waterline

waterstone INSOLVENCY

EDITION 7

INSIDE:

Economic insights into the perils of greed.

The Psychology of Debt Collection

Josie Hart

Debt collection is a battle of wills. A psycho-social game of chess.

Some debtors are grand masters, indifferent to all but the most severe applications of pressure but most respond positively to an effective campaign by a determined opponent.

Repetition, Embarrassment and Credibility. These are the credit controllers most effective tools.

Repetition. For problem or new clients a phone call before the payment is due establishes a pattern of behaviour. If there are issues they can be dealt with now, as opposed to after payment is due. If payment is not received a call the next day (not 2 weeks later), reinforces the pattern. Asking for a specific date, not "next week", creates an expectation in the debtor's mind that you will call the next day if payment is not received.

This affects the debtor. It becomes unsettling and they know it will continue. They will wake up in the morning knowing you will ring. You may not get through, but they know you will call.

Embarrassment. The most powerful human fear is embarrassment and this creates two lines of attack.

The first is never get angry. Getting angry gives a debtor the excuse to feign outrage and disengage. This hides their embarrassment and not being able to meet their commitments to you. Never give the debtor a superficial reason not to pay.

The second is a site visit. Turn up to the debtor's business. Be polite and discuss the weather first but then ask for payment. Most debtors will do anything and everything to get you out of their premises. Turning up at the debtor's place of business allows you to widen the net. A director will want to avoid the humiliation of having creditors appearing at the premises, chasing money in front of their staff and customers.

Credibility. The above two only work if you follow up your actions and do what you say you are going to do. The debtor needs to know you will keep calling. If you say that you are going to refer the debt to a debt collection agency unless payment is received within the next 7 days – then do it. If you say that you will default list them with a credit agency unless payment is received within the next 7 days – then do it. If you say you will commence legal action within the next 7 days if payment is not received – then do it.

The most effective debt collectors are the most persistent. You do not need to be big to be scary.

Creditors can be classified into two camps: Enforcers, and Non-Enforcers.

Enforcers bankrupt and liquidate debtors, no matter the size of the debt. Non-enforcers sometimes pretend to do this, but usually walk-away. Debtors confronted by an Enforcer will pay, because they know that the creditor is irrational. They will string out a Non-Enforcer.

Some large firms prove that they are Enforcers by setting harsh credit policies, removing discretion from front-line staff. For smaller firms the best way to demonstrate that you are an Enforcer is to take on the characteristics of one. Enforcers bankrupt and liquidate their creditors because they are genuinely outraged at not being paid and derive satisfaction from carrying out their threats.

The humble Hover Fly is completely harmless, yet it looks and acts like a bee. Predators are therefore wary of this harmless but fearsome looking insect. An effective credit policy has the same effect.

Josie Hart is the manager of Waterstone's debt collection business.

The harmless Hover Fly mimics a bee. A wise credit manager adopts a similar strategy.

Regulating Insolvency Practitioners

The Insolvency Practitioners Bill currently before the Commerce Select Committee Bill was to introduce negative licensing later this year. Negative licensing was simply the ability of the Companies Office to ban individuals from acting as an insolvency practitioner, in the same way that directors can be banned.

There were a dozen submissions on the matter and most of them were either ambivalent at best with most preferring a positive licensing regime.

The Bill has now been handed back to the Ministry of Economic Development and there is a real prospect that New Zealand will have a regime similar to that which operates in Australia.

In order to practice insolvency in Australia the individual must be registered. The regime is run by ASIC and applicants must be of good character, have a relevant tertiary qualification and have spent five of the last ten years working for a licensed insolvency practitioner.

Because New Zealand's insolvency industry is unregulated our Australian friends can ply their trade in our fair shores but the small coterie of New Zealand's working insolvency practitioners are denied reciprocal access.

If positive licensing is introduced there is every chance that, alongside apples, New Zealand insolvency practitioners will have the opportunity to test our wings across the Tasman.

McEntee Hire and Voidable Transactions

Alan Preston

Blanchett v McEntee was the first significant case to address changes to the voidable transactions regime that occurred with the passing of the Companies Amendment Act 2006. This altered the creditor's defence to a liquidator's claim and introduced the running account defence which replaced the much litigated ordinary business defence.

Transactions that decrease indebtedness after a creditor suspects insolvency will be voidable. This includes one off transactions as well as the net effect of a series of transactions in the case of a running account.

The changes to the creditor's statutory defence (s296(3)) requires that at the time the creditor received payment;

1. they acted in good faith; **and**
2. a reasonable person in the creditor's position would not have suspected, and the creditor did not have reasonable grounds for suspecting, that the company was, or would become, insolvent; **and**
3. the creditor gave value for the payments or altered their position in the reasonably held belief that the transfer of the payments to them was valid and would not be set aside.

The onus of proof is on the creditor. All three must be proved in order for the transaction not to be set aside.

In this case McEntee (the creditor) had received five payments totalling approximately $21,000, from Taupo Paving and More Limited.

McEntee were taken on face value to have acted in good faith.

The second test was broken down into two steps. First, whether a reasonable person would suspect that the company was, or would become, insolvent. Secondly, whether McEntee did actually suspect, insolvency or inevitable insolvency.

The judge used the Australian case of Queensland Bacon Pty Ltd v Rees as a guide, where the term suspect was defined;

"It is a positive feeling of actual apprehension or mistrust, amounting to 'a slight opinion, but without sufficient evidence'"

McEntee survived the first step. In light of the Australian case the court agreed with McEntee that bounced cheques and late payments were not sufficient in themselves to give rise to a suspicion of insolvency. Perhaps because the case was heard in Rotorua it was considered that such events were a normal practice for even solvent firms.

McEntee failed on the second step. McEntee had issued a stop credit notice which it argued was for the preservation of the trade relationship. No further credit was extended until the entire debt was paid off. McEntee also argued that it was not their practice to issue stop credit notices when they suspected insolvency, they usually send the debt to a debt collector, something which the liquidator was later able to prove that they had in fact done.

McEntee also failed on the third requirement. It was not giving value for the payments that were being made as they were taken to satisfy existing debt. Credit was not given again until that debt was cleared. McEntee argued that it altered its position when it once again began extending credit, but this was refuted by the judge as it was a resumption of the original relationship not in fact an alteration of position.

Establishing this meant that McEntee had failed to prove the three requirements and the transactions were voided.

Failing on the creditor's statutory defence McEntee tried to rely on the running account defence.

The running account defence recognises that transactional ping pong is a requisite for business. In acknowledging this, the legislation forces a liquidator to treat a period of payments and invoices as a single transaction, in which the payments received and the value of the goods or services provided by the creditor are netted off. Only the net effect of the period of transaction is then considered as to whether it is voidable under the act.

If the net effect of the transactions results in a decrease in the indebtedness of the liquidated company the net amount will be voidable.

The issue that is addressed in McEntee is the timing of when this period of indebtedness should commence. There is no legislated limitation placed on the liquidator, and therefore they should be free to pick the time that most benefits the creditors; the point of peak indebtedness.

As a minor aside the case also addresses the question as to whether there is a time requirement on the liquidator to file the notices to set aside with the court. The court ruled that whilst it should be served on the creditor within a reasonable time after it has been filed there is no requirement that it be filed with the court within any specified or implied time frame.

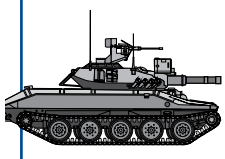
Firms dealing with potentially insolvent clients need to be aware that:

If they become aware that their client is or will soon become insolvent there is a risk that any moneys received will be voidable. If they continue to trade, payment for current invoices will be safe from a liquidator.

Liquidators can choose the most advantageous starting point, being the point maximum indebtedness and reclaim the total reduction in debt from that date.

Alan Preston is an Insolvency Officer at Waterstone.

Defences to Insolvent Transactions:



First Line of Defence:

Acted in good faith
Did not, and could not, suspect insolvency
Gave value for payments received

Must show all three conditions met, otherwise transactions are voidable.

Second Line of Defence:

A) Amount owing at Date of Peak indebtedness	$1,000,000
B) Payments received since	$400,000
C) Invoices issued since	$200,000
Maximum voidable (B-C)	$200,000

Can only void movement in debt level.

The Savaging of Mr Good

Peter Drennan

Traditionally funds introduced to a new firm were treated as capital. Recently we are seeing a trend towards shareholders (or related entities) injecting funds into companies by way of loans.

This can have a significant impact upon liquidation.

As an example take two companies, each formed with an injection of $100,000 from shareholders, both with $120,000 of trade debt at the date of liquidation.

Company A injected funds by way of capital, whilst company B injected funds by way of a loan from the shareholders family trust secured over the company's assets by a GSA.

	Company A *Funds introduced as Capital*	**Company B** *Funds introduced as Loans*
Assets (Cash)	**100,000**	**100,000**
Liabilities		
Creditors	120,000	120,000
Shareholders	-	100,000
Total	**120,000**	**220,000**
Net Shortfall	20,000	120,000
Distribution in Liquidation		
Creditors	100,000	-
Shareholders	-	100,000

This arrangement is increasingly common and has appeal for those starting up new companies, whilst leaving unsecured creditors unprotected.

How can a liquidator deal with companies setup in this way?

Any security can be voided by a liquidator under Section 293 of the Companies Act 1993 but only if the company was insolvent at the time the charge was granted

If the security was taken at the inception of the company this will often be impossible to prove, particularly if the security was given for funds actually advanced.

Section 299 of the Companies Act 1993

Section 299 allows a court, on application of a liquidator, to void a shareholder GSA. The provision casts a wide net over related parties extending to relatives, trusts and other companies connected to the company director.

It is not necessary for a liquidator to show that the company was insolvent at the time a charge was granted to a related party and there is no time restriction.

The main issue to be proved is that having regard to the circumstances of the charge, the company, and the related parties actions; that it is 'just and equitable' to set aside the charge.

The tale of Mr Good

The only relevant precedent in New Zealand is the 1984 High Court decision of Re Manson and James Limited (in liq). This case concerned an action brought pursuant to Section 311B of the Companies Act 1955, the predecessor of Section 299.

Mr Good purchased Manson and James Limited in 1982. However by the end of the following year the company was experiencing severe financial difficulties.

In October Mr Good paid the company $20,000 and executed a debenture in his favour before withdrawing $19,950 back out of the company. This left the debenture securing only $50 of new funds.

In November Mr Good appointed himself as the receiver of the company, just before a creditor had the company liquidated.

Under the 1955 Act if a liquidator wanted to void securities he had to issue a notice on the secured creditor outlining the grounds, and if the secured creditor wanted to prevent the charge from being set aside they needed to apply to the High Court to preserve their security.

Despite a seemingly hopeless case this is what Mr Good did, and he put forward several arguments for why his security should be upheld. They all failed.

The aptly named Justice Savage was suitably scathing of the inaptly named Mr Good's case and as such it is difficult to extract too much guidance from the brief judgement. It is clear, however, that in determining these issues the court will look at the substance of the transactions as opposed to the form.

In the case before Justice Savage there was no rationale for the company to borrow $50 and grant a security at a time when it owed over $100,000 to other creditors. The substance of the transaction, or its true purpose, was to allow the director to attain a higher priority than he was entitled.

Contemporary Application

Section 299 empowers the court to look beyond the form of transactions and to void charges which are unable to be reached by other sections of the act. Unfortunately the case of Mr Good was far too easy for the court to decide. It provides little guidance on how far this provision can be extended.

A precedent is yet to set on whether a situation as detailed in the example above could be challenged under Section 299. It is this writer's opinion that it could.

The example company was created with no capital, from its inception it was in debt to the director. This in itself creates possible breaches of directors' duties under Section 131-138. However such actions under these sections are notoriously difficult and expensive to pursue. Nonetheless the duties expounded in these sections could be invoked as a basis for setting aside charges on just and equitable grounds under Section 299.

It remains to be seen whether the judiciary will opt to truly empower Section 299 as a tool for insolvency practitioners. As it stands it is unclear whether it is the impotence of Section 299 or of the insolvency profession itself which leaves this section unused and shareholder GSA's in vogue.

Peter Drennan is a liquidator at Waterstone.

Our mascot Prudence, exploring the Moai on Easter Island.

Simplifying GST on Land Transactions

Steven Khov

On 1 April 2011 changes included in the Taxation (GST and Remedial Matters) Act come into force affecting transactions involving land. This will make all commercial land transactions zero-rated if both parties to the transaction are GST registered. Any land that is acquired to form part of a taxable activity will be taxed at 0%.

One objective of the Goods and Services Tax Act 1985 is to have a nil net effect when there are transactions made between GST registered entities. However abuse of the GST regime by a slew of developers has seen development companies claim the GST on the purchase of the land only to become liquidated or wound up before the GST is paid on the that same piece of land.

The GST on the purchase of land was treated as working capital and these schemes have left the IRD significantly out of pocket.

The new rules state that any transaction involving land will attract GST at 0% provided that the transaction is made between a registered person to another registered person who acquires the land with the intention of using it for making a taxable supply; and that the land is not intended to be used as a principle place of the residence of the purchaser of the land or any associated person.

The date of supply is defined as the time of settlement of the transaction, not the time of supply of the land.

The Bill also widens the definition of land to include:

- an estate or interest in land
- a right that gives rise to an interest in land
- an option to acquire land or an estate or interest in land
- shares in flat-owing or office-owning companies (as defined in section 121A of the Land Transfer Act 1952).

However, there is a specific exclusion of: *"an interest in land in circumstances where the supply is made periodically and 25% or less of the total consideration specified in the agreement, in addition to any regular payments, is paid or payable under the agreement in advance of or contemporaneously with the supply being made".*

This ensures that normal lease payments continue to be taxed at the standard rate and is not affected by the changes.

Up until the changes take effect the parties involved need to agree whether the sale is a going-concern which then determines whether there is GST applied to the transaction. The new section 78F eliminates this problem as it places the onus on the purchaser to provide a written statement to the vendor indicating whether:

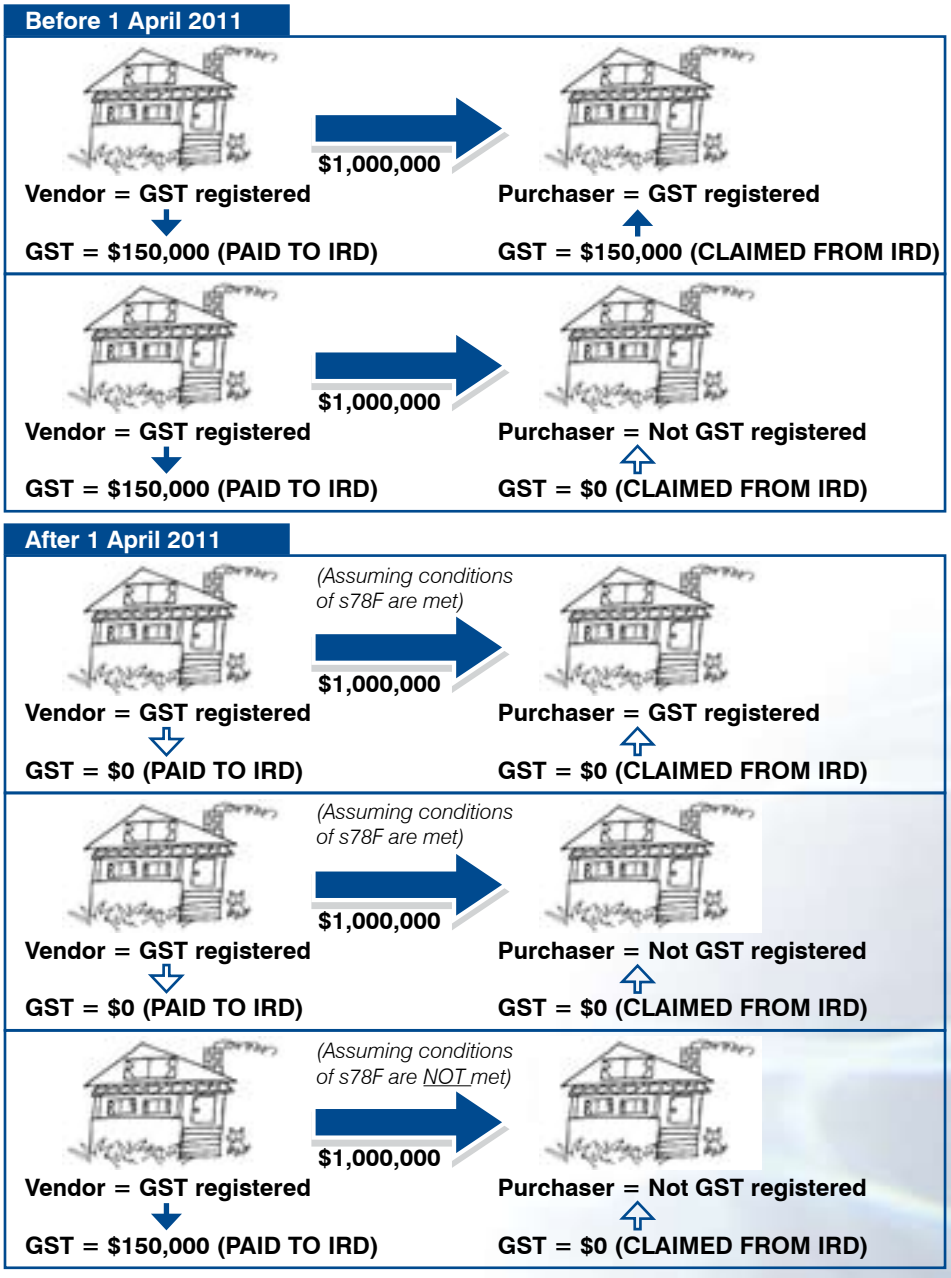
- they are, or expect to be, a registered person; **and**
- they are acquiring the goods with the intention of using them for making taxable supplies; **and**
- they do not intend to use the land as a principal place of residence for them or a person associated with them under section 2A(1)(c).

The Act makes it clear that the vendor is entitled to rely on the information that is supplied by the purchaser. Otherwise it would be too onerous on the vendor to actively seek the information or pursue the matter if the information is not voluntarily provided. There are no obligations that require the vendor to verify the information supplied. The above requirements are not intended to be onerous and can be simply met by providing a simple form or extra condition that is specifically initialled within the sale and purchase agreement.

Any transactions entered into before 1 April but the time of supply is after 1 April are subject to the existing GST rules.

The changes to the Act aims to simplify the treatment of GST on land transactions. The long term effect should reduce compliance for businesses.

Steven Khov is a liquidator at Waterstone Insolvency.



Is Fifteen Too Old?

Yes. Under changes to the Limitation Act that came into force on the first of January, if a debt is over fifteen years old it cannot be pursued, unless the money is owed to the Crown in the form of taxation or customs or is owed for Child Support.

The law consolidates earlier legislation and some complex and overlapping judgements. The new rules can be summarised as follows:

- Litigation to pursue a debt must commence no later than six years from the time that the debt became due.
- However, the six year rule is waived if the petitioner only became aware of the debt after the end of the six years. A petitioner has three years from the date that they become aware of the debt being due to take proceedings. This is the "knowledge period".
- Any debt over fifteen years cannot be litigated.

If the debt relates to a breach of directors duties relating to a company in liquidation, the six years begins from the date of liquidation. The precedent for this can be found in the Cellar House case, where liquidator Robert B Walker successfully argued that a directors liability crystallised at the date of liquidation and not the date that the breaches of directors' duties occurred.

Less than Six Years Old	Can Litigate
Over six years, less than fifteen years	Can Litigate only within three years of becoming aware of debt
Over Fifteen Years	Can not Litigate under any circumstances, except as below
Debt for tax, customs or Child Support	Can Litigate, no time limit
Claimant under 18	Clock starts from 18th birthday, not date of breach
Debtor acknowledges debt or makes part payment of debt before time limits expire	Clock starts from date of acknowledgement or part payment and not breach
Fraud caused lack of knowledge	No time limits to litigation
Defendant is Trustee, claimant is beneficiary of Trust	No time limits to litigation

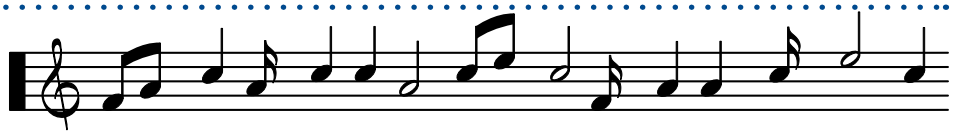
If the claim is for defamation, the same rules apply except litigation must commence after two years, not six, or must commence two years after knowledge of the defamation is uncovered, not three.

The legislation makes it clear that if a claimant did not know, but should have known, about the debt, then they cannot take advantage of the knowledge period.

Once litigation starts there is no time limit on the duration but if the debt has arisen from an arbitration ruling, the six years commences from the date of the breach of the arbitration award. Arbitration does not count as litigation.

Parties can contract out of the defences of the Limitation Act.

Wagnerian



The dispute between Paul Alexander and Rudi Gitmans was described by the High Court Judge hearing Gitmans bankruptcy hearing as Wagnerian.

Gitmans and Alexander were in business together as property developers. They fell out and began an orgy of self-destructive litigation in 1999.

First blood went to Gitmans. He obtained a court order to have some property transferred to him. Alexander responded by having his mother obtain a mortgage over the properties in question and then sell them in her capacity as mortgagee.

Gitmans sued for damages, winning judgement for over two million dollars. He moved to bankrupt his nemesis who elected to fall on his own sword and had himself declared bankrupt.

Despite his bankruptcy the media reported that Alexander was living the high-life courtesy of a number of trusts and as the beneficiary of his now deceased mother's estate.

The executors of the estate then elected to acquire a debt that both Alexander and Gitmans had personally guaranteed to a quantity surveyor. This debt was pursued with utmost vigour. Once judgement for $120,000 was secured an application was made to bankrupt Gitmans.

As this was progressing Alexander suffered a criminal conviction for tax fraud involving a joint venture company he had with Mr Gitmans and was forced to endure an additional two years as a bankrupt on account of the Official Assignee objecting to his release.

The denouement was heard last year with Gitmans' bankruptcy hearing. The High Court used its discretion and declined the order.

The discretion was based on the courts right, under the rarely invoked Section 37 of the Personal Insolvency Act, to consider if bankruptcy is *"..conductive or detrimental to commercial morality and the interests of the general public."*

The court found that there was no risk to the public from the seventy year old Gitmans. He had no assets, thus there was no possibility of recovery. There was nothing that warranted the investigation of the Official Assignee. The court concluded that the decision to pursue Mr Gitmans was for 'collateral' purposes and this appeared to influence the decision.

Most attempts by debtors seeking the courts discretion fail. The key principles were outlined by the Court of Appeal back in 1993 (Baker v Westpac) and they are very narrow. A lack of assets is required and the use of bankruptcy needs to be oppressive given the circumstances.

If the court feels that there is an ongoing commercial risk posed by the debtor adjudication is a given.

The Misconception of Limited Liability

There is a firmly held misconception about the application of Limited Liability. This is a protection that is open to shareholders. It does not extend to directors and a recent Court of Appeal case has clarified the issues nicely.

The case of Lewis v Mason has been widely reported but is worth re-visiting quickly.

Mr and Mrs Lewis were minority shareholders and also directors of a printing company, Global Print Strategies Limited. The other director managed the business and was actively defrauding a factoring company.

When the company went into liquidation, the liquidator sued the couple to recover money lost to creditors.

The Lewis took no part in the day-to-day operations of the business yet the Courts found that they were negligent in their obligations as directors. They were blissfully unaware of the fraud and they failed to take any of the necessary steps a prudent director should have taken. When evidence was presented to them (in the form of IRD demands sent to them) they failed to act.

The were only held liable for a portion of the company losses, reflecting their shareholding in the company and the time that they were directors. No punitive damages were awarded against them.

The recent case of Dr Oberholster developed the case law further.

The company was FXHT Fund Management Limited, based in Whangarei. The company used investors' money to take foreign exchange positions. It was run by a Mr Hitchinson, formerly from South Africia.

In December 2005 Dr Oberholster, who also had emigrated from South Africa, invested in the business and became a director. Mr Hitchinson's parents were patients of Dr Oberholster, and once a director he helped solicit investors.

Hitchinson ran the business with minimal oversight from Oberholster. With no supervision, and access to large amounts of investors' cash, Hitchinson began stealing client funds from April 2006. The total loss from these defalcations amounted to about $400,000.

Also in 2006 Hitchinson proposed moving investors funds from a European trading house to one in South Africa, a firm called FX Active. Dr Oberholster was consulted and participated in this decision and this change occurred.

Unfortunately, FX Active subsequently failed and a million dollars of investor's funds were lost. About the same time, late 2006, Dr Oberholster became aware of the fraud and moved quickly to prevent further losses and managed to secure the companies liquidation.

The liquidators, McDonald Vague, sued Oberholster for both the stolen money and for the money lost by FX Active.

The High Court found that the failure to supervise or put in place control measures over the company was a breach of Section 135, the Reckless Trading provision of the Companies Act. This failure allowed the fraud to occur, and to continue to occur for many months.

The Court also found that the decision to switch to FX Active, although in hindsight a bad one, was not a breach of Section 135.

The High Court held Oberholster liable for half of the money stolen by his fellow director. The decision was upheld by the Court of Appeal.

"I'm a Big Picture Person"

Insolvency practitioners are often asked what causes business to fail. Foolishly, we often provide our insights. These should be ignored because without seeing both businesses that fail and those that succeed we cannot really tell the difference between them. It is like a coroner saying that every dead person he sees has (or in some cases used to have) a colon. The observation is accurate but unhelpful.

Thus, the next observation is anecdotal and unreliable.

It is common for people to describe themselves as 'a big picture person'. Such people are not to be trusted.

Having a vision for what you want is an excellent trait. Most of us want to be fitter and wealthier than what we are, but the thing that matters are the details. Like the hard work and exercise required.

What most people mean when they claim to see the 'big picture' is that they do not have a grasp on the details. And details matter. The most successful businessman of the last decade has been Steve Jobs and if the media reports are accurate he is a relentless details driven perfectionist.

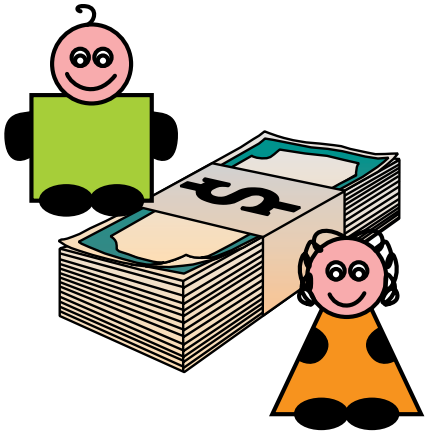
Strategy firm such as McKinsey do not employ 'Big Picture' people. They employ brilliant soul-less quants who mine vast amounts of data before recommending a strategy.

If you want to see the big picture you need to start with the pixels and work your way up.

Big Picture people like to sit around eating pizza and waffling about their importance and drawing boxes on white boards. They are often very good at obtaining other people's money to fund their grand adventures, which is why firms like Waterstone see so many of them .

Big Picture people are fun to go to the pub with and make great omelettes first thing in the morning, but do not lend them money. You will not see it back.

Money for Nothing, and your Cheques for Free



A lot of our work is negotiating debt restructuring for clients. Often we will be confronted by a director who will declare that they will pay their creditors five cents in the dollar. They assume their creditors will accept this, because, *"..otherwise they will get nothing."*

Funny thing. People are often happy to get nothing.

The Ultimatum Game is a tool devised by economists. The game has two players and an adjudicator.

The game involves splitting cash. The adjudicator holds the money. The first player decides how to split the cash. The second player can decide to either accept, or reject the offer. If the offer is rejected the adjudicator keeps the money, if the offer is accepted both players get the cash as allocated by the first player.

The game is only played once between the players.

Rationally, you would think that the second player would accept even a fraction of the cash. It is 'free money'. The first player should offer a token amount to the second player to induce acceptance.

There are two interesting results from this game.

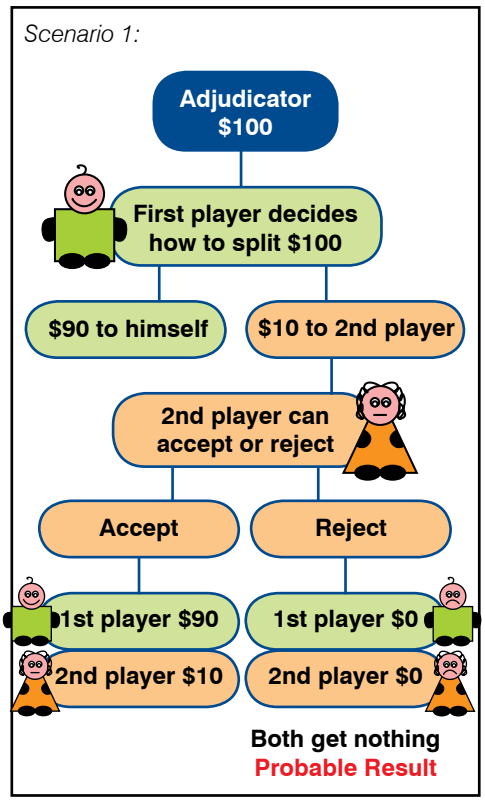
- The second player will reject what they perceive to be an 'unfair' split.
- Most of the initial offers were either 50/50 or very close to that.

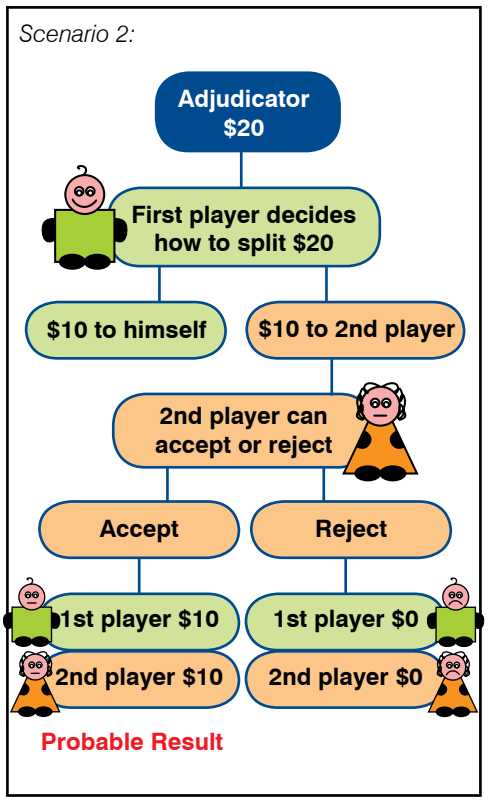
The first result surprised economists, (although perhaps only economists would be surprised). The second player is rejecting an unearned windfall. The only advantage they are obtaining is the ability to punish the initial player who made the selfish offer.

When this was first discovered economists speculated that this must be as a result of the parsimonious amounts being offered, given the limited research budgets of economic departments in the 1980's. It may be easy to reject ten percent of a hundred dollars, harder to reject ten percent of ten thousand dollars, impossible to reject ten percent of a billion dollars.

To test this theory in 1995 Princeton sent researchers to Indonesia where the relative income was much lower and thus the absolute amount would be much larger.

The results did not change, even when the amounts being rejected by the second players amounted to two weeks income. There is considerable debate amongst economists over this but to the rest of us the answer is pretty simple.





Selfish people make our lives miserable. They jump queues, cut us off when driving, talk over us in staff meetings and hog the covers when it is cold. If someone playing the ultimatum game offers us ten percent of the total pool, then we assume that they are a selfish narcissistic bed hogging queue jumper and smiting them is deeply satisfying, well worth two weeks salary.

Most people know this, even most selfish people, which is why the second observation is important. Anticipating a rejection of an unfair allocation most players of the Ultimatum game propose a reasonable split.

When negotiating a personal or company's debt this is an important issue. Creditors want to know that the offer is reasonable and will happily reject an offer that they suspect will leave the company in an unfair position or with a windfall gain.

In order to satisfy this creditors typically want the following:

Transparency:
They want to know all of the financial details of the company and preferably the shareholders. Trying to conceal information can be fatal to gaining creditor confidence.

Contrition:
This seems very difficult for some directors but creditors want to know that their sacrifice and support is being appreciated by the company and the directors are genuine, remorseful, and have learnt some lessons.

Dialogue:
It is very common for creditors to want to discuss the matter. Ideally they want to be involved in negotiating the level of compromise but most accept that this is impracticable but it is important that the director makes themselves available

It is a mistake to assume that creditors will take a narrow economic view. Like the respondent in the Ultimatum game, creditors can act against their own economic self interest if they suspect that they are not being treated fairly.