INSOLVENCY

FLASH CARDS

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Why use flash cards?

Flash cards are widely regarded as one of the most effective ways to study and retain information. This is because:

- Flash cards engage 'active recall' through repetition. Using flash cards promotes remembering a concept from scratch as opposed to trying to memorise a passage from a textbook.
- Flash cards provide immediate feedback and self-reflection. This will provide you with the ability to quickly check your answer with the correct answer to determine whether you were correct, or whether you need to spend more time understanding the subject matter.
- Flash cards provide for confidence-based study. As flash cards do not follow a strict order, you are free to mix them up and add your own notations. If you are very confident with certain areas, they can be separated to concentrate on areas or questions that may need further work.

Method

The following series of flash cards present 50 questions and answers in a table format, with up to five cards per page. The questions are provided in the left column with the corresponding answers in the right column. Print the document and then cut each card following the bold border. Once cut, each card should be folded vertically along the central dotted line and glued or taped to form a single double-sided flash card.

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Q1: Outline the “creditors bargain” model of insolvency.	Answer: The creditors bargain model is based on the notion that insolvency is a fact as opposed to an issue of morality. It asserts that there should be a stay of proceedings amongst the creditors of an insolvent company in order to preserve the pool of assets so that there can be an equitable distribution amongst the creditors (the ‘*pari passu*’ principle).
Q2: Explain the distributional theory of insolvency.	Answer: Creditors have limited bargaining power in relation to obtaining a secured charge over the company and, hence, the creditors bargain model operates to their disadvantage. In recognition of this disadvantage, distributional theories have emerged which assert that insolvency is a social problem and should be treated accordingly.
Q3: What is the test for assessing solvency and what is the authority for this test?	Answer: Section 95A(1) of the *Corporations Act 2001* (Cth) provides that a person (individual or company) is solvent where they can pay their debts as and when they become due and payable. Where a person does not have this ability they are insolvent. Section 95A(2) provides that ‘a person who is not solvent is insolvent’.
Q4: Name the key case which interprets the test for assessing solvency.	Answer: *Southern Cross Interiors Pty Ltd v DCT* (2001)