cape Town
- Meskin on *Insolvency Law* (looseleaf), Butterworths: Durban (This is the leading work on the Law of Insolvency in South Africa. The full text is available on the *My LexisNexis* database on the RU Library webpage under electronic information resources.)
- Loubser *Casebook on the Law of Partnership, Company Law and Insolvency Law* (1992) Juta, Cape Town
- Gering *Leading Cases on Insolvency* (1994) Butterworths, Durban
- Meyerowitz on *Administration of Estates and Estate Duty* (2007) The Taxpayer CC, Cape Town

## **COURSE OUTLINE**

### **TOPIC 1: INTRODUCTION**

**Hockly Chapter 1**

### **TOPIC 2: VOLUNTARY SURRENDER**

**Hockly Chapter 2**

### **TOPIC 3: COMPULSORY SEQUESTRATION**

**Hockly Chapter 3**

### **TOPIC 4: THE EFFECTS OF SEQUESTRATION**

**The legal position of the insolvent and vesting of assets of the insolvent**

**Hockly Chapters 4 and 5**

### **TOPIC 5: THE EFFECTS OF SEQUESTRATION (CONT)**

**Vesting of the assets of the solvent spouse**

**Hockly Chapter 6**

### **TOPIC 6: THE EFFECTS OF SEQUESTRATION (CONT)**

**Uncompleted contracts**

**Hockly Chap 7**

### **TOPIC 7: IMPEACHABLE DISPOSITIONS AND VOID TRANSACTIONS**

**Hockly Chapter 12**

### **TOPIC 8: ADMINISTRATION OF INSOLVENT ESTATES/COLLECTION OF ESTATE ASSETS**

**Hockly Chapters 8, 9, 10, 11, 13 and 14**

### **TOPIC 9: REALISATION AND DISTRIBUTION OF ASSETS**

**Hockly Chapters 15-17**

**TOPIC 10: COMPOSITION AND REHABILITATION**

**Hockly Chapters 18 and 19**

**TOPIC 11: WINDING-UP OF COMPANIES, JUDICIAL MANAGEMENT  
AND WINDING-UP OF CLOSE CORPORATIONS**

**Hockly Chapters 23, 24 and 25**

**TOPIC 12: CROSS-BORDER INSOLVENCY**

**Hockly Chapter 26**

**CONTACT DETAILS**

My office number is S2 and I am situated on the second floor of the Law Faculty building. Students are welcome to come and see me any time, should they need any information or advice.