

CASE LAW

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TECHNICAL UPDATE

Landlords and priority

In the case of **Pillar Denton Ltd and others v Jervis** the decision on the appeal is expected in November 2014.

Overriding mortgage terms

In the case of **Co-Operative Bank Plc v Phillips [2014] EWHC 2862 (Ch)** the bank who had a second charge on two properties issued possession proceedings despite the properties being in negative equity and no proceeds would have gone to the second charge holder. The bank discontinued proceedings and the court held that the bank would be liable for the mortgagor's costs on a standard basis overriding the mortgage document.

Trusts and Liquidator's investigations

There has now been an appeal lodged in the case of **Top Brands Ltd and another v Sharma and another Re Mama Milla Ltd (in creditors voluntary liquidation) [2014] EWHC 2753 (Ch)**.

Mis-selling and Duty of Care

In the case of **Crestsign Ltd v National Westminster Bank plc and another [2014] EWHC 3043 (Ch)** the court found that there would be a duty of care when giving advice but in this case they proved that they had not given advice. The court also stated that a duty to explain fully and accurately

the nature and effect of the products trying to be sold was owed and in respect of which an explanation had been volunteered. The court held that they did not owe a duty to ensure that the explanation provided was understood.

Secondary Proceedings

In the case of **Burgo group SpA v Illochroma SA (in liquidation): C-327/13 [2014] All ER (D) 114 (Sep)** the court answered various questions in respect of secondary proceedings. The court decided that secondary proceedings may be issued by an international creditor and this is not restricted to local creditors, as territorial proceedings are. Secondary proceedings may also be issued in the country in which its registered office is situated and in which it possesses legal personality. Consideration must be given to the law of the country in which the company is being wound-up as well as the EU regulations when opening those proceedings.

Unregistered company and assets in foreign jurisdiction

In the case of **Re Buccament Bay Resort Ltd; Re Harlequin Property (SVG) Ltd [2014] EWHC 3130 (Ch)** the court reviewed whether a company not based in the jurisdiction who was able to demonstrate substantial connection with the UK could be wound-up in an English court. The court held that since all the assets were based outside the UK the order would be ineffective and it was therefore not appropriate to

JIEB

I thought I would try to provide some useful information and tips for the exam.

ACVAR Exams

I am hoping you have all been informed that the JIEB exam for ACVAR will be marked electronically this year. This means you will be using a different answer booklet to the other exams and the JIEB have recommended that a black ball-point pen be used to answer this paper.

If you have been using a gel pen to practice questions then this may be a rude awakening. I would recommend down-loading the sample booklet and using it to complete your mocks. I have a link below to my website to download a copy of the sample booklet and the guidance issued by the JIEB:

<http://goo.gl/C7Dv2N> & <http://goo.gl/8ZBdv8>.

Exam topics to cover

No, I do not have a crystal ball and I have not seen the exam papers but I am happy to try to help guide you in your final weeks ;-).

Code of Ethics - I would recommend that you read the Code of Ethics. Learn fundamental principles, threats and safeguards. This could come up in all papers this year.

Insolvency Guidance Papers - these have regularly been coming up in the exams and I would learn all 5 (found in the IPA handbook)

wind-up the company.

Papers allowed to be served via LinkedIn account

In the case of an Irish liquidation a judge has agreed for the service of papers via a linkedIn account due to the inability of the liquidators to be able to effect service any other way. Here is a link to the article <http://goo.gl/4TSJX1>.

Personal Insolvency Scotland

It seems I may have missed a few of the draft statutory instruments seeking to be implemented in respect of the Personal Insolvency Regime, so please find attached a link to the full list <http://goo.gl/g1Wrhd>.

NCA consent request guidelines

The NCA have issued guidelines for the information to be provided when making a report and have stated that as at the 1 October 2014 they will refuse to consider consent requests that do not contain sufficient information. The guidance may be found here <http://goo.gl/ciWb1O>.

Cross-border recognition

The Financial Stability Board are seeking to achieve cross-border recognition of resolution actions and removing impediments. The consultation is open until 1 December 2014 and information may be found here <http://goo.gl/iEnwog>.

Jackson Reforms

The exemption to the Jackson Reforms for IPs is due to end in April 2015. R3 had completed an

impact report on the effect of the Jackson reforms on insolvency litigation which may be found here <http://goo.gl/wzP1n6>. There is continuous lobbying occurring for the exemption to be continued.

Insolvency Service Monitoring Report

The Insolvency Service has issued a report in respect of their monitoring activity of the RPBs responsible for authorising Insolvency Practitioners which may be found here <http://goo.gl/A7mXxJ>.

IVA Standing Committee Minutes, 17 July 2014

The minutes from the IVA Standing Committee in respect of their meeting on 17 July 2014 may be found here <http://goo.gl/gTKRsW>.

R3 manifesto for 2015 elections

R3 have issued a manifesto for the 2015 elections which may be found here <http://goo.gl/WIFWzJ>.

Direct Access to Counsel

There is a new scheme on the market called Litigation Warranty which gives direct access to barristers and also offers the strategic option of both criminal and civil litigation. Further information may be found here <http://goo.gl/QYJ9b6>

JIEB Courses 2015

My JIEB courses start 10th January on Saturdays and 16th March for block courses. Further information may be found at www.insolvencyexamtraining.co.uk

JIEB - ctd

Exam topics to cover - ctd

SIPs- yes I know everybody has told you to learn your SIPs but have you reviewed and learnt the guidance paper to SIP 2 which has many practical steps that the examiners will be seeking? Also, whilst the old SIP 3 will be examinable, have you learnt the principles for the new SIP 3 to boost your holistic marks?

Opening and closing mind-map - you should have one comprehensive mind-map which will allow you to deal with this issue in each exam since there are common areas to cover. Easy marks if it comes up.

Numbers questions - I don't care how good or bad you are, we both know that there will be one to two numbers questions in each paper. Students seem to have more problems with Cashflow and Profit & Loss accounts so learn these.

Language of the JIEB

It has always been a problem for students to understand exactly what is required when answering questions. The only way to do this effectively is to create your own analysis of what is required. I would recommend analysing the last 5 years' past paper questions for each exam. I did this the weekend before the exams started since by that point I had completed 21 mocks and learnt every single mind-map so it was a way of feeling as though I was doing something without panicking.

How to study in the final month

I know you are now busy with question practice but this will not help raise your marks unless you are also reviewing and making notes of the answers you missed and learning these points. After every mock, sit down and enhance your mind-maps, then spend an hour learning the new material, actively reviewing before you go to bed and then again the next morning. Every new piece of information you learn will take you a step closer to passing.

.....Good Luck



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Joanne also provides training for the JIEB, CPI, CPPI & CPCI exams.

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