

**INSOLVENCY LAW
MODEL EXAM
2010**



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IRAC method of completing exams

- Issues** - Outline the issues that you are going to discuss.
- Rules** - Define the legal rules that are relevant to the question.
- Application** - Apply the legal rules to the facts of the question (this is the hard part!).
- Conclusion** - Tie things up, usually in the form of an advice to your hypothetical client.

Always use your reading time wisely to **PLAN YOUR ANSWER** before writing. This is of utmost importance as it will help you clarify your thoughts and ensure that you avoid following desperate exam strategies that unprepared students commonly resort to, such as:

- i) 'the kitchen sink' i.e. spilling all of your knowledge that is vaguely related to the topic onto the exam paper and hoping for the best.
- ii) 'the garden path' i.e. going off on an irrelevant tangent

Remember that the **APPLICATION IS THE MOST IMPORTANT SECTION** of your answer and should take up the bulk of your time. The actual conclusions you reach are often superfluous. Rather, your marker will be most interested in *how you arrived* at your conclusion.

Question One

Josh operates a furnishing industry company, Australian Furnishing Industry Pty Ltd ("AFI") that has clientele throughout New South Wales. Josh and Daniel are the sole shareholders and directors of the company.

The accounts manager and company secretary, Jeff, has recently encountered difficulty in paying all of the company's suppliers on time. He believes that the company's cash flow problem has been caused by a decrease in consumer confidence in the furnishing industry as a result of the global financial crisis.

On 1 September 2009, Josh is personally served at the company's business premises in St George with a letter from a trade supplier, Furniture Supplies Pty Ltd ("FS"), together with a Form 509H Statutory Demand and supporting affidavit. The demand outlines that AFI owes "approximately \$8,000.00 for the account periods in June 2009, July 2009 and August 2009". The supporting affidavit which has been sworn by the director of FS, Jason, provides that FS had made five separate deliveries of expensive furniture to AFI.

On 10 September 2009, Josh has sought your legal advice in relation to challenging the statutory demand taking into account his following instructions.....

Question Two

Win Mining Ltd ("WM") is a public mining company which is listed on the Australian Stock Exchange ("ASX"). The board of directors consists of Jarryd, Nathan and Eric who each hold 20% of the company's shares. The remaining shareholders are investors trading on the ASX.

The price of commodities has recently fallen and WM has encountered a cash flow problem whereby they have been unable to pay various suppliers in accordance with now outstanding invoices. The accounts manager, Daniel, has secured continued supplies with these suppliers by agreeing to make pre-payments. However, this has culminated in the company failing to comply with their tax and rental obligations for several months.

The Australian Taxation Office ("ATO") became infuriated by delayed payments from WM and, consequently, served a statutory demand on the company for \$50,000 on 1 March 2009. In order to make this payment, the directors of the company entered into a loan agreement with Fast Money Ltd ("FM") but only after each director executed a guarantee over the repayment of the principal loan (\$50,000), interest and charges by the company.....

Question Three

Michael operates a sole trader business in Sydney called Fox Kitchen Designs (“FKD”). The business premises are leased by Doorway Real Estate Sydney for the amount of \$750 per week. The business relies on a major supplier of kitchens in the United States of America, Schofield Enterprises Inc.

On 1 June 2008, a customer of FKD, Lincoln, became injured when he entered the business premises and fell on a granite kitchen bench after slipping on water which had not been cleaned up by Michael. Later that month, Michael received a statement of claim from Lincoln’s legal representatives claiming \$50,000 for the injuries allegedly caused by Michael’s negligence.

The negligence claim has contributed to Michael’s cash flow problem whereby he has been unable to pay various invoices on time. As of 1 September 2008, he owes \$1,500 to Doorway Real Estate, \$2,500 to Schofield Enterprises Inc and \$1,000 in unpaid employee holiday leave loading over the Christmas period. Michael becomes increasingly stressed from his debts and takes an overseas holiday to Europe and closes the business on 18 January 2009. He does not tell the employees when he will re-open the business.

On 1 February 2009 whilst Michael is still overseas, Schofield Enterprises Inc issue a bankruptcy notice to Michael which is served by post at his business premises. The notice provides that Michael owes \$2,500 in unpaid tax invoices and interest to be determined pursuant to the s 101 of the *Uniform Civil Procedure Rules* (NSW) and have twenty-one days to pay the amount otherwise it will be committing an act of bankruptcy.....



**If you have any queries regarding the insolvency law model exam
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