

Institution: Lancaster University
Unit of Assessment: 20 (Law)
Title of case study: Case study 2: Facilitating the Understanding of Insolvency Legislation for the Benefit of Practitioners, the Judiciary and Policymakers
<p>1. Summary of the impact (indicative maximum 100 words)</p> <p>With over 130,000 insolvencies (corporate and personal) recorded annually in England and Wales insolvency is a significant area of legal practice. This study spotlights one major publication (<u>Sealy and Milman: Annotated Guide to Insolvency Legislation</u>) which has informed, and is informed by, other scholarly pieces. Evidence is offered of this publication's reach, indicating how it has developed into an authoritative legal source in its own right. Users of the research include lawyers advising/representing their clients, repeat players (such as HMRC) and judges dealing with issues of interpretation. These groups benefit by having professional time saved in researching points and by having something to base advice or a decision upon when there is no available precedent. The ultimate beneficiaries are the public who rely on legal advice and whose rights depend upon favourable judicial rulings.</p>
<p>2. Underpinning research (indicative maximum 500 words)</p> <p>Milman (an Honorary Member of the Insolvency Lawyers' Association and General co-Editor of <i>Insolvency Intelligence</i>) is a leading figure in the evolution of Insolvency Law scholarship in the past 25 years. The hallmark of his scholarship is the bridge-building between the academic and practitioner communities in the exchange of insights. The focus in this study is on Milman's research since joining Lancaster in 2005, though continuity with earlier research is apparent. The impact covers the current REF period. The study covers that body of law (primarily based on legislation) that regulates the relationship between debtors and creditors in the event of financial default. An effective system of insolvency law is essential to any economy where credit provides the lifeblood for interactions. The research is doctrinal and enriched by Milman's empirical studies in the 1990s (e.g. on CVAs and transactional avoidance). Comparative analysis is undertaken to offer a range of diverse insights. Milman's research outputs take the form of leading texts, scholarly monographs, journal papers and essays included by invitation in collected works.</p> <p>In the <u>Annotated Guide</u>, the central research effort involves an analysis of the interaction between the Insolvency Act 1986 and the Insolvency Rules 1986. Both the Act and the Rules are continually being amended (and reinterpreted by the courts), so the relationship between these regimes is in a constant state of flux. This requires re-evaluation by researchers. Add to this additional secondary legislation and the unpredictability of judicial decision-making and then one can appreciate the difficulty of keeping on top of the research subject. It is this ability to present an expert real-time understanding of the law <i>as it stands today</i> (aided by the annual publication and the frequent Westlaw updates) that provides the real value of the <u>Annotated Guide</u> to all users. The publication went into ebook format in 2012 using Thomson Reuters ProView technology.</p> <p>Assessing 7 years of development (particularly when set against the context of the pressures exerted by the global economic crisis) in insolvency law represents a considerable research challenge. The <u>Annotated Guide</u> has to cope constantly with new legislation and the implications of fresh judicial rulings, some of which are contradictory. So, the <u>Annotated Guide</u> offered first detailed analysis of the new debt relief order regime in 2009 (a procedure designed to provide relief for debtors with no income and no assets), and the major changes to core secondary legislation in 2010. Other significant legislative developments since 2005 analysed in the <u>Annotated Guide</u> include the Cross Border Insolvency Regulations 2006. The 16th edition begins to address major upcoming changes to bankruptcy initiation procedure. There are some 100 new cases across the spectrum that have to be researched/ evaluated annually. Having built up a vast store of foundational knowledge in the field, Milman is in an ideal position to contextualise any such new developments by drawing upon his historical perspective.</p>

The underpinning research predates 1993 and continues post 2005. The volatile nature of the research enterprise is reflected by the number of editions of the *Annotated Guide* published since 2005, which constitute a link between the underpinning research carried out at Lancaster and the impact. Milman is a 50% contributor with the co-author Sealy, an Emeritus Professor of Corporate Law at the University of Cambridge.

3. References to the research (indicative maximum of six references)

Sealy and Milman, *Annotated Guide to the Insolvency Legislation 2013* (two volumes totalling c. 2600 pp)(Sweet & Maxwell). (16th edition, 2013). (ISBN 978 0 414 02759 6 and 978 0 414 02760 2). First published by CCH Editions in 1987. Since 2004 it has become an annual publication and, reflecting the growth of the subject area in practice, it expanded into 2 volumes in 2005 for the 8th edition. The in-depth commentary marries together analysis of the primary statutory provisions with the extensive secondary legislation and relies heavily upon the authors' ability to provide expert analysis of new developments in real time as they happen, thereby maximising the publication's utility. The real value of the text to user is the commentary which amounts to several hundred thousand words. The research is informed by regular interaction with practitioners who continually feed suggestions to the authors for change or for the introduction of new material that is not generally known. The favourable reviews in academic journals such as [1995] JIBL 336, [1995] ICCLR 360, [2008] JBL 372-373, [2008] LMCLQ 419-420, [2008] 26 JIBLR 350, [2008] ICCLR 211, (2010) 21 ICCLR 237 and in practitioner publications such as [2011] (Autumn) Recovery 8, coupled with the fact that it has been cited on at least 80 occasions in academic/practitioner literature, attests to its status of at least 2*.

The following 3 related outputs form part of the UoA's outputs submission and provide evidence that the research underpinning the *Annotated Guide* is informed by more traditional legal scholarship. Research undertaken for the *Annotated Guide* is used to enrich these other publications, and vice versa. They all form part of a continuing multi-faceted research undertaking.

Personal Insolvency Law and the Challenges of a Dynamic, Enterprise-Driven Economy (2008) 20 Singapore Academic of Law Journal (Special Issue) 438-463 (ISSN 0218 2009). This essay was produced at the invitation of the Singapore Academy of Law. There are contributors from a range of jurisdictions, including 5 leading UK academics/ practitioners. Cited in [Hong Leong Bank v Soh Seow Poh](#) [2009] SGCA 37 at [39].

Promoting Distributional Justice on Corporate Insolvency in the 21st Century, Chapter 8 (pp 169-190 in *Mass Justice: Challenges of Representation and Distribution* edited by Steele and van Boom (Edward Elgar) (2011)(ISBN 978 1 84980 506 3). This paper arose out of an invitation to speak to the Erasmus School of Law in Rotterdam. It revisits a theme first discussed by the author in a paper delivered at UCL and produced for *Current Legal Problems* in 1991.

Governance of Distressed Companies (xxxv + 181pp)(2013) (Edward Elgar)(ISBN 978 1 78100 018 2). This [new monograph](#) analyses the interaction between insolvency law and stewardship principles in the context of distressed companies. It draws on research conducted by Milman as a Visiting Fellow at the Institute of Advanced Legal Studies in 2012.

4. Details of the impact (indicative maximum 750 words)

The impact of the research on insolvency legislation is reflected in its constructive usage by a wide range of beneficiaries, particularly insolvency practitioners. This research, as embodied ultimately in the latest edition of the *Annotated Guide*, is used to shape the understanding/policy/advice/argument/decision-making by a range of users.

Taken together the aforementioned research has:

- informed legal and accountancy practice in the sense that Sealy and Milman is a standard reference work in firms specialising in insolvency practice. It is sometimes called the industry

Impact case study (REF3b)

“bible” (*Turnaroundweek* 24/5/11, [Insolvencynews 7/7/11](#)) or the “blue book” (by reference to the predominant colour used on its cover since 1985). Some indication of its status is to be found in the aftermath of [Minmar \[2011\]](#) EWHC 1159 (Ch) where Chancellor Morritt disagreed with our interpretation of the law. This led to great consternation amongst practitioners and further litigation, the bulk of which supported our view of the law. See *R3 Technical Bulletin* No 96 (July 2011) at 96.2. Commenting on this controversial decision, one firm of legal practitioners (Paris Smith LLP) said in its legal blog of November 21st 2011 that it is no longer good enough to say that [“we did what Sealy and Milman told us to do”](#). That back-handed compliment indicates the work’s status in the professional psyche. The standing of the text as a standard commentary is reflected by the fact that judges now comment on it when it does **not** provide a view on a contested point.

- offered guidance to judges in the UK and overseas on disputed points of law. In terms of establishing change, for example, the decision in [Linfoot v Adamson \[2012\]](#) EWHC Misc 16 (CC) was clearly influenced by the commentary on s. 303 as HHJ Behrens quoted that commentary in para [56] of the judgment. In contrast, in a number of cases the courts have disagreed with what has been said in the commentary and, having engaged in the debate, the authors have taken the opportunity to clarify what has been said in the text. Because of the weekly Westlaw updating facility for the electronic version of this Guide (available through subscription since 2010), we can change the text immediately and thereby provide new advice to users based upon the most recent judicial insights.
- aided policymakers considering legal reform. The [Annotated Guide](#) has been referred to in Hong Kong in the discussion about reforms to the Companies Act – see [Bills Committee \(22/6/11\)](#) Annexe A footnotes 2 and 5, and [Bills Committee \(2/12/11\)](#) Annex B footnote 9.
- provided a vademecum designed for daily use by private sector practitioners and the Official Receiver’s staff. Close contact is maintained between the authors of Sealy and Milman and the Insolvency Service (a major customer). Letters on file support the high demand from end users and the significant utility of the research. The new ebook application further enhances utility.
- enabled the author to interact with the relevant users via delivery of expert seminars for Central Law Training (several since 2008), the Insolvency Lawyers’ Association (Annual Conferences 2010, 2012), Exchange Chambers (15/3/11, 19/10/11, 14/3/12, 18/9/12, 19/9/12 and 20/3/13) the Northern Circuit Commercial Bar Association (11/7/13) and in-house clients (College of Law course for DLA Piper).
- provided economic benefits to the legal publishing sector through its high customer demand (see Wildy’s bestseller lists) and frequent publication cycle. (Publishers can confirm.)
- been of value to a variety of users as a source of legal information (e.g see Authors’ Licensing and Collecting Society statement, available from the UoA).
- been recognised by Exchange Chambers in 2010 in the form of an invitation to Milman to become a [Professorial Associate](#). This has enhanced the link between his research and day to day legal practice.
- facilitated Milman to provide expert headnotes since 1996 for the Bankruptcy and Personal Insolvency Law Reports published by Jordans. These judicially approved reports are cited continually in the courts.

Sealy and Milman has been cited **by** 18 different judges in at least 27 English law cases reported since January 2008. Full details on Milman’s [Impact and Visibility webpage](#). This extensive citation attests to wide usage. The reach of the work goes beyond English law - the text has been cited in Northern Ireland in [Re Sheridan Millennium Ltd \[2011\]](#) NICH 23 at [45] per McCloskey J, in the Dubai International Financial Centre Court of Appeal in [Re Orion Holdings Overseas Ltd](#) (CA 004/2011, 7 December 2011) at [6] per Justice Sir John Chadwick and in the High Court of Ireland in [Re Harley Medical Group \(Ireland\) Ltd](#) [2013] IEHC 29 at [15] and [23] per Laffoy J.

Milman had also for several years up to 2012, in association with the College of Law, run an [in-house programme](#) for the international law firm DLA Piper, participation in which could lead to a qualification with the College.

5. Sources to corroborate the impact (indicative maximum of 10 references)

Impact case study (REF3b)

[Re OMP Leisure](#) [2008] BCC 67 at [6] per HHJ Hodge QC
[Johnson v Tandridge DC](#) [2008] BPIR 405 at [8] per HHJ Kaye QC
[Pannell v Official Receiver](#) [2008] EWHC 736 (Ch) at [17] per HHJ Havelock-Allan QC
[HMRC v Ben Yousef](#) [2008] EWHC 423 (Ch) at [29] per HHJ Purle QC
[Re The Parkside Group of companies](#) [2008] EWHC 3654 (Ch) at [48] and [53] per A Elleray QC
[Wm Hare v Shepherd Construction](#) [2009] EWHC 1603 (TCC) at [39] per Coulson J
[Flett v HMRC](#) [2010] EWHC 2662 (Ch) at [34] per A. Elleray QC
[Gilbert Deya Ministries v Kashmir Broadcasting Corp Ltd](#) [2010] EWHC 3015 (Ch) at [10] per HHJ Cooke
[Gould v Advent Computer Training \(No. 1\)](#)[2010] EWHC 459 (Ch) at [10] per HHJ Purle
[Hill v Stokes](#) [2010] EWHC 3726 (Ch) at [48] per Judge McCahill
[National Westminster Bank v Kapoor](#) [2011] EWHC 255 (Ch) at [91] and [92] per HHJ Hodge QC
[Minmar 929 Ltd v Khalatschi](#) [2011] EWHC 1159 (Ch) at [46]-[49] per Sir Andrew Morritt C
[Sunwing Vacation Inc v E Clear plc](#) [2011] EWHC 1544 (Ch) at [18] per Morgan J
[Re Business Dream Ltd](#) [2011] EWHC 2860 (Ch) at [35] and [40] per HHJ Behrens
[Re Langreen Ltd](#) (unreported, 21/10/11) at [53] per Registrar Derrett
[Bank of Scotland v Breytenbach](#) [2012] BPIR 1 at [18] per Chief Registrar Baister
[Baker v London Bar Company](#) [2011] EWHC 3398 (Ch) at [10]-[11] per Henderson J
[Re Switch Services Ltd \(SB Corporate Solutions v Prescott\)](#) [2011] EWHC B25 (Ch) at [271] per HHJ McCahill QC
[OTG Ltd v Barke](#) [2011] BCC 608 at [17] per Underhill J
[Wright Hassall LLP v Morris](#) [2012] EWHC 188 (Ch) at [21] per HHJ David Cooke
[MG Rover Dealer Properties v Hunt](#) [2012] BPIR 590 at [64] per Chief Registrar Baister
[Bramston v Haut](#) [2012] EWHC 1279 (Ch) at [35], [42] per Arnold J
[Linfoot v Adamson](#) [2012] EWHC Misc 16 (CC) at [56] per HHJ Behrens
[Lavin v Swindell](#) [2012] EWHC 2398 (Ch) at [58], [63] and [68] per HHJ Behrens
[Re Colliers International \(UK\) plc](#) [2012] EWHC 2942 (Ch) at [13] per David Richards J
[Dunbar Assets plc v Fowler](#) [2013] BPIR 46 at [32] per Chief Registrar Baister
[Sun Legend Investment Ltd v Jade Yuk Kuen Ho](#) [2013] BPIR 533 at [8] per DJ Musgrave

Extracts from 7 of the above case reports included as factual statements to corroborate the impact on the judiciary.

Factual statement from Senior Publishing Editor, Thomson Reuters corroborating the high customer demand for Sealy and Milman by practitioners and its frequent publication cycle.

Organisational contacts:

Senior Publishing Editor, Thomson Reuters who can testify as to the economic benefits that the Sealy and Milman has provided to the legal publishing sector through its high customer demand and frequent publication cycle.