

UNIVERSITY COLLEGE LONDON

University of London

EXAMINATION FOR INTERNAL STUDENTS

For The Following Qualification:-

LL.B.

LL.B. Part II: Corporate Insolvency

COURSE CODE : LAWS3035

DATE : 09-MAY-05

TIME : 10.00

TIME ALLOWED : 3 Hours 15 Minutes

CORPORATE INSOLVENCY

Answer FOUR questions.

1. “Corporate insolvency law must only pursue the objective of mitigating the co-ordination problems faced by the creditors of a company on the verge of financial distress. A commitment to any other purpose would render this branch of the law illegitimate.”

Do you agree?

2. “The *pari passu* principle is fundamental and all-pervasive. It is the guarantor of orderliness and fairness in corporate liquidation. Any derogation from it is therefore a cause for regret.”

Answer **BOTH** (a) **AND** (b):

- (a) Is this an accurate description of the role played by the *pari passu* principle in English law?
 - (b) What role, if any, does this principle in fact play?
3. “Secured creditors deserve their priority position because they have bargained for it. Unsecured creditors do not have a cause for complaint because they have chosen not to bargain for priority. Not to allow secured creditors to rank ahead of unsecured creditors would therefore be unfairly to deprive the former of the fruits of their bargain, and to confer a windfall upon the latter.”

Answer **BOTH** (a) **AND** (b):

- (a) Does this argument provide a satisfactory defence of the priority of secured credit?
 - (b) Can the priority of secured credit be justified?
4. “The law governing insolvency set-off is both complex and unfair.”

Discuss.

TURN OVER

5. Among the observations made by their Lordships in *Buchler v Talbot, Re Leyland Daf* [2004] 2 AC 298, are the following two by Lord Nicholls:

- (a) Floating charges are taken because “[f]inanciers have money but want security for any loans they make. They wish to rank ahead of the company's unsecured creditors if the business does not prosper.”
- (b) According priority to liquidation expenses over the claims secured by a floating charge would constitute “a potentially major additional incursion into the proprietary interests” of the holders of floating charges.

Discuss his Lordship's observations in **BOTH (a) AND (b)**.

6. Why does corporate insolvency law upset certain transactions entered into prior to the initiation of formal insolvency proceedings? What techniques does it adopt to discourage and detect such objectionable transactions?

Discuss with reference to at least two types of situation in which such transactions are upset.

7. Answer **BOTH (a) AND (b)**:

- (a) Evaluate the institution of administrative receivership.
- (b) Evaluate the ways in which the new administration procedure introduced by the Enterprise Act 2002 is similar to administrative receivership, and those in which it is dissimilar.

8. “The law of wrongful trading is a menace. It discourages directors from taking imaginative actions to rescue a distressed company, yet is unable to assist the creditors of those distressed companies the misbehaviour of whose directors has aggravated the loss suffered by the creditors.”

Do you agree?

Discuss with reference to both theory and case law.

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