

CASE LAW

- ARE HP ASSETS POSSESSED BY COMPANY?
- POWER OF S236
- BOTH CHARGING ORDER & STATUTORY DEMAND ALLOWED
- LANDLORD POSITION FINALISED

- ILLEGAL IMMIGRANTS ENTITLED TO CLAIM FROM RPO
- BANKRUPTCY ORDER SET ASIDE DESPITE OTHER CREDITORS

JIEB

- ETHICS

LEGISLATIVE UPDATE

- NEW PREFERENTIAL CREDITOR DEFINED
- SCOTLAND ... AND THERE'S MORE
- SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT BILL
- THE OLYMPICS HAVE ENDED

GENERAL INFORMATION

- SOLICITOR IPS NO LONGER TO BE REGULATED BY SRA
- IP SANCTIONS
- THE RED BOOK
- JIEB HOUR
- JIEB TUITION WHICH GIVES STUDENTS A VOICE

TECHNICAL UPDATE



Are HP assets possessed by company?

In the case of *Re Business Environment Fleet Street Ltd (In Administration)* [2014] EWHC 3540 (Ch) the court considered the application for administrators to dispose of HP property. The court determined, using the definition under para 111 schedule B1 and s251 IA86 for HP equipment, that it had no jurisdiction to grant the application where it was not persuaded on the balance of probabilities that a chattel leasing agreement had given possession of the assets to the company.

Power of s236

In the case of *Re Comet Group Ltd (in liquidation); Khan and others v Whirlpool (UK) Ltd* and another [2014] EWHC 3477 (Ch) the liquidators requested disclosure of documents by a third party who it had a potential damages claim against. Despite the company claiming this would give an unfair advantage, the court determined in favour of the liquidators on the basis that the benefit to the liquidation would outweigh the burden to the company.

Both Charging Order & Statutory Demand Allowed

In the case *Ludsin Overseas Ltd v Maggs* [2014] EWHC 3566 (Ch) the court initially held that it was inappropriate to issue a statutory demand based on a judgment debt and at the same time obtain an interim charging order where the

security was enough to pay the debt. On appeal, evidence that the property had been marketed for a certain value and had not been sold was sufficient evidence to prove that the security was not enough to meet the liability due under the charging order.

Landlord position finalised

In the case of *Pillar Denton Ltd and others v Jervis (Re Games)* the court has refused to allow the appeal and we are now back to where we started prior to Goldacre: paying for the period of occupation only.

Illegal immigrants entitled to claim from RPO

In the case of *Tumer v Raad van bestuur van het Uitvoeringsinstituut werknemersverzekeringen C-311/13* the Court of Justice of the European Union held that a third country national, who was not legally resident, was still entitled to payment from the fund each country has to maintain to meet the wage claims of insolvent companies.

Bankruptcy order set aside despite other creditors

In the case *Sands v Layne and another* [2014] EWHC 3665 (Ch) the court set aside the bankruptcy order on the condition of security being offered to the petitioning creditor. The trustee appealed on the basis of there being other creditors but the court refused to

Ethics

The training for the JIEB has started again and students are thinking about the 2015 exams.

The minimum amount I think you need to do between now and the New Year is to start reading and creating mind-maps for all the SIPs.

I hope to demonstrate that the SIPs should not be reviewed in isolation and that students should build connections between SIPs, legislation, guidance, case law and practical application.

SIP 1

Para 2 details how the Code of Ethics relates to the SIPs: "SIPs should be read in conjunction with the wider fundamental principles embodied in the Insolvency Code of Ethics."

Para 4 states IPs "should ensure that their acts, dealings and decision-making processes are *transparent, understandable and readily identifiable...*"

Maybe the most important guidance is **para 6** which states IPs "should evidence their compliance with SIPs and should therefore document their strategies and decision making processes appropriately."

The practical application of this is that compliance with every SIP must be evidenced in writing. Checklists and standard document templates should help, but contemporaneous notes of meetings and discussions are of paramount importance. I would suggest also reviewing the new SIP 3s, which embody this approach of documenting the decision-making process.

reverse its decision.

New preferential creditor defined

The Financial Services (Banking Reform) Act 2013 (Commencement No 7) Order 2014 SI 2014/3160 will come into force on 31 December 2014. A key provision is that amounts owed in respect of certain deposits are to be treated as a preferential debt in insolvency. The order may be found here <http://goo.gl/juSdiY>.

Scotland ... and there's more

As you are no doubt aware there are significant changes occurring in Scottish personal insolvency. The Common Financial Tool etc (Scotland) Regulations 2014 SSI 2014/290 and Bankruptcy and Debt Advice (Scotland) Act 2014 (Consequential Provisions) Order 2014 SSI 2014/293 are all affective 1 April 2015.

Small Business, Enterprise and Employment Bill

The Small Business, Enterprise and Employment Bill is slowly moving its way through parliament and is to be introduced in March 2015. A copy of the draft bill may be found here <http://goo.gl/4VrkfT>. Some proposals have met with opposition by IPs and R3 is campaigning to make amendments to it before it is introduced, particularly in respect of the removal of physical meetings <http://goo.gl/jaEDB8>.

The Olympics have ended

The Olympic Lottery Distribution Fund (Winding Up) Order 2014 has been drafted to deal with the winding-up of the Olympic Lottery

Distribution Fund after the sale of the Olympic village.

Solicitor IPs no longer to be regulated by SRA

The Solicitors Regulation Authority is proposing to stop licensing IPs and is in consultation with its membership. Responses may be submitted to trainingconsultations@sra.org.uk.

IP Sanctions

The Insolvency Service has issued guidance on the sanctions against Insolvency Practitioners which may be found here <http://goo.gl/5pprH7>.

The Red Book

LexisNexis are offering a 25% discount on Butterworths Insolvency Law until mid-December, here is the link <http://goo.gl/4kcJ4l>.

JIEB Hour

A new Twitter account has opened, JIEBHour@HourJo, which promotes a discussion hour Monday to Friday from 1pm to 2pm on the JIEB exam starting 1 December. If you are not on Twitter follow the feed on the website www.jiebhour.co.uk

JIEB tuition which gives students a voice

My JIEB classes have a maximum of 10 students meaning that all of my students have an opportunity to ask questions and participate in the learning process. My JIEB courses start 10th January on Saturdays and 16th March for block courses. For information click the link www.insolvencyexamtraining.co.uk/jieb2015.html

Ethics - ctd

The Code of Ethics

It is imperative you understand the fundamental principles and the framework approach and how this applies on a day-to-day basis to insolvency work.

Guidance on Transparency & Confidentiality

The IPA issued guidance on transparency which may be found here <http://goo.gl/PjsBRR>.

Other SIPs

SIP 1 requires we comply with the code of ethics when dealing with all SIPs, but other SIPs also refer to ethical issues; e.g. the need to understand whether we have a significant professional or personal relationship (SIP 8), a conflict of interest (SIP 13), the need to disclose the source of the administrator's initial introduction and the extent of the administrator's involvement prior to appointment (SIP 16).

Insolvency Act and Rules

The Act and Rules also give specific guidance via section 164 IA 1986 (corrupt inducement) and Rule 4.150 of the Insolvency Rules 1986 (solicitation).

Bribery Act

The Code of Ethics makes it very clear that referral fees may not be paid under any circumstances by the IP. IPs therefore rely on hospitality to maintain relationships with work providers. It is important to ensure that hospitality is proportionate and conforms to the industry standard.

JIC Winter Newsletter 2013

In their winter newsletter, the JIC tackled the issue of referral fees and commission and again brought to the profession's attention the importance of not paying for work given. The newsletter may be found here <http://goo.gl/YnyRDY>.

This is by no means an exhaustive list and I invite you to make other connections.



Joanne Harris is a licensed Insolvency Practitioner and has 16 years' experience in insolvency dealing with all case types. She was formerly a Director of Technical and Compliance in a top 20 firm before starting her own business to supply technical services for insolvency practitioners without a compliance resource.

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

M: 07780 613826

E: jo@johconsultancy.co.uk

E: jo@insolvencyexamtraining.co.uk

W: <http://www.johconsultancy.co.uk>

W: <http://www.insolvencyexamtraining.co.uk>