

Personal Insolvency

—Law and Practice

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Personal Insolvency
—Law and Practice

Foreword to the first edition

The coming into force of the Insolvency Act 1986, presents all those involved in personal insolvency matters with formidable problems. Some wholly new concepts are introduced by the new Act. Moreover the voluminous new rules made under the Act were only published at a very late date. Never has there been a more pressing need for a book which produces order out of a statutory maze.

I welcome this book for that reason. Not only is it published when the need is greatest, but also it renders intelligible much that is made obscure by the statutory drafting. I have found particularly instructive the introduction to the new law in Chapter 1 which explains the basic concepts underlying the law before going on to the necessary detailed consideration in Part 2.

The book will be especially useful because it contains, in one volume, both the old law and the new. One of the unhappiest features of the new legislation is that the old bankruptcy law will continue to apply to all cases in which the petition was presented before 29 December 1986. Thus, for many years bankruptcy practitioners will be concerned with two different systems, the old and the new. This book, containing as it does clear and concise statements of both systems, will be invaluable.

Finally, the last part of the book deals under separate headings with various problems commonly encountered in connection with bankruptcy, notably the effect of bankruptcy on rights in the matrimonial home. I am not aware of any other text book which provides this useful service.

I have no doubt that lawyers, accountants and the courts will all find this book a most useful aid in seeking to discover and apply the new law. I wish it well.

Nicolas Browne-Wilkinson V-C
February 1987

Preface

The Insolvency Act 1986 has now been in force for 6 years and all but a few of the 'old law' bankruptcies have worked their way through the system. With the chiller economic winds of recent years the business of the bankruptcy courts has thrived and a sufficient body of case law is now available to warrant a further edition of *Bankruptcy: Law and Practice*. In deference to the considerable rôle now played by individual voluntary arrangements, which area of law is given a full treatment in chapter 3, the title of this new edition has been changed to 'Personal Insolvency—Law and Practice'.

The text of the first edition has been substantially overhauled. The aim of this work is to provide a detailed guide to the law and procedure of individual voluntary arrangements and bankruptcy under the Insolvency Act and Rules 1986. The previous edition's section on the law under the Bankruptcy Act 1914 is replaced by a short summary of the old law designed to help those who are not familiar with it understand the legal structure underlying pre-1987 reported decisions. The practitioner must take care before such authorities are cited in court. There has been judicial complaint that authorities rendered otiose by the changes brought about by the Insolvency Act 1986 are still being cited. But it cannot be said that the new law of the Insolvency Act 1986 completely swept away all that existed under the Bankruptcy Act 1914 and the authors believe that the many old law authorities referred to in this work have contemporary relevance.

As we go to print there are two important changes on the horizon. First it is proposed that the law and procedure relating to insolvent partnerships be amended in a number of significant respects. The DTI hopes to have an Insolvent Partnerships Order 1993 in force by the end of the year. The expected changes are noted in chapter 16. Secondly, the county court Administration Order will be given a new lease of life when the provisions of s 13 of the Courts and Legal Services Act 1990 are eventually implemented. The Administration Order may become a popular alternative to an individual voluntary arrangement. These new statutory provisions are detailed in chapter 30, but their implementation will necessitate substantial amendment to the County Court Rules, and of these amendments there is at present no sign.

Naturally there are many references in the paragraph notes to the Insolvency Act 1986 and the Insolvency Rules 1986, the latter as amended in 1987. For ease of reference the abbreviations 'IA' and 'IR' are used in the paragraph notes to denote the Insolvency Act 1986 and the Insolvency Rules 1986, 'IPO' is used for the Insolvent Partnerships Order 1986, 'DPO' for the Administration of Insolvent Estates of Deceased Persons Order 1986, and

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'CDDA' for the Company Directors Disqualification Act 1986. All other statutory references appear in full.

We gratefully acknowledge the help we have received from various quarters and in particular to Philip Reed who contributed Chapters 7, 8 and 9. Our thanks also go to Akhil Shah and Penelope Radcliffe for their kind assistance. And in place of the customary acknowledgment of secretarial assistance we salute WordPerfect 5.1.

We have aimed to state the law as at 1 April 1993.

C.R.B.
E.H.B.
S.S.M.

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(a)	10.10E, 10.10s
(b)	10.10D, 10.10E
(c)	10.1
(2)	10.2, 10.10s, 10.19;
	12.17
(3)	3.3; 4.9, 4.63;
	10.2; 12.17, 12.21; 13.11
(4)	10.2, 10.10s; 12.17
383	3.16; 4.18, 4.33;
	10.32; 13.11;
	24.3
(1)	10.1
(a)	10.1; 28.1
(2)	4.18; 10.10o, 10.23,
	10.32
(3)	4.18; 10.32
(4)	4.18; 10.10o; 10.32
385(1)	4.9, 4.18, 4.63; 9.40;
	10.32; 12.21
386	3.20; 23.3
387	11.4
388	2.12