

McPHERSON & KEAY: THE LAW OF COMPANY LIQUIDATION. Andrew R. Keay [Sweet & Maxwell, 2018, ISBN 978-0-414-06151-4, clviii + 1234pp., Hardback, £240]

Subject: insolvency

The first edition of this text was entitled: *McPherson's Law of Company Liquidation* but the fourth edition recognises the phenomenal effort and reputation of the author, Andrew Keay, professor of corporate and commercial law at the University of Leeds. The text, which had its first edition published in 1994 by Bruce McPherson and James O'Donovan, provided a comprehensive text on the chronological order of events for collecting and realising the assets of a company and discharging its debts and liabilities. The fourth edition of this text is the first to be published since the passing of the late Honourable Dr McPherson, but the quality that made this text stand out continues to shine through.

Since the third edition of this work was published in 2013, there has been many developments, both legislatively and judicially, in the world of insolvency. While the fourth edition does well to not only highlight some of the more substantive changes, such as the Insolvency (England and Wales) Rules 2016, Small, Business, Enterprise and Employment Act 2015, and the (recast) EU Regulation on Insolvency Proceedings 2015, what makes the work particularly impressive is the coverage given to judicial activity. Important cases that have been noted since the last edition include Supreme Court decisions, such as: *Akers v Samba Financial Group*,¹ at para 7.015, which determined that section 127 only applied to assets legally owned by the company that it sells itself, and did not cover the transfer of legal rights held by a third party; *Re Nortel GmbH*,² at para 12.006, which addressed the ranking of claims in an insolvency and, in doing so, removed the numerous frustrations to both corporations operating defined benefit pension schemes and the insolvency; and *Re Olympic Airlines SA*,³ at para 18.053, which examined the meaning of 'establishment' in greater detail for the purposes of art2(h) of Council Regulation (EC) 1346-2000.

Despite incremental changes in the field of insolvency over the last few years, the author has made an extensive effort to ensure that the law is not only up-to-date, but the commentary provided is informative, relevant, and clear. This text has been designed to lead and address disputes in liquidation, with many of the arguments ready to be used as legal authority on given issues.

However, if the reader is under the impression so far that this book is merely a legal textbook they would be very much mistaken. Where this book differs from other established texts is the author's narrative style. On this point the text goes beyond what the title of the book may suggest to provide detailed analysis that brings colour to what otherwise, in lesser capable hands, could have been a laborious read. While this text is entitled *The Law of Liquidation*, the text is by no means restrictive. The author has taken the opportunity to address some of the more contentious issues, for example, how decisions are made in liquidation, following Pt 15 of the Insolvency Rules 2016 (at para 8.003); remuneration (at para 8.060); and provable debts following the Waterfall 1 litigation case at para 12.009).⁴ Each discussion deliberates the issues, identifies the key authorities, and offers a sizeable explanation as to what the implications are for the future.

Compared to other generalised texts on insolvency law, there is a clear justification for why liquidation can hold out on its own. Despite the recent high profile use of Company Voluntary Arrangements, and other rescue mechanisms, liquidation remains by far the dominant insolvency procedure. Such is its use it features on around 90 per cent of all insolvencies. With this in mind the text focuses on just that – the likely issues that may arise when dealing with a company ready to be

¹ [2017] UKSC 6.

² [2015] UKSC 52.

³ [2015] UKSC 27.

⁴ *The Joint Administrators of LB Holdings Intermediate 2 Ltd v the Joint Administrators of Lehman Brothers International (Europe)* [2017] UKSC 38.

liquidated. The approach taken with this text has not been to discuss the law in isolation, but to put it into context with relevant background information. This can be seen in the introduction which provides a legislative history to show how liquidation has developed and note the new important changes that have occurred since the last edition. This not only ensures that the text is digestible, but also reinforces the view that this is more than just a text for practitioners looking for an outline of the relevant statutory provision.

However, despite the extent of the text, the author admits that the work is not designed (nor realistically could it) to deal exhaustively with all of the many issues that are involved with such a contentious topic. Indeed, chapter 11 that deals with assets available for division and distribution is extensive but should not be seen as complete, while the order of distribution section starting from para 13.026 may need to be revised shortly after April 2020 should the proposed changes to HMRC preferential status be restored. Nevertheless, there are few texts that can compete with the thoroughness of this text.

This commentator has no doubt that McPherson & Keay will be of great interest to academics and researchers, as well as anyone who requires a knowledge of liquidation procedures and associated issues. This text should be in every law library and the commentator has no doubt that the book will continue to remain an essential read for any student of insolvency law, academic or practitioner, for many years to come.

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