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INSOLVENT ESTATES

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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



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Key terms

Reference in provision of 1986 Act	Substituted reference
the bankrupt; the debtor	the deceased debtor or his personal representative as the case may require
the bankrupt's estate	the deceased debtor's estate
the commencement of the bankruptcy	the date of the insolvency administration order
a bankruptcy order	an insolvency administration order

How to ascertain the debts?

- Section 27 of the Trustee Act 1925
- Actual knowledge



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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?



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- (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



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- 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



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- 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



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- 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



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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



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- 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