CORPORATIONS LAW

Step by Step Exam Notes

Covers: incorporation, promoters and pre registration contracts, lifting the veil, insolvent trading, the constitution, directors and meetings, corporate contracting, directors duties, related party transactions, consequences of breach and members remedies.

Built from a full semester of exam notes, checked against Lipton, Herzberg and Welsh, Understanding Company Law (20th ed, 2020) and the Corporations Act 2001 (Cth) as amended to October 2026. Changes since the textbook are marked NEW. All sections are Corporations Act unless stated.

HOW TO USE THESE NOTES

1. This sample is the complete Step 4 (insolvent trading) from the full notes. The full version has 21 steps, a master checklist and a hyperlinked contents page.

2. Jump to each step. Tick the boxes as you go so you do not skip an element.

3. Copy the gold Answer template and fill the brown **[PLACEHOLDERS]** with facts.

4. Green **How to apply it** boxes tell you which facts to look for and how to argue them. Use them to turn the template into an answer.

5. Red Exam flags are mark earners and traps. Read them before you write the step.

6. Every template ends with an **Other side** line. Use it: arguing both ways is where the higher marks are.

7. In the exam aim for 4 to 6 lines per issue.

8. Finish with the Conclude step and the "Did I..." list at the back.

† marks a citation carried over from course materials that could not be independently confirmed. Check it before citing.

SAMPLE

STEP 4 Insolvent trading (s 588G)

Did a director let the company incur a debt when there were reasonable grounds to suspect insolvency?

- ☐ (1)(a) Was D a director when the debt was incurred? (formal, de facto or shadow: Step 7)
- ☐ (1)(a) Was a debt incurred, and when?
- ☐ (1)(b) Was the company insolvent then, or did the debt make it insolvent?
- ☐ (1)(c) Were there reasonable grounds to suspect insolvency?
- ☐ (2) Was D aware of the grounds, or would a reasonable director in D's position have been aware? Did D fail to prevent the debt?
- ☐ Defences in s 588H, and the safe harbour in s 588GA.
- ☐ Consequences: compensation (s 588M, s 1317H), penalty (s 1317G), disqualification (s 206C), crime if dishonest (s 588G(3)).

THE LAW

s 588G(1): applies if a person is a director when the company incurs a debt, the company is insolvent at that time or becomes insolvent by incurring it, and there are reasonable grounds for suspecting it is or would become insolvent.

s 588G(2): the director contravenes if they fail to prevent the debt and they are aware of such grounds, or a reasonable person in a like position would be aware.

s 588G(1A): table of when a debt is incurred (for example, on paying a dividend, on entering the transaction).

s 95A: a company is solvent only if it can pay all its debts as and when they become due and payable.

s 588E(3): if insolvent at a time in the 12 months before the relation back day, presumed insolvent from then on. **s 588E(4):** presumed insolvent if it failed to keep or retain financial records (s 286). Both rebuttable.

s 588GA safe harbour: s 588G(2) does not apply to a debt incurred in connection with a course of action reasonably likely to lead to a better outcome for the company than immediate administration or liquidation, started after D began to suspect insolvency. It ends if no action is taken within a reasonable time, the course of action stops or stops being reasonably likely to help, or an administrator or liquidator is appointed. **s 588GA(4):** not available unless the company is paying employee entitlements (including super) and is substantially complying with tax lodgement obligations. **s 588GA(3):** the director bears the evidential burden. **s 588GA(2):** factors include properly informing themselves, getting advice from an appropriately qualified adviser, keeping proper records and developing a restructuring plan.

NEW s 588GAAB (2021): a separate safe harbour for debts incurred during small business restructuring under Pt 5.3B, in the ordinary course of business with the restructuring practitioner's consent or by court order.

NEW s 588GAB (2020): officers must prevent the company making a creditor defeating disposition (selling assets for less than market value so creditors cannot reach them, the phoenix problem). Civil penalty provision. Mention it if assets are moved out before collapse.

Element	Test and authority
Debt	The company "so acts as to expose itself contractually to an obligation to make a future payment of a sum of money as a debt" (Hawkins v Bank of China (1992) 26 NSWLR 562). Timing follows s 588G(1A).
Insolvency	• Cash flow test, not balance sheet (s 95A) • A temporary lack of liquidity is not insolvency. Look at commercial reality: assets that can be sold quickly, available borrowing, support from others • Use the 14 Plymin indicators below
Reasonable grounds to suspect	• Objective: would a reasonably competent and diligent director suspect? (ASIC v Plymin (2003) 46 ACSR 126) • "Suspicion" is more than idle wondering but less than belief (Queensland Bacon v Rees (1966) 115 CLR 266)
Failure to prevent	Covers inaction and failing to try (Plymin). You do not need to show D had power to stop it alone.

SAMPLE

Plymin indicators of insolvency (tick those in the facts)	
• Continuing losses • Liquidity ratio below 1 • Overdue Commonwealth and State taxes • Poor relationship with bank, cannot borrow more • No access to other finance • Cannot raise more equity • Suppliers on cash on delivery or demanding special payments	• Creditors paid outside trading terms • Post dated cheques • Dishonoured cheques • Special arrangements with selected creditors • Solicitors' letters, summonses, judgments or warrants • Round sum payments that do not match invoices • No timely, accurate financial information

Defence (D proves on balance)	What it needs	Cases
s 588H(2) Reasonable grounds to expect solvency	Actual expectation, on reasonable grounds, that the company was and would stay solvent. "Expect" is higher than "suspect".	Hope or optimism is not enough (Metropolitan Fire Systems v Miller (1997) 23 ACSR 699). If relying on selling assets, how soon will the cash arrive? (Hall v Poolman [2007] NSWSC 1330)
s 588H(3) Reliance on others	(a) reasonable grounds to believe a competent and reliable person was giving adequate information about solvency, and (b) expected solvency on the basis of that information.	An experienced businessman should have asked for regular debtor lists (Plymin)
s 588H(4) Absence from management	Did not take part in management because of illness or some other good reason.	Simply not getting involved is not a good reason (Tourprint International v Bott [1999] NSWSC 581)
s 588H(5) All reasonable steps	Took all reasonable steps to prevent the debt. s 588H(6): includes any action toward appointing an administrator.	Usually needs unequivocal action, such as raising it with the board

ANSWER TEMPLATE

Issue: whether **[D]** contravened s 588G(2) when **[COMPANY]** incurred **[DEBT]**.

Director: **[D]** was a director at the time because **[formally appointed / de facto / shadow, see Step 7]**.

Debt: on **[DATE] [COMPANY]** incurred a debt by **[TRANSACTION]** (Hawkins; s 588G(1A)).

Insolvent: under s 95A the question is whether **[COMPANY]** could pay its debts as they fell due. The facts show **[PLYMIN INDICATORS]**. **[Any answer: assets, finance?]** On balance the company was insolvent. **[Add s 588E presumption if relevant.]**

Reasonable grounds: a reasonably competent director would have suspected insolvency because **[FACTS]** (Plymin).

Awareness and failure: **[D]** was aware / ought to have been aware (s 588G(2)(a) or (b)) and did nothing to stop the debt.

Defences: **[D]** may argue **[s 588H(2) to (5)]** but **[WHY IT FAILS OR SUCCEEDS]**. **[Safe harbour: was there a better outcome plan?]**

Consequences: **[D]** is liable to pay compensation to the liquidator (s 588M(2)) and ASIC may seek a declaration, penalty and disqualification (Step 16).

Other side: **[D]** will say it was only a temporary cash flow problem with **[ASSETS/FUNDING]** available (Sandell v Porter), that they reasonably expected solvency (s 588H(2)), or that they were pursuing a better outcome plan (s 588GA). Respond with **[PLYMIN INDICATORS]** and the lack of any firm assurance of funds (Quin v Vlahos).

Case and citation	Trigger	Point for the exam
ASIC v Plymin (2003) 46 ACSR 126	Is it insolvent? Should D have known?	14 indicators; objective standard; "failing to prevent" includes doing nothing

SAMPLE

Case and citation	Trigger	Point for the exam
Hawkins v Bank of China (1992) 26 NSWLR 562	Was there a debt?	Definition of incurring a debt
Metropolitan Fire Systems v Miller (1997) 23 ACSR 699	s 588H(2) defence	Hope is not a reasonable expectation
Tourprint International v Bott [1999] NSWSC 581	Director who stayed out of it	Not participating is not a "good reason" for s 588H(4). Ignorance is no defence.
Hall v Poolman [2007] NSWSC 1330	Plan to sell assets	Timing of when the money will actually come in matters
DCT v Austin (1998) 16 ACLC 1555	Resigned director still acting	Can still be a (de facto) director for s 588G
Powell v Fryer [2001] SASC 59	Tax and levies owing	A debt is an obligation to pay money; includes statutory obligations such as taxes and penalties
Sandell v Porter (1966) 115 CLR 666	Short term cash problem	A temporary lack of liquidity is not insolvency; look at resources available to pay debts as they fall due
Williams v Scholz [2007] QSC 266	What counts as grounds to suspect	Continuing losses, overdraft repeatedly exceeded, bank warnings and refusal of further credit gave reasonable grounds to suspect
Quin v Vlahos [2021] VSCA 205	Director says he would have funded it	Outside funds count only if the company had sufficient assurance they would be available; insolvent on appeal
DCT v Clark [2003] NSWCA 91	Director who deferred to spouse	No s 588H(4) defence: do not take on the role unless prepared to perform it. Every director must take part in management
Chan†	Offer of support	An offer of support that is not firm enough does not make the company solvent

Why directors appoint an administrator early	Why it matters
Shows all reasonable steps	Action toward appointing an administrator is relevant to the s 588H(5) defence (s 588H(6)) and to relief under s 1317S(3)
Stops further debts	Once an administrator is appointed the directors' powers are suspended, so no new debts are incurred on their watch
Best outcome for creditors	The administrator investigates and recommends a deed of company arrangement, liquidation, or (rarely) returning the company to the directors
Directors choose the practitioner	Delay risks creditors or the court appointing a liquidator instead
Reduces later claims	Less exposure to insolvent trading, breach of duty (ss 180, 181) and preference claims

EXAM FLAGS

Common mistake: thinking voluntary administration "invokes" the safe harbour. Not quite: safe harbour protects debts incurred while D is **pursuing a better outcome plan**. Appointing an administrator **ends** it. Appointing an administrator is relevant to s 588H(6) and to relief under s 1317S(3).

Funding from a director or parent counts toward solvency only if the company had a sufficient assurance it would actually be available (Quin v Vlahos [2021] VSCA 205, the Roderick Group case, where a trial finding of solvency was reversed). Chan† is cited for the same point: an offer of support that is not firm does not make the company solvent.

Do not confuse "suspect" (s 588G) with "expect" (s 588H(2)). Expect is the higher bar.

Run it separately for each director. A non executive director cannot hide behind not reading the accounts.

HOW TO APPLY IT

Build a timeline. Fix the date each debt was incurred (s 588G(1A); Hawkins) and test solvency at that date, not at liquidation.

Name the Plymin indicators in the facts. Overdue tax, cash on delivery terms, bounced cheques, refused credit, unpaid creditors, solicitors' letters. More indicators make a stronger case.

Then argue the other way. Assets that could be sold quickly, an available facility, or support from a director or parent only count if firm and reliable (Sandell v Porter; Quin v Vlahos). Short term cash problems alone are not insolvency.

Run each director separately. Did they actually know (s 588G(2)(a)) or ought they to have known (s 588G(2)(b))? A director who never read the accounts ought to have known; ignorance and passivity are not defences (Tourprint; DCT v Clark).

Test each defence against the facts. s 588H(2) fails on hope; s 588H(3) needs a competent, reliable source actually giving solvency information; s 588H(5) needs real steps, such as raising it with the board or appointing an administrator.

Check the safe harbour. Was there a plan likely to give a better outcome, advice from a qualified adviser, employees paid and tax lodged (s 588GA)?

Assets sold cheaply before collapse? Add s 588GAB (creditor defeating dispositions).

Finish with consequences: liquidator recovers the loss (s 588M), and ASIC may seek a declaration, penalty and disqualification (Step 16).

SAMPLE