The Role of Wrongful Trading and Director Disqualification Provision in Insolvency Law

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Introduction

This is the greed of ‘having more’ that leads a man to seek possible ways legally or illegally. Laws are usually implemented to disapprove such built-in human greed, but despite these attempts, corruption makes its moves into each and every dealing or business affairs. To start, almost all thought to be successful means having a lot of money, but how much is "a lot"? Some people have a clear idea of the amount needed to feel prosperous.

Others define the prosperity as a kind of freedom to be, do and have what one wants without limitations. However, the sad truth is that most of us do not experience the feeling of prosperity. Hence, Prosperity is the experience of having a lot of what we really need and want in life, both in the material and in others.

The significant thing is to understand that prosperity is an inner experience, not an external state and that this experience is not linked to the fact of possessing a certain amount of money. While no amount of money can guarantee the experience of prosperity, it is possible to feel prosperous in virtually any economic level, except when we are unable to meet our basic needs.

Now we come to the main subject. Bankruptcy law, according to Douglas G. Baird Robert K. Rasmussen (2010) is rather valid in ‘limited financial instruments’. New changes in UK bankruptcy law, as per John Armour, Audrey Hsu And Adrian Walters (2012) ‘has made it possible to examine empirically the costs and benefits of different degrees of secured creditor control in bankruptcy.’
In other countries such as Canada, insolvency law is not that new. 'This monetary system is unsustainable and breeds corruption, greed, and economic violence '. This isn’t the government intervention, but penetration of a free market mechanism that gives rise to the bankruptcy of large financial institutions.

A free market economic structure, also, affects the bailout of banks and brings about downturns in the world's stock markets. Bankruptcy is, also, related to ‘its effect on incentives for potential entrepreneurs to start and operate small businesses. Many countries often go for protectionism in the name of wrongful trading provisions or trade barriers, but this, again, comes out to be a negative factor for the growth and development of the businesses. Insolvency Act becomes usable ‘when a company enters insolvent liquidation’.

Insolvency, according to Susan Block-Lieb, is a financial condition, or, in other words, it’s the ‘law that governs persons who are in that financial condition'. Most of the time, it is widely noted that governments are turned into ‘trade restriction body’, mainly whenever it comes to dealing with businesses and trading, as many states enforce a set of unrealistic restrictions which augments the tax base, but considerably inflict irrecoverable damages to businesses.

According to Thomas Bachner (2004), insolvency law is, in fact, ‘the essence of the activity consists of the company’s continuing to trade, and to incur liabilities, after the time when it was known, or ought to have been realised, by the directors, that an insolvent liquidation was inevitable, or, at least, would appear to be probable to a reasonable person in the place of the director sought to be held liable.’

The Insolvency Act, in a word, aims to ‘protect the interests of different stakeholders in the insolvency, namely the shareholders, creditors, and employees of the company’. Though
these wrongful trading provisions do offer positivity in the form of controlled business environment and non-monopolized market conditions, a large impact of wrongful trading provisions is not that much supportive of the total economy.
Bibliography


Andrew Keay, 2005, Wrongful trading and the liability of company directors: a theoretical perspective, 25 Legal Study. 431 2005

Andrew Keay, Balancing Interests in Bankruptcy Law, 30 Comm. L. World Rev. 211, 2001- 216


Fletcher, IF. The Genesis of Modern Insolvency Law - an Odyssey of Law Reform [1989] JBL pp.365-376
Fletcher, IF. The Insolvency Act 1976 (1977) 40, MLR, pp.192-197


Han S C. Hirt, 2004, The Wrongful Trading Remedy in UK Law: Classification, Application and Practical Significance, 1 ECFR 71,


Harmer, R. W., UNCITRAL Projects; Insol International, in: I. F. Fletcher, L. Mistelis and M.


John Armour, Audrey Hsu And Adrian Walters 2012, University of Oxford; National Taiwan University; Chicago-Kent College of Law, Published in REVIEW OF LAW AND ECONOMICS, 2012


Kobor, Susanne (2008), Bargaining In The Criminal Justice Systems Of The United States And Germany, Published by Peter Lang GmbH, 210 pages

Langbein, John H. (1979), Understanding the Short History of Plea Bargaining, Faculty Scholarship Series Yale Law School Faculty Scholarship, Yale Law School Legal Scholarship Repository, Yale Law School

Long, De, Michele, Briana (2008), 'The use of plea bargaining in the United States' criminal justice system', School of Criminology - Simon Fraser University


Susan Block-Lieb, 2013, Business Bankruptcy in the US, Cooper Family Professor of Law, Fordham Law School, Retrieved from a PPT presentation on December 13, 2013


The Costs and Benefits of Secured Creditor: Control in Bankruptcy: Evidence from the UK


