



Insolvency Act 1985

1985 CHAPTER 65

PART III

INDIVIDUAL INSOLVENCY

CHAPTER VI

EFFECT OF BANKRUPTCY ON CERTAIN RIGHTS, TRANSACTIONS ETC

Transactions etc.

174 Transactions at an undervalue and preferences

- (1) Subject to the following provisions of this section and to section 175 below, where an individual is adjudged bankrupt and he has at a relevant time entered into a transaction with any person at an undervalue or given a preference to any person—
- (a) the trustee of the bankrupt's estate may apply to the court for an order under this section ; and
 - (b) the court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if that individual had not entered into that transaction or, as the case may be, had not given that preference.
- (2) For the purposes of this section and section 175 below an individual enters into a transaction with a person at an undervalue if—
- (a) he makes a gift to that person or he otherwise enters into a transaction with that person on terms that provide for him to receive no consideration;
 - (b) he enters into a transaction with that person in consideration of marriage; or
 - (c) he enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the individual.

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- (3) For the purposes of this section and section 175 below an individual gives a preference to a person if—
- (a) that person is one of the individual's creditors or a surety or guarantor for any of his debts or other liabilities ; and
 - (b) the individual does anything or suffers anything to be done which (in either case) has the effect of putting that person into a position which, in the event of the individual's bankruptcy, will be better than the position he would have been in if that thing had not been done.
- (4) The court shall not make an order under this section in respect of a preference given to any person unless the individual who gave the preference was influenced in deciding to give it by a desire to produce in relation to that person the effect mentioned in subsection (3) (b) above.
- (5) An individual who has given a preference to a person who, at the time the preference was given, was an associate of his shall be presumed, unless the contrary is shown, to have been influenced in deciding to give it by such a desire as is mentioned in subsection (4) above.
- (6) The fact that something has been done in pursuance of the order of a court shall not, without more, prevent the doing or suffering of that thing from constituting the giving of a preference.
- (7) Subject to subsections (8) and (10) below, the time at which an individual enters into a transaction at an undervalue or gives a preference is a relevant time for the purposes of this section if the transaction is entered into or the preference is given—
- (a) in the case of a transaction at an undervalue, at a time in the period of five years ending with the day of the presentation of the bankruptcy petition on which that individual is adjudged bankrupt;
 - (b) in the case of a preference which is not a transaction at an undervalue and is given to a person who is an associate of that individual, at a time in the period of two years ending with that day; and
 - (c) in any other case of a preference which is not a transaction at an undervalue, at a time in the period of six months ending with that day.
- (8) Where an individual enters into a transaction at an undervalue or gives a preference at a time mentioned in paragraph (a), (b) or (c) of subsection (7) above, not being, in the case of a transaction at an undervalue, a time less than two years before the end of the period mentioned in the said paragraph (a), that time shall not be a relevant time for the purposes of this section unless the individual—
- (a) is insolvent at that time ; or
 - (b) becomes insolvent in consequence of the transaction or preference;
- but the requirements of this subsection shall be presumed to be satisfied, unless the contrary is shown, in relation to any transaction at an undervalue which is entered into by an individual with a person who is an associate of his.
- (9) For the purposes of subsection (8) above an individual is insolvent if—
- (a) he is unable to pay his debts as they fall due ; or
 - (b) the value of his assets is less than the amount of his liabilities, taking into account his contingent and prospective liabilities.
- (10) A transaction entered into or preference given by a person who is subsequently adjudged bankrupt on a petition under section 119(1)(d) above shall be treated as

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having been entered into or given at a relevant time for the purposes of this section if it was entered into or given at any time on or after the date specified for the purposes of this subsection in the criminal bankruptcy order on which the petition was based.

- (11) No order shall be made under this section by virtue of subsection (10) above where an appeal is pending (within the meaning of section 125 above) against the individual's conviction of any offence by virtue of which the criminal bankruptcy order was made.
- (12) For the purposes of this section a person who is an associate of an individual by reason only of being his employee shall be deemed not to be an associate of that individual.

175 Orders under s. 174

- (1) Without prejudice to the generality of subsection (1)(b) of section 174 above, an order under that section with respect to a transaction or preference entered into or given by an individual who is subsequently adjudged bankrupt may (subject to subsection (2) below)—
- (a) require any property transferred as part of the transaction, or in connection with the giving of the preference, to be vested in the trustee of the bankrupt's estate as part of that estate;
 - (b) require any property to be so vested if it represents in any person's hands the application either of the proceeds of sale of property so transferred or of money so transferred;
 - (c) release or discharge (in whole or in part) any security given by the individual;
 - (d) require any person to pay, in respect of benefits received by him from the individual, such sums to the trustee of his estate as the court may direct;
 - (e) provide for any surety or guarantor whose obligations to any person were released or discharged (in whole or in part) under the transaction or by the giving of the preference to be under such new or revived obligations to that person as the court thinks appropriate ;
 - (f) provide for security to be provided for the discharge of any obligation imposed by or arising under the order, for such an obligation to be charged on any property and for such security or charge to have the same priority as a security or charge released or discharged (in whole or in part) under the transaction or by the giving of the preference; and
 - (g) provide for the extent to which any person whose property is vested by the order in the trustee of the bankrupt's estate, or on whom obligations are imposed by the order, is to be able to prove in the bankruptcy for debts or other liabilities which arose from, or were released or discharged (in whole or in part) under or by, the transaction or the giving of the preference.
- (2) An order under section 174 above may affect the property of, or impose any obligation on, any person whether or not he is the person with whom the individual in question entered into the transaction or, as the case may be, the person to whom the preference was given; but such an order—
- (a) shall not prejudice any interest in property which was acquired from a person other than that individual and was acquired in good faith, for value and without notice of the relevant circumstances, or prejudice any interest deriving from such an interest; and
 - (b) shall not require a person who received a benefit from the transaction or preference in good faith, for value and without notice of the relevant circumstances to pay a sum to the trustee of the bankrupt's estate, except

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where he was a party to the transaction or the payment is to be in respect of a preference given to that person at a time when he was a creditor of that individual.

- (3) Any sums required to be paid to the trustee in accordance with an order under section 174 above shall be comprised in the bankrupt's estate.
- (4) For the purposes of this section the relevant circumstances, in relation to a transaction or preference, are—
 - (a) the circumstances by virtue of which an order under section 174 above could be made in respect of the transaction or preference if the individual in question were adjudged bankrupt within a particular period after the transaction is entered into or the preference given; and
 - (b) if that period has expired, the fact that that individual has been adjudged bankrupt within that period.

176 Extortionate credit transactions

- (1) This section applies where a person who is or has been a party to a transaction for, or involving, the provision to him of credit is adjudged bankrupt.
- (2) The court may, on the application of the trustee of the bankrupt's estate, make an order with respect to the transaction if the transaction is or was extortionate and was not entered into more than three years before the commencement of the bankruptcy.
- (3) For the purposes of this section a transaction is extortionate if, having regard to the risk accepted by the person providing the credit—
 - (a) the terms of it are or were such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of the credit; or
 - (b) it otherwise grossly contravened ordinary principles of fair dealing;
 and it shall be presumed, unless the contrary is proved, that a transaction with respect to which an application is made under this section is or, as the case may be, was extortionate.
- (4) An order under this section with respect to any transaction may contain such one or more of the following as the court thinks fit, that is to say—
 - (a) provision setting aside the whole or part of any obligation created by the transaction ;
 - (b) provision otherwise varying the terms of the transaction or varying the terms on which any security for the purposes of the transaction is held ;
 - (c) provision requiring any person who is or was party to the transaction to pay to the trustee any sums paid to that person, by virtue of the transaction, by the bankrupt;
 - (d) provision requiring any person to surrender to the trustee any property held by him as security for the purposes of the transaction ;
 - (e) provision directing accounts to be taken between any persons.
- (5) Any sums or property required to be paid or surrendered to the trustee in accordance with an order under this section shall be comprised in the bankrupt's estate.
- (6) Neither the trustee of a bankrupt's estate nor an undischarged bankrupt shall be entitled to make an application under section 139(1)(a) of the Consumer Credit Act 1974

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(re-opening of extortionate credit agreements) for any agreement by which credit is or has been provided to the bankrupt to be re-opened ; but the powers conferred by this section shall be exercisable in relation to any transaction concurrently with any powers exercisable under this Act in relation to that transaction as a transaction at an undervalue.

177 Avoidance of general assignment of book debts

- (1) Where a person engaged in any business makes a general assignment to another person of his existing or future book debts, or any class of them, and is subsequently adjudged bankrupt, the assignment shall be void against the trustee of the bankrupt's estate as regards book debts which were not paid before the presentation of the bankruptcy petition unless the assignment has been registered under the Bills of Sale Act 1878.
- (2) For the purposes of subsection (1) above " assignment" includes an assignment by way of security or charge on book debts and " general assignment" does not include an assignment of book debts due at the date of the assignment from specified debtors or of debts becoming due under specified contracts or an assignment of book debts included either in a transfer of a business made in good faith and for value or in an assignment of assets for the benefit of creditors generally.
- (3) For the purposes of registration under the said Act of 1878 an assignment of book debts shall be treated as if it were a bill of sale given otherwise than by way of security for the payment of a sum of money; and the provisions of that Act with respect to the registration of bills of sale shall apply accordingly with such necessary modifications as may be made by rules under that Act.

178 Contracts to which bankrupt is a party

- (1) Where a contract has been made with a person who is subsequently adjudged bankrupt, the court may, on the application of any other party to the contract, make an order discharging obligations under the contract on such terms as to payment by the applicant or the bankrupt of damages for non-performance or otherwise as appear to the court to be equitable.
- (2) Any damages payable by the bankrupt by virtue of an order of the court under subsection (1) above shall be provable as a bankruptcy debt.
- (3) Where an undischarged bankrupt is a contractor in respect of any contract jointly with any person, that person may sue or be sued in respect of the contract without the joinder of the bankrupt.

179 Enforcement procedures

- (1) Subject to section 132 above and to the following provisions of this section, where the creditor of any person who is adjudged bankrupt has, before the commencement of the bankruptcy—
 - (a) issued execution against the goods or land of that person; or
 - (b) attached a debt due to that person from another person,that creditor shall not be entitled, as against the official receiver or trustee of the bankrupt's estate, to retain the benefit of the execution or attachment, or any sums paid to avoid it, unless the execution or attachment was completed, or the sums were paid, before the commencement of the bankruptcy.

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- (2) Subject to subsections (6) to (8) below, where any goods of a person have been taken in execution, then, if before the completion of the execution notice is given to the sheriff or other officer charged with the execution that that person has been adjudged bankrupt—
- (a) the sheriff or other officer shall on request deliver to the official receiver or trustee of the bankrupt's estate the goods and any money seized or recovered in part satisfaction of the execution ; but
 - (b) the costs of the execution shall be a first charge on the goods or money so delivered and the official receiver or trustee of the bankrupt's estate may sell the goods or a sufficient part of them for the purpose of satisfying the ' charge.
- (3) Subject to subsection (6) below, where—
- (a) under an execution in respect of a judgment for a sum exceeding such sum as may be prescribed for the purposes of this subsection, the goods of any person are sold or money is paid in order to avoid a sale ; and
 - (b) before the end of the period of fourteen days beginning with the day of the sale or payment the sheriff or other officer charged with the execution is given notice that a bankruptcy petition has been presented in relation to that person ; and
 - (c) a bankruptcy order is or has been made on that petition,
- the balance of the proceeds of sale or money paid, after deducting the costs of execution, shall (in priority to the claim of the execution creditor) be comprised in the bankrupt's estate.
- (4) Accordingly, in the case of an execution in respect of a judgment for a sum exceeding the sum prescribed for the purposes of subsection (3) above, the sheriff or other officer charged with the execution—
- (a) shall not dispose of the balance mentioned in subsection (3) above at any time within the period of fourteen days so mentioned or while a bankruptcy petition of which he has been given notice under that subsection is pending ; and
 - (b) shall pay that balance, where by virtue of that subsection it is comprised in the bankrupt's estate, to the official receiver or (if there is one) to the trustee of that estate.
- (5) For the purposes of this section—
- (a) an execution against goods is completed by seizure and sale or by the making of a charging order under section 1 of the Charging Orders Act 1979 ;
 - (b) an execution against land is completed by seizure, by the appointment of a receiver or by the making of a charging order under that section ;
 - (c) an attachment of a debt is completed by the receipt of the debt.
- (6) The rights conferred by virtue of subsections (1) to (3) above on the official receiver or the trustee of a bankrupt's estate may, to such extent and on such terms as it thinks fit, be set aside by the court in favour of the creditor who has issued the execution or attached the debt.
- (7) Nothing in this section shall entitle the trustee of a bankrupt's estate to claim goods from a person who has acquired them in good faith under a sale by a sheriff or other officer charged with an execution.
- (8) Neither subsection (2) nor subsection (3) above shall apply in relation to any execution against property which has been acquired by or has devolved upon the bankrupt since

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the commencement of the bankruptcy unless, at the time the execution is issued or before it is completed—

- (a) the property has been or is claimed for the bankrupt's estate under section 154 above ; and
- (b) a copy of the notice given under that section has been or is served on the sheriff or other officer charged with the execution.

180 Distress etc.

- (1) The right of any landlord or other person to whom rent is payable to distrain upon the goods and effects of an undischarged bankrupt for rent due to him from the bankrupt shall be available (subject to subsection (5) below) against goods and effects comprised in the bankrupt's estate but only for six months' rent accrued due before the commencement of the bankruptcy.
- (2) Where a landlord or other person to whom rent is payable has distrained for rent upon the goods and effects of an individual to whom a bankruptcy petition relates and a bankruptcy order is subsequently made on that petition, any amount recovered by way of that distress which—
 - (a) is in excess of the amount which by virtue of subsection (1) above would have been recoverable after the commencement of the bankruptcy ; or
 - (b) is in respect of rent for a period or part of a period after the distress was levied, shall be held for the bankrupt as part of his estate.
- (3) Where any person (whether or not a landlord or person entitled to rent) has distrained upon the goods or effects of an individual who is adjudged bankrupt before the end of the period of three months beginning with the distraint, so much of those goods or effects, or of the proceeds of sale of those goods or effects, as is not held for the bankrupt under subsection (2) above shall be charged for the benefit of the bankrupt's estate with-the preferential debts of the bankrupt to the extent that the bankrupt's estate is for the time being insufficient for meeting them.
- (4) Where by virtue of any charge under subsection (3) above any person surrenders any goods or effects to the trustee of a bankrupt's estate or makes a payment to such a trustee, that person shall, in respect of the amount of the proceeds of the sale of those goods or effects by the trustee or, as the case may be, the amount of the payment, rank as a preferential creditor of the bankrupt, except as against so much of the bankrupt's estate as is available for the payment of preferential creditors by virtue of the surrender or payment.
- (5) A landlord or other person to whom rent is payable shall not at any time after the discharge of a bankrupt be entitled to distrain upon any goods or effects comprised in the bankrupt's estate.
- (6) Where in the case of any execution—
 - (a) a landlord is (apart from this section) entitled under section 1 of the Landlord and Tenant Act 1709 or section 102 of the County Courts Act 1984 (claims for rent where goods seized in execution) to claim for an amount not exceeding one year's rent; and
 - (b) the person against whom the execution is levied is adjudged bankrupt before the notice of claim is served on the sheriff or other officer charged with the execution,

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the right of the landlord to claim under that section shall be restricted to a right to claim for an amount not exceeding six months' rent and shall not extend to any rent payable in respect of a period after the notice of claim is so served.

- (7) Nothing in subsection (6) above shall impose any liability on a sheriff or other officer charged with an execution to account to the official receiver or the trustee of a bankrupt's estate for any sums paid by him to a landlord at any time before the sheriff or other officer was served with notice of the bankruptcy order in question; but this subsection is without prejudice to the liability of the landlord.
- (8) Nothing in this Part shall affect any right to distrain otherwise than for rent, and any such right shall at any time be exercisable without restriction against property comprised in a bankrupt's estate, even if that right is expressed by any enactment to be exercisable in like manner as a right to distrain for rent.
- (9) Any right to distrain against property comprised in a bankrupt's estate shall be exercisable notwithstanding that the property has vested in the trustee of that estate.
- (10) The provisions of this section are without prejudice to a landlord's right in a bankruptcy to prove for any bankruptcy debt in respect of rent.

181 Apprenticeships etc.

- (1) This section applies where—
 - (a) a bankruptcy order is made in respect of an individual to whom another individual was an apprentice or articled clerk at the time when the petition on which that order was made was presented ; and
 - (b) the bankrupt or the apprentice or clerk gives notice to the trustee terminating the apprenticeship or articles.
- (2) Subject to subsection (6) below, the indenture of apprenticeship or, as the case may be, the articles of agreement shall be discharged with effect from the commencement of the bankruptcy.
- (3) If any money has been paid by or on behalf of the apprentice or clerk to the bankrupt as a fee, the trustee may, on an application made by or on behalf of the apprentice or clerk, pay such sum to the apprentice or clerk as the trustee thinks reasonable, having regard to—
 - (a) the amount of the fee ;
 - (b) the proportion of the period in respect of which the fee was paid that has been served by the apprentice or clerk before the commencement of the bankruptcy; and
 - (c) the other circumstances of the case.
- (4) The power of the trustee to make a payment under subsection (3) above shall have priority over the obligation of the trustee to distribute the bankrupt's estate.
- (5) Instead of making a payment under subsection (3) above, the trustee may, if it appears to him expedient to do so on an application made by or on behalf of the apprentice or clerk, transfer the indenture or articles to a person other than the bankrupt.
- (6) Where a transfer is made under subsection (5) above, subsection (2) above shall have effect only as between the apprentice or clerk and the bankrupt.

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182 Unenforceability of liens on books etc.

- (1) Subject to subsection (2) below, a lien or other right to retain possession of any of the books, papers or other records of a bankrupt shall be unenforceable to the extent that its enforcement would deny possession of any books, papers or other records to the official receiver or the trustee of the bankrupt's estate.
- (2) Subsection (1) above does not apply to a lien on documents which give a title to property and are held as such.