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# The status of property interests during the business rescue process (Chapter 4)

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# Introduction - Balancing Rights

Sect 7 Purpose of the Act...

(k)- to... provide for the efficient rescue of financially distressed companies, in a manner that balances the rights and interests of all stakeholders



# 1. Section 134(1)

Regulates the disposal of property

- What is “Property”?
- What is “Dispose”?
  - Ordinary Course
  - Bona fide, at arms length and for value
  - Via an adopted BR plan
- Who may Dispose?
  - Consider the impact of the SCA judgment *Ragavan v. Optimum Coal*

# 1. Section 134(1)

Continued

## Sub - 1(b) Protect 3<sup>rd</sup> Party

- Confirms common law status
- Possession not impacted - compared to liquidation

vs

## Sub - 1(c) Protects company against 3<sup>rd</sup> parties -

- Where company is in legal possession despite contractual terms

## 2. Section 134(2)

Not in the notes

- Seems straight forward
  - Recent practical example
- When is it reasonable to refuse?
- When is it no longer reasonable?

## 3. Section 134(3)

- Security Interest v. Title Interest
- Concepts clarified by our courts:
  - “In writing” - Section 134(1)(a)(ii) Cloete Murray v. FirstRand
  - “Prompt Payment” - Section 134(3)(b) Louis Pasteur Holdings v. ABSA
  - Status of “Security” v. “PCF” - NUM vs VR Lazer

# Talking Points

- GNB - status?
- Debtors
  - Kritzinger v. Standard Bank
  - van den Heever v. van Tonder
- Security v. Adopted BR Plan
  - Redpath Mining v. Marsden