TRANSACTION
AVOIDANCE IN
INSOLVENCIES

SECOND EDITION

Rebecca Parry
James Ayliffe QC
Sharif Shivji

Consultant Editors
Hamish Anderson
William Trower QC

Oxford University Press
CONTENTS

Preface to the Second Edition v
List of Contributors xvii
Table of Cases xix
Table of Legislation xlix

PART I INTRODUCTION

1. Introduction
Rebecca Parry
A. Introduction 1.01
B. Organization of this Text 1.07

Rebecca Parry
A. Introduction 2.01
B. Transactions Vulnerable Outside Insolvency 2.05
C. Transactions Vulnerable Only in Insolvency 2.18
D. Conclusion 2.55

PART II AVOIDANCE LAWS IN INSOLVENCY

3. Post-Petition Dispositions (Insolvency Act 1986, Sections 127 and 284)
Rebecca Parry and Sharif Shivji
A. Introduction 3.01
B. History 3.03
C. Policy 3.04
D. Timing 3.07
E. ‘Disposition’ 3.10
F. Disposition of a ‘Company’s Property’ (Section 127 Only) 3.50
G. Issues Specific to Section 284 3.60
H. Consequences of Violation of Sections 127/284 3.66
## Contents

I. Validation 3.71  
J. Remedies 3.112  
K. Destination of Proceeds 3.118  
L. Other Remedies 3.120  
M. Avoidance of Attachments 3.126  

4. Transactions at an Undervalue (Insolvency Act 1986, Sections 238 and 339)  
*Rebecca Parry and Sharif Shivji*  
A. History 4.02  
B. Types of Transaction That May Be Voidable under Section 238 or 339 4.04  
C. Consideration 4.55  
D. Significant Undervalue 4.75  
E. Relevant Time 4.119  
F. Connected Parties and Associates 4.141  
G. Invalid Administrative Receivership 4.156  
H. Transactions in Good Faith (Corporate Insolvency Only) 4.158  
I. Ignorance on Part of Person with Whom the Transaction is Entered into 4.181  
J. Interests in the Family Home 4.182  
K. Group Reorganizations 4.183  
L. Remedies 4.184  
M. Exemption for Market Contracts 4.224  
N. Destination of Proceeds 4.225  
O. Other Remedies 4.227  
P. Cross-Border Transactions 4.236  
Q. Procedural Matters 4.240  

5. Preferences (Insolvency Act 1986, Sections 239 and 340)  
*Rebecca Parry and Sharif Shivji*  
A. History 5.03  
B. Overview 5.12  
C. Relevant Time 5.15  
D. Who May Apply for an Order? 5.21  
E. Creditor, Surety, or Guarantor 5.22
11. The Anti-Deprivation Rule
Rebecca Parry and Sharif Shivji
A. Introduction 11.01
B. Legitimate Deprivations and Means of Gaining Priority 11.11
C. Anti-Deprivation Type 1: No Contracting out of the Scheme of Distribution in Other Cases 11.25
D. Anti-Deprivation Type 2: No Improper Alienation of Assets from the Estate 11.36

PART III ISSUES PECULIAR TO BANKRUPTCY

12. The Family Home
Rebecca Parry
A. Introduction 12.01
B. Post-Petition Disposition 12.05
C. Bankruptcy Prior to Transfer 12.06
D. Transaction at an Undervalue 12.08
E. Equitable Accounting 12.61
F. Exercise of Discretion to Make No Order 12.62
G. Statutory Protection against Enforcement 12.63

13. Concurrent Bankruptcy and Divorce or Civil Partnership Dissolution
Rebecca Parry
A. Introduction 13.01
B. Ancillary Relief upon Divorce, Nullity, or Judicial Separation 13.08
C. Potential Avoidance of a Settlement or Transfer 13.29
D. Financial Provision in Connection with a Civil Partnership Dissolution, Nullity, or Separation 13.38

14. Pensions (Bankruptcy Only)
Emily Campbell and James Ayliffe QC

A. Introduction 14.01
B. Types of Pension 14.02
C. Transaction at an Undervalue/Transaction Defrauding Creditors 14.07
D. Position for Those Adjudged Bankrupt Prior to 29 May 2000 14.10
F. Explanatory Diagram 14.43

PART IV ISSUES PECULIAR TO CORPORATE INSOLVENCY

15. Pensions (Corporate Insolvency Only)
Emily Campbell and James Ayliffe QC

A. Introduction 15.01
B. Pension Scheme Deficits and the Pensions Regulator 15.02

Rebecca Parry

A. Introduction 16.01
B. Registration Requirement 16.02
C. Extent of Invalidity 16.09
D. Charges with an Overseas Element 16.33
E. Late Registration 16.41
F. Application for Invalidation 16.52

17. Avoidance of Floating Charges (Insolvency Act 1986, Section 245: Corporate Insolvency Only)
Rebecca Parry

A. Overview 17.01
B. History 17.04
C. Fixed Charges 17.06
Contents

D. Charges That Have Crystallized and Been Enforced 17.07
E. New Value 17.08
F. The Creation of the Charge: Contemporaneity 17.43
G. Relevant Time 17.56
H. Effect of Invalidity 17.61
I. Other Remedies 17.68
J. Agricultural Credits Act 1928 17.72

Rebecca Parry and Sharif Shivji
A. Introduction 18.01
B. Advantages of the 2006 Act Provisions: Overview 18.02
C. Transactions Exceeding Constitutional Limitations on Directors 18.11
D. Transactions with Directors 18.22
E. Share Capital Maintenance Requirements 18.71
F. Destination of Proceeds 18.91
G. Funding 18.92
H. Procedural Matters 18.93

19. Misfeasance (Corporate Insolvency)
Rebecca Parry
A. Introduction 19.01
B. Availability 19.04
C. Overlap between the Transaction Avoidance Provisions and Misfeasance 19.26
D. Persons against Whom a Remedy May Be Sought 19.36
E. Remedies 19.37
F. Who May Apply 19.44

PART V TRANSACTION AVOIDANCE IN SCOTLAND

20. Scotland
Rebecca Parry
A. Introduction 20.01
B. Sources of Avoidance Rules 20.02
PART VI PRACTICAL ISSUES

21. Cross-Border Transaction Avoidance
   Rebecca Parry
   A. Introduction 21.01
   B. Overview of Approaches to International Insolvencies 21.06
   D. European Union Regulation on Insolvency Proceedings 21.76
   E. UNCITRAL Model Law on Cross-Border Insolvency 21.97
   F. Safe Havens 21.119
   G. Conclusion 21.120

22. Evidence Gathering
   Sebastian Allen and James Ayliffe QC
   A. Introduction 22.01
   B. Corporate Insolvency 22.04
   C. Bankruptcy 22.50
   D. Cross-Border Issues 22.65

23. Other Laws Enabling Transaction Avoidance
   Rebecca Parry
   A. Introduction 23.01
   B. Laws Enabling the Avoidance of Unfair Bargains 23.06
   C. Resulting and Constructive Trusts 23.41
24. Limitation Periods
   Rebecca Parry and James Ayliffe QC
   A. Introduction 24.01
   B. Limitation Act 1980 24.02
   C. Application of the Limitation Act 1980 to Transaction Avoidance Proceedings 24.03
   D. Cases Involving Fraud 24.17
   E. Significance of Delay Outside of Limitation 24.18
   F. Delay in Prosecution of Proceedings 24.19

25. Destination of Proceeds (Corporate Insolvency)
   Rebecca Parry
   A. Introduction 25.01
   B. Impact of Law on Destination of Proceeds 25.06
   C. Actions Whose Realizations Definitely Fall within the Scope of the Charge 25.12
   D. Preferences 25.18
   E. Remedies Other than Preferences 25.61
   F. Global Recoveries 25.71
   G. Conclusion 25.74

Index 659