



## UNSW Course Outline

# JURD7414 Insolvency Law - 2024

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## General Course Information

**Course Code :** JURD7414

**Year :** 2024

**Term :** Term 2

**Teaching Period :** T2

**Is a multi-term course? :** No

**Faculty :** Faculty of Law and Justice

**Academic Unit :** School of Private and Commercial Law

**Delivery Mode :** In Person

**Delivery Format :** Standard

**Delivery Location :** Kensington

**Campus :** Sydney

**Study Level :** Postgraduate

**Units of Credit :** 6

### Useful Links

[Handbook Class Timetable](#)

## Course Details & Outcomes

### Course Description

The course intends to provide an understanding of the law and practice relating to personal bankruptcy law and to corporate insolvency. It has become increasingly important, if not, essential, for all lawyers to understand when and how the law regulates and deals with the results of commercial entities and/or individuals faltering financially.

The course examines the various regimes of insolvency, the effects of insolvency on the debtor, the rights of creditors, how the law regulates the claims of competing creditors, the role of the insolvency practitioner, the recovery and distribution of assets and the investigation of the causes of the financial faltering. The course will also focus upon the interaction between insolvency law and other branches of law as well as the socio/economic implications of insolvency law.

## **Main Topics**

- Introducing the aims of Insolvency Law and the historical background;
- Concepts and role-players;
- Personal Bankruptcy:
  - Measuring bankruptcy and insolvency;
  - The impact of insolvency on the debtor;
  - Recovery of assets;
  - Administration of the estate;
  - Non bankruptcy arrangements;
  - Ending of bankruptcy.
- Corporate Insolvency:
  - Different insolvency regimes;
  - Provisional and Final Liquidation;
  - Voluntary and compulsory winding-up;
  - The effects of winding-up;
  - Recovery of assets;
  - Administration of the estate;
  - Criminal and civil liability of directors;
  - Termination of the winding-up
  - Schemes of arrangement;
  - Receivership;
  - Voluntary administration;
  - Deeds of company arrangement
  - Cross-Border Insolvency
  - Restructuring.

## **Relationship to Other Courses**

The Law of Bankruptcy and the Law of Insolvency are relevant to very many other branches of the law. The winding up of bankrupt and insolvent estates requires a knowledge of personal law, property law, financial law (including tax law), equity etc. Any type of legal right may arise for consideration and be relevant to the winding up of the estate.

# Course Learning Outcomes

Course Learning Outcomes
CL01 : Demonstrate an awareness of law and practice relating to personal bankruptcy and corporate insolvency(PLOs 1, 3, 4 & 9)
CL02 : Recognise and appreciate the problematic issues that arise in insolvency and understand the various procedures and mechanisms by which the law addresses these issues (PLOs 1, 3, 4 & 7)
CL03 : Understand the implementation of strategies for managing, rescuing and dealing with individual and corporate estates that are faltering or, in fact, insolvent (PLOs 4, 5 & 6)
CL04 : Demonstrate knowledge regarding the rights and obligations of the various stakeholders, including the debtor, the creditors – secured and unsecured, directors, shareholders and insolvency practitioners (PLOs 1, 4 & 5)
CL05 : Demonstrate knowledge regarding the reach of the law relating to the recovery of assets and the distribution of the insolvent estate (PLOs 4 & 5)
CL06 : Examine the international and cross-border context of insolvency (PLO 5)
CL07 : Evaluate the social and economic implications of insolvency and the effect of the solutions imposed by the law (PLO 1, 3 & 8)

Course Learning Outcomes	Assessment Item
CLO1 : Demonstrate an awareness of law and practice relating to personal bankruptcy and corporate insolvency(PLOs 1, 3, 4 & 9)	<ul style="list-style-type: none"> <li>• Mid-term Exam</li> <li>• Final Take Home Exam</li> <li>• Case Note</li> </ul>
CLO2 : Recognise and appreciate the problematic issues that arise in insolvency and understand the various procedures and mechanisms by which the law addresses these issues (PLOs 1, 3, 4 & 7)	<ul style="list-style-type: none"> <li>• Mid-term Exam</li> <li>• Final Take Home Exam</li> <li>• Case Note</li> </ul>
CLO3 : Understand the implementation of strategies for managing, rescuing and dealing with individual and corporate estates that are faltering or, in fact, insolvent (PLOs 4, 5 & 6)	<ul style="list-style-type: none"> <li>• Mid-term Exam</li> <li>• Final Take Home Exam</li> <li>• Case Note</li> </ul>
CLO4 : Demonstrate knowledge regarding the rights and obligations of the various stakeholders, including the debtor, the creditors – secured and unsecured, directors, shareholders and insolvency practitioners (PLOs 1, 4 & 5)	<ul style="list-style-type: none"> <li>• Mid-term Exam</li> <li>• Final Take Home Exam</li> <li>• Case Note</li> </ul>
CLO5 : Demonstrate knowledge regarding the reach of the law relating to the recovery of assets and the distribution of the insolvent estate (PLOs 4 & 5)	<ul style="list-style-type: none"> <li>• Mid-term Exam</li> <li>• Final Take Home Exam</li> <li>• Case Note</li> </ul>
CLO6 : Examine the international and cross-border context of insolvency (PLO 5)	<ul style="list-style-type: none"> <li>• Mid-term Exam</li> <li>• Final Take Home Exam</li> <li>• Case Note</li> </ul>
CLO7 : Evaluate the social and economic implications of insolvency and the effect of the solutions imposed by the law (PLO 1, 3 & 8)	<ul style="list-style-type: none"> <li>• Mid-term Exam</li> <li>• Final Take Home Exam</li> <li>• Case Note</li> </ul>

## Learning and Teaching Technologies

Moodle - Learning Management System

## Learning and Teaching in this course

Live interactive classes.

Readings prescribed for each class.

There is no Class Participation assessment. With the two exams, the Case Note is the third assessment.

## Additional Course Information

Students should ensure that they are familiar with the Reading Schedule and Assessment dates and requirements.

# Assessments

## Assessment Structure

Assessment Item	Weight	Relevant Dates
Mid-term Exam Assessment Format: Individual	30%	Start Date: 28/06/2024 02:00 PM Due Date: Not Applicable Post Date: 28/06/2024 02:00 PM
Final Take Home Exam Assessment Format: Individual	50%	Start Date: 02/08/2024 04:00 PM Due Date: 12/08/2024 02:00 PM Post Date: 12/08/2024 02:00 PM
Case Note Assessment Format: Individual	20%	Start Date: Not Applicable Due Date: 09/07/2024 02:00 PM Post Date: 09/07/2024 02:00 PM

## Assessment Details

### Mid-term Exam

#### Assessment Overview

Mid-term Exam = 30%

Open Book (2 hours) – written in class.

Feedback includes formative feedback, peer feedback in class, online and the use of rubric.

#### Course Learning Outcomes

- CL01 : Demonstrate an awareness of law and practice relating to personal bankruptcy and corporate insolvency(PLOs 1, 3, 4 & 9)
- CL02 : Recognise and appreciate the problematic issues that arise in insolvency and understand the various procedures and mechanisms by which the law addresses these issues (PLOs 1, 3, 4 & 7)
- CL03 : Understand the implementation of strategies for managing, rescuing and dealing with individual and corporate estates that are faltering or, in fact, insolvent (PLOs 4, 5 & 6)
- CL04 : Demonstrate knowledge regarding the rights and obligations of the various stakeholders, including the debtor, the creditors – secured and unsecured, directors, shareholders and insolvency practitioners (PLOs 1, 4 & 5)
- CL05 : Demonstrate knowledge regarding the reach of the law relating to the recovery of assets and the distribution of the insolvent estate (PLOs 4 & 5)
- CL06 : Examine the international and cross-border context of insolvency (PLO 5)
- CL07 : Evaluate the social and economic implications of insolvency and the effect of the solutions imposed by the law (PLO 1, 3 & 8)

#### Detailed Assessment Description

**MID-TERM OPEN BOOK EXAM:** This will be written in your class on Friday, 28 June 2024. The

duration will be 120 minutes. The exam will include all work relating to personal bankruptcy - both as is dealt with in class and in the prescribed readings. The exam will be an open-book exam. Only written/printed material will be permitted. The use of electronic aids will not be allowed.

#### **Assessment Length**

2 hours

#### **Submission notes**

Written in class on 15 March 2024

#### **Assessment information**

The Exam covers all material dealt with in class as well as in the prescribed readings.

#### **Assignment submission Turnitin type**

Not Applicable

#### **Hurdle rules**

The Mid-Term Exam covers the Bankruptcy part of the course and the Final Take-Home Exam covers the Insolvency part of the course. Knowledge of the law relating to both Bankruptcy and Insolvency is essential to pass the course. In order to pass the course, Students must attain a mark of at least 40% for each of the Mid-Term and Final Take-Home Exams and an average of not less than 50% overall.

## **Final Take Home Exam**

#### **Assessment Overview**

Final Take Home Exam = 50%

Feedback includes formative feedback, online and the use of rubric.

#### **Course Learning Outcomes**

- CL01 : Demonstrate an awareness of law and practice relating to personal bankruptcy and corporate insolvency(PLOs 1, 3, 4 & 9)
- CL02 : Recognise and appreciate the problematic issues that arise in insolvency and understand the various procedures and mechanisms by which the law addresses these issues (PLOs 1, 3, 4 & 7)
- CL03 : Understand the implementation of strategies for managing, rescuing and dealing with individual and corporate estates that are faltering or, in fact, insolvent (PLOs 4, 5 & 6)
- CL04 : Demonstrate knowledge regarding the rights and obligations of the various stakeholders, including the debtor, the creditors – secured and unsecured, directors,

shareholders and insolvency practitioners (PLOs 1, 4 & 5)

- CLO5 : Demonstrate knowledge regarding the reach of the law relating to the recovery of assets and the distribution of the insolvent estate (PLOs 4 & 5)
- CLO6 : Examine the international and cross-border context of insolvency (PLO 5)
- CLO7 : Evaluate the social and economic implications of insolvency and the effect of the solutions imposed by the law (PLO 1, 3 & 8)

#### **Detailed Assessment Description**

**FINAL TAKE HOME EXAM:** The exam will be available on Moodle at 4.00pm on Friday, 2 August 2024. Answers must be uploaded via Turnitin via Moodle by 2.00pm on Monday 12 August 2024. The exam will primarily cover corporate insolvency but will also require knowledge of the relationship ie. similarities and differences between bankruptcy and insolvency as well as current issues relating to the law of bankruptcy and insolvency. Note: The exam will include what is dealt with in class and in the prescribed readings

#### **Assessment Length**

Final Take-Home Exam: 10 days.

#### **Submission notes**

Upload to Moodle via Turnitin - link provided

#### **Assessment information**

Typed answers need to be in a font of at least 12 points in size. The preferred font is Verdana

Line spacing = 1.5

#### **Assignment submission Turnitin type**

This assignment is submitted through Turnitin and students do not see Turnitin similarity reports.

#### **Hurdle rules**

The Mid-Term Exam covers the Bankruptcy part of the course and the Final Take-Home Exam covers the Insolvency part of the course. Knowledge of the law relating to both Bankruptcy and Insolvency is essential to pass the course. In order to pass the course, Students must attain a mark of at least 40% for each of the Mid-Term and Final Take-Home Exams and an average of not less than 50% overall.

## **Case Note**

#### **Assessment Overview**

Case Note = 20%

Feedback includes formative feedback, peer feedback in class, online and the use of rubric.

### **Course Learning Outcomes**

- CL01 : Demonstrate an awareness of law and practice relating to personal bankruptcy and corporate insolvency(PLOs 1, 3, 4 & 9)
- CL02 : Recognise and appreciate the problematic issues that arise in insolvency and understand the various procedures and mechanisms by which the law addresses these issues (PLOs 1, 3, 4 & 7)
- CL03 : Understand the implementation of strategies for managing, rescuing and dealing with individual and corporate estates that are faltering or, in fact, insolvent (PLOs 4, 5 & 6)
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- CL05 : Demonstrate knowledge regarding the reach of the law relating to the recovery of assets and the distribution of the insolvent estate (PLOs 4 & 5)
- CL06 : Examine the international and cross-border context of insolvency (PLO 5)
- CL07 : Evaluate the social and economic implications of insolvency and the effect of the solutions imposed by the law (PLO 1, 3 & 8)

### **Detailed Assessment Description**

**CASE NOTE ASSIGNMENT:** Students will be offered a list of cases from which to choose one case. Your Case Note must be uploaded via Turnitin on Moodle by no later than 2.00pm on Tuesday 9 July 2024.

In addition, a hard copy must be handed-in to your Insolvency Teacher during the class on Tuesday 9 July 2024. The list of cases and further instructions are available on Moodle.

### **Assessment Length**

See the Case Note Instructions on the Insolvency Moodle page.

### **Submission notes**

In addition to uploading your Case Note to Moodle via Turnitin, you must hand-in a hard copy during the class on 2 April 2024.

### **Assessment information**

In addition to uploading your Case Note to Moodle via Turnitin, you must hand in a hard copy during the class on 2 April 2024.

**The Case Note must be typed using a font of not less than 12 points in size. The preferred font is Verdana.**

**Importantly, Use a line spacing of 1.5    Also, and importantly, your hard copy must be printed on**



one side of the page only - single sided. Hard copies printed on both sides of the page (double-sided) will not be regarded as compliant.

#### Assignment submission Turnitin type

This assignment is submitted through Turnitin and students do not see Turnitin similarity reports.

## General Assessment Information

### ASSESSMENT CRITERIA and OVERALL GRADING

#### *Criteria*

The **Case Note** will be a written note analysing the relevant facts and decision in a case selected by the student from a given list of cases. The list of cases and further instructions are currently available on Moodle. Further details as to how students need to approach this assignment will be discussed in class.

The **Mid-Term Open Book Assignment** will be written in class. It will comprise problem questions to test the student's ability to identify the issues and apply the correct legal principles. Reference to authority, writing style and logical argument will count towards the marks allocated.

The **Final Take-Home Exam**. Problem questions and a question requiring an essay will be set to test the student's knowledge of the concepts and issues taught as well as an appreciation of the issues facing the development of insolvency law in the current era. In assessing the answers to the examination questions regard will be had to the student's knowledge of the legal principles, the identification of the relevant issues, problem-solving ability, appropriate use of authority, document drafting and legal writing capability.

#### **Late Work**

It is the student's responsibility to submit an online examination within the allotted timeframe. An online examination that is submitted late will not be accepted. An online examination includes short exams and long take-home exams.

The following applies to assessment tasks other than examinations.

Late work will not be accepted without penalty unless an extension has previously been granted. As per the UNSW Assessment Implementation Procedure, late work will be penalised by the deduction of 5% of available marks for that assessment for each full day or part of a day that the work is late. For example, if an essay is submitted 2 days late and the piece of assessment is worth 40%, the student will lose 4 marks out of 40.

## Grading Basis

### Standard

## Requirements to pass course

The Mid-Term Exam covers the Bankruptcy part of the course and the Final Take-Home Exam covers the Insolvency part of the course. Knowledge of the law relating to both Bankruptcy and Insolvency is essential to pass the course. In order to pass the course, Students must attain a mark of at least 40% for each of the Mid-Term and Final Take-Home Exams and an average of not less than 50% overall.

## Course Schedule

Teaching Week/Module	Activity Type	Content
Week 1 : 27 May - 2 June	Lecture	Preliminary Matters. Introduction to Bankruptcy. History, Courts and Officials. Voluntary and Compulsory Bankruptcy
Week 2 : 3 June - 9 June	Lecture	Compulsory Bankruptcy continued. Why & How Bankruptcy.
Week 3 : 10 June - 16 June	Lecture	Timing – Recovery of Assets. Administration of the Bankrupt Estate.
Week 4 : 17 June - 23 June	Lecture	Admin of the Bankrupt Estate continued. End of Bankruptcy.
Week 5 : 24 June - 30 June	Lecture	Bankruptcy Revision and Miscellaneous.
Week 6 : 1 July - 7 July	Other	READING WEEK.
Week 7 : 8 July - 14 July	Lecture	Introduction to Insolvency.
Week 8 : 15 July - 21 July	Lecture	Receivership – Voluntary Administration and DOCA.
Week 9 : 22 July - 28 July	Lecture	Effects and Administration. Termination of Winding-Up. Winding Up Civil Liability of directors; Insolvent trading: Safe Harbour.
Week 10 : 29 July - 4 August	Lecture	Phoenix Activity and Cross-Border Insolvency.

## Attendance Requirements

The 80% attendance rule is enforced. A register of attendance at each class is maintained

Please see information about attendance requirements in **Law & Justice Assessment Procedure and Student Information** located in the Other Useful Information tab in the Academic Information field.

Please be advised there will be no classes on public holidays. If your class falls on a public holiday, alternative arrangements will be made by the course convenor to make up the missed class.

## General Schedule Information

The class will be held from 2.00pm to 4.00pm on Tuesday and Friday in Room 203 (Law Building).

See the Reading Schedule for precise dates.

## Course Resources

### Prescribed Resources

The Bankruptcy Act 1966 (Cth)

Chapter 5 of the Corporations Act 2001 (Cth).

Keay's Insolvency - Murray & Harris - 11th Edition - Thomson Reuters

### Recommended Resources

Further resources will be suggested in classes during the term.

## Course Evaluation and Development

University-run course evaluation will be available.

Suggestions to improve the content and/or teaching of the course are welcomed.

## Staff Details

Position	Name	Email	Location	Phone	Availability	Equitable Learning Services Contact	Primary Contact
	Selwyn Selikowitz		Room 307, Level 3, Law Building.	X	On request - please email	No	Yes
Convenor	Riona Moodley					No	No

## Other Useful Information

### Academic Information

Upon your enrolment at UNSW, you share responsibility with us for maintaining a safe, harmonious and tolerant University environment.

You are required to:

- Comply with the University's conditions of enrolment.
- Act responsibly, ethically, safely and with integrity.
- Observe standards of equity and respect in dealing with every member of the UNSW community.

- Engage in lawful behaviour.
- Use and care for University resources in a responsible and appropriate manner.
- Maintain the University's reputation and good standing.

For more information, visit the [UNSW Student Code of Conduct Website](#).

## UNSW Law & Justice Assessment Policy

It is essential that all students undertaking this course read and abide by the [UNSW Law & Justice Assessment Policy & Student Information](#). This document includes information on Class Attendance, Late Work, Word Limits, Marking, Special Consideration, Workload, and Academic Misconduct & Plagiarism. More information can also be found at [Assessment & Exam Information](#).

Information regarding Course Outlines are subject to change and students are advised to check updates. If there is a discrepancy between the information posted here and the handbook or the UNSW Law & Justice website, please contact [Student Services via The Nucleus Hub](#) for advice. UNSW Law & Justice reserves the right to discontinue or vary such courses or staff allocations at any time. If your course is not here, please visit [Handbook](#) for information.

## Academic Honesty and Plagiarism

As a student at UNSW you are expected to display [academic integrity](#) in your work and interactions. Where a student breaches the [UNSW Student Code](#) with respect to academic integrity, the University may take disciplinary action under the Student Misconduct Procedure. To assure academic integrity, you may be required to demonstrate reasoning, research and the process of constructing work submitted for assessment.

To assist you in understanding what academic integrity means, and how to ensure that you do comply with the UNSW Student Code, it is strongly recommended that you complete the [Working with Academic Integrity](#) module before submitting your first assessment task. It is a free, online self-paced Moodle module that should take about one hour to complete.

## Submission of Assessment Tasks

Before submitting assessment items all students must read and abide by the [UNSW Law & Justice Assessment Policy & Student Information](#).

## Special consideration

Special consideration is primarily intended to provide you with an extra opportunity to demonstrate the level of performance of which you are capable. To apply, and for further information, see Special Consideration on the UNSW [Current Students](#) page.

## Feedback

UNSW Law & Justice appreciates the need for students to have feedback on their progress prior to the last date for withdrawal without failure. All courses will therefore provide feedback to students prior to this date, as well as throughout the course. However, students should note that feedback does not take the form only of formal grades and written comments on written assessments. Rather, formative feedback, which helps students to self-assess, to identify misunderstandings, and to identify areas requiring further work, will occur during class and possibly online. For example, where a teacher asks the class a question, all students should think about how they might answer. Even though not all students will necessarily be able to respond orally, everyone can reflect on their tentative answer in light of the teacher's response and subsequent class discussion. If you are struggling to understand what is being asked in class, or if your tentative answers prove incorrect and subsequent discussion does not clear things up, then you should continue to ask questions (of yourself, your peers or your teacher). Similarly, you can get a sense of your ability in a course through peer feedback during group work, your teacher's responses to your in-class contributions, and your own response to in-class problems and examples (whether or not you are called on to relay your answer to the class) and also your online activities and responses by others to those activities. Students enrolled in this course may check their Moodle course page for details on the specific feedback used in this course.

## Faculty-specific Information

### Additional support for students

- Student support: <https://www.student.unsw.edu.au/support>
- Academic Skills and Support: <https://student.unsw.edu.au/academic-skills>
- Student Wellbeing, Health and Safety: <https://student.unsw.edu.au/wellbeing>
- Equitable Learning Services: <https://student.unsw.edu.au/els>
- UNSW IT Service Centre: <https://www.myit.unsw.edu.au>

### Course improvement

Student feedback is very important to continual course improvement. This is demonstrated within the Faculty of Law & Justice by the implementation of the UNSW online student survey myExperience, which allows students to evaluate their learning experiences in an anonymous

way. myExperience survey reports are produced from each survey. They are released to staff after all student assessment results are finalised and released to students. Course convenors will use the feedback to make ongoing improvements to the course. Students enrolled in this course may check their Moodle course page for details on the actions taken in response to evaluation feedback in Student Survey.

## **School Contact Information**

Please contact [Nucleus Student Hub](#) for all enquiries. The Nucleus acts as a central communications hub for UNSW and will distribute your enquiry to the best person to respond.