

# School of Taxation and Business Law

## TABL3741 INSOLVENCY LAW

### Course Outline Semester 2, 2017

### Course-Specific Information

The Business School expects that you are familiar with the contents of this course outline. You must also be familiar with the Course Outlines Policies webpage which contains key information on:

- Program Learning Goals and Outcomes
- Academic Integrity and Plagiarism
- Student Responsibilities and Conduct
- Special Consideration
- Student Support and Resources

This webpage can be found on the Business School website:

<https://www.business.unsw.edu.au/degrees-courses/course-outlines/policies>

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## COURSE-SPECIFIC INFORMATION

### 1 STAFF CONTACT DETAILS

Lecturer-in-charge: A/Professor Anil Hargovan  
Room 2054H – Level 2 Quad (South Wing)  
Phone No: 9385 3577  
Email: [a.hargovan@unsw.edu.au](mailto:a.hargovan@unsw.edu.au)  
Consultation Times – By appointment

#### Communication with Staff

- Students are invited to consult, by email appointment, with the **lecturer in charge** on any aspect of the course.
- Students may contact staff by e-mails regarding course administration matters, **using only their official university email address as per *University Email Policy***. E-mail is not an appropriate medium for learning. It is a poor substitute for personal consultation. Do not expect staff to reply to e-mails which request extensive or substantive answers. Teaching staff will use their discretion when consulted via e-mail and may instead invite students to meet in person during consultation hours to discuss complex questions, solutions to tutorial questions, past exam questions, etc.

### 2 COURSE DETAILS

#### 2.1 Teaching Times and Location

**Monday 11.00-2.00pm – Colombo LG02**

Tutorials start in Week 2 (to Week 13) and are conducted in the same venue as lectures – it is held immediately after the lecture. It is your responsibility to ensure that you have a formal Tutorial Programme (downloadable from Moodle).

#### 2.2 Units of Credit

The course is worth 6 units of credit.

#### 2.3 Summary of Course

The purpose of this course is to examine the concept of insolvency, the aims of insolvency law and to study the law and practice of insolvency. The main principles of insolvency law, both personal and corporate insolvency, will be examined. Emphasis will be given to the areas dealing with the process of insolvency, its consequences and the legal alternatives to personal insolvency (bankruptcy) and corporate insolvency (liquidation). The course will also focus both on insolvency prevention and rehabilitation. The role of the regulatory agencies and the professionals involved in the administration of insolvency law (trustee, administrators, receivers and liquidators), together with their legal duties and responsibilities will be examined.

Lecture material will be grounded in contemporary commercial and legal developments to illustrate the practical relevance of topics studied.

#### 2.4 Course Aims and Relationship to Other Courses

Students may choose to study *Insolvency Law* as part of a Business Law major.

A Business Law co-major involves completing 8 courses (1 compulsory course TABL 1710 *Business and the Law*, and 7 TABL electives which must include at least 3 Level 3 TABL courses).

## 2.5 Student Learning Outcomes

The Course Learning Outcomes are what you should be able to DO by the end of this course if you participate fully in learning activities and successfully complete the assessment items.

By the end of this course, you should be able to:

1. explain the practical features of personal and corporate insolvency law and the legal environment in which they operate;
2. explain and apply principles of insolvency law (both personal and corporate insolvency);
3. analyse and evaluate legal problems;
4. apply logical argument, in written or oral form, to legal problems that arise in modern insolvency law
5. research legal principles that apply to insolvencies; and
6. identify emerging trends in regulation and governance of insolvency professionals.

The Learning Outcomes in this course also help you to achieve some of the overall Program Learning Goals and Outcomes for all undergraduate students in the Business School. Program Learning Goals are what we want you to BE or HAVE by the time you successfully complete your degree (e.g. 'be an effective team player'). You demonstrate this by achieving specific Program Learning Outcomes - what you are able to DO by the end of your degree (e.g. 'participate collaboratively and responsibly in teams').

For more information on the Undergraduate Program Learning Goals and Outcomes, see: <https://www.business.unsw.edu.au/degrees-courses/course-outlines/policies>

The following table shows how your Course Learning Outcomes relate to the overall Program Learning Goals and Outcomes, and indicates where these are assessed (they may also be developed in tutorials and other activities):

Program Learning Goals and Outcomes		Course Learning Outcomes	Course Assessment Item
<i>This course helps you to achieve the following learning goals for all Business undergraduate students:</i>		<i>On successful completion of the course, you should be able to:</i>	<i>This learning outcome will be assessed in the following items:</i>
1	Knowledge	Explain the practical features of personal and corporate insolvency law and the legal environment in which they operate  Explain and apply principles of insolvency law.	<ul style="list-style-type: none"><li>• Tutorial Problems</li><li>• Assignment (Group and Individual)</li><li>• Final Exam</li></ul>

2	Critical thinking and problem solving	Analyse the legal environment in insolvency law operates and evaluate its use in a commercial context.  Identify legal problems which arise out of the personal and corporate insolvency and explore alternatives to bankruptcy and liquidation. Research inefficiencies or defects in the law, propose an outcome and identify possible challenges to any proposed outcome.	<ul style="list-style-type: none"> <li>• Tutorial Problems</li> <li>• Assignment (Group and Individual)</li> <li>• Final Exam</li> </ul>
3a	Written communication	Construct written work which is logically and professionally presented.	<ul style="list-style-type: none"> <li>• Assignment (Group and Individual)</li> <li>• Final Exam</li> </ul>
3b	Oral communication	Communicate ideas in a succinct and clear manner.	<ul style="list-style-type: none"> <li>• Part of tutorial participation and Group Presentation</li> </ul>
4	Teamwork	Work collaboratively to complete a task.	<ul style="list-style-type: none"> <li>• Group Assignment Presentation</li> </ul>
5a.	Ethical, social and environmental responsibility	Identify and assess ethical considerations in decision – making in the administration and management of insolvencies – for example, by directors, trustees, administrators, receivers and liquidators	<ul style="list-style-type: none"> <li>• Tutorial Problems</li> <li>• Assignment (Group and Individual)</li> <li>• Final Exam</li> </ul>
5b.	Social and cultural awareness	Analyse insolvency and rehabilitation trends in the context of their social impact on society.	<ul style="list-style-type: none"> <li>• Final Exam</li> </ul>

### 3 LEARNING AND TEACHING ACTIVITIES

#### 3.1 Approach to Learning and Teaching in the Course

The approach to learning and teaching in this course is premised on the fact that active student involvement in the course will facilitate understanding and deep learning of the course materials. The accompanying tutorial program to this course facilitates this outcome together with the opportunities that will arise from time to time in the lectures. Consequently, students are expected to understand rather than memorise and to apply, rather than regurgitate.

In order to obtain the potential benefit from the course and to succeed in all aspects of course assessment, students are required to follow the points below:

1. Read the prescribed materials *before* class lectures. This will make the class material easier to follow and comprehend;
2. Download the lecture handout/slides (available from *Moodle*) *before* class lectures. It is essential to bring the handout/slides to class and to supplement it with notes taken from the lecture. It is important to remember that the lecture handouts are not designed to be comprehensive and serve as a substitute for class lectures;
3. Actively participate in class: answer answers and ask your own;
4. Attend classes on time (important announcements are usually made prior to the delivery of lectures); and
5. Make an appointment to see the lecturer(s) during their consultation hours if further clarification regarding the course content is required.

## 3.2 Learning Activities and Teaching Strategies

The teaching strategies in this course adopts a combination of weekly lectures and tutorials (or seminars) designed to allow the delivery of a body of material and the opportunity thereafter to discuss and contextualise the material. This is done with real life examples to aid student understanding. The teaching strategies adopted aims to encourage critical thinking, deep and positive learning. The course is also designed to cater for the learning needs of a diverse range of students. It incorporates self-review questions, found in the tutorial guide, to facilitate your own assessment of your progress in understanding the course materials.

The tutorial program for this course serves several useful and practical purposes. It is designed to help consolidate, interpret and apply the lecture material. Students are taught to learn by understanding and application, not memorisation and regurgitation. Solutions to tutorial questions are not provided to ensure that students participate actively in class to confirm their understanding, learn from their mistakes and receive feedback on the correct approach to the questions. Students may see the lecturer or tutor during their consultation hours if further clarification regarding the tutorial questions is needed.

Additionally, the tutorial program and assessment is also designed to allow students to develop the skills (both verbal and written) necessary to analyse problems which may arise in practice. The guide is designed to allow each student to reach the goal of being able to apply theory, knowledge and problem solving technique to fact situations that may arise in insolvency law. It is essential that students learn to select the important issues in such fact situations and that they be able to advance, in discussion, a carefully analysed solution aimed at resolution of the factual situation based on both relevant legislation and case law.

This course assumes you have studied TABL 1710 *Business and the Law* or the equivalent course. If you need to refresh your memory and re-familiarise yourself with the general principles of Australian law, you should read a short introductory book such as Carvan, *Understanding the Australian Legal System*, latest edition (Law Book Co), or Chisholm and Nettheim, *Understanding Law*, latest edition (Butterworths).

Reading cases is the best way to gain an understanding of:

- how common law and equity evolve (ie Judge made law, based on previous decisions)
- how the judges interpret the provisions of statutes

## 4 ASSESSMENT

### 4.1 Formal Requirements

In order to pass this course, you must:

- achieve a composite mark of at least 50; **AND**
- complete all assessment tasks; **AND**
- attend at least 80% of the tutorials.

### 4.2 Assessment Details

Assessment in this course consists of 3 Components:

- Real World Case Study: Group Written Assignment and Oral Presentation
- Individual Written Research assignment **and**
- Final exam

Assessment Task	Weighting	Length	Due Date
1. Real World Case Study: Group Research Assignment and Oral Presentation	(20 +10) = 30%	1,700 words and 15 minute class presentation	Advised in Week 2 during Lecture when group allocations are made
2: Individual Research Assignment	20%	1,700 words	Thursday 21 September at 6.00pm via Moodle (Turnitin)
3. Final Exam	50%	2 hours	University Exam Period
Total	100%		

### 4.3 Assessment Format

#### **Real World Case Study: Group Research Assignment and Oral Presentation is worth 30% of course assessment.**

Further details on the topic and expectations will be discussed in lectures in Week 2 of session. The following is an overview of the purpose of, and expectations from, this assessment task.

The Real World Case Study is designed to link contemporary insolvency events back to the insolvency law topics studied in this course. It aims to provide a contextual study of insolvency law in practice, both at a local level and internationally.

In each Real World Case Study, students in the allocated groups are expected to address the relevant facts, legal issue/s, the result and, most relevantly, the key insolvency law lesson(s) that emerge from the case study – it should be linked back to the course and its practical relevance to the course must be demonstrated.

- The written Real World Case Study has a minimum word limit of 1,500 words and maximum word limit of 1,700 words. See Style Guide posted to Moodle *for further details* on written presentation.
- Class Presentations are for a maximum duration of 15 minutes. The use of visual aids is encouraged.
- Group and Topic allocations will be addressed in lectures in Week 2, together with due dates for each group.

#### **Formal Written Individual Research Assignment is worth 20% of course assessment.**

The topic for the individual research assignment will be released via Moodle in Week 2. This is a formal written assessment which involves individual legal research and analysis. It has a minimum word limit of 1,500 words and maximum word limit of 1,700 words.

See Style Guide posted to Moodle *for further details* on written presentation.

It must be lodged at Turnitin before the due date and time: by 6.00 pm on Thursday 21 September 2017 (**note:** No other form of submission, for example email submission, is allowed without prior lecturer consent).

*Unauthorised late submissions will attract an immediate deduction of 20% and thereafter the same deduction per day late. Any assignment submitted 5 or more days late will score zero.*

### **Final Exam is worth 50% of course assessment.**

The final exam will consist of both problem questions and essay questions. It will be 2 hours long and cover the entire course material, unless advised by the lecturer to the contrary in class.

**It is an open book exam** – all materials are allowed except for electronic materials (ie. no computers, ipads, tablets, mobile phones, smart watches or any other form of technology is allowed).

The final examination will be held in the regularly scheduled University examination period. *Further information concerning the exam and its format will be announced in lectures in the final week of the course and a summary of the key points will be posted to Moodle.*

## **4.4 Assignment Submission Procedure**

*See above.*

All students must retain a spare copy of their assignment to be produced, if required, on demand.

## **4.5 Late Submission**

*See above.*

If you foresee that you will have problems submitting the assignment on time you should contact the lecturer-in-charge immediately. Only the lecturer-in-charge can grant an extension for an assignment.

**Do not wait until the due date to ask for an extension. No extensions will be granted on the due date itself.**

If circumstances beyond your control mean that you cannot complete an assignment by the due date you should make an application for special consideration (see <https://www.business.unsw.edu.au/degrees-courses/course-outlines/policies>). These applications are reserved for illness or misadventure, not work commitments. Work commitments are not a valid reason for special consideration applications.

Extensions will not be granted lightly and may only be granted in exceptional circumstances, supported by detailed documentation.

### **Quality Assurance**

The Business School is actively monitoring student learning and quality of the student experience in all its programs. A random selection of completed assessment tasks may be used for quality assurance, such as to determine the extent to which program learning goals are being achieved. The information is required for accreditation purposes, and aggregated findings will be used to



inform changes aimed at improving the quality of Business School programs. All material used for such processes will be treated as confidential.

## 5 COURSE RESOURCES

The prescribed textbook for this course is:

- Symes C and Duns J, ***Australian Insolvency Law, 3<sup>rd</sup> Edition (2015)***  
LexisNexis/Butterworths [hereinafter referred to as SD]

### **Note:**

1. The course content is statutory intensive. Access to the following statutes are required:

- ***Bankruptcy Act 1966 (Cth)* for the topics in Weeks 3-5**
- ***Corporations Act 2001 (Cth)* for the topics in Weeks 6-12**

Access to these statutes are available online and also available for purchase – for example, *Australian Corporations Legislation*, 2017, LexisNexis/Butterworths [student edition]. When making your decision, do remember that electronic equipment is not allowed in the exam.

2. **Students are strongly advised to use the latest edition of prescribed materials and statutes to ensure accuracy.** Due to a continuous process of law reform and judicial pronouncements in a rapidly changing legal environment, it is unadvisable to use previous editions of the prescribed materials. If you do so, you undertake a large risk which may have an adverse impact on performance in the variety of assessments for this course.

### **Recommended references**

- Murray, & Harris, *Keay's Insolvency: Personal and corporate law and practice*, 9<sup>th</sup> edition, (2016) Thomson Reuters
- Symes C, Brown D and Wellard M, *Australian Insolvency Law Cases and Materials* (2016) LexisNexis/Butterworths

### **General commercial law/ corporations/insolvency law texts**

- Harris J, Hargovan A and Adams M, *Australian Corporate Law*, 5<sup>th</sup> Edition (2016) LexisNexis/Butterworths – Chapters 18 and 22
- Ford, Austin & Ramsay, *Principles of Corporations Law*, 16<sup>th</sup> edition (2015) LexisNexis/Butterworths – Chapters 25-28
- Latimer P, *Australian Business Law*, 35<sup>th</sup> edition, (2016) Oxford – Chapter 13

Online Resources: The website for this course is on Moodle at <http://moodle.telt.unsw.edu.au>

**Students are encouraged to check the course website at Moodle for announcements and the following resources designed to assist students with their study of this course:**

- course outline
- assessment details (format of final exam; written style guide)

- relevant lecture slides;
- cases and articles;
- useful links

The following websites are also useful sources:

- Australian Restructuring Insolvency and Turnaround Association (ARITA)  
[www.arita.com.au](http://www.arita.com.au)
- Australian Financial Security Authority (AFSA)  
[www.afsa.gov.au](http://www.afsa.gov.au)
- Australian Securities and Investments Commission  
[www.asic.gov.au](http://www.asic.gov.au)
- Australasian Legal Information Institute ([www.austlii.edu.au](http://www.austlii.edu.au))
- Federal (Commonwealth) Parliament (bills, legislation, committees etc  
[www.aph.gov.au](http://www.aph.gov.au)
- Federal Register of Legislation  
[www.legislation.gov.au](http://www.legislation.gov.au)

## 6 COURSE EVALUATION AND DEVELOPMENT

Each year feedback is sought from students and other stakeholders about the courses offered in the School and continual improvements are made based on this feedback. UNSW's MyExperience survey is one of the ways in which student evaluative feedback is gathered. In this course, we will seek your feedback through end of semester MyExperience responses.

## 7 COURSE SCHEDULE

LECTURE SCHEDULE		
Week	Topic	References
Week 1 24 July	Course Overview Development, Structure and Administration of Insolvency Law <ul style="list-style-type: none"> <li>Personal and Corporate Insolvency</li> </ul>	SD Chapters 1-2
Week 2 31 July	Policy Issues and Design Principles in Insolvency Law <ul style="list-style-type: none"> <li>Personal and Corporate Insolvency</li> </ul>	SD Chapters 1-2
Week 3 7 August	Personal Insolvency: <b>Bankruptcy Law (Part 1)</b> <ul style="list-style-type: none"> <li>Bankruptcy Process and Consequences</li> </ul>	SD Chapter 3
Week 4 14 August	Personal Insolvency: <b>Bankruptcy Law (Part 2)</b> <ul style="list-style-type: none"> <li>Claims against Bankrupt Estate</li> </ul>	SD Chapter 3-4
Week 5 21 August	Personal Insolvency: <b>Bankruptcy Law (Part 3)</b> <ul style="list-style-type: none"> <li>Alternatives to Bankruptcy</li> </ul>	SD Chapters 5-6
Week 6 28 August	Corporate Insolvency: <b>Liquidation (Part 1)</b> <ul style="list-style-type: none"> <li>Compulsory liquidation (statutory demand)</li> <li>Voluntary liquidation</li> </ul>	SD Chapters 10-12
Week 7 4 September	Corporate Insolvency: <b>Liquidation (Part 2)</b> <ul style="list-style-type: none"> <li>Liquidators duties</li> <li>Examination and Recovery powers</li> </ul>	SD Chapters 10-12
Week 8 11 September	Alternatives to Liquidation <ul style="list-style-type: none"> <li>Options for corporate rescue (formal and informal)</li> <li>Schemes of Arrangement</li> <li><b>Voluntary Administration (Part 1) Overview</b></li> </ul>	
Week 9 18 September	<b>Voluntary Administration (Part 2)</b> <ul style="list-style-type: none"> <li>Appointment of Administrator</li> <li>Conduct of Administration</li> <li>Impact of Administration</li> <li>Court involvement</li> </ul> <u><b>Assignment Due on Thursday 21 September</b></u>  Mid-semester break: 23 Sept – 2 Oct	SD Chapter 8-9
Week 10 2 October	<b>Labour Day Public Holiday (No Lecture)</b>	

Week 11 9 October	<b>Voluntary Administration (Part 3)</b> <ul style="list-style-type: none"> <li>• Deed of Company Arrangement (DOCA)</li> <li>• Effects of DOCA</li> <li>• Termination and variation of DOCA</li> <li>• Transition to liquidation</li> </ul>	SD Chapter 8-9
Week 12 16 October	<b>Receivership</b>	SD Chapter 7
Week 13 23 October	Tutorial only (11.00am -12.00 noon)	