Law Of Corporate Insolvency In Scotland

Who enjoys statutory preferred creditor status? What justifications exist for jurisdictions to maintain statutes that favour 'priority' creditors over other creditors and contributories? This book examines preferential debts derived from specific legislative provisions applying to corporate insolvency. In exploring the concept of preferential treatment, Statutory Priorities in Corporate Insolvency Law includes chapters that provide a doctrinal, theoretical and historical analysis of who enjoys preferred creditor status. As well as examining the traditional major categories of priorities, this work also identifies potential new categories for priority status such as environmental clean-up costs, international creditors, tort claimants and consumers among other non-consensual creditors. While the study focuses on Australian corporate insolvency law, where appropriate, comparisons are made with other common law jurisdictions, particularly the UK, Canada, New Zealand and the US.

Fiona Tolmie combines a succinct exposition of substantive law with a clear explanation of how the law works in practice. She also highlights key policy issues regarding insolvency and the parts of the law that might be reformed in the future.

We live in an age of economic turmoil. The recent crises emphasize the need for modern, sophisticated rules to govern businesses in financial distress in order to realize value from distressed companies and to protect economic institutions. This book provides information for legislators, policymakers, lawyers, accountants, academics, and administrators who seek to understand the workings of insolvency laws. Guided by the World Bank’s Principles and Guidelines, it supplements the work in this field done by UNCITRAL.

In this Handbook, today's leading experts on the law and economics of corporate bankruptcy address fundamental issues such as the efficiency of bankruptcy, the role and treatment of creditors--particularly secured creditors--in the bankruptcy process, the allocation of going-concern surplus among claimants, the desirability of liquidation in the absence of such surplus, the role of contract in bankruptcy resolution, the role of derivatives in the bankruptcy process, the costs of the bankruptcy system, and the special case of financial institutions, among other topics. Chapters trace the historical path of both law and policy analysis, with a focus on how the bankruptcy process serves underlying policy objectives. Proposals to reform corporate bankruptcy are presented.Research Handbook on Corporate Bankruptcy Law includes policy analysis by both lawyers and economists and is thus an invaluable resource to law scholars and students interested in the economic analysis of corporate bankruptcy law as well as to economics and business scholars and students studying the law of corporate bankruptcy. These pages will prove equally valuable to lawmakers and judges who are interested in policy analysis of corporate bankruptcy.

For many years, the functioning of the single European market has made it easy for companies to establish themselves and do business throughout the European Union--unless, that is, they failed. In that case, until recently, a company became subject to the insolvency laws of each individual country. The divergence among these laws seemed far beyond the possibility of harmonisation. During the last few years, however, a twofold development is bringing relief. First, thanks to the European Regulation on Insolvency and the UNCITRAL Model Insolvency Laws, jurisdictional issues can be resolved and determined in cases where more than one country is affected by the insolvency of a particular enterprise. Second--and far more promising--stated EU policy goals urging a convergence in thinking on substantive insolvency issues at the Member State level are bearing fruit in reforms that abandon extreme or unusual features and open more common ground. Spearheading these reforms are statutory corporate insolvency procedures that offer an alternative to liquidation--procedures grouped under the heading of corporate rescue. In this book eleven outstanding European insolvency law specialists, representing both practitioners and academics, investigate significant changes in corporate rescue laws that have either already been implemented or that are on the law reform agenda. The essays include expert analyses and evaluations of corporate rescue laws in each of six EU Member States--France, Germany, Italy, Spain, Sweden, and the United Kingdom--as well as insightful discussions of the broader European context. Because corporate rescue is the lifeblood of insolvency law, it is likely to be this aspect thathas the greatest role to play in the economic and social development of the European Union. For this reason--and because of the obvious beneficial value of corporate rescue in ensuring fair treatment of creditors and protection of debtors, as well as in reducing the level of stigma attached to insolvency--"Corporate Rescue in Europe will be valued by company lawyers and law firms throughout Europe, and in particular to those handling bankruptcy and insolvency proceedings.

This volume analyses corporate insolvency law as a coherent whole, stemming from common fundamental principles and amenable to being justified or criticised on that basis. The author explains why consistency of principle must be sought and how it might be found in the relevant statutory and case law. He then constructs an egalitarian theory for the analysis of corporate insolvency law, based on the premise that all the parties affected by this law are to be treated as equals. He argues that this theory can reconcile the dictates of fairness with the demands of economic efficiency. The theory is employed to analyse some of the most important aspects of insolvency law. Why should the individualistic method of enforcing claims against solvent companies give way to a collective method during insolvency? Why are there different formal mechanisms for dealing with troubled companies? What role does the pari passu principle play in the distribution of an insolvent company s assets?The controversial issues of whether and when secured creditors should be accorded priority over others receive detailed consideration. The functional role of the floating charge and its relationship with receivership are also analysed in this context. The many questions relating to the operation of the new administration procedure introduced by the Enterprise Act 2002 are considered in the light of principle. The book also analyses the role of the wrongful trading provisions. It examines, finally, why insolvency law objects to certain transactions at an undervalue and those having a preferential effect. This volume aims to enhance understanding of this important branch of the law, and to suggest principled solutions to problems which have not yet received judicial attention.

The significant role of credit in obtaining corporate capital means that credit and the treatment of creditors’ interests raises distinctive issues in the event of company insolvency. In this book, Kayode Akintola addresses these issues, providing an exceptional in-depth analysis of the principles, policy and practice of creditor treatment in corporate insolvency law.

This publication provides a consolidation of Australian corporate insolvency legislation as at 1 January 2021. Key Features - Amending Act and legislative instrument details, including amending item numbers and the dates on which the amendments come into force. - Modifications to the Corporations Act 2001 (Cth) by the Corporations Regulations 2001 (Cth) (as amended

by the Corporations and Other Legislation Amendment (Insolvency Law Reform) Regulation 2016 (Cth)). - Application, savings and transitional provisions. - Coverage of all ASIC insolvency approved forms. - Cross-references to ASIC Regulatory Guides and legislative instruments. - Interactions between the Corporations Act 2001 (Cth) and the Corporations (Stay on Enforcing Certain Rights) Declaration 2018 (Cth). - Interactions between the Cross-Border Insolvency Act 2008 (Cth) and the Cross-Border Insolvency Regulations 2008 (Cth). - Links between the Corporations Act 2001 (Cth) and the Corporations Regulations 2001 (Cth). - Links between the Corporations Act 2001 (Cth) and the Insolvency Practice Rules (Corporations) 2016 (Cth). - Commentary is included under various sections of the Corporations Act 2001 (Cth) and Corporations Regulations 2001 (Cth).

This new edition of Corporate Insolvency Law builds on the unique and influential analytical framework established in previous editions - which outlines the values to be served by insolvency law and the need for it to further corporate as well as broader social ends. Examining insolvency law in the fast-evolving commercial world, the third edition covers the host of new laws, policies and practices that have emerged in response to the fresh corporate and financial environments of the post-2008 crisis era. This third edition includes a new chapter on the growing issue of cross border insolvency and deals with a host of recent developments, notably; the consolidation of the rescue culture in the UK, the rise of the pre-packaged administration, and the substantial replacement of administrative receivership with administration. Suitable for advanced undergraduate and graduate students, professionals and academics, Corporate Insolvency Law offers an organised basis for rising to the challenges of an ever-shifting area of the law.

This timely work is the first to comprehensively examine directors' responsibilities to creditors in times of financial strife, as well as addressing when these responsibilities arise, and what directors should have to do to ensure that they comply with their obligations. Keay explores the relevant issues from doctrinal, normative and comparative perspectives and addresses the question as to when directors are liable for wrongful trading, fraudulent trading or breach of their duties to creditors and whether directors should be held responsible for the before mentioned. Besides the relevant UK legislation and case law, legislation and case law from Australia, Canada, Ireland and the United States are examined and compared and reforms which take into account the aims and rationale of the relevant legislation as well as creditors' interests are proposed and assessed. Importantly, new approaches for courts which would make the nature of the responsibility and its timing more precise are suggested. Company directors have certain responsibilities to creditors of their companies. In particular, they should avoid fraudulent and wrongful trading and consider, as part of their duties, the interests of creditors when their companies might be, or are, in financial difficulty. The work is precipitated by the lack of coherence in the consideration of wrongful trading and the recent delivery of important cases on fraudulent trading. Also, this timely work is the first to comprehensively examine directors' responsibilities to creditors in times of financial strife, as well as addressing when these responsibilities arise, and what directors should have to do to ensure that they comply with their obligations. Keay explores the relevant issues from doctrinal, normative and comparative perspectives and seeks to address the question as to when directors are liable for wrongful trading, fraudulent trading or breach of their duties to creditors and whether directors should be held responsible for wrongful trading and failing to consider the interests of creditors. Besides the relevant UK legislation and case law, legislation and case law from Australia, Canada, Ireland and the United States are examined and compared, and reforms which take into account the aims and rationale of the relevant legislation as well as creditors' interests are proposed and assessed. Importantly, new approaches for courts which would make the nature of the responsibility and its timing more precise are suggested.

Corporate Insolvency and Rescue, Third Edition provides a full description and analysis of Irish corporate insolvency law, comprehensively updated from the publication of the second edition of this text in 2012 to the present. In particular, it is updated to the Companies Act 2014, which has transformed company law in Ireland.The book provides detailed consideration of the law relating to all insolvency processes and corporate restructuring, including examinership, receivership and winding-up. It examines the rights and liabilities of the parties involved in the winding-up process - company directors, shareholders, and secured and unsecured creditors - and also addresses the issue of fraudulent and reckless trading. The third edition is a user-friendly guide for busy insolvency practitioners to this complex and evolving area of law with up to date analysis of legal developments in the field of corporate insolvency and rescue.

Vanessa Finch provides a new look at corporate insolvency laws and processes, with two key questions posed throughout. Are current UK laws and procedures efficient, expert, accountable and fair? Are fundamentally different conceptions needed for the law to develop in a way that serves corporate and broader social ends? Topics considered in this fully up-to-date, interdisciplinary and wide-ranging book include different ways of financing companies, causes of corporate failure and prospects for designing rescue-friendly processes. This will appeal to academics, students at advanced undergraduate and graduate level and legal practitioners.

A new and substantially revised edition which looks critically at the broad effect and conceptual underpinnings of corporate insolvency law.

This text offers up-to-date and authoritative guidance on all aspects of corporate insolvency as the law stands in Scotland. The fourth edition takes account of developments in case law and legislation, including the Enterprise Bill and the impact of devolution and human rights.

Written by IMF's Legal Department, this book outlines the key issues involved in designing and implementing orderly and effective insolvency procedures, which play a critical role in fostering growth and competitiveness and may also assist in the prevention and resolution of financial crises. The book draws on lessons learned from firsthand experience by some of the IMF's 182 member countries. It includes an analysis of the major policy choices that countries need to address when designing an insolvency system, a discussion of the advantages and disadvantages of these choices, and a number of specific recommendations.

If a broker-dealer liquidates in federal bankruptcy court, why does an insurance company liquidate in state court, and a bank outside of court altogether? Why do some businesses re-organize under state law 'assignments', rather than the more well-known Chapter 11 of the Bankruptcy Code? Why do some laws use the language of bankruptcy but without advancing policy goals of the Bankruptcy Code? In this illuminating work, Stephen J. Lubben tackles these questions and many others related to the collective law of business insolvency in the United States. In the first book of its kind, Lubben notes the broad similarities between the many insolvency systems in the United States while

describing the fundamental differences lurking therein. By considering the whole sweep of these laws - running the gamut from Chapter 11 to obscure receivership provisions of the National Bank Act - readers will acquire a fundamental understanding of the 'law of failure'.

Corporate Insolvency in Scotland provides comprehensive coverage of all aspects of this technical and complex subject, including liquidation, receivership, administration and voluntary arrangements.

The ninth edition of Keay's Insolvency has come at a time when major insolvency reforms, foreshadowed in previous editions, have just been announced. While none of these has become law, the authors have introduced readers to the proposed changes and the considerable impact they will have on the operation of the law and the administration of insolvencies. These include the introduction of a safe harbour defence to insolvent trading, allowing more emphasis on informal restructuring, restrictions on counter-parties terminating contracts under "ipso facto" clauses, and allowing small companies to go through a streamlined liquidation process. The timing of these reforms, and their significance, is such that those studying and practicing in insolvency need to have an understanding of what is coming, which Keay will provide, even if by way of brief comment at various points throughout. Those reforms have confirmed the authors' continued and increased focus on corporate restructuring law and practice, including outside the context of formal insolvency, an on-going trend in Australia, and internationally. This edition also has new commentary on the roles and duties of lawyers acting in insolvency. PPS law and practice and further embedded in the commentary, along with cross-border insolvency, tax, banking and other related laws. The text has necessarily been updated with commentary on new and important case law, with an emphasis on decisions from the High Court and Courts of Appeals, or on decisions that add new perspectives on the law and practice. The authors have given greater emphasis to legal and insolvency practice - with references throughout to ASIC and AFSA regulatory guidance, Court rules, the ARITA Code, tax issues and forms. Useful tables have been added to explain the details in the text and each chapter now has a summary table of references to the particular parts of the legislation, regulatory guidance, and court rules. The book also cross-references to cases in the new case book, Insolvency Law - Commentary and Materials. Commentary on the statistical trends available from the October 2015 annual reports of the regulators, and other data, is explained, in particular in as far as they may support the law reform trends. The final chapter in the last edition of the text critically assessed Australia's insolvency regime. The authors stand by that commentary and have necessarily updated and added to it in light of the law reform announcements, remaining of the view that while the laws work well enough, the environment local and international environment in which they operate has significantly changed such that, while the reforms are welcomed, a wholesale review of the regime in Australia is still needed. The authors are pleased to see the recognition given to Australian insolvency law and practice through the election of Mr Mark Robinson of PPB Advisory as President of INSOL International in 2015, and of Professor Rosalind Mason, of Queensland University of Technology (QUT), as Chair of INSOL Academics. Both have contributed enormously to the development of the practice and law of insolvency both in Australia and internationally. We are very pleased to have Mark Robinson contribute a foreword to this edition of the book. Michael Murray remains a visiting fellow at the Queensland University of Technology, and is now a Fellow of the Australian Academy of Law, and continues to work in and contribute to the development and thinking of insolvency and restructuring law, practice and policy. Jason Harris is now an Associate Professor in Law at the University of Technology, Sydney, and continues to teach and write extensively in the area, in particular in corporate law and restructuring. Each brings his respective knowledge, experience and thoughts to this important area of law and practice.

Bailey and Groves: Corporate Insolvency - Law and Practice is a leading commentary on the substantive law of corporate insolvency and practical guidance on the various procedures arising in this important field.Written by recognised experts in the field, it remains a user-friendly text covering all aspects on corporate insolvency in one volume and is accessible to both legal and accountancy practitioners.

With the increasing interdependence of global economies, international relations are becoming a more complex system. Through this, the growth of any economy is dependent upon the ease of business transactions; however, in recent times, there has been a growing impact of corporate insolvency law. Corporate Insolvency Law and Bankruptcy Reforms in the Global Economy is an essential reference source that discusses the importance of insolvency laws in the financial architecture of emerging economies, as well as its fundamental issues. Featuring research on topics such as business restructuring, debt recovery, and governance regulations, this book is ideally designed for law students, policymakers, economists, lawyers, and business researchers seeking coverage on the jurisprudence and policy of corporate insolvency law in a globalized context.

This textbook deals with the foundations and key issues of insolvency law and approaches the topic from a comparative perspective, i.e. it does not concentrate on one insolvency law in particular but rather introduces the relevant rules from various jurisdictions, primarily England (and Wales), France, Germany and those of the USA. It is case focused and designed for learning and teaching insolvency law.

This introductory work provides a complete account of the law of insolvency with reference to all of the major issues in insolvency practice such as rescue and restructure, insolvency of corporate groups and cross-border matters.

Comparative Insolvency Law argues that the most important development in contemporary insolvency law and practice is the shift towards a rescue culture rather than full creditor satisfaction. This book is the first to specifically examine the rise of the pre-pack approach, which permits debtor companies to formulate a clear pre-arranged exit before entering into formal insolvency proceedings.

. . . a highly readable and informative text and an excellent addition to insolvency scholarship. . . In their entirety, the chapters of Corporate Rescue Law An Anglo-American Perspective represent one of the most incisive and relevant treatments of comparative insolvency regimes to date. . . This book is an absolute boon: it provides the reader with a mass of legal and practical insights into the workings of two

ostensibly divergent systems and challenges received wisdom in a fluent and persuasive manner. Not only are legal differences examined through the lens of practice, but also commercial, philosophical and social responses to failure are considered and highlighted as possible drivers of those real distinctions that do exist. Professor McCormack has produced an exceptional work that should be required reading for academics, practitioners and policy makers alike, and is to be warmly congratulated. Sandra Frisby, Banking and Finance Law Review The issues are well chosen. They are easily the most important aspects of any corporate rescue law. The careful analysis of the technical provisions, the incorporation of the extensive scholarship on the two corporate rescue regimes and the reference to practice in the real world all help to make these chapters an indispensable tool for any scholar wishing to gain a better understanding of the similarities and differences of English and American corporate rescue laws. . . This monograph could not have come at a better time. . . The comparative account in this book will help law reformers, judges and scholars to have a better grasp of the issues and appreciate better how the two systems have dealt with them. . . Comparative law has a critical role to play in promoting mutual understanding and respect. It is hoped that this monograph will help in that respect. Wee Meng Seng, Singapore Journal of Legal Studies This book offers an unprecedented and detailed comparative critique of Anglo-American corporate bankruptcy law. It challenges the standard characterisation that US law in the sphere of corporate bankruptcy is pro-debtor and UK law is pro-creditor , and suggests that the traditional thesis is, at best, a potentially misleading over-simplification. Gerard McCormack offers the conclusion that there is functional convergence in practice, while acknowledging that corporate rescue, as distinct from business rescue, still plays a larger role in the US. The focus is on corporate restructurings with in-depth scrutiny of Chapter 11 of the US Bankruptcy Code and the UK Enterprise Act, and offers other comparative oversights. Integrating theoretical and practical insights, this book will be of great interest to academics and practitioners, and also to policymakers in the DTI, Insolvency Service and regulatory bodies.

Principles of Insolvency Law is widely regarded as 'the' text on Insolvency law. Professor Sir Roy Goode's reputation as the "doyen of commercial law" has established a unique position for the Work as a leading authority in the field. The book provides a clear and concise treatment of the general philosophical principles underpinning Insolvency law. It works as an introduction to this complex area and as such it has a broad market, ranging from students and newly qualified practitioners to barristers in Court.

Considering five areas of insolvency law, this volume contains essays on insolvency practitioners, global insolvencies in a world of nation states, priority rights on corporate insolvency, directors' duties with regards to insolvency and creditors' schemes of arrangement.

This interdisciplinary examination of corporate insolvency law assesses recent reforms and anticipates new legislation. Finch poses two critical questions: first, are current laws and procedures efficient, expert, accountable and fair?; second, are fundamentally different conceptions of insolvency law necessary to enable it to serve both corporate and broader social ends?

Corporate law and corporate governance have been at the forefront of regulatory activities across the world for several decades now, and are subject to increasing public attention following the Global Financial Crisis of 2008. The Oxford Handbook of Corporate Law and Governance provides the global framework necessary to understand the aims and methods of legal research in this field. Written by leading scholars from around the world, the Handbook contains a rich variety of chapters that provide a comparative and functional overview of corporate governance. It opens with the central theoretical approaches and methodologies in corporate law scholarship in Part I, before examining core substantive topics in corporate law, including shareholder rights, takeovers and restructuring, and minority rights in Part II. Part III focuses on new challenges in the field, including conflicts between Western and Asian corporate governance environments, the rise of foreign ownership, and emerging markets. Enforcement issues are covered in Part IV, and Part V takes a broader approach, examining those areas of law and finance that are interwoven with corporate governance, including insolvency, taxation, and securities law as well as financial regulation. The Handbook is a comprehensive, interdisciplinary resource placing corporate law and governance in its wider context, and is essential reading for scholars, practitioners, and policymakers in the field.

International insolvency is a newly-established branch of the study of insolvency that owes much to the phenomenon of cross-border incorporations and the conduct of business in more than one jurisdiction. It is largely the offspring of globalization and involves looking at both law and economic rules. This book is a compendium of essays by eminent academics and practitioners in the field who trace the development of the subject, give an account of the influences of economics, legal history and private international law, and chart its relationship with finance and security issues as well as the importance of business rescue as a phenomenon. Furthermore, the essays examine how international instruments introduced in recent years function as well as how the subject itself is continually being innovated by being confronted by the challenges of other areas of law with which it becomes entangled.

This interdisciplinary examination of corporate insolvency law assesses recent reforms and anticipates new legislation.

Insolvency law reform has become a subject of public urgency in many countries in the past two decades and particularly in much of Asia over the last ten years. This volume provides an overview of insolvency laws and related rules and procedures in the countries of East Asia. The book comprises two introductory chapters dealing with issues such as legal culture and cross-border insolvency, before examining the fourteen principal jurisdictions in the region. Each chapter addresses the key themes of different insolvency regimes, such as: the legal system and culture; personal insolvency laws; corporate insolvency rules; court-based schemes of arrangement; winding-up procedures; liquidators; enforcement; and offences. This title will be an invaluable guide to academics, practitioners and policy makers working in the areas of comparative and commercial law.

This book analyses corporate rescue laws, processes and policies prescribed in corporate insolvency or bankruptcy laws, and employment laws of the UK and the US, with a particular focus on how extant employee rights are treated when a debtor employer initiates corporate insolvency proceedings. The commencement of formal insolvency proceedings by an employer affects employees' rights and interests. Employment laws seek to protect employees' rights and interests, while insolvency laws seek to promote corporate rescue, which may entail workforce changes. Consequently, this creates a tension between whose interest insolvency law should give primacy of protection. The book analyses how corporate rescue processes such as administration, pre-pack business sales, company voluntary arrangements, receivership and liquidation impact employee rights and protection during corporate rescue proceedings in both jurisdictions. It goes on to address how the federal system of government in the US and the diffusion of power between federal and state law jurisdictions impact a uniform code of employee protection during Chapter 11 bankruptcy reorganisation proceedings. The book considers how an interpretative approach to law (Dworkin's Interpretative Theory of Law) may be used to balance both employee protection and corporate rescue laws during corporate insolvency

in the UK and the US. Of interest to academics, students and employment law practitioners, this book examines the tension between corporate rescue laws and employment protection laws during corporate insolvency in the US and the UK and how this tension may be remedied or balanced.
This book provides a logically ordered guide to the substantive law and practice relating to corporate insolvency as it currently stands. Procedures for commencing and conducting various types of insolvency proceedings are set out alongside the latest legislation (the Insolvency Act 1986, theInsolvency Rules 1986 and the two Insolvency Acts of 1994) and any relevant case law which supports, modifies or interprets that legislation