Seminar on:

Managing

Debt Recovery

Through

Legal Procedures

Judgement Debts & Judicial Management of Financially Troubled Companies

Date: 29th October 2004 (Friday)
Time: 10.00am to 4.00pm
Venue: Construction Industry Training Institute (CITI)
200 Braddell Road
Singapore 579700

Organised by: CITI Construction Industry Training Institute
the training arm of BCA

29/10/04

Handling delinquent clients

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- A Debt is technically a breach of contract
- → civil proceedings
- Sue to enforce payment

TIPS

- Photostat 1st Cheque Payment
- "on demand" - on the IOU note

- You tried to no avail. What next ?
- Cause of Delay - Find Out !
  Many reasons for non-payment, e.g.
  - dispute over goods, or
  - strapped for cash
- Use appropriate means to settle debt before suing (last resort to start legal action)

- To maintain goodwill
  recover less if winding up
- weigh legal costs against monetary and non-monetary value of debt
  - image / reputation
- Write off if financial and time costs not justifiable

Difference between

- Personal insolvency
  bankruptcy
- Corporate insolvency
  liquidation/winding up

Who is your debtor?

- **Differences between debt recovery procedures for companies, firms and individuals**

Who is your debtor?

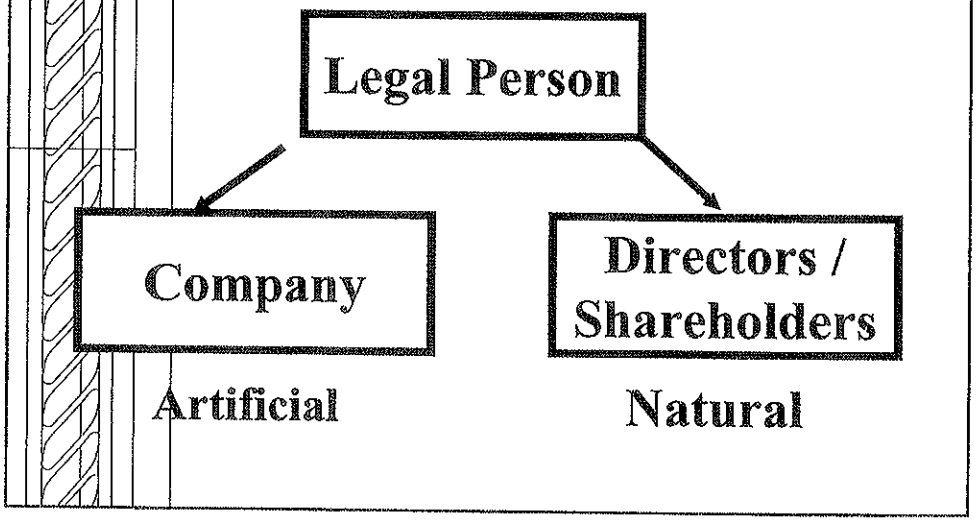
1. Sole-trader
   - bankruptcy

2. Partnership firm
   - bankruptcy

3. Company → legal entity
   - liquidation/winding-up
   - receivership
   - judicial management

A Company

- is a legal entity
- has a separate corporate personality



Liability for Crimes

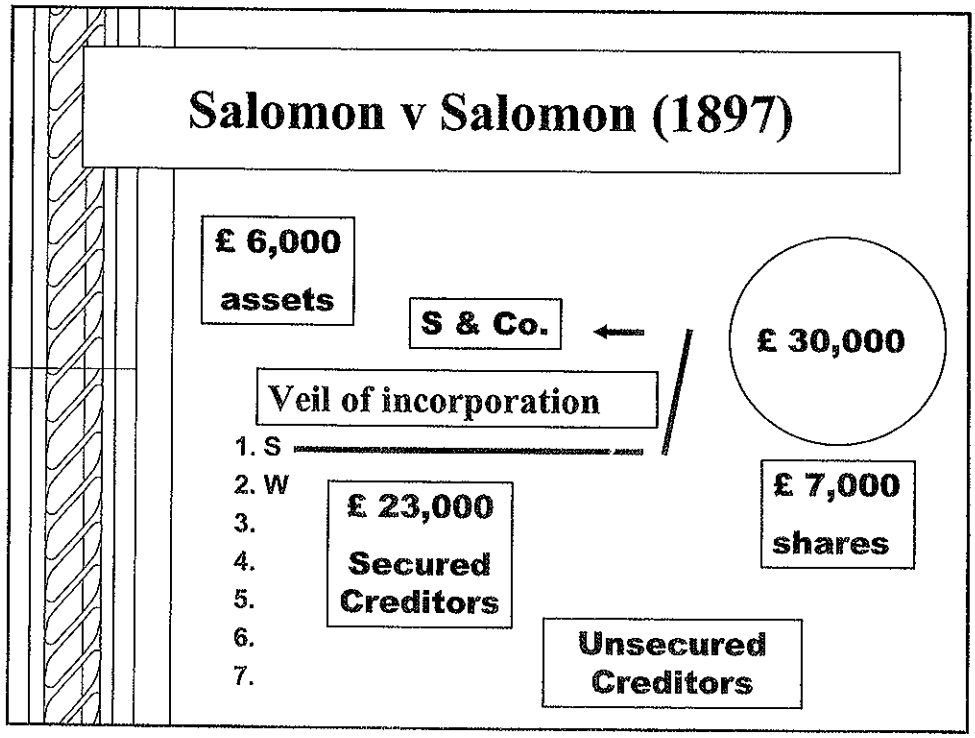
Brains

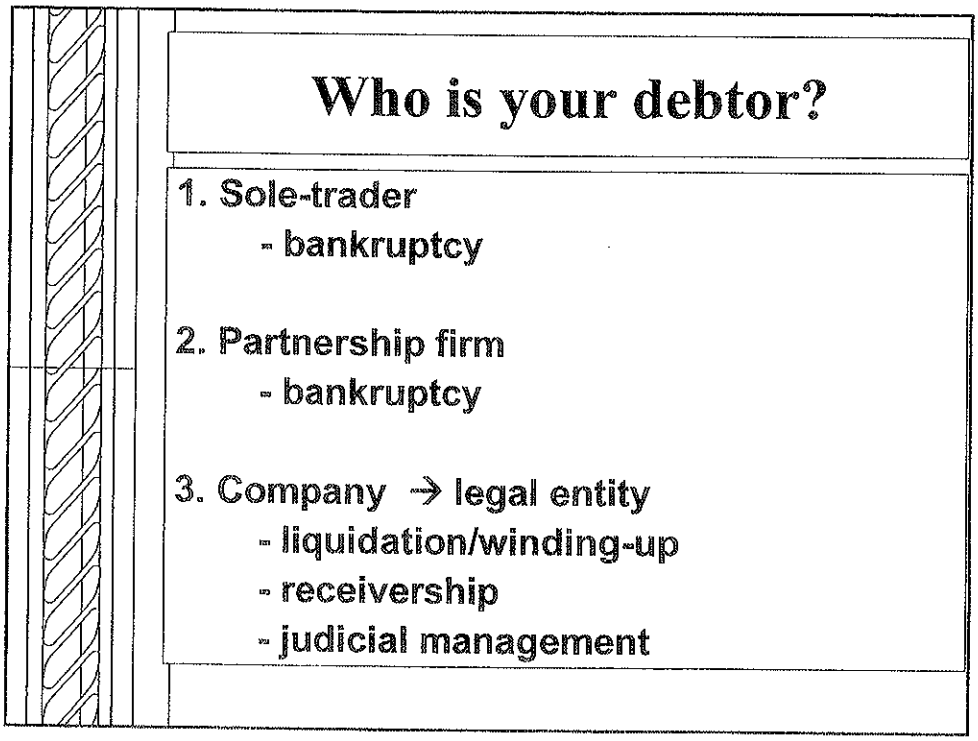
Hands & Tools

- Directors / Managers represent the "directing mind & will of the company"

  – Tesco Supermarket Ltd v Nattrass (1972)

Liability for wrongful acts


Salomon v Salomon (1897)
£ 6,000
assets
S & Co.
£ 30,000
Veil of incorporation
1. S
2. W
3.
4.
5.
6.
7.
£ 23,000
Secured
Creditors
£ 7,000
shares
Unsecured
Creditors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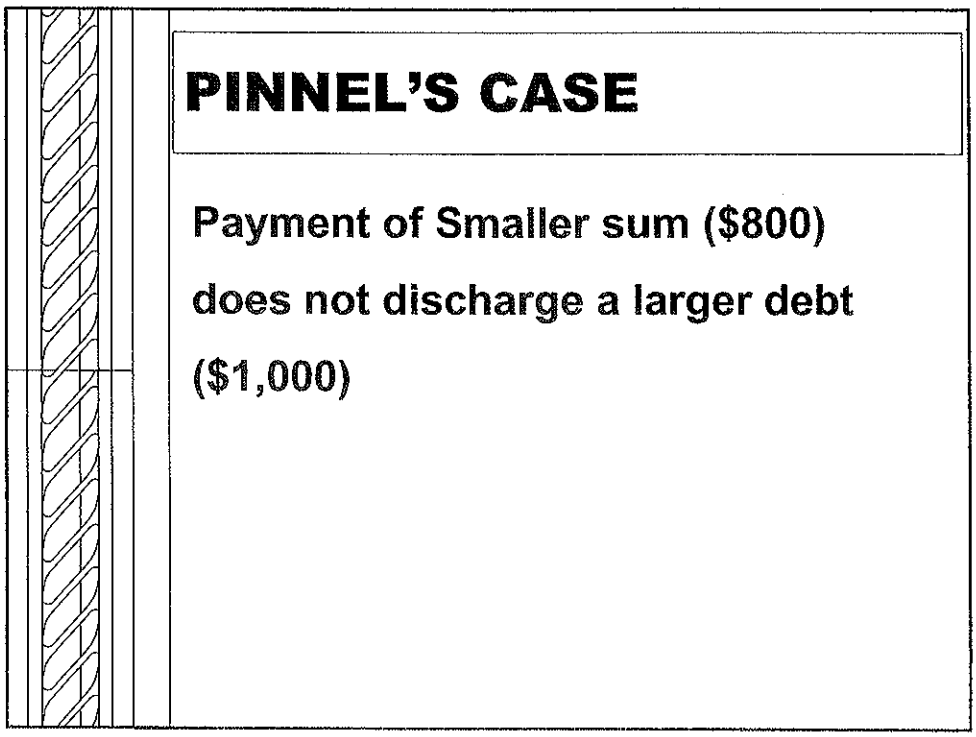
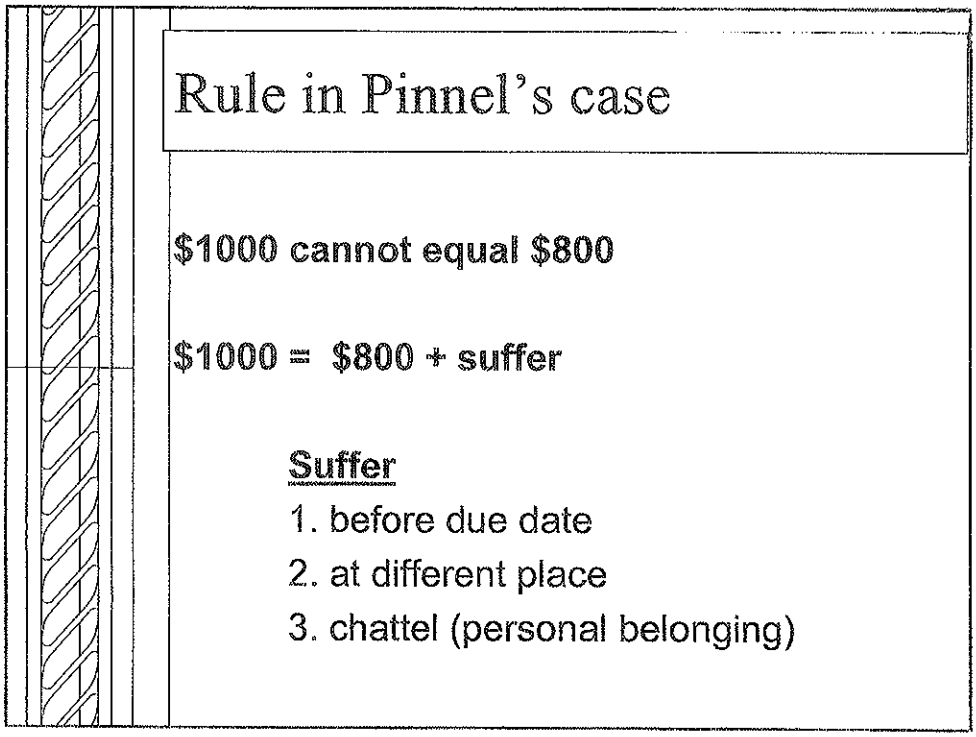

PINNEL'S CASE
Payment of Smaller sum ($800)
does not discharge a larger debt
($1,000)


Rule in Pinnel's case
$1000 cannot equal $800
$1000 = $800 + suffer
Suffer
1. before due date
2. at different place
3. chattel (personal belonging)

Qualifications to Pinnel's Rule

- Payment of a smaller sum before due day at creditor's request is valid consideration
- Payment of a smaller sum at different place at creditor's request is valid consideration
- Payment of smaller sum accompanied at creditor's request by delivery of a chattel is valid.

Qualifications to Pinnel's Rule

- Payment of lesser sum by cheque is no discharge of the balance
- Part payment of debt by third party
- Composition agreement

Landlord's cases

- **Writ of Distress**

Collection of Debts – 2 stages

- **Obtain judgment debt**
  - **ordinary debt**

2. **Enforce/execute judgment debt**

When recovering debts look at…

1. **Limitation period**
   - **6 years**
   - **3 years for personal injury cases**
   - **1 year for Small Claims Tribunal**

When collecting debts look at

2. **Written Contract**
   - **contains rights/obligations of parties**
   - **payment terms & interest**

Oral contract
   - **quotations**
   - **purchase orders**
   - **delivery orders**

Is your customer…

- **Local or**
- **International?**

International debtor

- **Where to sue?**
  - **in Singapore**
  - **or country of debtor?**
- **See jurisdiction clause in contract**

If no jurisdiction clause…

- **then consider**
  - **where is contract made?**
  - **where are the debtor's assets**
  - **where is place of performance of contract?**

Local Debtor…

- **Consider which court to sue?**
  1. **High Court**
     - **above $250,000**
  2. **Subordinate Courts**
     - **district court**
       $60,000 - $250,000
     - **magistrate court**
       < $60,00

Local debtor...

3. Small Claims Tribunal
   < $10,000 or
   < $20,000 if got written agreement

Claims on
- contract for sale of goods
- provision of services
- property disputes

Cannot traffic accident claims

Small Claims Tribunal - Fees

- Consumers
  - $10 for <$5000 claim
  - $20 for $5000 - $10000 claim
  - 1% of claim for $10000 - $20000 claim

Fees for Small Claims Tribunal

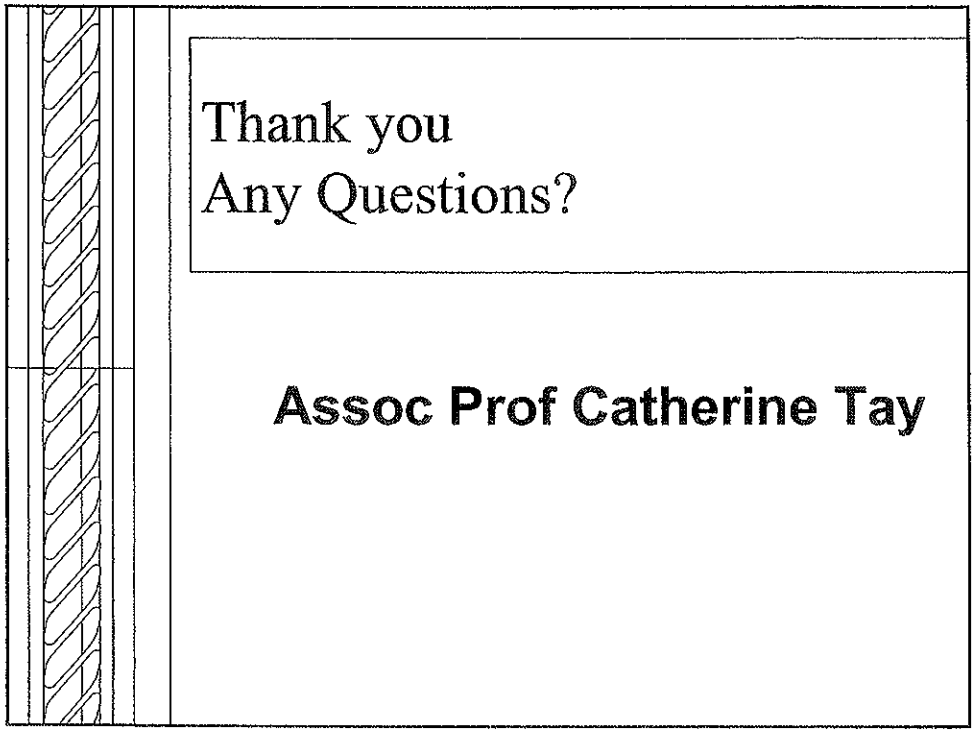
- **Non-consumer**
  - **$50 for <$5000 claim**
  - **$100 for $5000 - $10000 claim**
  - **3% of claim for $10,000 – $20000 claim**

Reference Books by Catherine Tay Swee Kian

1. How to Recover Your Debts – (1994 SNP Publishers)
2. Your Rights a s a consumer – 2003 (Times Editions)

Small Claims Tribunal

3. Bankruptcy – The Law & Practice 1984 (Butterworths)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Debt Recovery Procedures

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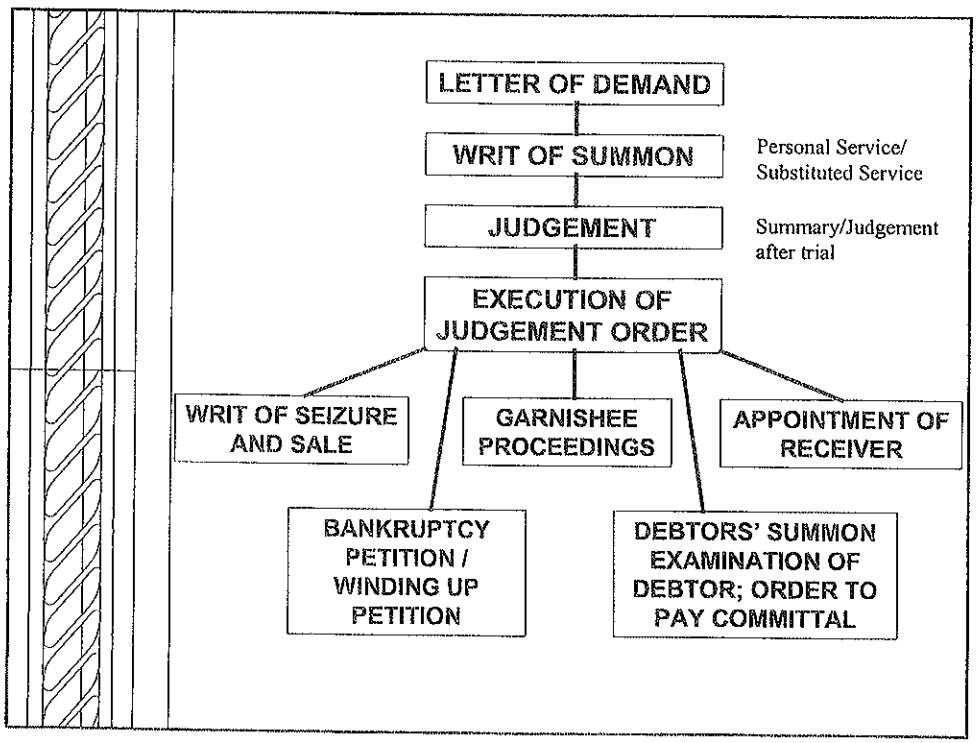


Obtain Judgment in Court

- **Letter of demand**
- **Writ of summons**
  - **attach statement of claim**
  - **personal service or**
  - **substituted service**
- **Memorandum of appearance by debtor**

Pleadings

- **Defence & Counter-claim**
- **Reply to Defence and Counter-Claim**

Disposal of Action before Trial

- **Summary Judgment**
- **Judgment in Default of Appearance**
- **Judgment in Default of Defence**

Summary Judgment (Order 14)

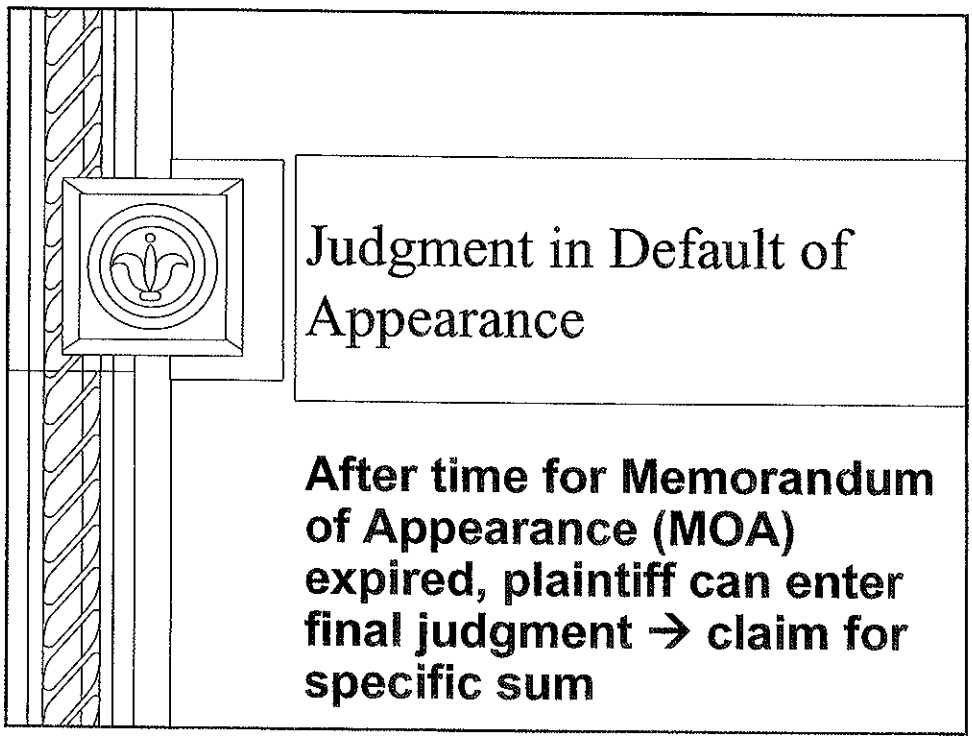
- **Order 14 Application**
- **After defence served, plaintiff apply for judgment on ground that defendant has no real defence to claim**

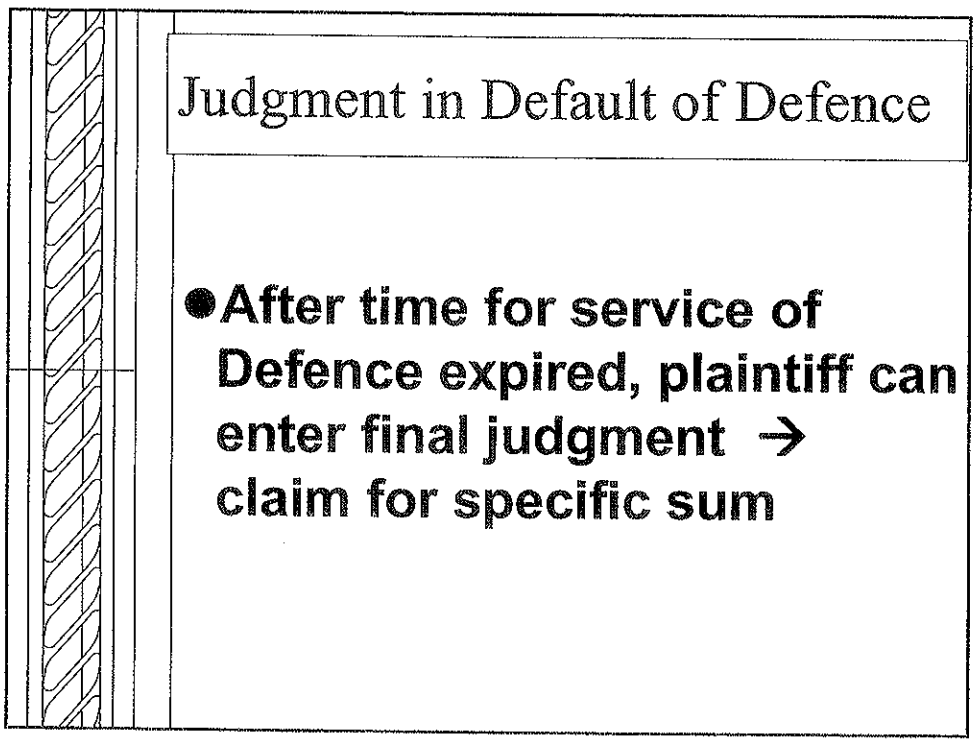
Order 14 Procedure

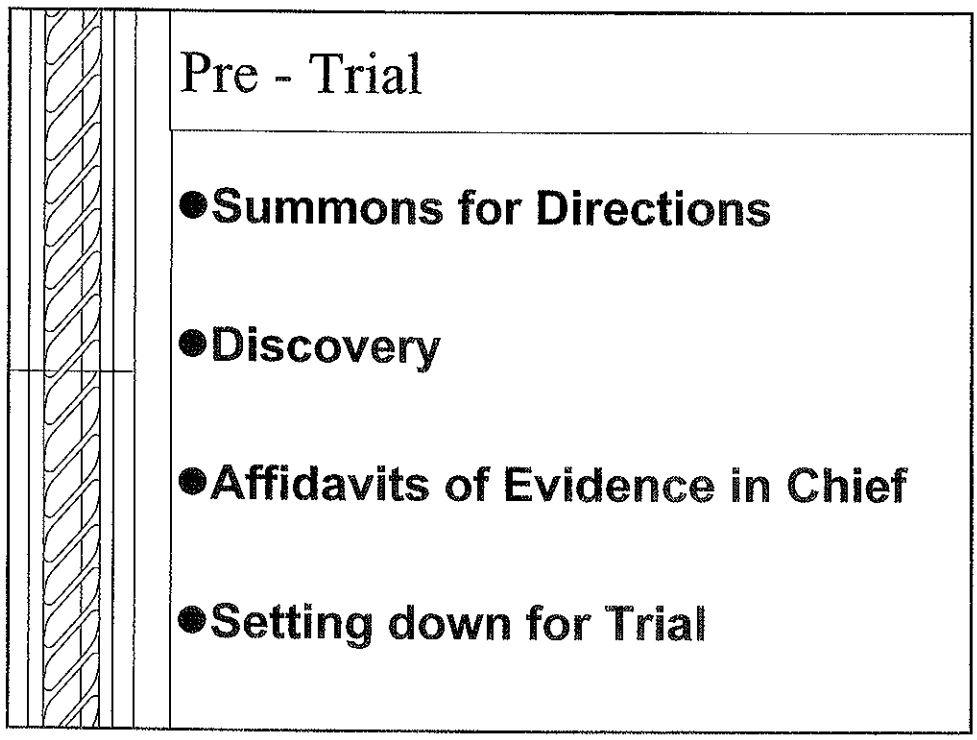
- **File Order 14 summons and serve on debtor within 3 days**
- **Debtor may show cause against Order 14 application by filing affidavit within 14 days**
- **Plaintiff file reply affidavit within 14 days**

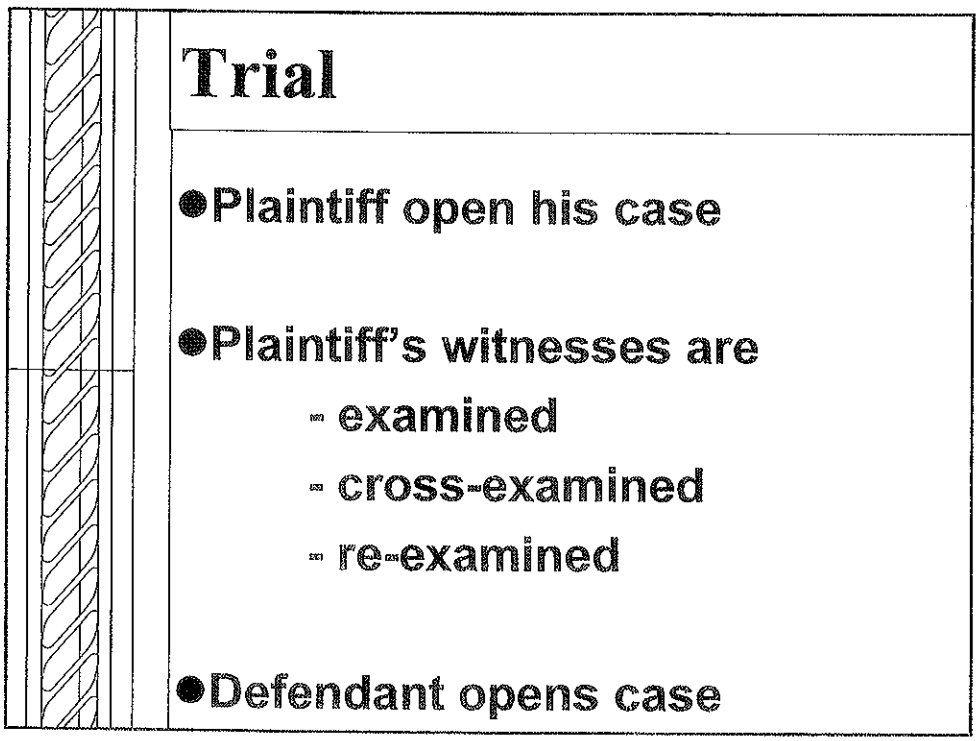
On Order 14 application, court may…

- **Judgment for plaintiff**
- **Dismissed plaintiff's application**
- **Unconditional leave to defend**
- **Conditional leave to defend**


Judgment in Default of Appearance
After time for Memorandum of Appearance (MOA) expired, plaintiff can enter final judgment → claim for specific sum


Judgment in Default of Defence
After time for service of Defence expired, plaintiff can enter final judgment → claim for specific sum


Pre - Trial
Summons for Directions
Discovery
Affidavits of Evidence in Chief
Setting down for Trial


Trial
Plaintiff open his case
Plaintiff's witnesses are
examined
cross-examined
re-examined
Defendant opens case

Judgment Order after Trial

- **After trial → judgment order/debt**
- **Interest accrue on judgment debt**
  - **statutory interest 6%**

Time Frame for Judgment Order

- **Writ to summary judgment..... 2 - 3 months**
- **Writ to default of appearance.....10 - 25 days**
- **Writ to default of defence..... 3 – 6 weeks**
- **Writ to Trial.....12- 18 months**

Costs of Proceedings

- **Letter of demand.....$50 - $300**
- **Writ of summons issued**
  - **High court ..... $2000 - $3000**
  - **Subordinate Courts....$1000-$1700**

Costs

- **For obtaining judgment in default of appearance**
  - **High court.....$2500 - $3500**
  - **Subordinate courts...$1200 -$2000**

Costs

- **Order 14 application**
  - **High court……$5000-$17,000**
  - **Subordinate courts…$2500 - $12,000**

Cost of Full Trial

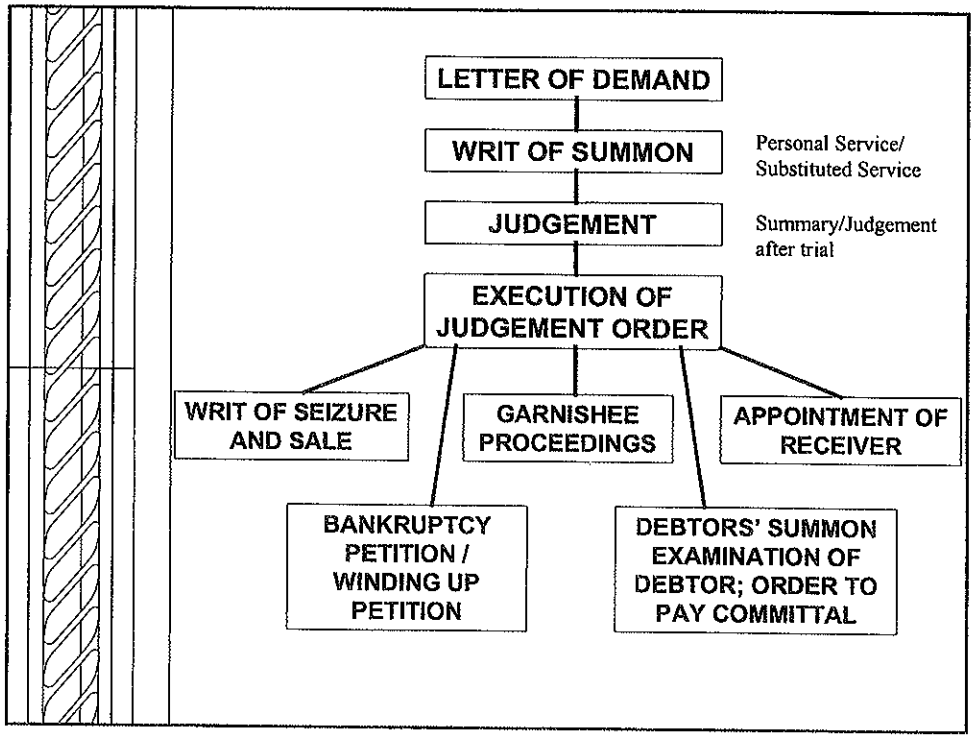
- **Depends on case how complex**

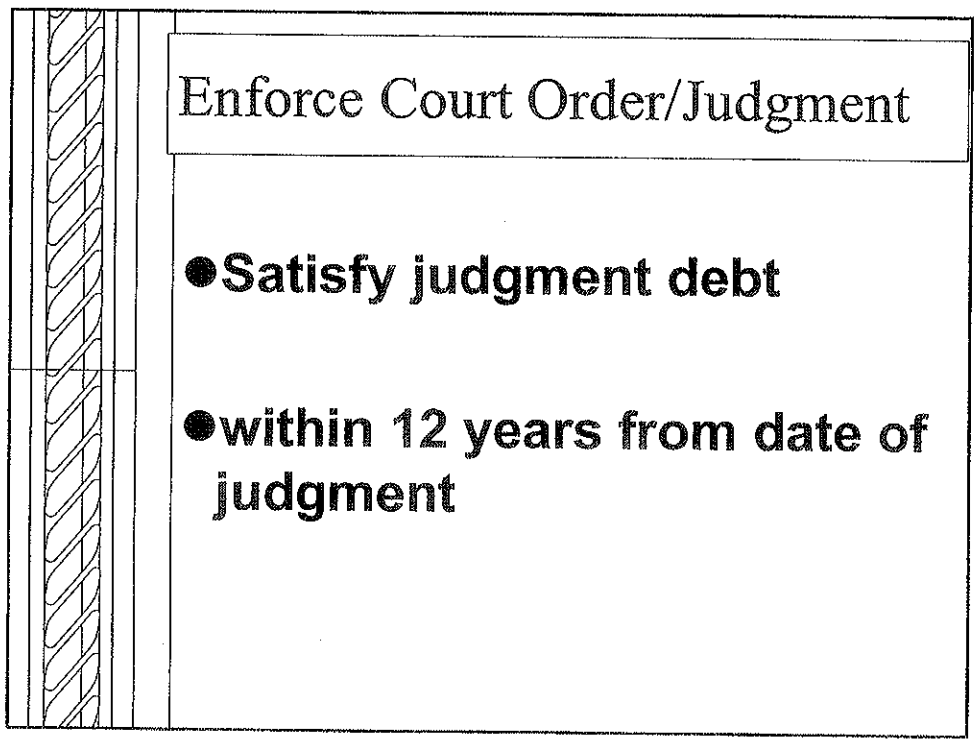
Costs from other party

- **If unsuccessful claim, must pay defendant's and own costs**
- **If successful claim..... 60%-70% can be recovered from defendant**

After obtaining Judgment Order

- **Letter of Demand of Judgment Debt**
- **Mediation**
  - **Primary Dispute Resolution Centre**
  - **Singapore Mediation Centre**


LETTER OF DEMAND
WRIT OF SUMMON
Personal Service/ Substituted Service
JUDGEMENT
Summary/Judgement after trial
EXECUTION OF JUDGEMENT ORDER
WRIT OF SEIZURE AND SALE
GARNISHEE PROCEEDINGS
APPOINTMENT OF RECEIVER
BANKRUPTCY PETITION / WINDING UP PETITION
DEBTORS' SUMMON EXAMINATION OF DEBTOR; ORDER TO PAY COMMITTAL


Enforce Court Order/Judgment
Satisfy judgment debt
within 12 years from date of judgment

Execution of Judgment Debt

- **Writ of Seizure & Sale**
- **Garnishee Proceedings**
- **Company in Receivership**
- **Examination of Judgment Debtor**
- **Bankruptcy/Winding up**

Writ of Seizure & Sale (WSS)

- **Seizure & sale of debtor's property**
- **Bailiff of Supreme Court will seize assets for sale**
- **After deducting bailiff's costs/expenses, proceeds of sale pay judgment debt**

WSS enforceable against...

- **Movable & immovable property except**
  - **HDB flat**
  - **bedding, clothing, furniture, household equipment necessary for basic domestic needs of debtor/family**
  - **tools, books necessary for his employment or business**

Ownership of goods

- **Anyone else claiming ownership pf seized goods can apply to set aside WSS**
- **Costs of WSS.....$1000 - $3000**

Garnishee Proceedings

- **Creditor recover judgment debt from third party (garnishee) e.g. bank who is indebted to debtor**
- **Costs... $800 - $1000**

Examination of Judgment Debtor

- Debtor required by EJD order to attend before Registrar and be orally examined
  - on whether debtor has property to satisfy judgment debt

Bankruptcy of Individuals/Firms

- **Creditor can enforce payment of debt by presenting a bankruptcy petition against individuals or firms**

Bankruptcy Requirements

- **Debt at least $10,000**
- **Failure to pay after statutory notice of 21 days**
  - **presumption of inability to pay**

Official Assignee (OA) takes charge…

- **OA realise assets & distribute to all creditor**
- **Creditors to file proof of debt with OA who will admit or reject**

Bankruptcy costs

- **Estimate $3000 - $5000**

Winding up of Companies

- **Creditor can enforce payment of debt by presenting a winding up order against a company**

Winding up requirements

- **Debt at least $10,000**
- **Failure to pay after statutory notice of 21 days**
  - **presumption of inability to pay**

Winding up Costs

- **Estimate $5000 - $10,000**

Aim of Bankruptcy Act

- To reduce bankruptcies and encourage settlement of debts
  Voluntary Arrangements
- To introduce simplicity to otherwise complex, archaic bankruptcy procedure
  Bankruptcy Procedure
- To increase powers of OA
  Administration in Bankruptcy

- To encourage creditors to take more active interest in bankruptcy proceedings

  Private Trustee

- To encourage entrepreneurship (bankruptcy due to failure misfortune rather than malpractice)

  Discharge in Bankruptcy

- To increase amount available in bankrupts' estate for distribution to creditors

  Insolvency Assistance Fund

Voluntary Arrangements

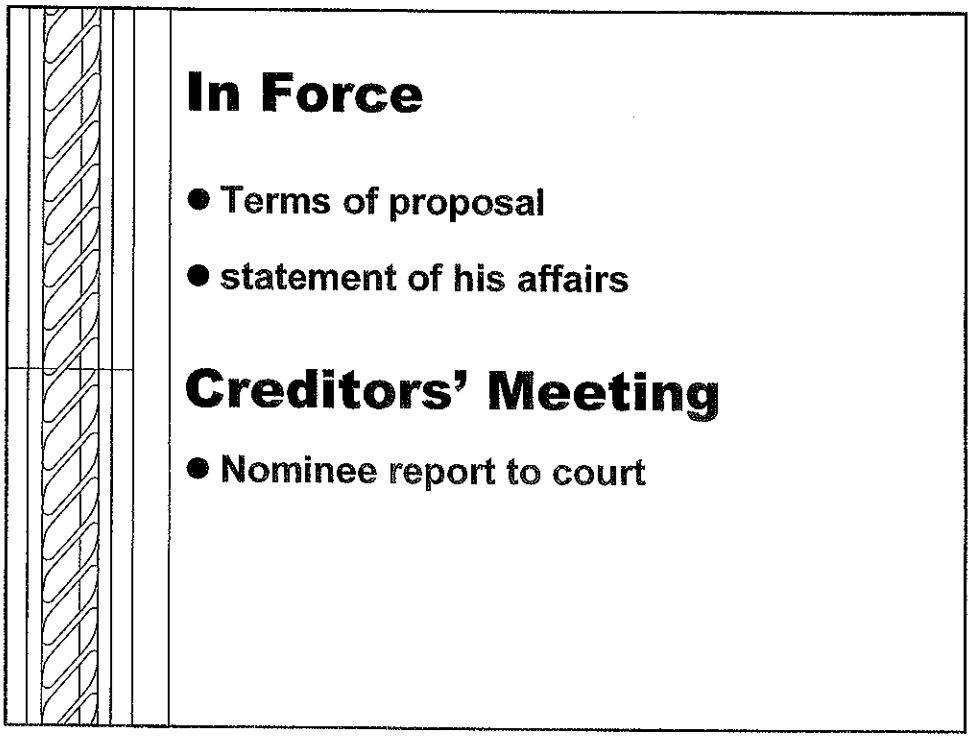
Bankruptcy Act enables Debtors to avoid bankruptcy by entering into voluntary arrangement with creditors

Who can Apply?

Debtor or Firm make a proposal to creditors for a composition or scheme of arrangements

Interim Order

- Appoint a " Nominee " to implement arrangement
- Interim Order stays all legal proceedings
- Nominee
  - advocate and solicitor
  - public accountant
  - Minister to prescribe

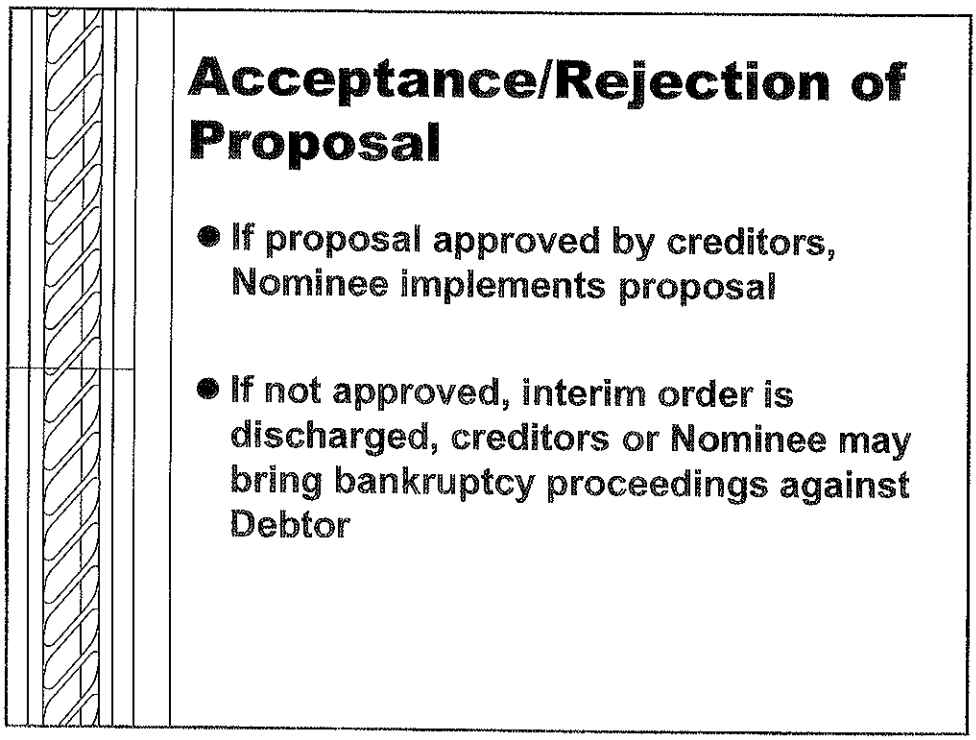


In Force

- Terms of proposal
- statement of his affairs

Creditors' Meeting

- Nominee report to court



Acceptance/Rejection of Proposal

- If proposal approved by creditors, Nominee implements proposal
- If not approved, interim order is discharged, creditors or Nominee may bring bankruptcy proceedings against Debtor

Statutory Demand

- Creditor need not obtain judgement first before serving his demand on Debtor

Grounds for Petition

"unable to pay his debts"

1. Fails to comply with a Statutory demand within 21 days OR
2. Execution issued against Debtor
3. Absconds outside Singapore

Increased Powers of OA

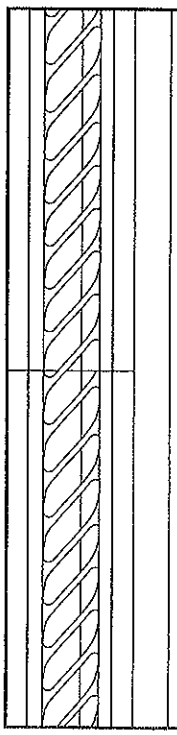
1. Control over property held by secured creditors

2. Supervision of Bankrupts
   - Power of Entry and Seizure
   - Power to impound passports
   - Power to avoid further unfair preferences and transactions at an undervalue
   - New offences and increased penalties

Offences

- Failure to file Statement of Affairs
- Failure to submit 6 monthly returns
- Failure to obtain OA's sanction before commencing action in court or
- travelling out of Singapore

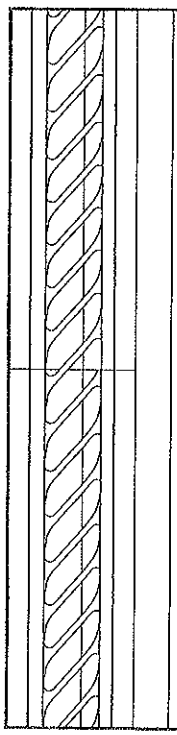
2 years jail or $10,000 or both



Penalties

Bankruptcy offences are :

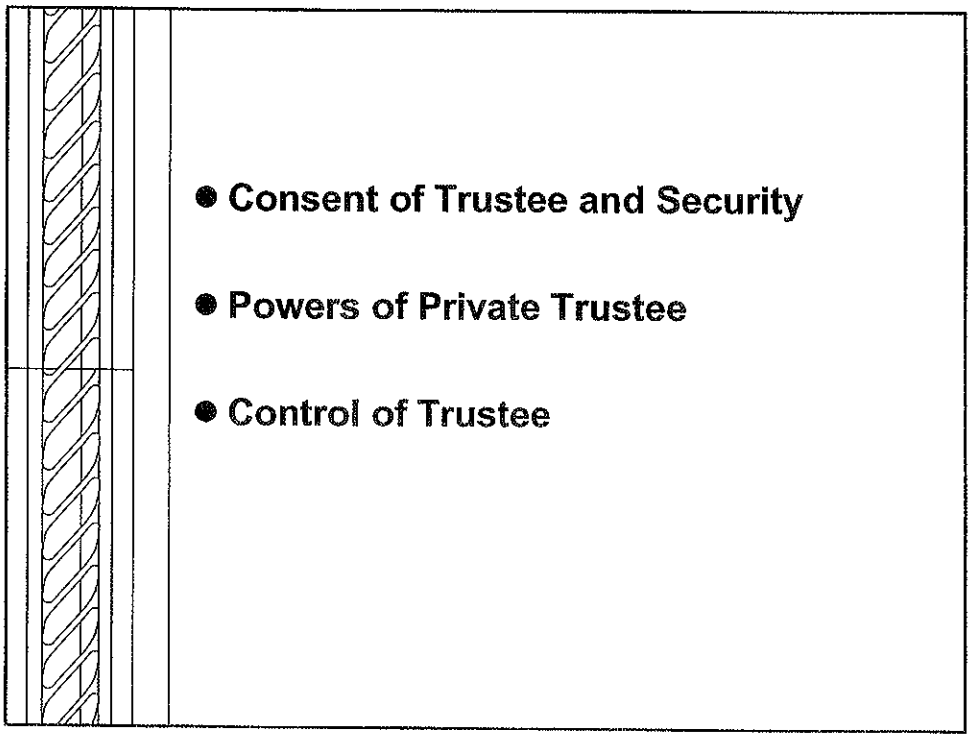
- wilful concealment of property by a bankrupt
- making false statements
- incurring further liabilities without reasonable expectation of settling these liabilities

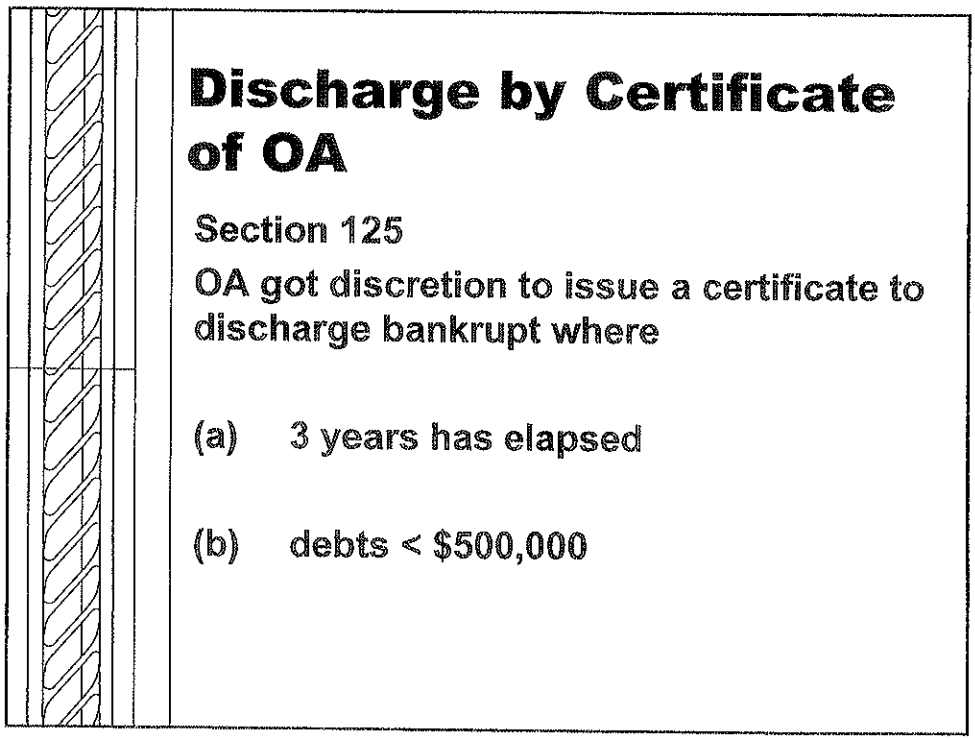


Private Trustee

Aim: Encourage creditors to take more active interest in bankruptcy proceedings

- Appointment of Private Trustee on application of Creditor to administer Bankrupt's estate
- Qualification of Trustee
  - Public accountant
  - advocate and solicitor
  - Minister prescribe


● Consent of Trustee and Security
● Powers of Private Trustee
● Control of Trustee


Discharge by Certificate of OA
Section 125
OA got discretion to issue a certificate to discharge bankrupt where
(a) 3 years has elapsed
(b) debts < $500,000

Relevant Considerations

- Cause of the bankruptcy
- period of bankruptcy
- bankrupt's assets and payments to his bankruptcy account
- bankrupt's conduct
- level of co-operation to OA

Discharge Procedure

- OA serve notice to creditors
- objection by creditors
- creditor apply to court
  - dismiss objection
  - make an order imposing conditions for discharge
  - order that bankrupt shall not be discharged by certificate for more than 2 years

Discharge by Court

- Less onerous
- public examination not mandatory
- category of persons expanded:
  - Bankrupt
  - OA
  - any person

to apply for discharge

Judicial Management

- Receiverships
- Liquidations
- Rehabilitate financially troubled companies
- 24 sections 227A - Section 227X
  - Companies Act

Who Can Apply for JM

- Company or creditor(s) or directors

(1) where the company is unable to pay its debts and

- 2. Where there is
  - likelihood of rehabilitating the company
  - of preserving its biz as going concern
  - interests of creditors is better served than by resorting to winding-up

Circumstances

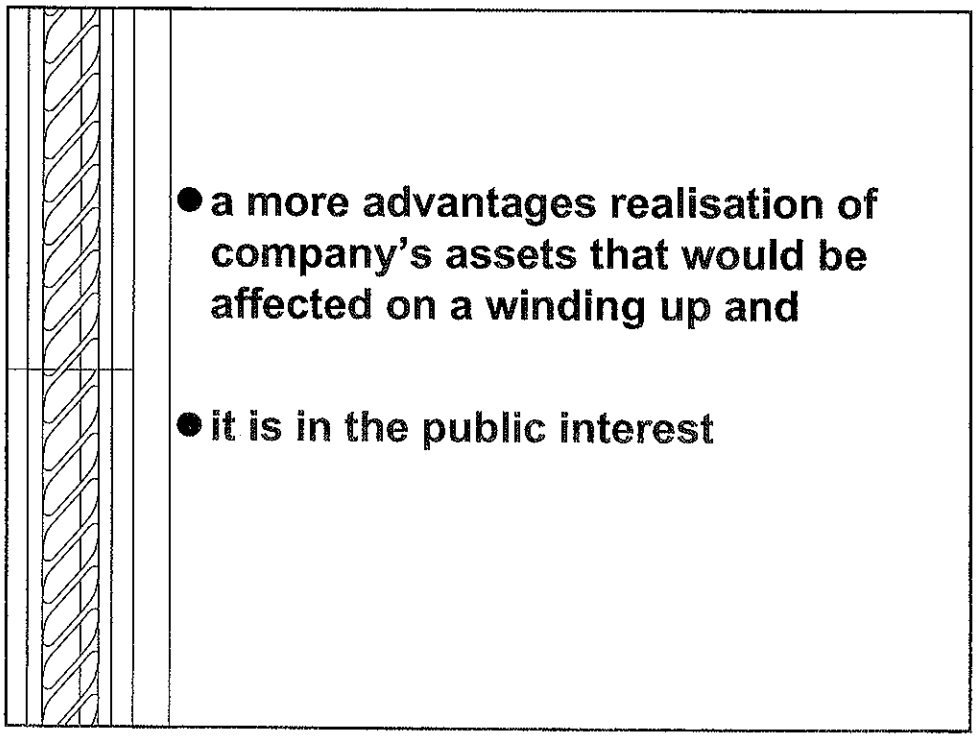
- **Court may make JM order and appoint JM if satisfies that**

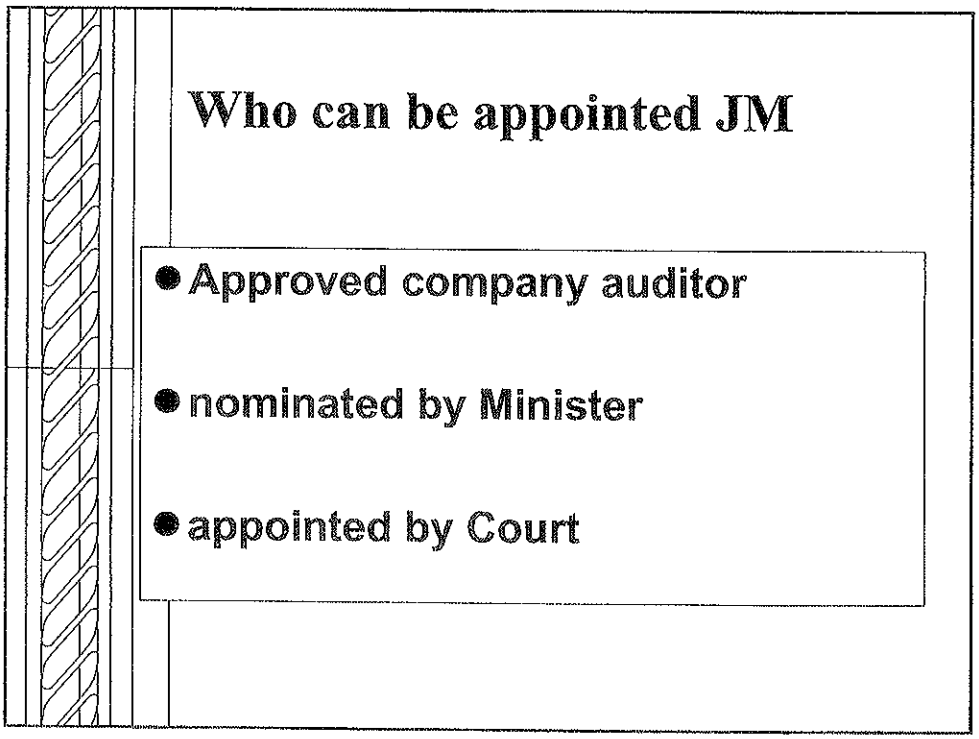
  (1) Company is insolvent and if

Circumstances

(2) Court considers that JM is likely to achieve one or more of the following purposes:

- the survival of the company as a going concern
- a compromise or arrangement between the company and its members or creditors under Section 210 CA


a more advantages realisation of company's assets that would be affected on a winding up and
it is in the public interest


Who can be appointed JM
Approved company auditor
nominated by Minister
appointed by Court

Duty to send to

- RCB
- all Creditors
- all members of company
- publish notice in newspaper

Copy of Statement of proposals

- Duty to send to
  - (1) RCB
  - (2) Company
  - (3) Creditors
- a copy of the JM order

Effect of JM order

(1) No winding up may be started

(2) No Receiver under a floating Charge may be appointed

(3) Any Receiver or Manager appointed must vacate office

(4) No steps can be taken to enforce any security over the company's property except with permission of JM or Court

- Personal liability for Contracts
- Functions, duties and power of JM
- Protection for Creditors Members
- Duty to Co-operate with JM

Reference Books by Catherine Tay Swee Kian

1. **Bankruptcy – The Law & Practice (1984, Butterworths)**

2. **How to Recover Your Debts – (1994 SNP Publishers)**

3. **Judicial Management (1987 Malayan Law Journal)**

Thank you

Any Questions?

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Author of Law Books

Singapore Legal System

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Singapore Legal System

- CRIMINAL LAW
- CIVIL LAW

Criminal Proceedings

Public Prosecutor v Accused

⟶ Fine / Cane / Jail / Death

Guilty

[Beyond reasonable doubt - 100%]

Civil Proceedings

Plaintiff v Defendant

⟶ Damages / Specific

Liable Performance / Injunction

[on a balance of probabilities - 51%]

Sources of Law

- Legislation / Statutes
  Acts of Parliament
- Common Law / Cases
  Decision of Judges - Law Reports

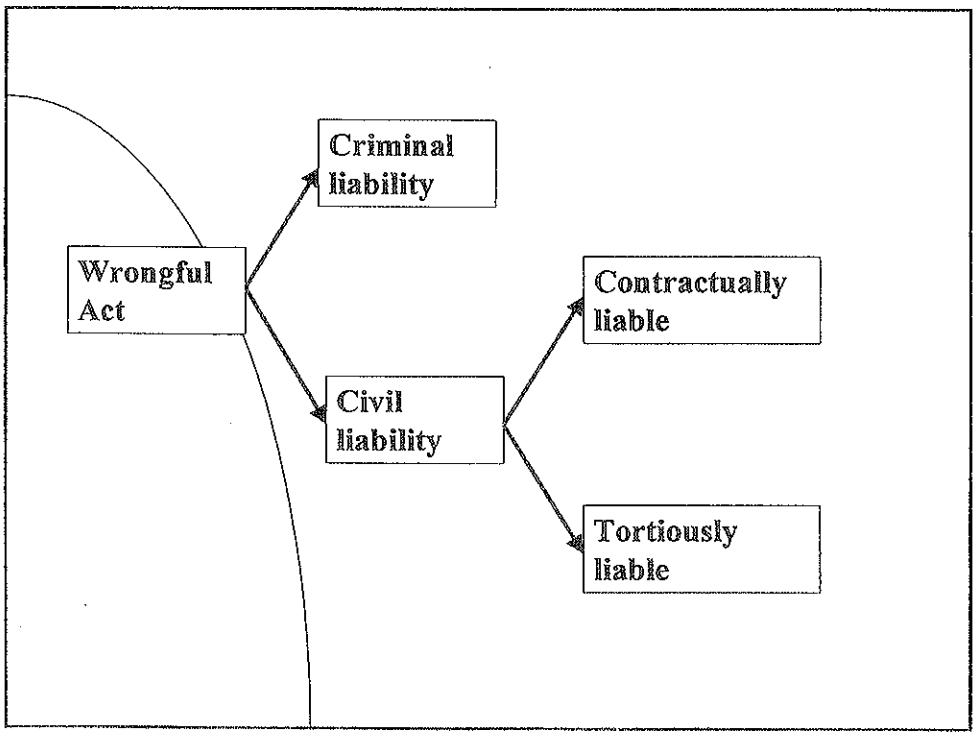
Types of Law

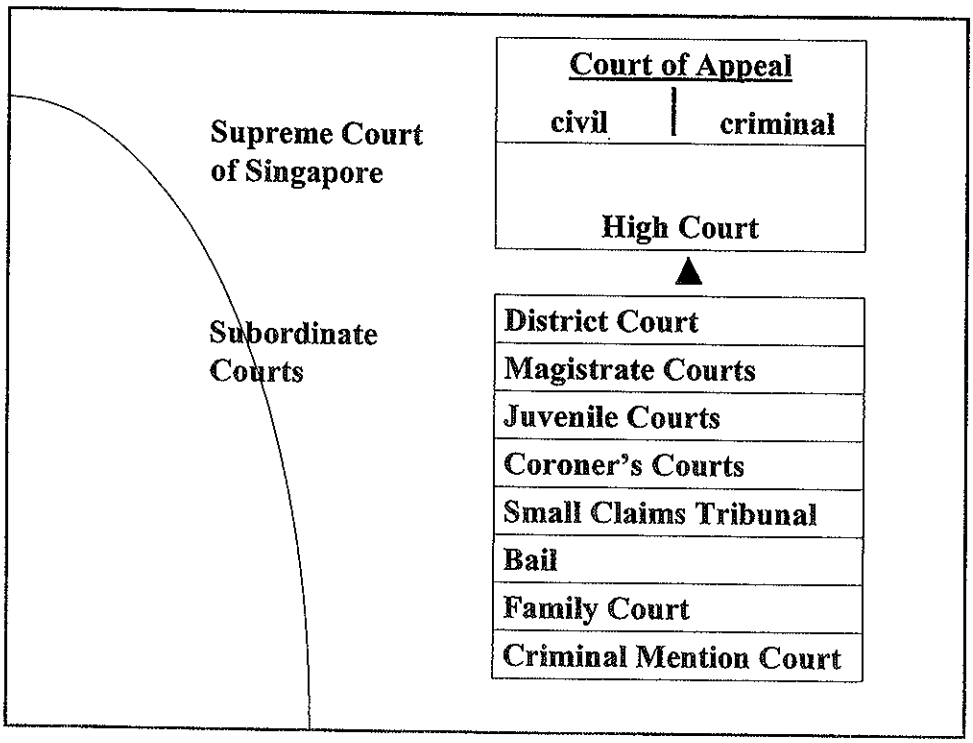
- Contract Law
- Tort Law
- Intellectual Property Law
- Insolvency Law
- Company Law

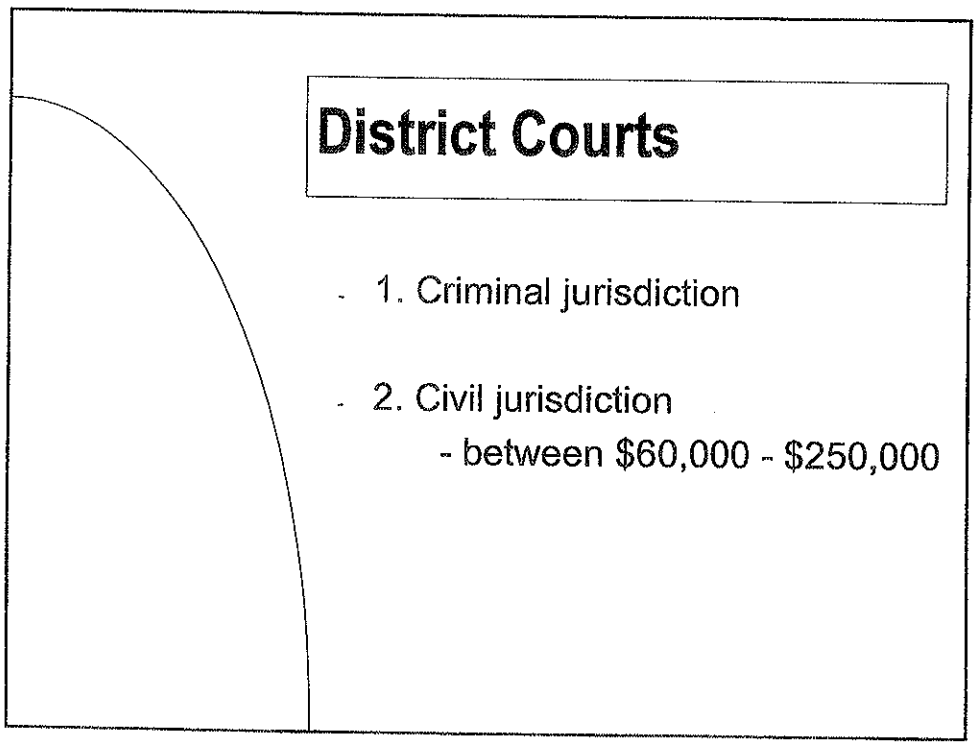
Torts

wrongful acts

- negligence
- intentional
- nuisance
- trespass
  - land
  - goods
  - person
- defamation
- conversion
- occupiers' liability




Supreme Court of Singapore
Court of Appeal
civil
criminal
High Court
Subordinate Courts
District Court
Magistrate Courts
Juvenile Courts
Coroner's Courts
Small Claims Tribunal
Bail
Family Court
Criminal Mention Court


District Courts
1. Criminal jurisdiction
2. Civil jurisdiction
- between $60,000 - $250,000

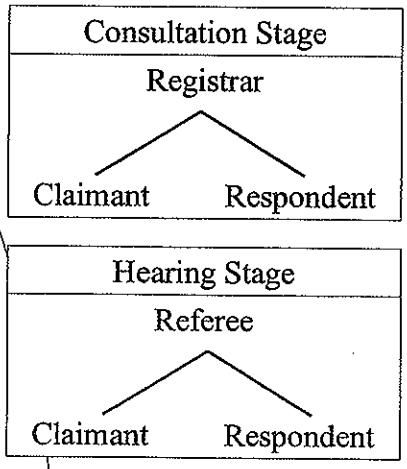
Magistrates Courts

- Criminal
- Civil
  - < $60,000 claims

High court

- Criminal
- Civil
  - > $250,000

Small Claims Tribunal



- **$10,000 limit for hearings at Small Claims Tribunal**
- **But if both agrees in writing, limit claim of up to $20,000**

Examples of claims that can be brought :

- defective goods
- unsatisfactory services e.g. shoddy workmanship, car repairs
- property disputes

Examples of claims that ***cannot*** be brought :

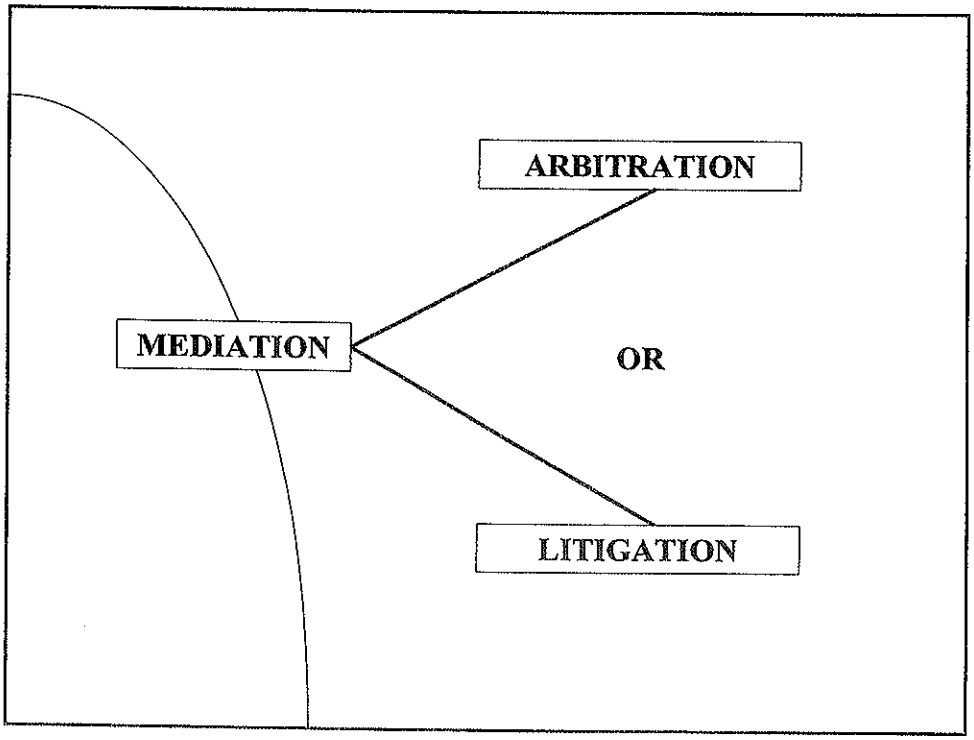
- tort of claims
- hire-purchase
- insurance claims

Alternative Dispute Resolution

- negotiation/consultation
- mediation
- arbitration

Mediation

- Give & take attitude
- Willing to compromise



Advantages of Arbitration

- Choice of tribunal
- Privacy / Confidentiality
- Speed
- Technical expertise
- Enforceability of award [New York Convention 1958]

Enforcement of Award

New York Convention 1958 - which allows awards made in one member country to be enforced in another member country

Disadvantages of Arbitration

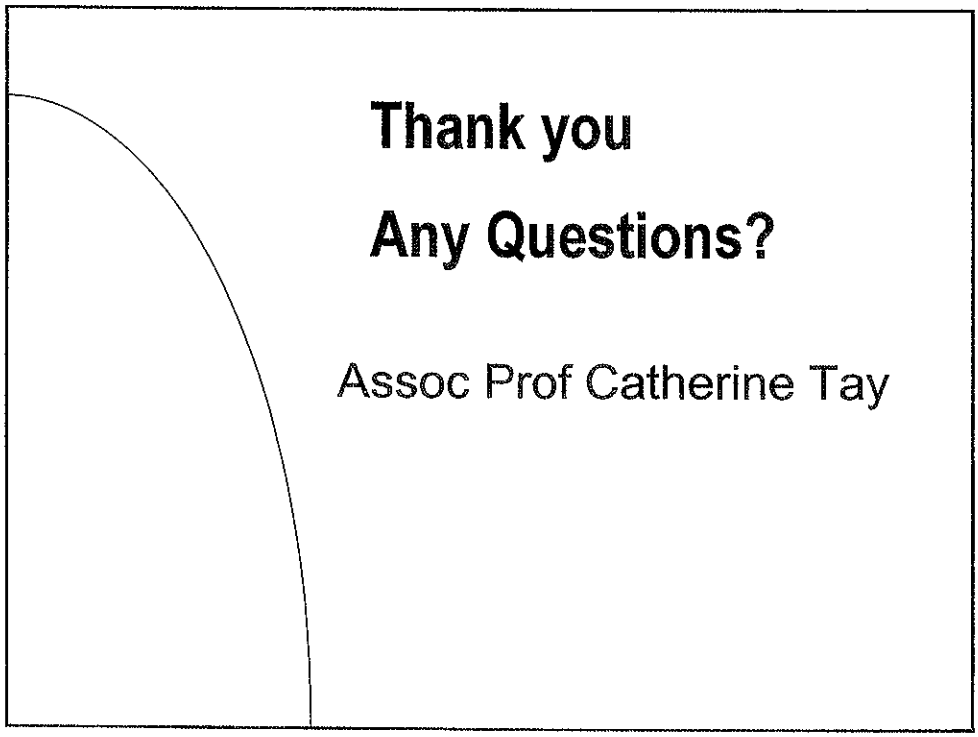
- Issue - one for law
- Pay for arbitral tribunal & facilities e.g. cost of arbitrtor & hearing rooms
- Legal aid not available

Appointment of Arbitrator

- anyone
- professional

Book

- Resolving Disputes by Arbitration
  by Catherine Tay Swee Kian,
  Singapore University Press


Thank you
Any Questions?
Assoc Prof Catherine Tay

Managing Debt Recovery Through Legal Procedures

by
Timothy Kho
Tan Peng Chin LLC

Preliminary Considerations

- Is there a legally enforceable debt or a course of action at law?
- Is the claim time barred?
- Is recovery of the claim feasible?

Forum

- Small Claims Tribunals
- Magistrates' Courts
- District Courts
- High Court
- Arbitration

Small Claims Tribunal

- No legal representation allowed
- Limited claims permitted such as sale of goods, provision of services and tort claims for property damage (but not road accident claims)
- Claim must be brought within a year

Court Process

- Writ of Summons (Legal demand is not necessary)
- Pleadings
- Summons For Directions
- Discovery and inspection of documents
- Exchange of affidavits of evidence-in-chief
- Trial

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Summary Judgment

- Suitable when Defendant has no defence to claim
- Filing window: after Defence but within 14 days from close of pleadings
- Procedure: tried by way of affidavits in Chambers

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Immediate Relief in Exceptional Cases

- Mareva Injunction
- Relief under the Debtors Act Cap. 73

Arbitration

- Need for Arbitration Agreement
- Similar to Court Proceedings
- Confidentiality
- Choice of judge
- More flexible, possibly faster and cheaper than legal proceedings
- Limited right of appeal

Mediation

- Focus is on interests and not rights/liabilities
- Outcome is negotiated and there is more certainty
- Informal, flexible, expeditious and cheaper
- Relationships are preserved
- Potential for wasted costs if mediation is unsuccessful

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Mediation and the Courts

- Singapore Mediation Centre
- Subordinate Courts: Court Dispute Resolution
- Mediation has a fairly high rate of success
- Possible impact on costs in legal proceedings

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Enforcement of Judgment

- Writ of Seizure and Sale
- Garnishee Proceedings
- Appointment of Receiver

Insolvency Proceedings

- Bankruptcy Proceedings
- Winding Up Proceedings
- Amount owing has to be at least $10,000
- Pari Passu Distribution

Implications of Insolvency Proceedings

- Possible claw back of assets
- Undervalue transactions - 5 years
- Unfair preference - 6 months or 2 years

General Procedure in Insolvency Proceedings

- Statutory Demand
- Bankruptcy or Winding Up Petition
- Advertisements
- Proof of Debt

Section 210 of Companies Act Cap. 50

- A possible procedure for compromise with creditors to be reached
- Application to Court for leave to call meeting of creditors (and usually to stay legal proceedings)
- Majority in number and 75% in value of creditors
- Court Sanction