Insolvency Law
Corporate and Personal

Fourth Edition

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PREFACE TO THE FIRST EDITION

Insolvency was until recently subsumed under company law and commercial law, but over the past decade it has become a separate discipline within law. And while at undergraduate level corporate insolvency issues are often still tacked on to the end of a company law course and bankruptcy is lucky to find its way into a commercial or business law course, there are quite a number of insolvency law modules taught to both law and business students in England and Wales. Also, insolvency law modules or specialist corporate insolvency modules have become quite popular at LLM level and even as electives in Legal Practice Courses. A reasonably comprehensive and readable text is needed for these modules and this publication endeavours to meet this need. Additionally, it is intended that this book might be of use to legal and accounting practitioners, particularly those who want an exposition of fundamental issues or are coming new to the field. We should point out that the book is, predominantly, a doctrinal study of insolvency law. In places we do refer to theoretical discussions, particularly in Part I, and to the need for reform, but for the most part we limit ourselves to an exposition of the current law given space constraints.

Given the anticipated readership of the book, it is not intended to provide an exhaustive treatment of insolvency. That would be impossible in a volume of this length and kind, unless the treatment was little more than superficial. We have endeavoured to keep the book to a manageable size, so that it is more easily read and it is not too daunting. Some areas that might justify inclusion in a book of insolvency, but are of marginal relevance or are not frequently considered in practice have not been discussed. We have sought to focus on the most critical aspects of insolvency law given the state of the law at the present time and the likely areas of development in the near future. One area that is becoming increasingly important is that of cross-border insolvency. This is a complex area and we do not think that we could do justice to it in a book of this kind. There are separate volumes that deal with the topic. Also, we have refrained from giving long expositions of matters relevant to procedure. While we have mentioned some of the more critical aspects of procedure in some places, we are generally of the view that if the reader wishes to become conversant with most procedural steps either reference to a specialist text or the Insolvency Rules themselves is the best course of action.

Where possible we have inserted citations of cases and statutes in the body of the text for ease of reference. However, in some situations it has been more
appropriate to include the citations in footnotes. We have endeavoured to keep footnotes to a minimum, and have only used them, in the main, to deal with issues that are deemed to be worth considering, but which would inhibit the flow of the text if referred to in the body of the book.

A consequence of keeping the book within manageable proportions is that while we have provided some authorities for the propositions stated, we have not included references to all relevant cases. Likewise we have, from time to time, included in the footnotes references to helpful articles and books, but we have not attempted to refer to all relevant materials that are available. But we have included at the end of each Part a list of some of the articles and books that either we have found most helpful or we believe might be of assistance to others. Also, we have not embarked on discussions of a large number of cases as this, again, would not be possible for a book covering such a large range of areas of law. We have refrained, except where necessary, from quoting statutory provisions as we assume that readers will have access to the relevant pieces of legislation.

Essentially, while the book purports to provide an exposition of insolvency law principles that apply in England and Wales, we do discuss in places some interesting contentious issues. However, again because of length, and also so that the book does not become overly complex, we have refrained from dealing with these issues in great detail. More specialist texts such as (in no particular order) I.F. Fletcher *The Law of Insolvency* (Sweet & Maxwell, 3rd edn, 2002); R. Goode *Principles of Corporate Insolvency Law* (Sweet & Maxwell, 2nd edn, 1997); A. Keay *McPherson’s Law of Company Liquidation* (Sweet & Maxwell, 2001); E. Bailey, H. Groves and C. Smith *Corporate Insolvency Law and Practice* (Butterworths, 2nd edn, 2001); C. Berry, E. Bailey and S. Schaw-Miller *Personal Insolvency Law – Law and Practice* (Butterworths, 3rd edn, 2001); R. Pennington *Pennington’s Corporate Insolvency Law* (Butterworths, 2nd edn, 1997); G. Lightman and G. Moss *The Law of Receivers and Administrators of Companies* (Sweet & Maxwell, 3rd edn, 2000); and D. Milman and C. Durrant *Corporate Insolvency: Law and Practice* (Sweet & Maxwell, 3rd edn, 1999) might be referred to for more extensive discussion. Reference is made in the book from time to time to some of these and other specialist texts.

As alluded to above, the main purposes of the book are to act: as a text for law and commerce students, at both undergraduate and postgraduate level; as a reference tool for lawyers and insolvency practitioners; and as an introduction to the area for those practitioners who wish to familiarise themselves with the essential principles and issues in insolvency law.

The book is published at an important time for insolvency law in the UK. Recently, Parliament enacted the Enterprise Act, a wide-ranging statute that, inter alia, introduced some significant changes to insolvency law. The foremost are probably the overhaul of the administration process, the abolition of administrative receivership in all but a few limited cases, the abolition of the
Crown preference and the introduction of a new bankruptcy set-up including the advent of bankruptcy restriction orders. We endeavour to address these innovations and some of the issues that accompany them in the text. However, it must be emphasised that the bankruptcy provisions in the Enterprise Act 2002 are not going to be operative until 2004 and the other insolvency provisions in the legislation were not operative when the book went to press. We have, however, assumed all of the insolvency provisions in the Act, save for the bankruptcy provisions, to be in operation.

While we have discussed matters relevant to all parts of the book, for the most part Andrew Keay was responsible for the writing of Parts I, III, IV, VI, VIII and IX, and Peter Walton was responsible for writing Parts II, V, and VII.

We have endeavoured to use gender neutral language where possible. In the places where we have had to use pronouns, we have attempted to be encompassing by referring to both the masculine and feminine. In situations where the use of both pronouns makes the exposition cumbersome, we have used the masculine pronouns, ‘he’ and ‘his’, with the intention of referring to both male and female.

In recent years the Internet has become more and more important for all professionals and students. In places we refer to websites that are either helpful or the source of our commentary. Of particular interest are the following sites:

- www.insolvencyservice.gov.uk (the Insolvency Service);
- www.dti.gov.uk (the Department of Trade and Industry);
- www.companieshouse.gov.uk (Companies House).

We have debts as authors. Andrew Keay would like to thank Rhonda for her usual support and patience when he engages in a writing exercise. Peter Walton would like to thank Debs for her constant support, understanding and crowd control skills.

We have endeavoured to state the law as it was available to us as at 1 January 2003.

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Peter Walton

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PREFACE TO THE FOURTH EDITION

The last edition was written 5 years ago, which is quite a long time in insolvency law terms and especially given the developments that have taken place since 2012. We would have written this latest edition earlier but felt that it was wise to wait until the overhaul of the Insolvency Rules was finalised (and this was really only in October 2016) and a recast version of the EC Regulation on Insolvency Proceedings was passed and was ready to come into operation. The introduction of new Insolvency Rules on 6 April 2017 was a very important development and, although the law is only stated until 1 March 2017 for other purposes, we have included references to and discussion of the new rules because of their importance, not only for practice but also as to the law. Another important development that we take account of in the book is the recasting of the EC Regulation on Insolvency Proceedings. While it did not come into force until 26 June 2017 we have stated the law concerning EC insolvency proceedings on the basis that the Regulation is in effect and will be by the time that the book is published.

Besides the abovementioned developments, we have seen many case law and other statutory developments since the writing of the last edition and we take these into account in the book. Worthy of mention in this Preface is the passing of the Small Business, Enterprise and Employment Act 2015, the Deregulation Act 2015 and the Enterprise and Regulatory Reform Act 2013 which produced changes to parts of the Insolvency Act 1986 and other legislation, such as the Company Directors’ Disqualification Act 1986. We have endeavoured to take into account, and where appropriate discuss, important decisions delivered after the publishing of the last edition and these include: the Supreme Court judgments in BNY Corporate Trustee Services Ltd v Eurolais-UK 2007-3BL Plc; Akers v Samba Financial Group, Re Nortel GmbH et al, Rubin v Eurofinance SA; the Privy Council decisions in Stichting Shell Pensioenfonds v Krys, PricewaterhouseCoopers v Saad Investments Ltd, Singularis Holdings Ltd v PricewaterhouseCoopers; the Court of Appeal in Tallington Lakes Ltd v South Kesteven District Council; and other decisions such as Re M F Global UK Ltd, Official Receiver v Norriss, Official Receiver v Sahaviriya Steel Industries Public Co Ltd, Maud v Aabar Block Sari, BTI 2014 LLC v Sequana SA, Wateborn v Jupiter Industries Ltd, Hunt v Conwy County Borough Council, Re Ralls Builders Ltd, Wilson v SMC Properties Ltd, Stanley and Barber v Wilson and Horton v Henry. Some recent foreign cases have been included, mainly in Chapters 25 and 26 which deal with international
insolvency. Examples are: In re Fairfield Sentry Ltd, Akers v Deputy Commissioner of Taxation, Re Lightsquared L.P.

An important addition to the book is an explanation of the decision-making process in insolvency regimes as provided for in several sections of the Insolvency Act and significant parts of the new Insolvency Rules. This is found at the end of Chapter 4. The rules surrounding decision-making will, undoubtedly, become a critical aspect of insolvency practice.

As mentioned above, we have taken into account the latest version of the Insolvency Rules where appropriate, but we have not gone into great detail in many parts when it comes to procedure as this is not within the scope of the book.

We wish to thank Kate Hather and Mary Kenny of the publisher for their significant help in many elements of the publishing process. We would like to thank Cheryl Prophett for editorial assistance. Pete would also like to thank, for their continued support, his wife, Deborah, who has become a vicar during the work on this edition and his son, Caleb, who has become a man during the same period. Andrew would like to thank Rhonda for her support and understanding.

We have stated the law as it was available to us on 1 March 2017, although, as mentioned above, we have taken into account the Insolvency Rules 2016 and the recast of the EC Regulation on Insolvency Proceedings.

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