INSOLVENT ESTATES

By Dr Nathan Smith
Introduction

• Key legislation:

  • Administration of Insolvent Estates of Deceased Persons Order 1986 (SI 1999/1986)
  • The Insolvency Act 1986
  • The Insolvency Rules 2016

• Further reading: Williams, Sunnicks & Mortimer, Executors Administrators and Probate, 20th ed., Chapter 51
### Key terms

<table>
<thead>
<tr>
<th>Reference in provision of 1986 Act</th>
<th>Substituted reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>the bankrupt; the debtor</td>
<td>the deceased debtor or his personal representative .... as the case may require</td>
</tr>
<tr>
<td>the bankrupt’s estate</td>
<td>the deceased debtor’s estate</td>
</tr>
<tr>
<td>the commencement of the bankruptcy</td>
<td>the date of the insolvency administration order</td>
</tr>
<tr>
<td>a bankruptcy order</td>
<td>an insolvency administration order</td>
</tr>
</tbody>
</table>
How to ascertain the debts?

- Section 27 of the Trustee Act 1925
- Actual knowledge
When is an estate insolvent?

• Section 421 of the 1986 Act:

“the estate of a deceased person is insolvent if, when realised, it will be insufficient to meet in full all the debts and liabilities ...”

• Question of fact
How should an insolvent estate be administered?

• (1) Administration under CPR 64 directions
• (2) Administration by PR out of court
• (3) Administration in bankruptcy, after insolvency administration order
Administration out of court

- Article 4 - same principles apply as if in formal insolvency process
- Difficult for lay PR to administer
- Personal liability to reinstate assets if not carried out correctly
Obtaining an insolvency administration order

- Who has standing? Section 264
- Who should be served? Section 266
- What are the grounds for an application?
- What does the court have to be satisfied of?
The effect of an administration order

- Who has control of the assets? Sections 283 and 291A
- What are the powers of a trustee?
- What dispositions are void? Section 284
- Can creditors commence proceedings? Section 285
Court proceedings or out of court?

• Ability of PR to carry out administration?
• T can recover property that passes by survivorship
• T can investigate dealings and challenge transactions
• Effect on prior transactions
• Effect on limitation
• Effect on ongoing proceedings
Conclusion

• Consider whether estate insolvent at outset
• If insolvent, choose whether to administer out of court or seek insolvency administration order
• A failure to realise an estate is insolvent, or a failure to advertise for unknown claims, can lead to significant personal liability for PR