

Course Outline 2017

COMLAW 303: RECEIVERSHIPS AND RECONSTRUCTIONS (15 POINTS)

Semester 2 (1175)

Course Prescription

A business in difficulty may fail or it may be rehabilitated. Receiverships and Reconstructions looks at aspects of business failure and near failure including informal workouts, formal business rescue regimes, company receiverships and personal bankruptcy. Students will develop skills and expertise to operate in these fields.

Programme and Course Advice

Prerequisite: COMLAW 203 or LAW 417

Goals of the Course

This course looks at the roles, responsibilities and liabilities of insolvency practitioners. Insolvency practice includes practising as a “company doctor”, overseeing formal and informal workouts for financially distressed businesses and practicing as a company receiver, administrator and liquidator. The course is also designed to be relevant for students not specifically seeking a career in insolvency practice but who are interested in business rescue and business failure generally. The course also exposes students to some of the ethical issues facing insolvency practitioners.

Learning Outcomes

By the end of this course it is expected that the student will be able to:

1. Have practised problem solving skills;
2. Have an awareness of ethical issues facing insolvency practitioners;
3. Understand the legal principles of company liquidation;
4. Understand the legal principles of receiverships;
5. Understand the powers, duties and liabilities of company receivers;
6. Have an understanding of the policies and goals of insolvency law;
7. Be able to advise on strategies to avoid liquidation and on alternative formal and informal workout procedures;
8. Understand the legal rules necessary to administer workout proposals;
9. Have a sufficient understanding of the relevant legal rules necessary to be able to practise as insolvency practitioners.

Content Outline

Part A (7 weeks)

- The different roles of professional advisors in the insolvency arena;
- Introduction to company liquidation;
- Court appointed receivers;
- Revision of security interests;
- Creditor appointed receivers;
- Status of receiver and company in receivership;
- Appointing a receiver;
- Initial steps in a receivership;
- Powers of receivers;
- Duties of receivers;
- Duties in relation to preferential creditors;
- Personal liability of receivers;
- Rights of third parties;
- Termination of receiverships.

Part B (5 weeks)

- Introduction to bankruptcy policy;
- Company arrangements under Parts 14 and 15 Companies Act – overview;
- Legal issues arising out of company arrangements: prejudiced creditors, classes of creditors, public policy considerations;
- Voluntary administration of companies.

Learning and Teaching

The course will be delivered on the City Campus. There will be 36 hours of lectures inclusive of any in class workshops. There will be one two-hour and one one-hour class per week which will essentially be lectures but there may instead be in class workshops where students will be asked to solve practical problems facing insolvency practitioners using the legal problem solving methodology. There are no weekly assignments but students are required to read extensively from the recommended readings. Students are instructed how to access relevant on-line legal databases and other resources. The class size is around 100 students.

Teaching Staff

Professor Mike Gedye

Course Coordinator

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Learning Resources

There are no mandatory texts for the course. The course content is covered in the following:

- The online Commercial Law and Corporations Law Libraries published by Brookers, LexisNexis and CCH available from the University Library databases.
- Blanchard and Gedye's, *The Law of Private Receivers of Companies in New Zealand*, LexisNexis Wellington, 2008.
- Ross, *Corporate Reconstructions – Strategies for Directors*, CCH, 1999.
- Gedye, chapters 16, 18, 19 and 20, *The Law of Business Organisations*, 5th ed, Palatine Press, 2009.
- Brookers *Insolvency Law*, available on line from Davis Law Library databases.
- Heath and Whale on *Insolvency*, LexisNexis, available on line from Davis Law Library databases.

Assessment

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|-----------------|-----|---------------------------------------|
| In Class test 1 | 15% | marked by Mike Gedye |
| In Class test 2 | 15% | marked by Mike Josling |
| Final Exam | 70% | (2 hours, covering the entire course) |
| Total | | 100% |

| Learning Outcome | Test 1 | Test 2 | Final Exam |
|------------------|--------|--------|------------|
| 1 | X | X | X |
| 2 | X | | X |
| 3 | X | | X |
| 4 | X | | X |
| 5 | | | X |
| 6 | | X | X |
| 7 | | X | X |
| 8 | | X | X |
| 9 | | | X |

Inclusive Learning

Students are urged to discuss privately any impairment related requirements face-to-face and/or in written form with Mike Gedye, the Course Coordinator.

Student Feedback

Student feedback from previous years has been used to modify the content and structure of the course for the benefit of current students. Similarly, current students will be asked to complete a course evaluation that will assist the lecturers in making changes to the course for the benefit of future students and all current students are encouraged to complete the survey.