

## Insurance Skeleton

### Marine Insurance Act?

- The Act applies to Marine Insurance per s 1.
- Per s 7, marine insurance is a contract whereby the insurer undertakes to indemnify the assured in a manner and to the extent thereby agreed against marine losses, losses incident to the marine adventure.
- Per s 9(2), marine adventure is defined by exposure to maritime perils
- Maritime perils mean the perils consequent on or incidental to the navigation of the sea.

### An insurable interest

- Marine Insurance Act: s 11
  - Captures loss of profits and interests in the goods itself
  - Ships, goods or movables exposed to maritime peril
- Insurance Contracts Act: s 17
  - Low standard for interests being focused on a practical commercial loss
  - Legal or equitable interest is not required

### Duties of disclosure

Duty applies when you renew, extend or vary your insurance

This is a manifestation of the underlying duty of good faith

- Marine Insurance Act: s 24
  - The insured (claimant) is pre-contractually obliged to provide every material circumstance to the insurer
  - The material circumstance will influence the judgment of a prudent insurer in deciding whether or not to take the risk and in fixing the premium
  - Circumstances which diminish the risk or presumed to be known need not be disclosed
- Insurance Contracts Act: s 21
  - The insured has the duty to disclose all matters relevant to the decision of the insurer on whether or not to accept the risk
    - The insured subjectively must know of the matter
    - The insured knew that the matter was relevant or a reasonable person would have known that the matter was relevant
      - Considering the nature and extent of the insurance
      - The class of persons who would ordinarily apply for the same kind of cover
    - Knowledge of the agent will be imputed onto the principal (Lindsay cf. obiter in Permanent Trustees)
    - Knowledge of one partner can be imputed onto the other (Advance)
    - Knowledge of the director will be imputed onto the company (*Twenty-first Maylux Pty Ltd v Mercantile Mutual*)
  - Per s 21, not required to disclose matters that:
    - Diminishes the risk

## **Bankruptcy Structure**

Debtor's petition alone

Assuming the petition was accepted by the Official Receiver, Trent will be declared bankrupt on that day (s 55) and this will be the commencement of bankruptcy.

Where there is no creditor's petition pending, there is no relationship back period and bankruptcy will commence at the time the presentation of petition occurs.

Where the debtor's petition is presented when at least one other creditor's petition is pending:

- The date of the commencement is the earliest act of bankruptcy within the 6-month period before the creditor presents the petition to the court

Creditor's petition is based on an **act of bankruptcy** that has occurred within 6 months of the notice being filed: s 40

- The debtor must be notified
- The debt must be \$5,000 or more
- Court hearing for sequestration order; if the court agrees with the creditor, sequestration order is made

### **The court may dismiss the petition if: s 52(2)**

- Debtor may raise that they were solvent – cash flow test is applied.
  - o A person is solvent if and only if the person is able to pay all of their debts as and when they become due and payable: s 1
- Court order on which the bankruptcy notice is based is wrong
  - o Requires the court to go around a prior court order
- The debt is less than \$5k
- The bankruptcy notice is not personally served
- The date of the sequestration order is the date of bankruptcy

### **Pool of assets available to the trustee**

- Any secured property is removed from the bankrupt's estate
  - o Registered PPSA interests will also be removed
- The pool of money or property can then be sold and money is then distributed to unsecured creditors: s 109
  - o Unsecured creditors are not paid in priority but proportionately to the debt owed

### **Relation back doctrine**

Property captured within the period between the 'act of bankruptcy' and the commencement of bankruptcy: s 115

On debtor's petition

- Where there is no creditor's petition pending and no act of bankruptcy within 6 months of the petition, there is no relation back period and bankruptcy commences at the time of presentation of petition
- Where no creditor's petition and there is an act of bankruptcy within the past 6 months then from the time of the act
- Where there is a creditor's petition pending then from the time of the earliest act of bankruptcy that the creditor's petition is based

## **Negotiable Instruments Structure**

### **Is the instrument a bill of exchange?**

Per s 8, the following requirements need to be met:

- Unconditional order in writing
  - o Payable was found to be unconditional by the majority in *Diamonds Leisure*
  - o Must not be payable upon a contingency: s 16
- Addressed by one person to another
- Requiring a sum to be paid at a later certain date
  - o Where there is a discrepancy in the amount, the lesser amount will stand (s 14)
  - o The sum can be fixed with interest or bank charges (s 14)

A bill will not be invalid if it is not dated, does not specify the value given or where it was drawn or where it is payable.

### **Who are the parties?**

- The drawer is the person who draws the bill
- The drawee is the buyer who accepts the bill by signing
  - o Once the drawee signs, they are known as the acceptor (the person who will pay)
- The payee is the person to whom money is owed
- The holder is the person in possession of the bill
- An indorser is the person who has negotiated it off, by signing may be liable for compensation