

Contents

<i>Preface</i>	vii
<i>Acknowledgements</i>	xi
<i>Preface to Third Edition</i>	xiii
<i>Preface to Second Edition</i>	xvii
<i>Preface to First Edition</i>	xix
<i>Sources of Definitions</i>	xxvii
<i>Table of UK Statutes</i>	xxxiii
<i>Table of Foreign Legislation</i>	xlvi
<i>Table of Statutory Instruments</i>	xlix
<i>Table of European and International Treaties and Conventions</i>	lv
<i>Table of European Directives</i>	lvii
<i>Table of European Regulations</i>	lix
<i>Table of Uniform Rules</i>	lxi
<i>Table of UK Cases</i>	lxiii
<i>Table of Foreign Cases</i>	ciii

PARA.

Chapter 1 The History and Framework of Corporate Insolvency Law	1-01
1. Introduction	1-01
2. History and Sources	1-10
3. The Institutional Setting	1-30
4. The Various Insolvency Regimes	1-31
5. Bank Failures and their Policy Implications	1-57
6. Exemptions from Rules of Insolvency Law	1-60
Chapter 2 The Foundations of Corporate Insolvency Law	2-01
1. Introduction	2-01
2. The Objectives of English Corporate Insolvency Law	2-02
3. The Instruments of Corporate Insolvency Law	2-07
4. The Philosophy of Corporate Insolvency Law	2-14
Chapter 3 The Principles of Insolvency Law	3-01
Chapter 4 The Concept of Corporate Insolvency	4-01
1. General Principles	4-01
2. The Cash Flow Test	4-15
3. The Balance Sheet Test: General Considerations	4-22
4. The Balance Sheet Test: Computation of Assets and Liabilities	4-32

Chapter 5 The Winding Up Process: An Outline	5-01
1. The Liquidator and his Role	5-02
2. Creditors' Voluntary Winding Up	5-07
3. Compulsory Winding Up	5-10
4. Winding Up through Administration	5-25
Chapter 6 Winding Up: Assets Available for Distribution	6-01
1. Delineation of the Property of the Company	6-02
2. Disclaimer of Onerous Property	6-27
3. Swelling the Assets Available to Creditors	6-32
4. Assets Belonging to Third Parties	6-41
5. Effect of Dissolution of Company	6-47
Chapter 7 The Anti-Deprivation Rule	7-01
1. Three Common Law Rules	7-01
2. The Sphere of Application of the Anti-Deprivation Rule	7-04
3. The <i>Perpetual Trustee</i> Case	7-13
Chapter 8 The Proof, Valuation and Ranking of Claims in Winding Up	8-01
1. The Pari Passu Principle of Distribution	8-02
2. Impact of the Pari Passu Principle	8-07
3. Exceptions to the Pari Passu Principle	8-15
4. Liquidation Expenses	8-32
5. Proof of Debt	8-40
6. Ranking of Claims	8-49
Chapter 9 Set-Off and Netting	9-01
1. The Nature and Purpose of Set-Off and Netting	9-01
2. Types of Set-Off	9-02
3. Contractual Set-Off, Netting and the Impact of Insolvency	9-08
4. Insolvency Set-Off: General Principles	9-16
5. Insolvency Set-Off in Special Situations	9-36
6. Set-Off in Administration	9-48
Chapter 10 Administrative Receivership	10-01
1. The Development of Administrative Receivership	10-01
2. The Partial Abolition of Administrative Receivership	10-05
3. The Legal Nature of Administrative Receivership	10-06
4. Appointing the Receiver Out of Court	10-25
5. Effect of the Appointment	10-36
6. Powers of the Receiver	10-41
7. Duties and Liabilities of the Receiver	10-48
8. Impact of Winding Up on the Receivership	10-66

9. Order of Application of Realisations by Receiver	10-68
10. Termination of the Receivership	10-72
11. The Position of the Debenture Holder After Appointing a Receiver	10-75
Chapter 11 Administration	11-01
1. Genesis of the Administration Procedure	11-01
2. Principal Changes Introduced by the Enterprise Act 2002	11-05
3. Nature and Purposes of Administration	11-17
4. Administration Compared with other Insolvency Procedures	11-29
5. The Rise of the Pre-Pack	11-37
6. The Appointment Procedure in Outline	11-43
7. Effect of Administration	11-49
8. Powers and Agency of the Administrator	11-80
9. Duties and Liabilities of the Administrator	11-92
10. The Administrator's Proposals	11-109
11. Termination of the Appointment and the Administration	11-113
12. Exits from Administration	11-115
13. Administration followed by Liquidation and Vice Versa	11-116
14. Variation or Rescission of the Administration Order	11-117
15. The Effectiveness of Administration	11-118
Chapter 12 Restructuring and Arrangements	12-01
1. Restructurings	12-02
2. Schemes	12-12
3. Company Voluntary Arrangements	12-26
Chapter 13 The Avoidance of Transactions on Winding Up or Administration	13-01
1. The Diverse Nature of the Avoidance Provisions	13-02
2. The Policies Underlying the Avoidance Provisions	13-03
3. The Minimum Conditions for Avoidance	13-05
4. Other Relevant Conditions	13-10
5. The Grounds for Avoidance: A Summary	13-11
6. Transactions at an Undervalue	13-12
7. Preferences	13-71
8. Extortionate Credit Transactions	13-108
9. Floating Charges for Past Value	13-111
10. Registrable but Unregistered Charges	13-123
11. Dispositions of Property after the Commencement of Compulsory Winding Up	13-127
12. Transactions Defrauding Creditors	13-136

13. Application of Recoveries	13-140
14. Exemptions for Market and Related Contracts	13-143
15. Critique of the Avoidance Provisions	13-144
16. Do Common Law Restitutionary Principles Apply?	13-145
Chapter 14 Improper Trading and the Duties and Liabilities of Directors	14-01
1. The Duties of Directors: Some General Observations	14-03
2. The Duties of Directors under the Criminal Law	14-06
3. The Duties of Directors to the Company	14-07
4. Duties to Creditors at Common Law	14-20
5. Liability for Fraudulent Trading	14-21
6. Liability for Wrongful Trading	14-27
7. Civil Sanctions for Improper Trading	14-51
8. Disqualification of Directors: General Considerations	14-57
9. Disqualification for Unfitness of Director of Insolvent Company	14-67
Chapter 15 The European Insolvency Regime	15-01
1. Introduction	15-01
2. Background to the Insolvency Regulation	15-02
3. An Overview of the Regulation	15-05
4. Scope of the Regulation	15-09
5. Jurisdiction Generally	15-20
6. The Principle of Recognition and Respect within the Community	15-28
7. The Opening of Main Proceedings and its Effect	15-39
8. Main Proceedings	15-45
9. Determination of Debtor's COMI	15-49
10. Powers of the Liquidator	15-59
11. Territorial Proceedings	15-60
12. Co-Ordination of Parallel Proceedings	15-69
13. The Applicable Law under Art.4	15-70
14. Exclusions from Art.4	15-73
Chapter 16 International Insolvency	16-01
1. The Problems of International Insolvency	16-01
2. The Insolvency Jurisdiction of English Courts	16-11
3. Foreign Insolvencies and English Courts	16-57
4. Concurrent Insolvency Proceedings	16-63
Appendix 1 Council Regulation 1346/2000	A3
Appendix 2 Council Regulation 210/2010	A28

Appendix 3 Cross-Border Insolvency Regulations 2006 incorporating the UNCITRAL Model Law	A45
Appendix 4 UK Insolvency Act 1986, section 426	A117
Appendix 5 UK Insolvency Act 2000, section 14	A121
Appendix 6 Virgós-Schmit Report on the Convention on Insolvency Proceedings	A123
<i>Index</i>	Index-1