



corporate & personal insolvency law

Fiona Tolmie

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Second Edition

Fiona Tolmie

School of Law, Kingston University



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Dedicated to Andrew, Isabel and Tom

PREFACE

This is the second edition of a work first published in 1998; such has been the pace of change in the last five years that many portions of it have had to be almost entirely rewritten. There have been, or are about to be, major developments affecting most sections of this book. The changes have been caused both by statute (including the Welfare Reform and Pensions Act 1999, the Insolvency Act 2000, the European Council Regulation on Insolvency Proceedings 2000, the Limited Liability Partnerships Act 2000 and the Enterprise Act 2002) and as a result of the considerable volume of case law (particularly *Re Brumark*). As a consequence, changes have been made or are planned to company administration orders, voluntary arrangements and bankruptcy; administrative receivership is on its way to being abolished. Changes have also been made both to the assets which are available to creditors in a bankruptcy and to the order of distribution in both bankruptcy and liquidation. There have been major developments in the areas of disqualification of directors, funding of litigation by officeholders and cross-border insolvency within Europe. The impact of the human rights legislation has been felt in a number of areas of insolvency law. The Department of Trade and Industry has indicated a wish to address the issue of over-indebtedness more generally; this has prompted an expansion in the relevant areas of this text.

There is yet more change on the way; detailed implementation of the provisions of the Enterprise Act 2002 will happen over the next couple of years as well as new company legislation (which is likely to include radical change in relation to the registration of security over personalty), amendments to the Transfer of Undertakings Regulations and changes to civil enforcement procedures. Reform of the county court administration procedure and consequential reform of bankruptcy is possible. Although the law referred to in the text was up to date as at Easter 2003, things are likely to have moved on even by the time the book reaches the bookshops. Readers are recommended to bear in mind the need to consult the websites of the Insolvency Service (www.insolvency.gov.uk) and the newly-named Department of Constitutional Affairs (www.lcd.gov.uk) and to look at recent case law. Relevant articles are particularly likely to be found in the *Insolvency Lawyer*, *Insolvency Intelligence*, *Tolley's Insolvency Law and Practice*, the *Company Lawyer* and the *Journal of Business Law*; the sprawling nature of insolvency law means, however, that material might also be found in almost any legal journal.

The aim of this book remains to provide a book on both corporate and personal insolvency within the price range of students. The intention is to provide a basic framework of knowledge of the current legal rules (which will also be useful for those meeting the area in practice) and an introduction to the underlying issues, with signposts to sources of additional material; as with the first edition, it is not designed to provide my students with an escape from wider and deeper research, rather to facilitate it. Insolvency law is a particularly appropriate topic of study for students on cross-disciplinary law and business courses and for that reason, this book does not assume much prior knowledge of property law and attempts to provide an introduction to the necessary concepts.

Fiona Tolmie
School of Law, Kingston University
July 2003

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