



INSOL
INTERNATIONAL

GLOBAL INSOLVENCY PRACTICE COURSE (ONLINE)

2021 / 2022

Short Paper Topics



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GLOBAL INSOLVENCY
PRACTICE COURSE

Short Paper Topics

INSOL Global Insolvency Practice Course Short Papers

Listed below are proposed topics for the Short Paper. Please e-mail your first and second choices to heather.callow@insol.org by the **13 December 2021**.

It is also possible for you to propose a paper topic of your own choice. If you wish to do so, please indicate the title and theme of the proposed topic with sufficient clarity; it must be comparative (at least two jurisdictions) or international in scope. If you are proposing your own short paper topic, the deadline for submitting the topic for approval will be one week earlier - **6 December 2021**. Note that the final decision as to the topic on which each participant will write their paper rests with the Core Committee. We will inform you by the **22 December 2021** the paper you have been allocated. The paper then needs to be submitted via your student portal **9 February 2022**.

Guidelines for writing the paper can be found in the Course Handbook. The paper will form part of the discussion during the oral examination.

Topics

- (1) Analyse the use of the UNCITRAL Model Law on Cross-Border Insolvency, using at least one jurisdiction that is not your home jurisdiction. Include an examination of the deviations or particular differences from the Model Law.
- (2) An analysis of the use of “stalking horse” proceedings to maximise value in an insolvency workout, using at least two jurisdictions for your analysis.
- (3) A critical analysis of the CoCo, JudgeCo or JIN Guidelines.
- (4) Analyse the use of cross-border protocols in cross-border insolvency proceedings.
- (5) Describe and analyse the system of jurisdiction and recognition of insolvency-related judgments (arts 6 and 32 of the EU Insolvency Regulation) and compare it to the UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments.
- (6) Discuss the challenges for finding the COMI of business enterprise groups, assessing the EU Insolvency Regulation and the work of UNCITRAL Working Group V on this issue, in particular the Model Law on Enterprise Group Insolvency.
- (7) A comparative examination of the treatment in insolvency of multinational corporations where branches, as opposed to separate legal entities (subsidiaries) are located in different jurisdictions, using at least two jurisdictions in your analysis.

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- (8) Analyse whether substantive consolidation is ever appropriate in a multi-entity, multi-jurisdictional restructuring / insolvency. Include in your answer a critical analysis of why it is better / worse than an entity-focused insolvency / restructuring.
- (9) Chapter V of the EU Insolvency Regulation and the UNCITRAL Model Law on Enterprise Group Insolvency attempt to address some of the problems encountered when insolvency occurs within a group of companies. Critically analyse at least one of these sets of rules. How well do you think they will work? What significant problems remain unaddressed and how would you amend the rules to address them?
- (10) Analyse the evolution of the approach of the common law courts to cross-border co-operation through existing case law, including the *Cambridge Gas* and *Singularis* cases. Comparing England and one other jurisdiction in the common law family, discuss the extent to which the principle of universalism still applies in the common law.
- (11) Offer an analysis of how to address the conflicts of law issues raised by the EU Insolvency Regulation, focusing on at least two conflicts of law problems.
- (12) In what circumstances will a stay on enforcement of rights *in rem* in Member State A affect holders of these rights in Member State B of the EU?
- (13) Offer a comparative analysis of the balance between liquidation and restructuring goals and proceedings in two jurisdictions that are not your home jurisdiction.
- (14) Analyse the UNCITRAL Model Law on Cross-Border Insolvency's public policy limitations, including a discussion of how at least two jurisdictions have interpreted and applied them.
- (15) The US and England are jurisdictions that have relaxed rules permitting foreign entities to use their restructuring systems. Analyse and compare the mechanisms, legal rules and case law in both jurisdictions that can be employed by a foreign entity wishing to utilize the US or English law and courts for a restructuring. Also, analyse whether the rulings of the US or English court can be enforced elsewhere.
- (16) Compare and contrast the use of an English scheme of arrangement or restructuring plan with the use of a US Chapter 11 "pre-pack" to restructure a single class of bond debt while leaving other creditors and equity holders unaffected.
- (17) Should the rules of the COMI jurisdiction that permit avoidance or claw back of transactions detrimental to creditors be applied in an ancillary or secondary proceeding instituted in a different jurisdiction? Include in your discussion an analysis of the approaches taken by the UNCITRAL Model Law on Cross-Border Insolvency, US law and the EU Insolvency Regulation.

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- (18) Offer a comparative analysis of the valuation methods used to determine the valuation of a distressed business when considering restructuring solutions. Review at least two jurisdictions, at least one of which must be the US or England and Wales. Discuss whether liquidation value, enterprise value, or some other valuation is used and critique each jurisdiction's approach.
- (19) Access to post-petition / DIP financing is an essential component of any restructuring. Analyse and compare the legislative provisions in two or more jurisdictions, including the ability to prime existing lenders and roll-up pre-petition debt into the DIP facility. Also, comment on the market for DIP loans in the selected jurisdictions, terms, etc.

Please read the regulations regarding the paper and its evaluation in **Appendix A** below.

Appendix A: Paper Guidelines

APPENDIX A

The guidelines below for writing the Short Paper must be complied with.

Short Papers should be approximately 6 A4 pages in length (typewritten, 1.5 spacing), between 2,500 – 3,000 words. You may use the opportunity to write a longer paper, although you should try to limit your answer to no more than 5,000 words. However, papers exceeding this length will not be penalised. **Please also note that INSOL will look at publishing Short Papers that obtain a mark of 8 or higher out of 10 and which would be of interest to the INSOL membership.**

Your Short Paper MUST include at least the following:

- title of the paper;
- table of contents;
- introduction clearly stating the problem to be examined or what the paper deals with;
- clear description of the basics facts, legal provisions, etc;
- substantive discussion with reference to legal sources (arranged in chapters, sections or paragraphs);
- conclusion;
- bibliography.

Generally speaking a Short Paper may be based on the materials as they appear in the programme materials. Additional material may be researched via the internet, through a library or may be suggested by a lecturer. The topic of the Short Paper must be agreed on with the Course Committee. The Course Committee assigns a member of the faculty to supervise the paper.

The original Short Paper must be submitted via your student portal no later than **9 February 2022**. Instruction on how to do this appear later in this handbook.

The deadline for submission may be extended upon written request by a candidate and which is submitted no later than **1 February 2022**. The Course Committee will decide any requests for an extension. If the paper is submitted after the final deadline, it will be deemed to have not been submitted.

The paper must be organised and written according to the guidelines that appear below and must be accompanied by a declaration attesting that the candidate has prepared the Short Paper independently. The form that author declaration must take can be found in **Appendix A** to the Course Handbook.

Appendix A: Paper Guidelines

GUIDELINES ON THE CONTENT OF THE SHORT PAPER

Contents

A paper should always include:

- a title;
- a table of contents;
- an introduction;
- a substantive body of the paper divided into sections;
- a conclusion;
- a bibliography.

(a) **Title:** The title should reflect the contents of the paper. On the one hand it should not be so broad as to include topics that you are not dealing with in the paper, while on the other it should cover the main body of the contents of the paper. The use of a witty or fancy title is discouraged. However, a sub-title may be considered.

(b) **Table of contents:** A table of contents is an enumeration of the sections of the paper.

(c) **Introduction:** The introduction should introduce the subject and context of the paper. It should therefore introduce the legal questions that will be considered in the paper and provide some insight into how the paper will be structured or approached. Some general remarks concerning the subject of the paper may be included, but ensure that these are relevant and concise.

(d) **Content:** This is the main body of the paper and should be divided into different sections. The paper should have a logical structure and should therefore be divided into sections that are interconnected. The body of the paper should contain a clear description of the basic facts, legal provisions, etc as well as the substantive discussion of the topic with references to legal sources (arranged in sections and paragraphs).

(e) **Conclusion:** The conclusion should summarise the main points of the paper and answer the legal questions that were posed in the introduction. A conclusion may also contain some general observations on the topic of the paper.

(f) **Bibliography:** A bibliography lists the books and articles that you have consulted as sources for the content of the paper. In addition to this, all sources you have used in your paper must be properly acknowledged and referenced in footnotes. It is very important to have an up to date and comprehensive bibliography and it is extremely important that you

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acknowledge the sources you have used; not only in bibliography, but also by way of footnotes. Participants are free to choose any referencing system, but please ensure that you provide full details of the sources used (including internet sources) and that you apply the referencing system consistently throughout your paper.

Referencing

References to books should include: name author, title of book, place of publication: publisher (year of publication), page.

Example

Fletcher, Ian F, *Insolvency in Private International Law*, Clarendon Press, Oxford (2005), p 123.

References to a chapter of an edited book

Example

Harmer, R W, UNCITRAL Projects; Insol International, in: Fletcher, I F, Mistelis, L, and Cremona, M (eds), *Foundations and Perspectives of International Trade Law*, Sweet & Maxwell, London (2001), pp 480-495.

References to journals should read: name author, title article, title of journal, issue number journal: pages (or the order of citation suggested by the source itself).

Example

Westbrook, Jay, "Multinational Enterprises in General Default: Chapter 15, the ALI Principles, and the EU Insolvency Regulation", 76 *American Bankruptcy Law Journal* 2002, p 1ff.

References to materials taken from the internet should include the date of visiting the site.

Example

Campbell, Andrew, "Issues in Cross-Border Bank Insolvency: The European Community Directive on the Reorganization and Winding-Up of Credit Institutions", at <<www.imf.org.external/np/leg/sem/2002/cdmfl/eng/campb.pdf>>, accessed on 6 July 2007.

Appendix A: Paper Guidelines

English

Participants should check their English carefully, especially if English is not their first language. It can be useful to use the spell check function on your word processing software for this purpose.

Footnotes

References to the sources / literature used as a basis for writing the paper, as well as additional comments on the main text of the paper, can be made with the use of footnotes which appear at the bottom of each page (not endnotes which appear at the end of the paper). If you repeat the same reference in two (or more) consecutive footnotes, in the second and further footnotes you may shorten the reference by using the term *ibid*, followed by a reference to the page number. If you want to refer to a footnote where a reference has been used in a previous footnote that does not immediately precede the footnote you are populating, you may use "*op cit* note X" if it is a source just mentioned, or "*supra*, note X" if cited previously in the document (with X being the number of the footnote that you are referring to), followed by a reference to the relevant page number.

Quotations

You should always duly acknowledge the work of authors you build on. If you in any way use or elaborate on somebody else's work you should make that clear through a reference to the source. Literal quotations must be placed in quotation marks. If they are longer than two lines, they may be indented from both sides and single spaced. Only use quotations where they are essential, either to clarify or substantiate a point already made or to provide a starting point for an idea that you wish to discuss. Quotations should never be used to prove that you have read certain literature, nor to simply reiterate what you have read, but rather to strengthen your line of argument or for purposes of illustration.

Plagiarism

Plagiarism has serious consequences and participants should therefore be extremely careful in respecting the standard techniques for referencing and quoting. A reliable guideline is to always indicate in some way the source of an idea or argument, no matter to what extent you feel you have put it in your own words. Unless you intend to interpret, discuss, argue for or against an author's statement, try not to use extensive paraphrasing. Without your own interpretations, examples and arguments, it does not improve the standard of your paper anyway. It may in fact detract from it. Paraphrasing is a rather shady area and it is sometimes difficult to know when you are verging on plagiarism.

Appendix A: Paper Guidelines

Ideas

Your knowledge, understanding, insight, ideas and experience are the essential ingredients of a good research paper. Your ideas are important and you should not hesitate to express them. However, be sure to do so in a professional way - that is, with arguments for and against, with support from relevant authors (fully referenced) and with a critical, creative and thoughtful attitude.

Layout

You must type your paper using word processing software such as Microsoft Word. Please ensure that you use the spell check function that comes with your software. It is important that your paper is set out in a professional and attractive manner. Margins should be set at 2.5 cm with an 11-point font and 1.5 line spacing. You must use the same font throughout for the main body of your paper, although you may use different fonts for titles, headings etc should you so wish.