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THE EFFECT OF THE NATIONAL BANKRUPTCY CODE UPON THE UNIFORM BUSINESS CORPORATIONS ACT

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The Federal Constitution provides that Congress shall have the power to establish uniform bankruptcy laws.[1] This does not deprive the states of their power to enact insolvency laws but merely suspends the operation of such laws where enforcement would conflict with the Federal Act.[2] Whether an insolvency statute is considered a bankruptcy act depends on whether the debtor is given an absolute discharge.[3] The whole of the state act or merely the discharge portion may be invalid depending upon whether its other sections are inseparably interlaced with the discharge provision.[4] If the highest court of the state declares its discharge provisions suspended (courts often say void) but the rest of the act valid, no federal question is presented.[5]

The Uniform Business Corporations Act provides for dissolution of a corporation[6] when its liabilities exceeds its assets[7] (bankruptcy) at the instance of (1) a shareholder (voluntary petition), (2) a judgment creditor, or (3) a creditor whose claim has been admitted (involuntary petitions) [8] The trustee is then empowered to wind up the corporation, collect all debts, convert the assets into cash, and pay all claims according to their respective priorities.[9] This dissolves the corporation,[10] and thus, in effect, absolute discharge of the corporate debtor has been accomplished without full payment of its debts. Moreover, except by specific statute, individual shareholders are not personally liable for corporate debts by virtue of the corporate entity doctrine.[11] Thus, it is submitted, it logically follows that the force of at least the above sections of the Uniform Business Corporations Act

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[1] U. S. CONST. Art. I, § 8, cl. 4, Hanover Nat. Bank v. Moyses, 186 U. S. 181 (1902).

[2] Sturges v. Crowninshield, 4 Wheat 122 (U. S. 1819).

[3] Boese v. King, 108 U. S. 379 (1882), Armour and Co. v. Becker, 167 Wash. 245, 9 P.(2d) 63 (1932).

[4] Meyer v. Hallman, 91 U. S. 496 (1875).

[5] *In re* Tarnowski, 191 Wis. 279, 210 N. W 836, 49 A. L. R. 686 (1926), Pobreslo v. Boyd Co., 287 U. S. 518 (1932).

[6] REM. REV. STAT. §§ 3803-48 to 3803-56 [P P C. §§ 446-1 to 446-17].

[7] *Id.*, § 3803-50a [§ 446-5a].

[8] *Id.*, § 3803-51 [§ 446-7].

[9] *Id.*, § 3803-52 [§ 446-9].

[10] *Id.*, §§ 3803-49, 50 [§§ 446-3, 5].

[11] Flink v. Paladini, 279 U. S. 59 (1929), *In re* Koke Co., 38 F.(2d) 232 (C. C. A. 9th, 1930), STEVENS, CORPORATIONS § 16 (1936).

has been suspended[12] except in instances where the Federal Act is not applicable. In construing a similar statute, the Supreme Court of the United States in *In re Watts*[13] stated:

> And the operation of the bankruptcy laws of the United States cannot be defeated by insolvent commercial corporations applying to be wound up under state statutes. The Bankruptcy law is paramount in its field.

The above contention is of course limited to the provisions of state laws which predicate dissolution upon insolvency The administration of decedents' estates is not a valid analogy [14] There the occasion giving rise to the administration of the estate is an act of God normally beyond human control. Under the Washington Business Corporation Act and like statutes the corporation or its creditors initiate the proceedings, solely because of the bankrupt condition of the debtor corporation. There seems to be no persuasive answer to the argument that: (1) Congress can exclusively govern the dissolution of bankrupt corporations,[15] (2) it has done so,[16] and thus (3) the field is exempt from state control.

Cases holding that a receiver could be appointed under the state law and could proceed with dissolution, prorating assets, and so forth[17] and that such was merely an act of bankruptcy subject to being set aside within four months, merely beg the question. It is the state law itself which is suspect, not action taken thereunder. The regulatory provisions of the Corporations Act presumably would not be affected although the Washington court in *Armour v. Becker,*[18] *Tacoma Grocery Co. v. Doersch,*[19] and *Anderson v. Zelensky*[20] held the whole of the Washington Assignment For the Benefit of Creditors Act[21] invalid, drawing no distinction between the regulatory and discharge provisions.[22] The proposition that the Uniform Business Corporations Act is in part a bankruptcy act is of importance in analyzing its impact on

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[12] Hammond *et al.* v. Lyon Realty Co., 59 F.(2d) 592 (C. C. A. 4th, 1932), Continental Bldg. & Loan Ass'n v. Superior Court of San Francisco, 163 Cal. 579, 126 Pac. 476, 479 (1912), *see also* 5 REMMINGTON ON BANKRUPTCY § 2071 (5th ed. 1936).

[13] 190 U. S. 1, 27 (1902).

[14] Hammond *et al.* v. Lyon Realty Co., 59 F.(2d) 592, 593 (C. C. A. 4th, 1932).

[15] *See* cases cited 5 REMMINGTON ON BANKRUPTCY 124 (3d ed. 1923) and DRYER, SUPREME COURT BANKRUPTCY LAW 129 to 149.

[16] U. S. C., TITLE 11, c. 3, § 1, cl. 1, cl. 23 and § 22.

[17] Roberts Cotton Oil Co. v. F E. Morse & Co., 97 Ark. 513, 135 S. W 334 (1911), *see also* State *ex rel.* Strohl v. Superior Court, 20 Wash. 545 (1899).

[18] 167 Wash. 245, 9 P.(2d) 63 (1932).

[19] 168 Wash. 606, 12 P.(2d) 929 (1932).

[20] 170 Wash. 137, 15 P.(2d) 934 (1932).

[21] REM. REV. STAT. §§ 1086 to 1103 [P P C. §§ 642-1 to 642-33].

[22] *Compare,* International Shoe Co. v. Pinkus, 278 U. S. 261 (1928).

the prior corporate receivership statute[23] which has no discharge provision. In the opinion of the writer the pertinent provision of the latter statute is sufficiently inconsistent with the receivership section of the Uniform Act to be mutually exclusive. Without the complicating federal factor, the Uniform Business Corporations Act should be held to repeal the antecedent receivership statute by implication.

The Federal Bankruptcy Act only suspends the operation of the state insolvency law where Congress has pre-empted the field; therefore any function of the state law outside the federal scope should not be affected. For example, the Bankruptcy Act does not cover amounts under $1,000.[24] The receivership-discharge provisions of the Uniform Act, as do all statutes, have two functions: (1) the affirmative or substantive function, and (2) the negative or repealing action upon prior inconsistent statutes. The latter would be affected by the Bankruptcy Act no more than if it had been express. Only the affirmative function has been suspended and only as to amounts of $1,000 or over. Thus the rational conclusion must be that: (1) the prior corporate receivership statute,[25] subsection 5, is repealed, and (2) that the receivership provisions of the Uniform Corporations Act[26] are suspended.

Caveat: The Washington court in the *Becker* case,[27] *supra,* held that a creditor's acts under the Assignment for the Benefit of Creditors Act[28] were "invalid" because of the discharge provision, even though the amount concerned was under $500 and thus without the scope of the Bankruptcy Code. From that decision it is arguable that the Washington court feels that federal action in this field not only "suspends" but "invalidates" or "repeals" the offending state law, a position which, it is submitted, is erroneous.

THE ASSIGNMENT OF ERRORS IN APPELLATE BRIEFS

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INTRODUCTION

Few subjects have troubled courts more and legal writers less than faulty assignments of error. Since the subject has received little atten-

[23] REM. REV. STAT. § 741(5) [P P C. § 91-3(5)].
[24] U. S. C., TITLE 11, c. 3, § 22.
[25] REM. REV. STAT. § 741(5) [P P C. § 91-3(5)].
[26] *Id.,* §§ 3803-48 to 3803-56 [§§ 446-1 to 446-17].
[27] 167 Wash. 245, 9 P.(2d) 63 (1932).
[28] REM. REV. STAT. §§ 1086 to 1103 [P P C. §§ 642-1 to 642-33].