

COMMERCIAL LEASES *and* INSOLVENCY

Patrick McLoughlin

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Preface

The law of insolvency was reviewed in 1982 by a committee chaired by Sir Kenneth Cork. The review led to the amendment and consolidation of the law, which is now contained in the Insolvency Act 1986. The amendment and consolidation of the law was the seed which has engendered a spate of new books on insolvency. This book, however, is not the produce of the seed of the 1986 reform but is instead a product of the recession of 1991 to 1992. As a practitioner advising on the insolvency of tenants in commercial leases I found myself and others struggling to solve problems thrown up by the recession. There were many books on insolvency law, and many texts on the law of landlord and tenant; but there was nothing to bridge the gap between the two areas of law, and to explain specifically how the relationships between commercial property owners, their tenants, and mortgagees of commercial leases are affected by a tenant's insolvency. It is the purpose of this book to bridge that gap.

Spurred on by the recession, and urged by fellow professionals to produce something in the shortest possible time, I have limited the scope of this first edition to the law of England and Wales, and the law relating to registered companies and individuals. Some of the law differs in Scotland, and in the cases of unregistered companies and partnerships.

Although I am a lawyer and primarily equipped to write for the benefit of other lawyers, I am very aware that the law on this subject is as much of interest to various non-lawyers, including accountants who are insolvency practitioners, property managers, surveyors, and banks whose loans are secured on commercial leases. I have, where appropriate, attempted to consider the needs of such persons in so far as a work of such a technical nature will allow.

Thanks are due to those who have assisted me in progressing this book from the inception of the idea to the point of publication. In particular I acknowledge the assistance of Susan Prevezer, barrister, of the chambers of Michael Crystal QC, who read and commented on the draft in full. I also thank my colleagues Christine Lerry, Gary Russell, and Caroline Sielle, who each commented on parts of the draft. I must, of course, accept responsibility for any errors or imperfections which remain. My gratitude is due also to the quasi-corporate entity of Theodore Goddard for allowing me time to complete this book and recognising that the need for knowledge has a value which has its place alongside financial concerns.

Patrick McLoughlin
Theodore Goddard

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