

Jersey & Guernsey Law Review – February 2013

BOOK REVIEW

A Dessain and M Wilkins, *Jersey Insolvency and Asset Tracking*, Key Haven Publications, 4th ed, 2012, ISBN 978-1-901614-55-8

1 The law on insolvency in the Channel Islands has roots both in the customary law of Normandy as well as influences from civil law developments in neighbouring France and, more recently, in the influence, as far as corporate liquidation is concerned, of comparable rules in the United Kingdom. Similar observations may be made of the laws in relation to property, taking security and procedural matters such as litigation and recovery, where the legal origins may lie equally in civil and common law roots. As a mixed jurisdiction, the law in Jersey provides a fascinating insight into the juxtaposition of rules from different legal families and how these are articulated. Providing an understanding of these areas of law is the function of this work, the fourth edition of a text first published in 1999, co-authored by Anthony Dessain, senior partner in Bedells and a prominent Jersey advocate, and Michael Wilkins, for many years the Viscount of the Royal Court in Jersey, the official office-holder in bankruptcy in that jurisdiction. The six years that have elapsed since the last edition have seen a number of changes in the law in Jersey, which are reflected in the updates in the text as well as in the provision of further commentary on key issues that the authors deem necessary to elucidate the book's contents.

2 The text first offers a brief introduction to the Jersey legal system and court structure, also providing a glimpse into the sources of Jersey law and issues of validity and capacity. There then follows a very detailed chapter on asset recovery and claimants' rights around insolvency, including litigation and enforcement issues. This chapter reveals the very different concept of property in the Island, which draws from the civil law insofar as property and co-ownership rights are concerned. Security types, also canvassed here, illustrate the range of sources used in Jersey law, showing civil law antecedents in real property interests, a mixed heritage in the law relating to tangible movable security as well as the Island's own Security Interests (Jersey) Law 1983, covering intangible movable security. The 1983 Law was an autochthonous development with a nod towards the personal property security regime developed elsewhere in the Commonwealth. The Commonwealth influence is now given greater expression in its

replacement, the Security Interests (Jersey) Law 2012, which is due to come into force in 2013 and which is mentioned in some detail here. The interaction between foreign and domestic security over property, especially property situated in a jurisdiction other than where the security was created, is dealt with here as well as issues in relation to enforcement, covering such topics as torts, fraud, constructive trusts and tracing as well as other causes of action. This ends with a section dealing with remedies and orders available as well as the specific enforcement of judgments and arbitral awards.

3 Given the likely root cause of any litigation that may be necessary, the next chapter deals with directors' duties and liabilities under corporate, insolvency and other legislation, as well as with issues of creditor and shareholder protection. The authors detail the many statutory provisions underpinning control over directors' behaviour and the risk of their disqualification for breach of the rules. This is followed by a chapter dealing with the specific issue of piercing the veil in the context of the use of corporate bodies, which is particularly important given the prevalence in Jersey of financial investments structured around bodies established under corporate and trust laws, in the context of which piercing the veil issues have also been raised. Major cases are referred to here, some of which are of recent vintage, while the issue of corporate identity and the nature of the separate legal entity continue to form themes in the case law, particularly in the recent spate of vulture fund litigation, rendering the discussion in this chapter particularly valuable.

4 Chapter 5 is a lengthy and major part of the work covering all that might be termed "bankruptcy", from winding-up procedures under company law to the classic (*cessions de biens* and its dependent enforcement procedures as well as *remise de biens*) and modern (*désastre*) procedures in the law of insolvency. There is a tremendous amount of detail in this chapter explaining the functioning of the procedures, and the relevant provisions underpinning them. They also deal with the case-law, illustrating the court's role in interpreting the law governing these procedures, many of which have only been partially codified in statute and that at an early date, for example the Laws of 1832 (*cession de biens*) and 1839 (*remise de biens*). Of note too is the continuing evolution of this jurisprudence, seen in a number of recent cases, which are canvassed here, with reference also being made to commentary on these procedures where available. What the whole chapter reveals is not only the lack of a clear rescue procedure in Jersey, unsurprising given the vintage of some of the procedures revealed here, but also how the older procedures are being reworked in practice to deal with the enforcement of creditors' rights in the modern age, often with some success. Yet, overall, what is interesting about these procedures is how often creditors' access to them is restricted or

qualified, leaving the debtor mostly in a better position than he would be in many other jurisdictions.

5 The tome is then rounded off with two chapters on cross-border insolvency, including how Jersey courts have dealt with issues of cooperation and comity, as well as the impact of human rights in insolvency, of more recent concern in the insolvency world. To the material collected in the various chapters is then added further commentary on issues raised in the text as well as appendices containing the relevant laws. In summary, this is a very detailed text that offers a technical and considered exposition of insolvency rules in Jersey. It is well written and articulate, dealing with matters clearly and lucidly. For these reasons, it should readily find a place on the shelves of anyone who has dealings in that jurisdiction.

Paul J Omar, of Gray's Inn, Barrister, is a Visiting Professor at the Institute of Law, Jersey