

LAW585 (INSOLVENCY II)

TUTORIAL 6

Group 1

"The phrase 'unable to pay its debts' is susceptible of two interpretations. One meaning which may properly be attached to it is that a company is unable to pay its debt if it is shown to be financially insolvent in the sense that its liabilities exceed its assets. But to require proof of this in every case would impose upon an applicant the often near impossible task of establishing the true financial position of the company and the weight of authority undoubtedly support the view that the primary meaning of the phrase is insolvency in the commercial sense that is inability to meet current demands irrespective of whether the company is possessed of assets which, if realized would enable it to discharge its liabilities in full."

[Per Siti Norma Yaakob J (as she then was) in *Hotel Royal Ltd Bhd v Tina Travel & Agencies Sdn Bhd* [1990] 1 MLJ 21

Discuss the tests mentioned above and the implication of winding up on various stakeholders.

Group 2

Yeo Jin owns a 56% of shares in Hanshin Group Bhd (Hanshin). Hanshin is now insolvent and owes its creditors the sum of RM150,000.00.

Advise Yeo Jin whether she can be made liable for Hanshin's debts.

Group 3

Handytool Bhd (the company) is a supplier of electronic components to various companies. Early this year, the company's major customer decided not to renew its contract worth RM500,000. In addition, the company also faced competition from cheaper alternatives produced by its competitors. As a result of that, the company's financial position is badly affected.

The Board of Directors have been informed of the situation and the possibility of the company going into liquidation if the company could not secure new contracts. One of its directors, Toni, without the Board's approval decided to invest in gold prospecting abroad. Toni estimated that if the investment succeeds, the company's financial situation will improve and the company may be able to avoid liquidation.

Toni's scheme, however, failed and Meng, one of its creditors, filed a winding up petition in September 2014. Subsequently in December, a winding up order was granted against the company and a liquidator was appointed.

Advise Toni on his liability as a director for the company's debts.

Group 4

Discuss the effect of liquidation on unsecured creditors.

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