AN ANALYSIS OF THE PARI PASSU DOCTRINE IN THE INSOLVENCY LAW OF UGANDA

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AS20B11/090

A DISSERTATION SUBMITTED TO THE SCHOOL OF LAW, IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF A DEGREE OF BACHELOR OF LAWS OF UGANDA CHRISTIAN UNIVERSITY

May, 2024

UGANDA CHRISTIAN UNIVERSITY

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DECLARATION

I SETIMBA EDRINE do hereby declare that this dissertation paper was written by me and has never been submitted to any other academic institution for any other academic award and that the works cited or referred to in this study are accordingly acknowledged.

Signature: …………………….………………….. Date: …………………………

SETIMBA EDRINE

APPROVAL

This dissertation paper has been submitted for examination to the School of Law of the Uganda Christian University with my approval as the University Supervisor.

SIGNED: …………………………………….. DATE: ………………………………….

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ABSTRACT

This study is about the analysis of the Insolvency law of Uganda in line with the doctrine of Pari passu. “Pari passu” is a Latin word which means equal footing. In Insolvency Law, the Pari passu doctrine states that when there are two competing claims of unsecured creditors and the debtor is pronounced insolvent, the claims or debts from the debtor’s remaining assets are divided on an equal basis amongst the unsecured creditors. In equity, the distribution of the assets of the debtor amongst the creditors is on equitable terms though in pari passu it is on equality terms that the debtor's assets are equally distributed without considering which debt was acquired when and who invested their funds first before the other. This study is challenging such kind of settlement of debts and it's unfair in a way that the one who gave the debtor money first is going to be settled at the same time as those who might have funded the debtor in that month before being pronounced insolvent. This study suggests the change in the law that debts should be settled on a “first in first out” basis because is this equitable and just since funds being issued in a timely manner is of the essence in businesses and the running of companies. This study has research objectives; to find out the law on the doctrine of pari passu during insolvency proceedings, to critique the practice and applicability of the doctrine of pari passu in the Insolvency law of Uganda, to propose the different ways the insolvency laws and the legislation can improve to favour all creditors. The research questions are what is the doctrine of pari passu in insolvency law? What is the law governing the insolvency doctrine of ‘pari passu’? The research uses a desk review method to research the topic and it also helps the researcher to analyze different laws and writings and critically know what other people have written in line with the topic. The research also didn’t limit the scope of the laws to only Ugandan laws but also considered looking into different jurisdictional laws to compare the different approaches to the achievement of writing a well-researched excellent research paper. The researcher at the end gives recommendations and his findings on the research paper by suggesting that some laws need to be amended while practicing insolvency.

DEDICATION

This research paper is dedicated to the Almighty God who awesomely strengthened me amidst challenges of discouragements and failures so that I research this great piece of work. To my mentors Counsel Naboth Muhairwe, Jean Kobusingye who encouraged me any time I would call them and showed me anything is possible as long as you plan for it before. To the Latela Mentorship Hub Family and my friends Patricia Kansiime, Sserulika Dickson, Martha Nuwagira, Diana Nakiyimba, Jorame Edonu, Etem Joshua, Promise Andinda, Odette Adongo, my discussion group members and cell family for the prayers and support. To my late grandfather Wamala Enpanga and young brother Mpembe Gilbert who keeps me encouraged and prays for me religiously.

Last but not least, Mr. Kashaija Emmanuel who was my supervisor. He made sure that I researched excellently on this topic and got a highly recommendable dissertation paper.

ACKNOWLEDGEMENT

I appreciate highly my Mother Jane Kyabaki, who has contributed highly to my education journey spiritually, financially, mentally, and physically by standing with me at any time of the day and night. My Dad Kikonyogo John has been there for me in so many ways and the entire clan. The other big acknowledgement goes to Watoto Child Care Ministries which has supported me wholly through rescuing, raising and rebuilding me, I'm forever indebted to this organization but God bless the management and everyone. I also acknowledge the financial help from my family my sister, Nalongo Jackie Nanyonga, my big brother Kisembe Franco, my young brother Mpembe Gilbert, my uncle Mr. Paul Muyodi, Mr. Kiirya Paul.

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CHAPTER ONE

EQUAL FOOTING IN INSOLVENCY LAW

GENERAL BACKGROUND

(i) Introduction

In the years prior to the 1900 Buganda Agreement signing, there existed a barter trade system in the trading and carrying out of business in Uganda. Barter trade according to the case of **Cooper v State**[1] is a contract by which parties exchange goods or commodities for other goods without the use of money. It differs from sale, in this current system goods or property are exchanged for money. In the case of **Speigle v. Meredith**[2], it was emphasized that "Barter was a trade by which the parties exchanged goods for goods". Therefore, due to this kind of trade, gaps were developing as per equality and equity as some goods and services were not easily quantifiable in equal measures due to the coming into force of the **1900 Buganda Agreement** which became a legislative instrument; it welcomed the interception of the British laws into the legislation instruments of Uganda. There existed a problem that if one did not have property or goods to exchange, they were forbidden from participating in economic exchanges and development, which meant there was no insolvency law. So, the interception of the 1900 Buganda Agreement with the British laws, introduced the concept of money and other monetary facilities like credit, and debt to allow those without goods and commodities to also participate in trade and industrial work.

After the coming of the new laws of England, different cultures and societies started allowing borrowing and lending because Uganda had received English laws. The legal framework to regulate the actions of the creditors and their facilities (which as well Uganda adopted in its laws) was first established in England in 1542 under the English

[1] Cooper v. State 37 Ark. 418

[2] Speigle v. Meredith, 4 Biss. 123, Fed. Cas. No.13,-227

Bankruptcy Act which brought the idea of collectiveness into insolvency.[3] The first legislation in regard to insolvency to be enacted in Uganda was in 1931 and it was called the **Bankruptcy Act 1931**. This act was a replica of the **English Bankruptcy Act 1914** and specifically, allowed English Insolvency laws to be applicable in Uganda, where necessary.[4] This brings us to the fact that during the pre-colonial period, goods were exchanged for goods which meant that people lived within their means by getting only what they needed or could afford to exchange for what they already had. After the signing of the **Buganda Agreement of 1900**, which contained a **reception clause** for British law in Uganda and with the introduction of the cash economy, people started to borrow money they did not have to finance their trade activities or needs and where there was borrowing it means there is also the risk of failure to pay back or one having their liabilities being more than their assets, which is termed as **insolvency** the inability for one to pay debts as can be simply defined.[5] The Insolvency ideas were literally borrowed from England into the Ugandan Bankruptcy Act 1931 whose provisions did not separate corporate and individual insolvency like the new **Insolvency Act 2011** does in its provisions.

This law in Uganda started to interest people into borrowing and those who would fail to pay would be subjected to the courts of law to apply the Bankruptcy Act of 1931 in line with the English laws on bankruptcy. However, this importation of the English insolvency law is questionable as per what **Lord Denning** advised some years ago "It is recognition that the common law cannot be applied in a foreign land without considerable qualification. Just as with an English oak, so with the English common law. You cannot transplant it to the African continent and expect it to retain the tough character that it has in England. It will flourish indeed but it needs careful tending. So the common law has many principles of manifest justice and good sense which can be applied with advantage to peoples of every race and colour all the world over: but it has also many refinements, subtleties and technicalities which are not

[3] C.Nyombi, A. Kibandama, D.J. Bakibinga, The motivations behind the Uganda Insolvency Act 2011, [2014] Journal of Business Law, Pg.654.
[4] Bankruptcy Act 1931, Section 2
[5] Bankruptcy Act 1931, Section 2

suited to another folk. These off-shoots must be cut away. In these far-off lands the people must have a law which they understand and which they will respect. The common law cannot fulfil this role except with considerable qualification. The task of making these qualifications is entrusted to the judges of these lands. It is a great task. I trust they will not fail therein".[6] The passage above from Lord Denning was very wise advice to the British colonies and other European colonized African states that were adopting the use of their colonial master's laws. It was wise counsel that countries like Uganda only adopt some laws but to help them come up with better laws that answer their problems. The **Bankruptcy Act, 1931** should have been enacted after a careful study of the circumstances prevailing in the Ugandan protectorate. It was a scandalous idea to suggest that English Insolvency Law should apply in Uganda where necessary.[7] The two countries from then until now are on different levels of economic development so the understanding of the insolvency laws and its principles like debt and credit is different. So therefore, there existed existence of so many evolving laws like the Insolvency Act, 2011 and the **Insolvency Regulations 2013 No.36**. The Act and its regulations are subjected to amendments for example the new amendment called **the Insolvency (Amendment) Act, 2022** which amended the Insolvency Act, 2011 to update the laws as per the needs of the people of Uganda and also due to the economic developments in the whole world and in Uganda.

The first legislation in Uganda relating to corporate entities was the **Indian Companies Act 1882**, which applied owing to ties in trade and industry with India. The Act did not contain any provisions on corporate insolvency.[8] After the coming into force of the Bankruptcy Act 1931 which introduced the English insolvency law in Uganda, a further push towards British insolvency ideals was achieved by the **Companies Ordinance of 1935** which repealed the **1923 Companies Ordinance**. But significantly more reform especially in regard to company law, was made in 1961 with the enactment of the Companies Act. The **1961 Companies Act** was almost similar to

[6] Nyali Ltd v. Attorney General [1956] 1QB 1
[7] Deus Mugabe, Insolvency Law in Uganda (First Edition 2022) Pg. 3
[8] Ibid, pg. 4

the **British Companies Act 1948** and contained insolvency provisions relating to company winding up and the payment of debtors in case of running insolvent.[9] This is introduced further in the current insolvency laws like in the **Insolvency Act, 2011** principles like “Pari passu”.

Therefore, the background to this study shows the evolution of insolvency in Uganda and how corporate insolvency was introduced by the 1961 Companies Act where we first meet doctrines like “pari passu” in Uganda. Chapter one of this study will elaborate on the background of the study, problem statement, objectives of the study, scope, significance, justification, conceptual framework, methodology and literature review considered for this study.

(ii) Background

In insolvency law, the principle of “**Pari passu**” is defined to hold that where, in relation to preferential debts and ordinary debts, there is a shortfall between the totality of liabilities within the category of priority and the sum of money available to discharge these, debts of equal shall abate in equal proportions as between themselves.[10] Insolvency law which introduces to us the doctrine of “Pari passu” was already established by the time Uganda gained independence in 1962. **The 1961 Companies Act** was typically a replica of the **British Companies Act 1948** and contained insolvency provisions relating to company winding up. Therefore, there was a strong body of insolvency and company law that reflected the commercial development at the time.[11] The Insolvency law that governed the insolvency of companies was adopted from England which made it good but at the same time did not fully answer to the problems of the local companies in Uganda.

However, Uganda maintained its deep roots in British legal history, and to this day it continues to rely heavily on English common law and equitable doctrines in

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[9] Ibid

[10] Vanessa Finch, Is pari passu passé? Insolv. L.2000, 5(Oct), 194-210 at 194

[11] C. Nyombi, A. Kibandama, D.J. Bakibinga, The motivations behind the Uganda Insolvency Act 2011, [2014] Journal of Business Law, 656

conformation, section 14 of the Judicature Act provides that "in every cause or matter before the High Court, the rules of equity and the rules of common law shall be administered concurrently; and if there is a conflict or variance between the rules of equity and the rules of common law with reference to the same subject, the rules of equity shall prevail.[12] These laws of equity are not sufficient enough in the Insolvency practice, especially with the sharing of funds amongst debtors in the case of winding up.

Before the coming into force of the **Insolvency Act 2011,** the **Companies Act 1961** and the Bankruptcy Act 1931 were the statutory basis for insolvency laws in Uganda. For too long Uganda was struggling to free itself from the dominancy of the colonial rule and desired to take into consideration the aspiration and problems of the people of Uganda. By the time the Insolvency Act of 2011 was passed, insolvency laws in Uganda were over 80 years old and did not represent the commercialization and market developments that had intensified since the end of the Second World War.[13] The **Insolvency Act No.14 of 2011** (the Insolvency Act) though passed and assented to in 2011, only became law on the 1st July 2013 according to the Insolvency Act,2011 (Commencement) Instrument 2013[14]. The Companies Act of 2012 contains major corporate rescue provisions and must be understood to form an integral part of the Insolvency legal regime in Uganda. The Insolvency Act repealed the Bankruptcy Act 1931, the Deeds Arrangement Act and parts VI, VII, and IX of the Companies Act 1961.[15] Uganda is a common law jurisdiction and so that means a lot of cases are to be used to explain the principles of insolvency in Uganda and the doctrine of "**pari passu**" since the current insolvency regime in Uganda is barely a decade old and very few contentious insolvency issues have been handled.[16]

The problem which courts in the application of insolvency law are forcing is the interpretation of the Act and its doctrines. This court reasoned that in interpreting a

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[12] Section 14(4) of the Judicature Act, Cap 13
[13] C. Nyombi, A. Kibandama, D.J. Bakibinga, The motivations behind the Uganda Insolvency Act 2011, [2014] Journal of Business Law, 657
[14] Insolvency Act, 2011 (Commencement) Instrument 2013, Instrument No. 25
[15]Section 262of Insolvency Act, 2011
[16] Deus Mugabe, Mugabe on Insolvency Law in Uganda (First Edition 2022) Pg. 5

special statute, which is a self-contained code, the court must consider the intention of the Legislature. The reason for this fidelity towards the legislative intent is that the Statute has been enacted with a specific purpose, which must be measured from the wording of the statute strictly construed. The Insolvency Act and regulations made under the Act must be given the same treatment in order to achieve the intended purpose as was stated in the case **Ruth Sebatindira SC and Another v Lap Greenn Ltd and others.**[17] The case is about the interpretation of statutes where the Insolvency Act also is best in understanding doctrines like "pari passu" where courts are limited to either what the Insolvency Act states or relying on case law where mainly its common law hence being subjective. Courts rely mainly on common law and a statute which mostly have the same principles as England, yet there is a need to consider the interests and economic development differences between Uganda and England hence a problem of unbalance in the application of the Insolvency Act together with its principle of "pari passu".

The doctrine of "Pari passu" is a fundamental principle of English insolvency law and as well established in **Section 12 of the Insolvency Act**, which provides that the payment of preferential debtors is limited.[18] The doctrine entails that all unsecured creditors must share equally any available assets of the company in proportion to the debts due to all creditors.[19] Since the doctrine is encamped in set-off time, its effect is that a creditor who owes money to the company on a separate account may resort to self-help by setting off the debt due to him or her against his or her indebtedness to the company.[20] This payment of debts is what this entire write-up is against saying it's not conclusive, it's not as stated.

The Pari passu principle, however, can only apply to unencumbered assets of the insolvent company that are available for distribution.[21] So therefore, goods possessed

[17] Ruth Sebatindira SC & Another v. Lap Greenn Limited And others Misc Application No. 173 of 2017
[18] Insolvency Act 2011, Section 12(3)
[19] Re Virgin Active Holdings Ltd [2021] EWHC 1246 (Ch) per Snowden J at 106 to 108
[20] Goode on Principles of Corporate Insolvency Law, edited by Kristin Van Zwieten, 5th Student Edition, 2019, Sweet & Maxwell, Pg. 8-19
[21] Finch V, Milman D. The Context of Corporate Insolvency Law: Financial and Institutional. In: Corporate Insolvency Law: Perspectives and Principles. Cambridge University Press; 2017:53-54

by the company under the contract of sale that reserves title to the seller until completion of payment do not form part of the pool.[22]The pari passu rule therefore does not apply to them.[23] This doctrine as part of insolvency excludes assets held by the insolvent on trust.[24] This is the entire background as to why this study is entirely looking at reflecting on the doctrine of Pari passu in the insolvency law of Uganda.

So therefore, throughout this study, various cases, statutes, and regulations both within Uganda legislations and other jurisdiction laws were relied on but basically, the **Insolvency Act, 2011** of Uganda and the **Insolvency Regulations, 2013 (No. 36)** as for this research.

(iii) Statement of the Problem

The principles of Insolvency law and the handling of preferential and non-preferential debts are still considered new practices in Uganda. The understanding of the doctrine of "pari passu" and its dynamics remains controversial hence creating gaps in the insolvency application in company dissolution therefore problematic. According to the **Oxford Dictionary of Law**[25], "Pari passu" is a principle that states that where there are competing claimants, for example in insolvency and bankruptcy proceedings, assets are divided on an equal footing proportionally without preference.

The gap which is whether the law is fair and equitable to companies' creditors leaves a lot to be desired from the already existing legal framework, especially for creditors who invested in insolvent companies so the Insolvency Act, 2011 is desired from more solutions. The problem of companies taking on debts and calling upon different creditors to invest and lend huge sums of funds to the daily running of the company and at the end payment of the debts becomes a very big problem when pronounced insolvent regardless of whether being a secured creditor or unsecured is the source of

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[22] Vanessa Finch and David Milman, Corporate Insolvency Law, (2017) 3rd Edition, Cambridge University Press, at 512.
[23] Aluminium Industrie Vaasen BV v Romalpa Aluminium Ltd [1976] 1 WLR 676
[24] Vanessa Finch and David Milman, Corporate Insolvency Law, (2017) 3rd Edition, Cambridge University Press, at. 512
[25] Oxford Dictionary of Law, 7th Edition Pg. 850

the problem suffered during the application of “pari passu” insolvency proceedings to the creditors.

Under the Insolvency law of Uganda, after paying preferential debts under the law, the insolvency practitioner applies the remaining assets in satisfaction of all other claims. This reveals how non-secured creditors are considered after paying off the preferential creditors and the remaining assets of the insolvent company which is the debtor are then equally distributed amongst the non-secured creditors without considering which creditor funded the debtor first and as well not considering how much was credited into the company by whom.

Ideally, the claims referred to above rank equally among non-secured creditors and are paid in full unless the assets are insufficient to meet them, in which case they abate in equal proportions. That portrays the problem identified by this research through an argument that if creditors have invested money into a company in different time intervals and the amount invested is certainly known by both the creditors and the debtor, why then carry out equal distribution of assets of the debtor among the unsecured creditors without putting into consideration the fact that some credits came in first before others.

The law of equal distribution in the Insolvency practice of Uganda is unfair since creditors who invest in companies aiming at gaining a profit from their investments into a company so therefore when an unforeseeable occurrence of running insolvent happens, the fact that all creditors have right to the funds invested into the company at different time intervals, payments in full and considerable time should be the priority while refunding them. When a company runs insolvent, it does not remove the fact that some of its creditors had invested money into the company earlier before others so distributing the debtor company’s assets amongst the different creditors in a “Pari passu” system would be unfair in equity due to equal distribution of the remaining assets of the debtor when the assets cannot satisfy full payment of the creditors’ claims.

This research suggests that when a debtor is pronounced insolvent and their assets are meant to be distributed in satisfaction of the creditors' claims, "Pari passu" would be unfair but rather the principle of **"first in first out"** would work well since the debtor is indebted and full and timely payments were given to them by the creditors so therefore, the aspect of considering what credit fund came in first before the others should be highly considered when the debtor is pronounced insolvent and their assets are used in paying off their debts.

This research paper therefore analyses what the existing law on Insolvency in regards to the doctrine of "pari passu" can do and suggests how to cure the problem of settling off the debts of the insolvent debtor on an equal basis amongst the unsecured creditors without considering what came in first and last.

(iv)Objectives of the study

General objective

To critically analyze and assess the law relating to the 'pari passu' doctrine as enshrined in the insolvency law of Uganda.

Specific objectives

The specific objectives of the study are;-

1. To find out the law on the doctrine of pari passu in the insolvency proceedings of Uganda.
2. To critique the practice and applicability of the doctrine of pari passu in the insolvency law of Uganda.
3. To propose the different ways the insolvency laws and the legislation can improve to favour all creditors.

(v) Research Questions

1. What is the doctrine of pari passu in the insolvency law of Uganda?

2. What is the practicality and applicability of the doctrine of ‘pari passu’ in Uganda's insolvency law?
3. What measures can be done to better protect all creditors in Uganda’s insolvency law?

(vi) Scope of study

1) Subject scope

This research majorly focused on examining the law on Insolvency which is the Insolvency Act, 2011, Insolvency (Amendment) Act, 2022 and the Insolvency Regulations, 2013 and other related laws in other jurisdictions. This study keenly looks at why companies wind up due to debt burdens and during repayment of creditors by the insolvent company, who is considered first before the other and why should that be phased out. Why all the creditors shouldn’t be paid equally as per the ‘pari passu’ doctrine without considering preferential debts first and the government.

Since the company is already going through liquidation and the economic burdens might not be answered once the proceedings are done, so this research will suggest that such a company should pay all its creditors equally depending on the assets available and the demand per creditor. This practice will phase out the problem of nonpayment of unsecured, non-preferential debts yet they are also entitled to their payment. The Insolvency Act, in Section 13 provides for payment of non-preferential debts last, but if the assets are not enough, the preferential debts will consume all the payments and hence become problematic to the non-preferential creditors. This research depending on its findings, its recommendations will emphasize the change in the practice of the ‘pari passu’ doctrine, and show the need to adopt some changes in the Insolvency Act, 2011 as Amended.

2) Time-based Scope

This study is to focus on the period from 2011 when the Insolvency Act was enacted to 2023 and investigates the concept of the doctrine of parri passu.

3) Geographical Scope

This research shall be conducted in Uganda mainly in the central region.

(vii) Justification of the study

- To point out the loopholes and gaps in the application of the Insolvency law while undertaking 'pari passu' during winding up.
- To sensitize the reasons behind the enactment of the Insolvency Act, 2011, and the role of the Act during the winding up.
- To analyze the solutions available in the Insolvency law and case law while settling off debts by debtors.

(viii) Significance of the study

Since this research is focused on a legal topic which has an already existing law known as the Insolvency Act, 2011 as Amended, this shows the fact that insolvency law is a major aspect in the winding up of a company since companies have a number of creditors who finance their work. This research paper aims to review the implementation, effects, and impact of the insolvency law in line with the doctrine of 'pari passu' as companies, in the long run, become insolvent and insolvency proceedings have to commence on them. The study is focused on streamlining the effective use and relevance of the doctrine of 'pari passu' under the insolvency laws and fostering change in the application of the doctrine in a way that government and other preferential creditors are considered together with other creditors while setting off of a company.

(ix) Literature review

The doctrine of Pari passu according to **Ex p. Mackay (1873)**[26], in its original formulation, provided that a man is not allowed, by stipulation with a creditor, to provide for a different distribution of his effects in the event of bankruptcy from that which the law provides. Mellish L.J stated that a person cannot make it part of his contract that, in the event of bankruptcy, he is then to get some additional advantage which prevents the property from being distributed under the bankruptcy law.[27] This very principle applies the same way as stated in the holdings above, to the corporate companies. However much the doctrine stipulates as revealed above, some modifications have been made in the doctrine hence exceptions and other means of bypassing the rule. This research is not in any way different from associating with the modifications and changes as different writers have revealed that the doctrine is not equitably and fairly executing its mandate thus to think of other means like the one discussed in the research of "First in first out" rule which with equality can consider time and other factors while settling off debts of creditors in insolvency of a company.

The doctrine of 'Pari passu' comes in to mitigate the issue of preference amongst unsecured creditors by stating that all creditors be settled at an equal footing depending on the remaining assets of the debtor who is pronounced insolvent. In the book Goode on Principles of Corporate Insolvency Law, it was written that 'the pari passu rule is a fundamental principle of insolvency law with its main objective being that all creditors should participate in the common pool in proportion to the size of their admitted claim'.[28]

Vanessa Finch in her book wrote about the doctrine in summary 'In insolvency law, the principle of pari passu holds that where, in relation to preferential debts and ordinary debts, there is a shortfall between the totality of liabilities within the category of priority and the sum of money available to discharge these, debts of equal

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[26] Ex p. Mackay (1873) L.R 8 Ch. App 643 per James L.J at 647. For his part Mellish L.J stated (at 648)

[27] ibid

[28] Goode on Principles of Corporate Insolvency Law, edited by Kristin Van zwieten, 5th Student Edition, 2019, Sweet & Maxwell, at para 8-02

shall abate in equal proportions as between themselves'.[29] By virtue of possessing a lien on the debtor's assets, senior secured creditors must be paid in full and receive full recovery before the claims held by lower-priority creditor classes can be paid. That said, the pari passu clause is generally more relevant to lower priority claim holders, such as lenders of unsecured loans and bonds, because of the lower recovery rates.[30] The classification of claims is based on shared commonalities and interests. Once the claims are classified into groups, the ranking (and treatment of the consolidated claims) is determined by the Court and then applied to each distinct class, rather than to individual claims.[31]

The write up of **Vanessa Finch and that of Wharton & Wall** have a common response to what pari passu doctrine is and they both point out the same way so the rest of the writers have that the settlement of the debt by the liquidator of the debtor, while applying the principles of pari passu the secured preferential creditors are recognized first for payment and the rest who are non -preferential come in for the principle to be applied on them, sharing from the assets of the debtor on equal footing which this research proposes to challenge. The pari passu rule of distribution underpins other insolvency rules relating to proof of debts.[32] In **Wight v Eckhart Marine GmbH**,[33] **Lord Hoffman** held that the general rule that the claims are to be valued as at the date of commencement of the winding-up was designed to ensure that the assets are distributed in pari passu.

Oliver J explained in **Re Dynamics Corp of America[34]**, that purpose of the rule that debts are valued at the date of winding up is to give effect to the principle of pari passu distribution. It is a principle of fairness between creditors; so she stressed further that 'It is only in this way that a rateable or pari passu distribution of available property can be achieved, and it is, as I see it, axiomatic that the claims of

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[29] Vanessa Finch, Is pari passu passé? Insolvency law. 2000, 5(Oct), 194-210 at 194
[30]Wharton &Wall, 'Step-by Step Guide to Understanding Pari passu' (2023)<https://www.wallstreetprep.com>knoweled ge>pari-passu
[31] Ibid
[32] Goode on Principles of Corporate Insolvency law, edited by Kristin Van Zwieten, 5th Student Edition, 2019, Sweet & Maxwell, para 8-15.
[33] Wight v Eckhart Marine GmbH [2003] UKPC 37
[34] Re Dynamics Corp of America [1976] 2 All ER 669 at 675, [1976] 1 WLR 757 at 764

creditors amongst whom the division is to be effected must all be crystallized at the same date … for otherwise one is not comparing like with like'. This stating by court is to the effect that the doctrine is very vital and should be handled in a more serious manner in that all the creditors are looking at gaining from the assets of the debtor so it should be carried out there and then during winding up. So if it so has to be done like that issues about the best way of handling the assets under pari passu, should be disposing them for the benefit of all, preferential and non –preferential creditors. Within the principle of pari passu, there is the development of the **hotchpot rule**, which reflects the principle that the assets of a company in liquidation, after provision for liquidation expense and preferential debts are divided pari passu.[35]

In **Cleaver v Delta American Reinsurance Co[36], Lord Scott** held that the wellspring of the hotchpot rule is the need to ensure that the assets of liquidation are, subject to prior claims such as liquidation expenses, preferential debts etc., divided pari passu among the unsecured creditors. If any of them obtains a share of the liquidation assets by participating in a distribution of liquidation assets in a foreign liquidation, that share must be brought into account before a dividend in the English liquidation can be claimed.

There is no example to which their Lordships have been referred of any application of the hotchpot rule for any other purpose than that. Nor should that be a surprise.[37] The rule against double proof is a particular application of the principle that the debtor's assets are to be applied in payment to its creditors in pari passu.[38] And in the case of **Barclays Bank Ltd v. T.O.S.G Trust Fund Ltd**,[39] **Lord Oliver** held that the rule against double proof has nothing to say upon the question of which of two proving creditors has the better right to claim a dividend in respect of his debt. It bears merely upon the question of whether both are to be admitted for dividend and stems

[35] Goode on Principles of Corporate Insolvency Law, edited by Kristin Van Zwieten, 5th Student Edition, 2019, Sweet &Maxwell, at para 8-15.
[36] Cleaver v Delta American Reinsurance Co [2001] UKPC 6, [2001] 2 WLR 1202, 58 WIR 123.
[37] Deus Mugabe, Mugabe on Insolvency Law in Uganda (First Edition 2022) Pg. 50
[38] Goode on Principles of Corporate Insolvency Law, edited by Kristin Van Zwieten, 5th Student Edition, 2019, Sweet &Maxwell, para 8-15.
[39] Barclays Bank Ltd v T.O.S.G Trust Fund Ltd [1984] AC 626, [1984] 1 All ER 1060

from the fundamental rule of all insolvency administration that, subject to certain statutory priorities, the debtor's available assets are to be applied pari passu in discharge of the debtor's liabilities. In my own view the judge's submission is in line with this research because I'm standing for the fact that all debt liabilities of the debtor are the same, so let the assets of the debtor in fulfillment of the pari passu rule, include all creditors whether preferential or non-preferential.

The equal footing principle in pari passu should apply to all at once without some being considered before others. Therefore, scholars have some of the arrangement that flout the pari passu rule which include an undertaking by the debtor to give the creditor additional security in the event of the debtor's insolvency.[40] Another arrangement that offends the pari passu rule is a contractual provision for set off of claims by third parties against a debt owed to the debtor. This is because set-off is limited to mutual claims and to allow third-party set-off would be to subvert the fundamental principle of pari passu distribution.[41] The doctrine of pari passu according to **Roy Goode** in his book noted above, that the doctrine is affected to be practiced fully as it is, because of debtors additional security offered by the debtors to the creditors and also undertakings of setting off third-party debts, so this has a legal implementation on the legal aspect that if so the doctrine is to be practiced, all debts whether secured with securities or not should all be subjected to the doctrine since the doctrine aims at equity and fairness since all creditors are entitled to the debt repayment.

However, writers have come up with exceptions to the general rule of pari passu, **Mugabe** in his book states that the limitations are not necessarily exceptions, some are truly exceptions and others are merely mechanisms by which parties can bypass the pari passu rule.[42] **Roy Goode** stated: False exceptions to the pari passu, the distribution of assets in the doctrine does not apply to the rights of secured creditors, suppliers of goods under agreements reserving title or creditors for whom the

[40] Ibid, para 8-14
[41] Ibid, para 8- 13
[42] Deus Mugabe, Mugabe on Insolvency Law in Uganda (First Edition 2022) Pg. 51

company holds assets on trust. However, this is not because these are exceptions to the rule, but because such assets do not belong to the company and thus do not fall to be distributed among creditors on any basis…. The true exceptions to the pari passu as per Roy Goode are many and they fall broadly into four categories; rights which are analogous to security, such as set-off; claims that in the distribution of dividends are given preferential treatment over ordinary unsecured debts, such as various kinds of claim by employees; claims which are deferred, ranking below those of the general body of creditors; and other departures from the pari passu doctrine expressly or implicitly authorized by statutes or by principles of equity.[43] The legal applications and the writings about the pari passu still show the gap that while settling all debts of a debtor, the rule still has priorities and so many times debts considered to be settled by the surplus assets of the debtor company are always not sufficient to the unsecured/non-preferential creditors to the liquidated debtor.

In conclusion, the authors Roy Goode, Mugabe, and others as shown above do not provide a solution or write about the need to settle the debts of a debtor all, but one at a ago depending on the “first in first out” rule if pari passu is to be fairly and equitably applied. This research is aimed at identifying and analyzing if there is a solution to curb the waiting of non-preferential creditors while winding up and settling last after the preferential creditors yet both secured and unsecured debts are used by the debtor while the running of the company before liquidation.

(x) Methodology

1) Introduction

This study adopted a qualitative method of research. The research paper is concerned with the analysis of the pari passu doctrine in the insolvency laws of Uganda. It mainly intends to investigate how the doctrine in Uganda is practised and whether it meets the desires of the companies and individuals who lend to debtors as creditors, and if

[43] Goode on principles of Corporate Insolvency law, edited by Kristin Van Zwieten, 5th Student Edition, 2019, Sweet & Maxwell, at para 8-18 and the authority cited therein.

so the debt burden moves after the pari passu. This reveals that such issues are best investigated through qualitative methods as a methodology. This method is aimed to establish the point of view of the different writers since its desk review especially in a more reflective way and as well it will provide a detailed description. The qualitative research methodology will strongly equip with an understanding of the challenges associated with the pari passu. Therefore, this research study shall show the area of the study, the research design, and the data collection as it shall be analyzed.

2) Area of Study, Population

The study shall be conducted in Uganda and the population will be company owners and the creditors to companies. The reason for conducting this research through companies and debtors or creditors is because it's very people who are entitled to dividends and in case of liquidation, those are the very people affected while winding up and the assets of the debtor distributions. These very own companies suffer on how to survive though due to the law enforcement, the company can be an area of concentration during this research.

3) Research design

The researcher used several sources of data collection and analyzing the data which included the use of textbooks, articles, journals, the internet, statutes, case law and other laws which are very vital in explaining the doctrine of pari passu in Uganda. The citations and authorities used in data collection are both legislations from Uganda, and other statutes from other countries hence the research topic with an overview of the doctrine of pari passu in Uganda.

4) Data collection and analysis

The researcher obtained his data through secondary data collection methods about the topic of the study so that he acquires the most necessary information and data relating to the topic of study. The data was obtained from mainly published books and the accepted laws concerning the topic of the study. Unpublished books, reports, journals, articles from newspapers and material like statutes very relevant to the research were considered for use. In regards to the qualitative analysis, content

analysis techniques were considered for use in describing the data. Through reading and analyzing existing documents, books and other necessary material, the researcher was able to draw data by analyzing the content therein since it requires an analysis to respond to the research topic. The findings from the reading and analysis of different documents are then linked to the objectives of this research to generate meaning for the topic of study.

(xi) Chapter synopsis

This study is structured in four major chapters which are aimed at guiding the reader on a systematic understanding of the reason and knowledge for the research. This gives the reader an oversight as to why this research was conducted and the need to read each chapter connecting to the other.

Chapter One; gives an introduction and background of the study and describes the problem which the study intends to answer known as the problem statement. The chapter further gives the objectives of the study and outlines the specific objectives as well, the research questions intended to be answered through the research, and an overview of the scope of the study for example the time scope. Justifications and significance of the study are also revealed in chapter one, the literature review and the methodology used for the study.

Chapter two; focuses on the understanding of how the insolvency doctrine of pari pasu is described in Uganda and its mode of operation. It focuses on the gaps, challenges, and general causes of insolvency in Uganda. Provide the non-legal regime or issues in regard to the insolvency impact and challenges on companies and their creditors as per its regulatory provisions.

Chapter three; defines Insolvency and gives an understanding of pari passu as a doctrine. It will go ahead and give the legal regime governing the insolvency practice and its principle of pari passu, and an analysis of the international, regional and domestic perspectives and applications of insolvency. The Insolvency Act, 2011 as

Amended critically analyzed its regulations and the case laws which have set precedents in line with the insolvency and the pari passu.

Chapter four; mainly looks at the findings of the study, the conclusions, and recommendations aimed at solving the gaps identified in the research study.

CHAPTER TWO

THE THIN LINE BETWEEN SOLVENCY AND INSOLVENCY

Introduction

This chapter focuses on the non-legal regime, whereby the researcher looks at the reasons why people become bankrupt and why companies become insolvent. Insolvency proceedings are only applied to companies and individuals who run out of funds to settle their debts. This chapter focuses on the understanding of how the insolvency doctrine of pari pasu is described in Uganda and its mode of operation. It focuses on the gaps, challenges, and general causes of running insolvent in Uganda. Provide the non-legal regime or issues in regard to the insolvency impact and challenges on companies and their creditors as per its regulatory provisions.

Potential causes of corporate and individual insolvency in Uganda

"Common reasons why people file for bankruptcy include loss of income, high medical expenses, an unaffordable mortgage, spending beyond their means, or lending money to loved ones. Often, bankruptcy is a result of several of these factors combined." [44] Below are some of the recognized reasons according to different researchers why people run bankrupt and some end up announcing themselves as bankrupt.

Loss of Income; - Losing a job and a source of regular income can cause significant financial strain, especially if your wages are already stretched thin. A September 2023 survey found that 78% of Americans live paycheck to paycheck.[45] Losing your work can also mean losing your health insurance, making one especially vulnerable to high medical bills unless they can find other alternative insurance in the meantime. This has resulted in many becoming bankrupt in Uganda and others end up having insolvency proceedings applied to them.

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[44] Mark P. Cussen. Top 5 Reasons why People Go Bankrupt, updated Aprill 11, 2024.

[45] PayrollOrg. "2023 'Getting Paid In America' Survey., https://info.payroll.org/pdfs/npw/2023_Getting_Paid_In_America_survey_results.pdf,"Page2.

Medical Expenses; - Medical expenses are another major factor contributing to bankruptcy. Medical problems can also lead to joblessness in some situations. For example in circumstances where one has lost a job and insurance, and then suffers a medical catastrophe, one in such a scenario could also face financial strain.

There are several programs intended to ensure people who lose their jobs keep their health insurance. The Consolidated Omnibus Budget Reconciliation Act is a federal law that allows many laid-off workers to stay on their ex-employer's insurance plan for a period of time. However, COBRA requires the employee to pay both their share and their employer's former share of the insurance cost, plus an administrative fee, making it unaffordable for many people, especially when they're out of work.[46] The arrangement by the Consolidated Omnibus Budget Reconciliation Act applies in the American setting on jobs, and countries like Uganda which are still developing have no such arrangements and in case one is bankrupt, there and then they can't clear off their debts and insolvency proceedings apply on them without any favor of health insurance.

Unaffordable Mortgage/Foreclosure;- Home mortgages are typically the largest portion of household debt in the United States, far surpassing credit cards, car loans, student debt, and all other categories. At the end of the fourth quarter of 2023, according to the Federal Reserve Bank of New York, housing-related debt, which includes both mortgages and home-equity lines of credit, topped $12.61 trillion and accounted for approximately 72% of household debt in the U.S.[47] Lenders sometimes approve a buyer for a larger loan than they can afford to pay. People who accept these loans are always at risk of losing their estates and homes to foreclosure if they fail to complete payments. They may also lose their jobs or face some other financial constraints in the long run after failure to pay off debts earned in terms of house mortgages. In Uganda, debtors who get loans to buy homes and also acquire estates in different property consultants' companies, face challenges of paying back those

[46] U.S. Department of labor. "Continuation of Health Coverage, https://www.dol.gov/genral/topic/health-plans/cobra."

[47] Federal Reserve Bank of New York. "Household Debt and Credit Report, https://www.newyorkfed.org/microeconomics/hhdc.html,"

loans hence ending up bankrupt due to the fact that they took on loans that are way beyond what they can pay for.

Some mortgages have adjustable rates, which mean the homeowner's monthly payments can rise if interest rates rise. If a borrower suddenly faces a higher mortgage payment that they cannot afford to pay, they may be forced to file for bankruptcy.[48] The problem of unrealistic loans has highly contributed to the high rates of running bankruptcy in Uganda. Loans that individuals and companies get without considering whether the payment terms are really favorable or not have led to bankruptcy and insolvency. Such kind of mortgages and loans lead individuals and companies into insolvency because of miscalculations while acquiring the loans. There is a high level of illiteracy amongst many Ugandans as even those who have studied don't pay attentions to reading and analysing terms and conditions. This has affected so many by ending up in miscalculated loans which lead many into bankruptcy.

Overspending; - Overspending resulting into living beyond ones' means can quickly result in unmanageable debt. If a borrower maxes out their credit cards by buying unnecessary items, and then cannot afford to make the minimum monthly payments, they can see their debt quickly rising with interest costs. Overspending in Uganda results from luck of budgeting and accountability due to the fact that people don't know how much they need to survive on and even where there is a business, one who doesn't keep records ends up not certain about their expenditure and gross income so the balance-sheet ends up in defects due to the fact that the business overspends without records and proper plan.

To minimize the risk of overspending, create a budget that ensures income is greater than expenses. One can also work towards saving an emergency fund from their monthly earnings so that when financial constraints come there is a fund to save them through the season. This can help in covering unexpected expenses without

[48] Mark P. Cussen. www.investopedia.com.April 29, 2024

having to go into indebtedness.[49] Being bankrupt is a challenging position and individuals who go into bankruptcy can't even hold some political positions due to that situation and then also share the debtor's estate and assets on a "pari passu" which is on a basis of equal distribution of the assets amongst the unsecured creditors to the debtor. So therefore if one can avoid ending up in such a position, they can do all it takes to get themselves from such catastrophe.

Providing Financial Assistance and over dependence; - Sometimes, the need to provide assistance to relatives and friends can be a factor in contributing to a situation that leads someone into becoming bankrupt. Whether they are providing support to adult children or aging parents, some people may find it difficult to decline financial assistance to a family member in need.[50] In Africa especially Uganda, there is a high level of dependence as family and clan members can all decide to depend on this one financially stable family member for survival in regards to education fees, building homesteads, start-up capital funds and many other expenses are lied on those financially stable family members. This has left many indebted to banks, money lending agencies, friends and many other institutions so that they can raise funds to keep up with the family support system. And when such an individual is indebted, they can never be supported by the family members because no one having such funds to cater for the loans. Such individuals cannot survive insolvency proceedings like pari passu from applying on them hence loss of assets, estates and becoming bankrupt.

High student loan debts; - Although student loan debt is difficult to discharge in bankruptcy, it's not impossible. A new policy introduced in 2022 has made discharging federal student loans easier through a process called an adversary proceeding, which establishes that paying the loans may result in undue hardship.[51] There are a number

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[49] Consumer Financial Protection Bureau. "An Essential Guide to Building an Emergency Fund, https://www.consumerfinance.gov/an-essential-guide-to-building-an-emergency-fund/."
[50] Mark P. Cussen. www.investopedia.com.April 29, 2024
[51] United States Bankruptcy Court: Central District of California. "Student Loan Discharge Adversary Proceeding, Special Rules, https://www.cacb.uscourts.gov/the-central-guide/student-loan-dischage-adversary-proceeding-special-service-rules."

of offered loans to students to study for example loans from banks, loans from governments, and also from money lending agencies and investments which can decide to lend one funds which can take such an individual from O-level Ugandan system of learning to university level so as to have this student pay bank when they get their first job, and due to economic constraints caused to high levels of unemployment, the students end up failing and indebted to such money lenders and banks. Government loans are paid off by such students being employed by government and payment of the loans is considered through reducing a certain percentage of funds from that former student's monthly salary in acknowledgment of the student loan that was extended to him/her during their time of study.

Some borrowers may end up bankrupt in order to eradicate other debt so they can afford their student loan payments. Other people may face financial strain as a result of divorce or separation, which can be costly due to legal fees.[52] Legal proceedings and cases in courts take long in Uganda especially cases that end up in High Court due to the fact that there is high level of corruption and bribery so that there is delayed justice. And this causes gaps in the legal regime hence escalating expenses in the legal dispensation of cases. These kind of cases have led to high number of such litigates end up indebted and bankruptcy proceedings are conducted on them since bribery and corruption has caused the financial constraints to them.

Potential causes of corporate insolvency; - The first commonly noted reason is cash flow problems; **-** One may need help with receivables, high expenses, or poor financial management, making it challenging to meet the business' financial obligations.[53] The failure to balance the cash inflow in the business has seen many businesses and companies pronounced insolvent due to failure to handle the cash in-flows and out-flows. Funds come into the business but if the business is not well balanced by its managers, it will suffer cash flow problems hence failure to thrive in its development and profit gains.

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[52] Supra

[53] Business bankruptcy: Essential Insights & Strategies. https://www.allianz-trade.com/en_US/insights/business-bankruptcy.html#:~:accessed on April 30, 2024

Excessive debt: - Too much debt can strain one's business and companies, making it difficult to repay loans or interest payments. Business owners don't wait to see their businesses grow through the test of time so issues like over-borrowing to feed the capital rate end up becoming problematic hence causing increased capital but less sales in the company, resulting in losses due to bad debts, losses due to expiration of business commodities therefore running insolvent and bankrupt where it's a single person running the business. Debts that are merging from different creditors are always very difficult to settle due to some being attached to securities and others attached to different business assets hence resulting in challenges while clearing such debts. This finds many businesses indebted and cannot run away from the debts hence being pronounced insolvent that they cannot pay off their debts with the funds they have as a company or business hence facing insolvency proceedings.

Insufficient capital: - Underestimating the startup costs or the funds required to sustain the business can eventually lead to bankruptcy unless you can secure additional financing.[54] Business are encouraged to start small but so many businesses are started on insufficiency, the business owners think of running their business and due to different advices and copycatting, many start-up businesses but without having a reasonable comprehensive thought on the financial requirements and demands hence causing challenges while the business is just on its stage of thriving and starting level. Therefore such businesses and companies are found insolvent and cannot continue with operations but rather closed due to financial miscalculations.

Operational Issues; - Operational inefficiencies and poor management decisions can significantly impact a business's financial health.[55]This looks at matters concerning how the business is operates in regards to the handling of the affairs of the business while dealing with all aspects of the business for example integrity of the workers which is a vital key role player since where there is no integrity, even the financial stability of the business will highly be affected hence contributing to such a business running insolvent.

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[54] Ibid

[55] ibid

Business management; - Inadequate planning, decision-making, or leadership can lead to the downfall of your business. Businesses have to be well planned and thought of in order to thrive without facing challenges of becoming insolvent. If the management of the business is poorly conducted it results into collapsing of that business due to mismanagement. The top management of the business must be in connection and good relationship with the rest of the other managerial bodies but where this is not, decision making can be affected in regards to compliance with the decisions hence affecting the business into issues of becoming bankrupt since financial decisions as well are affected.

Market saturation also results into running insolvent as a business; - Operating in an overly competitive market can make it difficult for your business to gain a significant market share or generate enough profits to stay afloat like others it competes with.[56] The market space is always competitive and requires a dynamic business which is willing to cope up with the different changes that always come in the market place to survive and thrive without a lot of difficult. Businesses that fail to cope up with the system and the momentum end up pronounced insolvent because debts are always in such a business and its chances of becoming insolvent due to failure to pay off its debts. The failure to know and being involved in the changing dynamics of business inter play has seen off different businesses insolvent because the cash flow automatically is unstable to such a business. So market saturation is key in the affairs of the business running less it's recognized the more it has affected businesses.

Dealing in outdated products or services; - Failing to keep up with changing consumer demands and trends can lead to a gradual decline in sales and, ultimately, bankruptcy.[57] So many businesses in Uganda run bankrupt because of not being updated. Investors can come up to fund such a business to see to it that they are supported financially and this financial support is in form of debts from money lenders, investment loans from banks, financial support from different sources like relates and friends. So in such a business due to its not being updated and its services

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[56] ibid
[57] Ibid

being archaic, the world which is full of technology and updated system of operation will not favor such a business hence ending up indebted to different investors who pull funds into the business hence applying insolvency proceedings on such a business. The number one reason for starting up a business is to make profits and grow the income capacity of those that inject funds into that particular business, so the creditors to such outdated and failing business always run to insolvency proceedings so as to at least gain back their investments. So failure to update the business can result in failure to pay off debts hence running insolvent which comes with the inability to pay off debts.

External factors beyond one's control can also lead to business bankruptcy and these factors can include economic downturns which may be explained as a recession or economic slowdown which can impact consumer spending, affecting business revenue and profitability.[58] This effect can be an instance in a way that non-profitability results in the ineffectiveness of the business hence getting into situations of being indebted and in the long run unable to clear off business loans by that business.

Government regulations and policies: - Changes in laws or regulations could impact how you operate your business, increasing costs or reducing profit margins. In Uganda we have the Insolvency Act, 2011, The Insolvency Regulations, 2013 among other laws which are being amended every other time to foster changes in the government revenue earnings and the tax base hence constraining to those that run business and companies. Whenever governments change or where there is change in the existing laws and regulations, there is also need to sensitize the business people and if one is not updated to the changes, one ends up in high losses which may result from borrowing to run the business as it has always been run. So this has seen many companies and businesses run insolvent.

Natural disasters: - Unforeseen events such as floods, hurricanes, or pandemics like Covid19 can significantly disrupt one's business operations and lead to bankruptcy if

[58] Ibid

they were not found adequately prepared.[59] This kind of catastrophe is unforeseeable so when it so happens to a business, it's a set back to that business and due to the fact that so many businesses operate on loans, when unforeseeable action occurs, the business owner remains without option but to have insolvency proceedings carried out on them in order to pay off their debts. COVID-19 effects are still suffered in Uganda and the whole world so some companies and businesses haven't yet recovered from their debt burdens hence the effects of some ending up being pronounced insolvent due to their failure to clear off their debts.

The other reason why companies become insolvent is overtrading, which is a phenomenon in which a business engages in excessive trading activities that exceed its capacity to handle them. It occurs when a company's sales grow rapidly; leading to increased orders, but the business does not have the necessary funds and strength to handle the increased demand. Overtrading can be a major cause of business insolvency, and it is a warning sign that a company may be in financial distress. One of the primary reasons overtrading can lead to insolvency is that it often results in a cash flow crisis. As a business takes on more orders, it may need to purchase additional inventory or raw materials, hire more staff, or invest in new equipment.[60]

However, if the company does not have the necessary funds to make these investments, it may be forced to borrow money or delay payments to suppliers. This delay technique is aimed at buying time to survive being insolvent but in the long run the business could be in position where it cannot withstand the delay but rather allow that insolvency actions be carried out on the business so that the debt burden at least is cleared. This is a step of allowing that now the company can no longer handle its debts.

Legal disputes can also be a significant cause of business insolvency. Disputes can arise from a variety of sources, including breach of contract, intellectual property disputes, employee disputes, and regulatory issues. Legal disputes can be costly and

[59] ibid

[60] BMS Auditing Chartered Accountants'. 10 Causes of business Insolvency. https://www.bmsauditing.com/blogs/causes-of-business-insolvency#:~: Accessed on May 1, 2024

time-consuming, diverting resources away from core business activities. In some cases, legal disputes can result in substantial damages or compensation claims that can put significant financial pressure on a business.[61] Legal disputes whether in arbitration courts or normal court hearings can both be extrinsic in nature because of the expenses and movements involved in legal disputes. In addition to the financial impact, legal disputes can also damage a company's reputation, affecting customer confidence and potentially leading to a loss of business.

Fraud and embezzlement can be a significant cause of business insolvency. Fraud refers to intentional deception or misrepresentation of financial information or other business activities, while embezzlement refers to the misappropriation of funds or assets by an employee or other trusted individual. Fraud and embezzlement can have a severe impact on a company's financial position, often leading to significant financial losses. In some cases, fraud or embezzlement can be ongoing for a significant period before it is detected, further exacerbating the financial impact. Fraud and embezzlement can also damage a company's reputation, leading to a loss of customer confidence and potential legal action from affected parties.[62] This can result into that company run into serious position of bankruptcy and insolvency due to loss of customers.

Competition is also significant in causing business insolvency. In today's global marketplace, businesses face increasing competition from both domestic and international competitors, which can lead to decreased sales and revenue. Competition can be particularly challenging for small businesses that may not have the resources to compete with larger or more established rivals. New entrants into a market can also disrupt existing business models, further impacting profitability and viability.[63] Competition since cannot be overcome in the marketplace so it cannot be cut off but dealt with in a more specific and wise way and failure to keep up in the competition leads to failure to thrive in the business world hence resulting to borrowing beyond what the company can account for and use, this has led to many of

[61] ibid
[62] ibid
[63] ibid

such companies becoming insolvent due overdrafts and loans which cannot be paid back to the creditors.

To mitigate the impact of competition on business insolvency, businesses need to have a clear understanding of their market and competitive landscape. This includes conducting market research and analysis to identify emerging trends and potential threats.

Conclusion

This chapter was intended by the research to bring out an oversight as to why people and companies become bankrupt and insolvent. Most of the outlined and explained points show reasons why individuals whether corporate or natural human beings end up in a position where the assets and funds at hand cannot cater for their debts hence referred to individual declaration of bankruptcy or insolvency proceedings are carried out on such people to pay off the debts of the creditors. This process carries for applying doctrines like pari passu on such debtor in order to pay both secured and unsecured creditors. The reasons research above has also revealed that people and companies sometimes end up bankrupt and insolvent without their involvement in the catastrophe for example natural causes like floods, draught among others and pandemics for example Covid19 pandemic which broke out in 2020 to 2022 in Uganda caused a lot of setbacks in the business sphere in Uganda as some people and companies are still insolvent.

CHAPTER THREE
THE UGANDA INSOLVENCY LEGAL REGIME

Introduction

This chapter discusses the legal regime of the insolvency law and how one gets into a situation of being insolvent. It analyzes the insolvency doctrine of “parri passu”, what amounts to getting insolvent and how different debts are handled starting from preferential and non-preferential debts. The aspect of settlement of debts when a debtor is pronounced insolvent and the assets being to the debtor are meant to be shared amongst the creditors. The chapter also gives a detailed overview of the insolvency laws critically looking into the Insolvency Act, 2011 and its Amendment and the Insolvency Regulations, 2013. The laws are analyzed in line with the case laws both international and nationally decided cases in agreement with the principles of insolvency and how debt repayment is dealt with when a debtor is said to be insolvent.

The Legal Regime on the analysis of the doctrine of parri passu in insolvency law.

The situation of ending up in insolvency proceedings and bankruptcy comes into existence due to the inability to pay debts. **Section 3 of the Insolvency Act**[64], provides that a debtor is presumed to be unable to pay their debts if; - the debtor has failed to comply with a statutory demand, the execution issued against the debtor in respect of a judgment debt has been returned unsatisfied in whole or in part, or all or substantially all the property of the debtor is in the possession or control of a receiver or some other person enforcing a charge over that property. When a company or an individual is said to be under the category mentioned above, they are presumed to be unable to pay their debts yet it’s a legal obligation to pay off debts. The creditor according to **Section 4 of the Insolvency Act**[65], makes a demand notice and shall constitute a statutory demand which shall be made in respect of a debt that is not less than the prescribed amount and in the case of a debt owed by an individual is a

[64] Section 3 of the Insolvency Act, 2011
[65] Section 4 of the Insolvency Act, 2011

judgment debtor or a company is an ascertained debt, but need not be judgment debt. The statutory demand shall be in the prescribed form, except where the debt is a judgment debt, be verified by statutory declaration attached to the demand.

Section 11 of the Insolvency Act[66] provides for the special treatment of the secured creditors in that such a creditor as soon as practicable after public notice has been given of the liquidation or bankruptcy, deliver to the liquidator or trustee written notice of any debt secured by a charge over any asset, including particulars of the asset subject to the charge and the amount secured. **Section 10** of the Act is in a position that the unsecured creditors wait for the settlement of the debts of the secured creditors and the liquidator or trustee may admit or reject any claim in whole or in part. So there is a difference in dealing with both creditors according to the law. Since a debtor is under an obligation to pay off his debts, it creates a contract between the debtor and the creditors and any alteration of the agreements is a breach of contract hence compensation to the creditors.[67]

In the case of **Haji Asadu Lutale v. Michael Ssegawa**[68] it's stated that "a breaking of the obligation which a contract imposes, which confers a right of action for damages on the injured party. It also entitles him to treat the contract as discharged if the other party renounces the contract or makes performances impossible, or totally or substantially fails to perform his promise". This doesn't change the application of the law in Insolvency, therefore one under "Parri passu" has to comply, and the doctrine requires one to first wait for the court to pay off government if the insolvent company is also indebted to the government and then the equal distribution of the assets of debtor among other creditors will then be effected. This is where the problem of this study is based in a way that both creditors should be treated equally whether preferential or non-preferential creditors. **Section 12 of the Insolvency Act**, provides that "preferential debts shall so far as the assets are insufficient to them, have priority over the claims of secured creditors in respect of assets, which are subject to

[66] Section 11 of the Insolvency Act, 2011
[67] Section 62 Contracts Act, 2010
[68] Haji Asadu Lutale v. Michael Ssegawa HCT OO-CC-CS-292-2006

security interest; and become subject to that security interest by reason of its application to certain existing assets of the grantor and those of its future assets which were after-acquired property or proceeds and shall be paid accordingly out of those assets".[69] **Section 12(4) and (5) of the Insolvency Act** list the preferential debts for example first to be paid shall be, remuneration and expenses properly incurred by the liquidator or trustee, any receiver's or provisional administrator's indemnity under **Sections 159 or 187**. Section 12 (5) provides those that are to be considered second amongst the preferential debts following those mentioned for example all wages or basic salary among other payments listed in the subsection.[70]

Section 13 of the Insolvency Act, states that after paying preferential debts in accordance with section 12, the liquidator or trustee shall apply the assets in satisfaction of other claims.[71] This section provides for payment of creditors who are not secured and hence considered non-preferential according to the Act. This contradicts the laws that govern contracts since the entire creditors and the debtor are in a contract hence the law should not intervene while settling creditor's estates from the insolvent debtor.

The doctrine of "pari passu" should be applied as fairly and equally as it can be done without considering settling others before the rest. This forms the biggest reason for this study. In the case of **Barclays Bank Ltd v. T.O.S.G Trust Ltd**[72], Lord Oliver held that the rule against double proof has nothing to say upon the question of which of the two proving creditors has the better right to claim a dividend in respect of his debt, and subject to certain statutory priorities, the debtor's available assets are to be applied 'pari passu' in the discharge of the debtor's liabilities. The holding above provides the problem of double proof and the preferential issues can get into play in such a scenario pointing us to **Section 14 of the Insolvency Act** which provides that the liquidator must distribute the company's surplus assets in accordance with the memorandum and articles of association of the company and the **Company Act,**

[69] Section 12(2) of Insolvency Act ,2011
[70] Ibid
[71] Section 13 of Insolvency Act, 2011
[72] Barclays Bank Ltd v. T.O.S.G Trust Fund Ltd [1984] AC 626, [1984] 1 All ER 1060

2012.[73]Yet it's very rarely the case that there is a surplus hence the study of the doctrine of 'pari passu' in Uganda since the Insolvency Act as amended is showing some gaps which this study has seen as a problem to be resolved. This study aims at enhancing the already existing knowledge and law based on Insolvency and proposes measures that can be implemented to address this gap.

Insolvency comes as an inability to pay off debts and the result of not having enough cash when you need it. To any insolvency advisor, cash is king. Without getting too technical, insolvency is defined by two kinds of tests; the inability to pay debts as and when they fall due known as 'the cash flow test' and or the moment at which liabilities exceed the value of assets known as 'balance sheet test'.[74] Insolvency is the condition of an insolvent person, inability to pay one's debts; lack of means to pay one's debt.[75] In other words, such condition of a man's assets and liabilities when all availed at once, cannot be sufficient to dispose of equally. The debt burden is more compared to the assets and capital at hand. In the **case of Dewey v. St. Albans Trust Co**[76], it was stated that Insolvency is a condition of a person who is unable to pay his debts as they fall due or in the usual course of trade and business. Generally, insolvency means the inability to pay one's debt.[77]

Therefore, one must appreciate what it means for a debtor to fail to pay his or her debts for insolvency purposes.[78] The law states that insolvency happens due to the inability to pay debts but if it's like that, then matters to do with disposing of the debtor's assets should be done in a way that the creditors are all paid equally without distinguishing another that such a person is a preferential creditor and the other is a non-preferential who are considered paid last per payment of insolvency under the provision of the Act. The Insolvency Act in its Amendments amends the provision on

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[73] Section 14 of Insolvency Act, 2011.
[74] Corporate Insolvency (2004), Andrew McTear, Chris Williams, Frank Brumby & Rosey Border, Cavendish Publishing limited, 1st edition p. 8
[75] Black's Law Dictionary, 2nd edition
[76] Dewey v. St. Albans Trust Co., 56 Vt. 475. 48 Am. Rep. 803
[77] Goode on Principles of Corporate Insolvency Law, edited by Kristin Van Zwieten, 5th Student Edition, 2019, Sweet &Maxwell, para 1- 20.
[78] Deus Mugabe, Mugabe on Insolvency Law in Uganda (First Edition 2022) p. 12

mutual debts and set-off to limit a creditor's right to set-off to only the amount that he or she would be entitled to receive insolvency proceedings in accordance with the **Insolvency Act, Section 12.**[79] Deus Mugabe in his book Mugabe on Insolvency Law in Uganda, states that the Insolvency Amendments seek to provide for prioritization of the payment of secured creditors over other preferential debts to conform to international best practices.[80] This brings us to the fact that Insolvency law seeks to consider secured creditors first while paying them their debt and those who are not secured known as non-preferential creditors are considered second. Hence the gap created in the balance of equality.

In the case of **Pepper v. Litton**[81], the court held that in applying the parri passu doctrine, the court has the power to ensure that that substance does not give way to form and that technical consideration does not prevent substantial justice from being done. The major problem the researcher found is from the case of **Uganda Telecom Ltd & others v. Uganda Revenue Authority & 5 Others**[82], Since a debtor is under an obligation to pay off his debts, it creates a contract between the debtor and the creditors and any alteration of the agreements is a breach of contract hence compensation to the creditors.[83]

In the case of **Haji Asadu Lutale v. Michael Ssegawa**[84] it's stated that "a breaking of the obligation which a contract imposes, which confers a right of action for damages on the injured party. It also entitles him to treat the contract as discharged if the other party renounces the contract or makes performances impossible, or totally or substantially fails to perform his promise". This doesn't change the application of the law in Insolvency, therefore one under "Parri passu" has to comply, and the doctrine requires one to first wait the court to pay off government if the insolvent company is also indebted to government and then the equal distribution of the assets of debtor among other creditors will then be effected. This is where the problem of this study is

[79] Insolvency (Amendment) Act, 2022
[80] Deus Mugabe, Mugabe on Insolvency Law in Uganda (First Edition 2022) p. 13
[81] Pepper v Litton, 308 U. S 295, 305, 60 S. Ct 238
[82] Uganda Telecom Ltd & Others V. Uganda Revenue Authority & 5 Others Miscel. Application No… 1164… OF 2020
[83] Section 62 Contracts Act, 2010
[84] Haji Asadu Lutale v. Michael Ssegawa HCT OO-CC-CS-292-2006

based in a way that both creditors should be treated equally whether preferential or non-preferential creditors. **Section 12 of the Insolvency Act**, provides that "preferential debts shall so far as the assets are insufficient to them, have priority over the claims of secured creditors in respect of assets, which are subject to security interest; and become subject to that security interest by reason of its application to certain existing assets of the grantor and those of its future assets which were after-acquired property or proceeds and shall be paid accordingly out of those assets".[85]

Section 12(4) and (5) of the Insolvency Act list the preferential debts for example first to be paid shall be, remuneration and expenses properly incurred by the liquidator or trustee, any receiver's or provisional administrator's indemnity under **Sections 159 or 187**. Section 12 (5) provides those that are to be considered second amongst the preferential debts following those mentioned above for example all wages or basic salary among other payments listed in the subsection.[86]

Section 13 of the Insolvency Act, states that after paying preferential debts in accordance with section 12, the liquidator or trustee shall apply the assets in satisfaction of other claims.[87] This section provides for payment of creditors who are not secured and hence considered non preferential according to the insolvency Act. This contradicts with the laws that govern contracts since the entire creditors and the debtor is in a contract hence the law should not intervene with difference while settling creditor's estates from the insolvent debtor.

The doctrine of "pari passu" should be applied as fairly and equally as it can be done without considering settling others before the rest. This forms the biggest reason to this study. In the case of **Barclays Bank Ltd v. T.O.S.G Trust Ltd**[88], Lord Oliver held that the rule against double proof has nothing to say upon the question of which of the two proving creditors has the better right to claim a dividend in respect of his debt, and subject to certain statutory priorities, the debtor's available assets are to

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[85] Section 12(2) of Insolvency Act ,2011
[86] Ibid
[87] Section 13 of Insolvency Act, 2011
[88] Barclays Bank Ltd v. T.O.S.G Trust Fund Ltd [1984] AC 626, [1984] 1 All ER 1060

be applied 'pari passu' in discharge of the debtor's liabilities. The holding above provides the problem of double proof and the preferential issues can get into play in such a scenario pointing us to **Section 14 of the Insolvency Act**[89] which provides that the liquidator must distribute the company's surplus assets in accordance with the memorandum and articles of association of the company and the **Company Act, 2012**. Yet it's very rarely the case that there is a surplus hence the study of the doctrine of 'pari passu' in Uganda since the Insolvency Act as amended is showing some gaps which this study has seen as a problem to be resolved.

In Conclusion

Section 14(3) of the Judicature Act provides that the applied law, the common law and the doctrine of equity shall be in force only insofar as the circumstances of Uganda and of its peoples permit, and subject to such qualifications as circumstances may render necessary**. Subsection 4 of Section 14 of the Judicature Act** in agreement states that if there is a conflict between the rules of equity and the rules of common law with reference to the same subject, the rules of equity prevail.[90] So written law of Uganda for example the Insolvency Act 2011 and its Regulations supersedes the other rules of equity and common however much equity supersedes common law written law supersedes all. So the written laws of Uganda in regards to Insolvency and bankruptcy are accorded much respect and should be acknowledged while dealing with the legal regime of Insolvency and its principles.

[89] Section 14 of the Insolvency Act, 2011
[90] Section 14 of the Judicature Act, Cap 13

CHAPTER FOUR

Findings of the Study, Recommendations and Conclusions

(i) Introduction

Chapter four being the last chapter of this dissertation paper, summarizes the findings of this whole research study and gives recommendations where need be to address the challenges outlined all throughout the research.

(ii) Findings of the Research Study

The research was a desktop review research and it systematically led the researcher to the following findings as shown below;-

From the overview of the Insolvency Act 2011, from sections 4,11,12,13 and 14 the law describes how one becomes insolvent from the first stage of being announced unable to pay off their debts in section 3. **Section 10 of the insolvency Act**[91] has revealed to us that unless otherwise required by the liquidator or trustee, an unsecured creditor may make a dated claim informally in writing. This research also discovered that the liquidator or trustee may admit or reject any claim in whole or in part and if the liquidator or trustee subsequently considers that a claim was wrongly admitted or rejected in whole or in part, he or she may revoke or amend the decision. This revealed that after the settlement of secured creditors and set them off with the assets of the debtor, the law allows the unsecured creditors then to also write to the trustee or liquidator to make their claims and from this finding the creditors who make their written claims first and those who make their last according to section parri passu doctrine, all are settled on an equal footing without considering which debts were acquired first before others. **Section 11 of the Insolvency Act**[92], for it provides an organized mode and system for the payment of the debts of the secured creditors that a secured creditor may realize any asset subject to a charge, where he or she is entitled to do so, make a claim in regards as a secured creditor or surrender

[91] Section 10 of the Insolvency Act,2011

[92] Section 11 of the Insolvency Act, 2011

the charges for the general benefit of creditors and claim as unsecured creditor for his or her whole debt. This shows that the law is equitable for the secured creditors and for the unsecured creditors the settlement of their debts on a parri passu and after the payment of the secured so in case the assets of the debtors are not enough the secured will be settled and the remaining assets of the debtor will be divided amongst the unsecured debtors on a parri passu basis.

Section 13 of the Insolvency Act [93]provides that after paying preferential debts in accordance with section 12, the liquidator or trustee shall apply the assets in satisfaction of all other claims. This portrays how already a non-secured creditor is considered after paying off the preferential creditors and the remaining assets of the insolvent company who is the debtor shall then equally be distributed amongst the non-secured creditors without considering which creditor funded the debtor first and as well not considering how much was invested into the company by whom. **Section 13(2) of the Insolvency Act**[94], states that the claims referred to in subsection (1) shall rank equally among non-secured creditors and shall be paid in full unless the assets are insufficient to meet them, in which case they abate in equal proportions. The finding from this section of the Insolvency Act reveals a problem that when creditors have invested money into a company in different time intervals and the amount invested is certainly known by both the creditors and the debtor, why then carryout equal distribution of assets of the debtor among the unsecured creditors without putting into consideration the fact that some credits came in first before others.

In the case of **Uganda Telecom Limited & others v. Uganda Revenue Authority & 5 Others**[95], Court stated that since a debtor is under an obligation to pay off his debts, it creates a contract between the debtor and the creditors and any alteration of the agreements is a breach of contract hence compensation to the creditors is a legal

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[93] Section 13 of the Insolvency Act Cap, 8 of 2011

[94] Ibid

[95] Uganda Telecom Ltd & Others V. Uganda Revenue Authority & 5 Others Miscel. Application No… 1164… OF 2020

obligation.[96] In the case of **Haji Asadu Lutale v. Michael Ssegawa** it's stated that "a breaking of the obligation which a contract imposes, which confers a right of action for damages on the injured party. It also entitles him to treat the contract as discharged if the other party renounces the contract or makes performances impossible, or totally or substantially fails to perform his promise"[97]. This obligation as recognized in the cases above in this chapter reveals that the law aims at debtors paying off their debts as they merged since it's an obligation so equal footing of the debts contradicts with other provisions of the law and some case laws as analyzed in the research.

In parri passu as the law states, the settlement of debts of creditors by the debtor is aimed at settlement of all debts at once and equally without putting into account the fact that some debts are offered first before others and some are heavier than others so therefore settlement of such debts in such a way is equal but not equitable. And this research also found out from **Section 14(4) of the Judicature Act**[98], provides that in every causes or matter before the High Court, the rules of equity and the rules of common law shall be administered concurrently, and if conflict or variances between the rules of equity and the rules of common law with reference to the same subject, the rules of equity shall prevail. Though the same law also provides that where rules of common law, equity and written law are in conflict, the written law supersedes all of them and shall be handled in a higher hierarchy over the rest of the laws. So the provisions of the Insolvency Act, 2011 and its Regulations and Amendments are handled with high relevance in insolvency as per the Judicature Act Cap 13.

(iii) Recommendations by the researcher

This research recommends that instead of equal footing in parri passu the law changes into a "first in first out" doctrine that the aspect of what debt was credited to the debtor first and when is put into consideration and also the element of which debt is

[96] Section 62 Contracts Act, 2010
[97] Haji Asadu Lutale v. Michael Ssegawa HCT OO-CC-CS-292-2006
[98] Section 14(4) of the Judicature Act, Cap 13

bigger than the other, so that there is equity instead of equality which is unfair and not just in regards to fairness. Whenever a company runs insolvent, it does not necessitate that debtor company to forget the fact that some of its creditors had invested money into the company earlier before others so distributing the debtor company's assets amongst the different creditors on a "Pari passu" basis would be non-considerate since it calls for equal distribution of the remaining assets of the debtor and when the assets cannot satisfy full payment of the creditors' claims, the law rewards such kind of a person with an equal value amount. So the aspect of equal footing isn't good enough to the economy growth of our country where people are still working before their expenditures. So the most reliable mode of dealing away with the equal footing is the aspect of "**first In First Out**".

The principle of **"first in first out"** would work well since the debtor is indebted and full and timely payments were given to them by the creditors so therefore, the aspect of considering what credit fund came in first before the others should be highly considered when the debtor is pronounced insolvent and their assets are used in paying off their debts. The aspect of equal footing of the assets of the debtor is provided for by the law in **section 13(2) of the Insolvency Act**[99] which states that non-preferential debts shall rank equally among themselves and shall be paid in full unless the assets are insufficient to meet them, in which case they abate in equal proportions.

Therefore, this research recommends that firstly the law be amended in that this section of the law is changed to allow debtors who are pronounced insolvent pay their creditors with time even after being pronounced insolvent. So that the debt burden which is an obligation as seen above is fully cleared and no equal footing but time be allowed to debtors to pay off their debts.

The second recommendation in line with Section 13 is that the law should also be amended with respect to insufficiency of the funds or assets of the debtor to satisfy

[99] Section 13(2) of the Insolvency Act, 2011

the debts of the creditors on an equal footing should be changed to full payment of the debt even if one is given a lie way. Insolvency should not be a basis of dodging payment of debts but rather considering the aspect of time that a debtor is first observed that when they get out of being insolvent, the debt payment resumes that the remaining debts are as fully well considered.

Public lectures should also be conducted to explain the parri passu doctrine to companies in a more clear way so that questions about the principle are reduced and the general public is educated on the difference between preferential and non-preferential creditors. This will enable people to secure their funds when lending to companies so that creditors protect their assets in companies by guaranteeing them so that when unforeseeable circumstance happens like running insolvent, the assets are distributed based on preferential debts.

Bodies responsible for regulating assets and lending should regulate the amounts of funds different companies are allowed to borrow so that cases of companies running insolvent with huge amounts of money are reduced which leads to equal footing of assets on a pari passu when the debtor becomes insolvent.

Bank of Uganda since it regulates banks should limit certain types of loans and credit some companies since due to limited knowledge of the interests on the repayment of the loans some companies have ended up in unnecessary borrowing and yet some loans are set up by some private banks to run businesses and companies into insolvency and bankruptcy so that there is sharing of assets. So limiting such banks will reduce the issues of running insolvent because businesses will learn to thrive without certain loans which came in as saviours yet come to destroy them.

Parliament can also come up with another law to regulate the borrowing and sharing of assets of the insolvent looking into the issue of settlement of creditors on a doctrine of "**First in First out**" to work hand in hand with the Insolvency Act, 2011.

(iv) Conclusion

This research dissertation paper acknowledges the principles of Insolvency law and also affirms the operation of Insolvency law in Uganda in that it has proved that companies in Uganda like Uganda Telecom run insolvent and the question of distribution of the assets become realistic. So the aspect of whose rights during distribution of assets of the debtor becomes first before other comes to reality so planning about the aspect of pari passu is very keen and securing funds or assets invested in any individual or company is key as it saves from preferential creditors are considered before the non-preferential because all the creditors then shall be preferential. The law of Insolvency in Uganda under **section 13 of the Insolvency Act** is found to be unfair and this research suggested for an amendment of the section 13(2) to phase away pari passu and substitute it with the doctrine of **"first in first out"** which is equitable and considerate on which credits came in first to the debtor to be paid first in case of insolvency when unsecured.

This research will contribute to the already existing knowledge on Insolvency if the above recommendations and findings are highly considered by the law makers in Uganda so that equity is upheld to supersede equality.

BIBLIOGRAPHY

NATIONAL LEGISLATION

- The 1995 Constitution of the Republic of Uganda as Amended.
- Companies Act, 1961
- Companies Ordinance, 1923
- Companies Ordinance, 1935
- Insolvency (Amendment) Act, 2022
- Insolvency Act, (Commencement) Instrument 2013, Instrument No. 25
- The 1900 Buganda Agreement
- The Bankruptcy Act, 1931
- The Contracts Act, 2010
- The Insolvency Act, 2011
- The Judicature Act. Cap 13

FOREIGN LEGISLATION

- British Companies Act, 1948
- English Bankruptcy Act, 2014
- Indian Companies Act, 1882

TEXTBOOKS

- Corporate Insolvency (2004), Andrew McTear, Chris Williams, Frank Brumby & Rosey Border, Cavendish Publishing limited, 1st edition
- Deus M. (2022), Mugabe on Insolvency Law in Uganda (First Edition 2022)
- Goode on Principles of Corporate Insolvency Law, edited by Kristin Van Zwieten, 5th Student Edition, 2019, Sweet &Maxwell.
- Vanessa Finch and David Milman, Corporate Insolvency Law, (2017) 3rd Edition, Cambridge University Press.
- Vanessa Finch, Is pari passu passé? Insolvency law. 2000, 5(Oct).

JOURNALS AND ARTICLES

- C.Nyombi, A. Kibandama, D.J. Bakibinga, The motivations behind the Uganda Insolvency Act 2011, [2014] Journal of Business Law.

- Finch V, Milman D. The Context of Corporate Insolvency Law: Financial and Institutional. In: Corporate Insolvency Law: Perspectives and Principles. Cambridge University Press; 2017:
- Mark P. Cussen. Top 5 Reasons why People Go Bankrupt, updated Aprill 11, 2024.

ONLINE SOURCES

- Business bankruptcy: Essential Insights & Strategies. https://www.allianz-trade.com/en_US/insights/business-bankruptcy.html#:~:accessed on April 30, 2024.
- BMS Auditing Chartered Accountants'. 10 Causes of business Insolvency. https://www.bmsauditing.com/blogs/causes-of-business-insolvency#:~: Accessed on May 1, 2024

- Consumer Financial Protection Bureau. "An Essential Guide to Building an Emergency Fund, https://www.consumerfinance.gov/an-essential-guide-to-building-an-emergency-fund/."
- Federal Reserve Bank of New York. "Household Debt and Credit Report, https://www.newyorkfed.org/microeconomics/hhdc.html,"
- Mark P. Cussen. www.investopedia.com.April 29, 2024
- PayrollOrg. "2023 'Getting Paid In America' Survey., https://info.payroll.org/pdfs/npw/2023_Getting_Paid_In_America_survey_results.pdf,"Page
- U.S. Department of labor. "Continuation of Health Coverage, https://www.dol.gov/genral/topic/health-plans/cobra."
- United States Bankruptcy Court: Central District of California. "Student Loan Discharge Adversary Proceeding, Special Rules, https://www.cacb.uscourts.gov/the-central-guide/student-loan-dischage-adversary-proceeding-special-service-rules."
- Wharton &Wall, 'Step-by Step Guide to Understanding Pari passu' (2023)<https://www.wallstreetprep.com>knoweled ge>pari-passu

CASE LAW

- Aluminium Industrie Vaasen BV v Romalpa Aluminium Ltd [1976] 1 WLR 676
- Barclays Bank Ltd v. T.O.S.G Trust Fund Ltd [1984] AC 626, [1984] 1 All ER 1060
- Cleaver v Delta American Reinsurance Co [2001] UKPC 6, [2001] 2 WLR 1202
- Cooper v. State 37 Ark. 418
- Dewey v. St. Albans Trust Co., 56 Vt. 475. 48 Am. Rep. 803
- Ex p. Mackay (1873) L.R 8 Ch. App 643
- Haji Asadu Lutale v. Michael Ssegawa HCT OO-CC-CS-292-2006
- Nyali Ltd v. Attorney General [1956] 1QB 1
- Pepper v Litton, 308 U. S 295, 305, 60 S. Ct 238
- Re Dynamics Corp of America [1976] 2 All ER 669, [1976] 1 WLR 757
- Re Virgin Active Holdings Ltd [2021] EWHC 1246 (Ch)
- Ruth Sebatindira SC & Another v. Lap Greenn Limited And others Misc Application No. 173 of 2017
- Speigle v. Meredith, 4 Biss. 123, Fed. Cas. No.13,-227
- Uganda Telecom Ltd & Others V. Uganda Revenue Authority & 5 Others Miscel. Application No… 1164… OF 2020
- Wight v Eckhart Marine GmbH [2003] UKPC 37