

LAWS40041 Insolvency Law

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| Credit Points: | 12.50 |
| Level: | 4 (Undergraduate) |
| Dates & Locations: | 2012, Parkville This subject commences in the following study period/s: Semester 2, Parkville - Taught on campus. |
| Time Commitment: | Contact Hours: One 2-hour lecture per week. Total Time Commitment: 120 hours. |
| Prerequisites: | Legal Method and Reasoning; Principles of Public Law; Torts; Legal Theory; Obligations; Contracts; Property or in each case their equivalents. |
| Corequisites: | Corporations Law. |
| Recommended Background Knowledge: | None. |
| Non Allowed Subjects: | None. |
| Core Participation Requirements: | For the purposes of considering requests for Reasonable Adjustments under the Disability Standards for Education (Cwth 2005), and Students Experiencing Academic Disadvantage Policy, academic requirements for this subject are articulated in the Subject Description, Subject Objectives, Generic Skills, and Assessment Requirements of this entry. The University is dedicated to providing support to those with special requirements. Further details on the disability support scheme can be found at the Disability Liaison Unit website: http://www.services.unimelb.edu.au/disability/ . |
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| Subject Overview: | <p>An insolvency regime is a necessary part of the legal system in a capitalist economy. That is because a means is needed for dealing with businesses that fail, and individuals who cannot pay their debts. An insolvency regime is required to ensure that in those circumstances the insufficiency of assets is equitably distributed amongst the creditors. To ensure equitable distribution, liquidators and trustees in bankruptcy are given powers to enforce claims to assets and undo past transactions.</p> <p>Insolvencies often raise legal, practical and theoretical questions of considerable interest, which are by no means confined to a narrow concept of "insolvency" itself. Consequently, insolvency lawyers require knowledge of many other areas of public and private law, including equity and trusts, corporations law, contract, property and securities law and constitutional and administrative law.</p> <p>This subject involves a practical and theoretical examination of the law of personal insolvency (i.e. bankruptcy), and corporate insolvency. The subject will concentrate on the law currently applicable in Australia. It will, though, touch on foreign and historical insolvency regimes where they throw light on the content, theory and operation of the Australian insolvency system.</p> <p>The subject will cover the process for placing individuals and companies under the various forms of insolvency administration under the <i>Bankruptcy Act 1966</i> and the <i>Corporations Act 2001</i>, and what happens when that is done. Because the law of insolvency principally exists to serve economic and social policy objectives, an examination of those objectives and the extent to which they are well served by the current law will be an important part of the subject.</p> <p>As well as discussing what the law is, students will be expected to consider why the law should be (or not be) as it is. They will also be expected to discuss what economic and social objectives should be served by the insolvency law, and what reforms might be desirable to make it serve them better than it does. It is hoped that students who complete this subject will</p> |

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| | have a fuller understanding of how the law serves policy objectives of Government and different interest groups in society. |
| Objectives: | <p>On completion of this subject, students should be able to:</p> <ul style="list-style-type: none"> # Understand the nature and operation of the regimes for personal and corporate insolvency presently operating in Australia; # Understand insolvency law in its economic, social and political context from perspectives including those of debtors, creditors, businesspeople, company shareholders and officers, insolvency practitioners and governments; # Conduct effective legal research in the area of insolvency law; # Use critical perspectives to understand and analyse a range of texts including statutes, cases, academic commentary and government reports; # Create structured and effective legal analyses and arguments to discuss hypothetical fact scenarios relating to insolvency; # Respond to policy and theoretical questions relating to insolvency law, including comparative insolvency law; # Discuss and evaluate reforms and proposed reforms of Australian insolvency law. |
| Assessment: | A research assignment of 5,000 words, 100% (due end of semester) OR a final examination of three hours, 100%. |
| Prescribed Texts: | Printed materials will be available from the Melbourne Law School; Corporations Act 2001 (available online). Andrew Keay and Michael Murray, Insolvency: Personal and Corporate Law and Practice, 7th ed, The Law Book Company Limited, Sydney, 2011 (Keay). |
| Breadth Options: | This subject is not available as a breadth subject. |
| Fees Information: | Subject EFTSL, Level, Discipline & Census Date, http://enrolment.unimelb.edu.au/fees |
| Generic Skills: | <p>On completion of the subject, students should have developed the following generic skills:</p> <ul style="list-style-type: none"> # Attitudes towards knowledge that include valuing truth, openness to new ideas and ethics associated with knowledge creation and usage; # The capacity for close reading and analysis of a range of sources; # The capacity for critical and independent thought and reflection; # The capacity to solve problems, including through the collection and evaluation of information; # The capacity to communicate, both orally and in writing; # The capacity to plan and manage time. <p>In addition, on completion of the subject, students should have developed the following skills specific to the discipline of law:</p> <ul style="list-style-type: none"> # Understanding and reasoning about the processes whereby social and economic policy objectives are translated into statutory and other law; # Applying knowledge gained in a number of different areas of law to analyse and discuss practical and theoretical legal problems; # Evaluating the extent to which legislation and case law achieves acceptable social and economic policy outcomes, and suggesting and designing improvements to the legal system; # Comparing and contrasting the current operation of the Australian legal system with other past and present legal systems; # Analysing complex legal problems involving the interaction of statute and case law, giving a concise statement of the effect of the relevant law, and applying it to given factual situations. |
| Notes: | The essay in this subject is regarded as a substantial piece of legal writing for honours purposes. |