

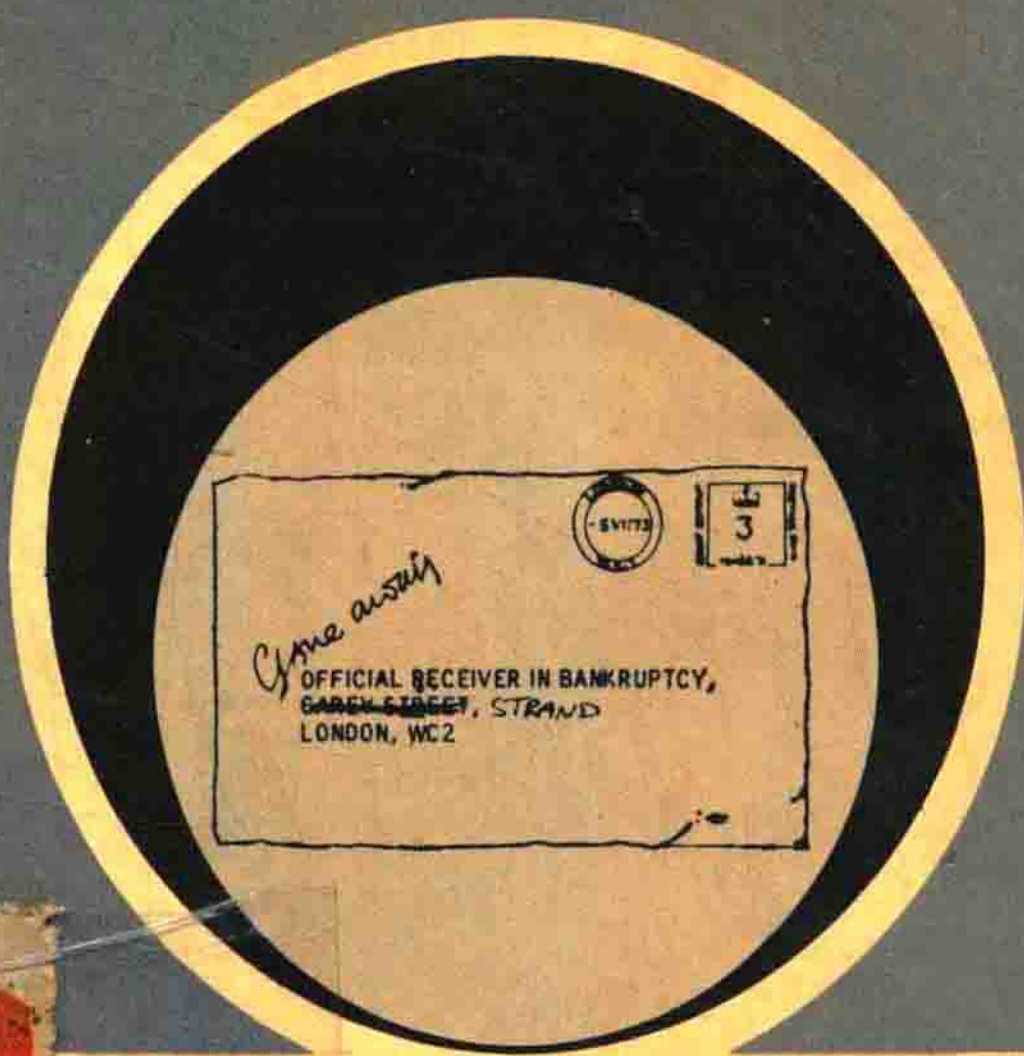
EIGHTH EDITION

Bankruptcy Law

P.W.D. Redmond

revised by

I.M. McCallum



M&E HANDBOOKS

THE M & E HANDBOOK SERIES

Bankruptcy Law

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EIGHTH EDITION



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Preface to the Eighth Edition

This book has been revised to take account of the changes made to bankruptcy law by the Insolvency Act 1976. This Act raised the out-dated financial limits in the Bankruptcy and Companies Acts which regulate jurisdiction and other matters. By increasing these monetary limits, the number of bankruptcies has been reduced by about 40 per cent. The Act also gave the courts power to dispense with the public examination of bankrupts, in appropriate cases, on the application of the Official Receiver. Not only does this spare the bankrupt the ordeal of an examination; it also gives the court the power to make a further order granting an "automatic" discharge which will take effect on the fifth anniversary of the bankrupt's adjudication. In addition, the Act conferred an "automatic" discharge on bankrupts who have been undischarged for 10 years prior to 1977 when the Act took effect. The Act also requires the Official Receiver to make an application to the court in respect of every undischarged bankrupt within the 12 months following the fifth anniversary of his adjudication, to enable the court to decide whether he should be discharged, even though the bankrupt himself has not yet applied for a discharge.

The text has also been amended to incorporate new decisions of the courts and statutory amendments made by the Land Charges Act 1972, the Consumer Credit Act 1974, the Social Security Act 1975, the Social Security (Pensions) Act 1975 and the Employment Protection (Consolidation) Act 1978.

Owing to changes in commercial practice bankruptcy law is in need of reform. What is really required is a modern unified system of bankruptcy and insolvency law. Both the Government and the Cork Committee have produced papers containing proposals for reform. In addition, the Commission of the European Communities has formulated a Draft Bankruptcy Convention. In order to establish the present position with regard to reform, I have included a note summarising these proposals. (Appendix I).

Although I have found it necessary to amend Mr. Redmond's original text quite considerably in some areas, I have endeavoured

to preserve his text as much as possible. Thus the book's layout and structure remains largely unchanged.

Method of study. It is recommended that the book should be used as follows:

(a) *Read through the main text quickly two or three times* so as to get an over-all picture of the subject. Concentrate on the main points and do not commence memorisation at this stage.

(b) *Then study the book chapter by chapter*, paying due attention to comments and notes and studying the facts of cases.

(c) *Check your knowledge by constant use of the Progress Tests* at the end of each chapter. These constitute complete revision coverage of the whole subject and over a hundred phased questions are presented, together with references to the numbered notes to assist checking of answers. The use of Progress Tests is of great importance; there is no better way to memorise a law subject than by constantly submitting yourself to the question-and-answer process.

(d) *For final revision*, work quickly through the book and re-work the Progress Tests. For those students who desire it, specimen examination papers are printed at the end of the book which can be used to check one's grasp of the subject before the examination.

Further reading. This HANDBOOK covers adequately most examination requirements, but students who desire further information either on Bankruptcy or on general commercial law are recommended to consult one of the following works. In each case, only the most up-to-date edition should be used.

Williams, Sir R. V., ed. Hunter, M. and Graham, D. *Law and Practice in Bankruptcy*, Stevens

Fletcher, I. F. *Law of Bankruptcy*, Macdonald & Evans

Redmond, P. W. D., rev. Lawson, R. G. *Mercantile Law*, Macdonald & Evans

May, 1981

I.M.

ABBREVIATIONS

A of B	Act of Bankruptcy
BA, or BA 1914	Bankruptcy Act 1914
B(A)A 1926	Bankruptcy (Amendment) Act 1926
BN	Bankruptcy Notice
BR	Bankruptcy Rule (s)
CA 1948	Companies Act 1948
C of I	Committee of Inspection
DAA (or DA Act)	Deeds of Arrangement Act 1914
DT	Department of Trade
IA 1976	Insolvency Act 1976
LCA 1972	Land Charges Act 1972
LPA 1925	Law of Property Act 1925
LRA 1925	Land Registration Act 1925
OR	Official Receiver
PE	Public Examination
PP	Presentation of petition
RO	Receiving Order
s.	Section (of an Act)
ss.	Sections
S of A	Statement of Affairs
SM	Special manager

Unless otherwise indicated in the text, section references are to the Bankruptcy Act 1914.

References to "Ireland" must be read as references to "Northern Ireland".

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CHAPTER I

The Nature of Bankruptcy

INTRODUCTION

1. Definition of bankruptcy. Bankruptcy may be defined as the compulsory administration of a person's estate by the court for the benefit of his creditors generally; and bankruptcy law is that part of the Common and Statute Law relative to that compulsory administration.

Bankruptcy law now consists of the Bankruptcy Act 1914, as amended by the Bankruptcy (Amendment) Act 1926, the Bankruptcy Rules 1915–1977, and the County Courts Act 1959. This legislation has been further amended by the Insolvency Act 1976 which made a number of important changes. Bankruptcy law also includes principles derived from the decisions of the courts.

2. Objects of bankruptcy. When a person is insolvent (i.e., unable to pay his debts as and when they fall due) either he or his creditors may petition for the court to take over the administration of his estate and its distribution among creditors. This procedure is called bankruptcy and is governed by the Bankruptcy Act 1914, as amended. The objects of bankruptcy are:

(a) To secure a fair and equal distribution of available property among the creditors.

(b) To free the debtor from his debts, so that he can make a fresh start as soon as he is discharged by the court.

(c) To enquire into the reasons for his insolvency, in order to deter people from rashly incurring debts they cannot pay.

PROCEDURE

3. An outline of bankruptcy procedure.

(a) The debtor must be subject to the English law of bankruptcy; the Acts of 1914, 1926 and 1976 do not (except in so far as is expressly provided) extend to Scotland or Ireland.

(b) He must have given presumptive evidence of insolvency, i.e.

committed what is technically termed an act of bankruptcy. It by no means follows that he is in fact insolvent, though in the large majority of cases he is proved to be so.

(c) Proceedings must be commenced by the presentation of a petition to the proper court, either by the debtor himself, or by a creditor or creditors competent to do so. This petition asks that a Receiving Order may be made in respect of the debtor's estate.

(d) The court, in proper cases, grants a Receiving Order, which has the effect of:

(i) protecting the debtor and his estate from legal proceedings; and

(ii) taking away from the debtor the control over his property and placing it under the control of an officer of the court called an Official Receiver.

(e) Immediately after the making of the RO, the debtor must undergo a preliminary examination by the OR, and then prepare a full statement of his affairs, containing a list of his assets and liabilities, a copy of the statement being forwarded to each creditor.

(f) The debtor must next undergo a public examination, and be questioned on all matters, with a view to the disclosure of the manner in which he managed his affairs and the full circumstances and causes of his bankruptcy. The court may if it wishes, make an order dispensing with this part of the procedure. There are also other exceptions to the imposition of this rule, e.g. on grounds of physical or mental ill-health (*see* V, 5).

(g) The first meeting of creditors, which follows, gives an opportunity to creditors again to question the debtor, especially on his statement of affairs. Here, the question of accepting or refusing a scheme of arrangement or composition may come before the meeting.

(h) The debtor is not a "bankrupt" until the court makes an order of adjudication. This order vests the property of the debtor in the OR (or trustee, when appointed).

(i) With the aid of the bankrupt, where necessary, all his property is realised and (subject to certain priorities) dividends are paid to the creditors whose proofs for debts have been admitted by the trustee.

(j) Finally comes the *order of discharge* which restores his civil status to the bankrupt, now freed of all debts provable in the bankruptcy (with certain exceptions), and freed also from many civil disabilities which attached to him as a bankrupt. Such a discharge may be granted to the bankrupt personally or on the

application of the OR, or it may be automatic in certain circumstances (*see* VI, 7).

4. The Official Receiver and the trustee. Once the court has made a RO against the debtor, the management of his affairs is entrusted to the Official Receiver, an official of the Department of Trade. The OR summons meetings of the creditors who:

(a) have power to control much of the day-to-day operation of the bankruptcy (and to stop the bankruptcy entirely in some cases);

(b) appoint (usually) a trustee of the debtor's estate to take over from the OR as soon as the court adjudicates the debtor bankrupt.

The creditors, at their meetings, vote either personally or by proxy in exercise of their rights (*see* 5 below).

5. Resolutions in bankruptcy. Creditors' resolutions are either ordinary or special.

(a) *An ordinary resolution.* This is defined by BA 1914, s. 167, as a resolution decided by a *majority in value* of the creditors present personally or by proxy at a meeting of creditors and voting on the resolution.

(b) *A special resolution.* This is defined by the same section as a resolution decided by a *majority in number and three-fourths in value of the creditors present* personally or by proxy at a meeting of creditors and voting on the resolution.

ARRANGEMENTS OUTSIDE BANKRUPTCY

6. The Deeds of Arrangement Act 1914. Where a debtor is insolvent and wishes to avoid bankruptcy, he and his creditors may reach an agreement for the arrangement of his affairs for the benefit of the creditors (without pushing the debtor into bankruptcy). The Deeds of Arrangement Act 1914 applies to such agreements (whether under seal or not) made

(a) for the benefit of creditors generally; or

(b) by an insolvent trader for the benefit of three or more creditors. (The administration of the arrangement is entrusted to a trustee.)

NOTE: Alternatively such an agreement may take the form of a *composition with creditors*, i.e. a contract by which the creditors agree to accept (in complete discharge of their debts) a proportion of their claims, e.g. 75p in each pound owed. This is binding

on all the creditors who assent to it; the consideration for it lies in the mutual interchange of promises by the creditors not to sue for the whole debt, i.e. mutual forbearances.

The law relating to deeds of arrangement is dealt with in XIII below.

PROGRESS TEST 1

1. Define bankruptcy, and explain what laws and statutes govern this subject. (1) What are the objects of bankruptcy? (2)
2. Summarise the various steps in bankruptcy proceedings. (3)
3. Explain briefly the main functions of the Official Receiver and of the trustee in bankruptcy. (4)
4. Distinguish between ordinary and special resolutions in bankruptcy meetings. (5)
5. Where a person is insolvent it may be possible for him to escape bankruptcy by making some arrangement with his creditors. Explain how this may happen, and what laws govern the arrangement so made. (6)