



Bankruptcy (Scotland) Act 1985

1985 CHAPTER 66

Safeguarding of interests of creditors of insolvent persons

34 Gratuitous alienations

- (1) Where this subsection applies, an alienation by a debtor shall be challengeable by—
- (a) any creditor who is a creditor by virtue of a debt incurred on or before the date of sequestration, or before the granting of the trust deed or the debtor's death, as the case may be; or
 - (b) the permanent trustee, the trustee acting under the trust deed or the judicial factor, as the case may be.
- (2) Subsection (1) above applies where—
- (a) by the alienation, whether before or after the coming into force of this section, any of the debtor's property has been transferred or any claim or right of the debtor has been discharged or renounced; and
 - (b) any of the following has occurred—
 - (i) his estate has been sequestrated (other than, in the case of a natural person, after his death); or
 - (ii) he has granted a trust deed which has become a protected trust deed; or
 - (iii) he has died and within 12 months after his death, his estate has been sequestrated; or
 - (iv) he has died and within the said 12 months, a judicial factor has been appointed under section 11A of the Judicial Factors (Scotland) Act 1889 to administer his estate and the estate was absolutely insolvent at the date of death; and
 - (c) the alienation took place on a relevant day.
- (3) For the purposes of paragraph (c) of subsection (2) above, the day on which an alienation took place shall be the day on which the alienation became completely effectual; and in that paragraph "relevant day" means, if the alienation has the effect of favouring—

Status: This is the original version (as it was originally enacted).

- (a) a person who is an associate of the debtor, a day not earlier than 5 years before the date of sequestration, the granting of the trust deed or the debtor's death, as the case may be; or
 - (b) any other person, a day not earlier than 2 years before the said date.
- (4) On a challenge being brought under subsection (1) above, the court shall grant decree of reduction or for such restoration of property to the debtor's estate or other redress as may be appropriate, but the court shall not grant such a decree if the person seeking to uphold the alienation establishes—
- (a) that immediately, or at any other time, after the alienation the debtor's assets were greater than his liabilities; or
 - (b) that the alienation was made for adequate consideration ; or
 - (c) that the alienation—
 - (i) was a birthday, Christmas or other conventional gift; or
 - (ii) was a gift made, for a charitable purpose, to a person who is not an associate of the debtor, which having regard to all the circumstances, it was reasonable for the debtor to make:

Provided that this subsection shall be without prejudice to any right or interest acquired in good faith and for value from or through the transferee in the alienation.

- (5) In subsection (4) above, " charitable purpose " means any charitable, benevolent or philanthropic purpose whether or not it is charitable within the meaning of any rule of law.
- (6) For the purposes of the foregoing provisions of this section, an alienation in implementation of a prior obligation shall be deemed to be one for which there was no consideration or no adequate consideration to the extent that the prior obligation was undertaken for no consideration or no adequate consideration.
- (7) This section is without prejudice to the operation of section 2 of the Married Women's Policies of Assurance (Scotland) Act 1880 (policy of assurance may be effected in trust for spouse, future spouse and children).
- (8) A permanent trustee, the trustee acting under a protected trust deed and a judicial factor appointed under section 11A of the Judicial Factors (Scotland) Act 1889 shall have the same right as a creditor has under any rule of law to challenge an alienation of a debtor made for no consideration or for no adequate consideration.
- (9) The permanent trustee shall insert in the sederunt book a copy of any decree under this section affecting the sequestrated estate.