

タイトル	Recent Developments of Wrongful Trading
著者	IWABUCHI, Shigehiro
引用	北海学園大学法学研究, 55(1): 224-224
発行日	2019-06-30

## Recent Developments of Wrongful Trading

Shigehiro IWABUCHI

The purpose of this paper is to illustrate recent developments in 'Wrongful Trading' under UK law (Insolvency Act 1986 §.214) by analysing discussions in the legislative process of Small Business, Enterprise and Employment Act 2015 ( 'SBEEA' ) and case laws since 2015.

Wrongful trading is the director's liability in an insolvent company. The purpose of this liability is to compensate creditors who were damaged by inappropriate business continuity in an insolvent company. In the UK, however, the number of such claims is quite small. Aiming to spur on wrongful trading claims and secure the protection of creditors, the Government introduced some provisions in SBEEA. However, the UK courts do not seem to be aimed to facilitate the compensation. This is because they have understood that the compensation under § 214 is measured by the increasing of net deficient of the company. Accordingly, creditors cannot be compensated when allegedly wrongful trading decreases the company's net deficit, but it increases one or a class of creditors' deficit. This conclusion may be inconsistent with the purpose of SBEEA and the spirit of the original idea of wrongful trading which was claimed by the Cork Committee.

Through the analysis of those cases laws, this article clarifies that these two reasons led the UK courts to reach such a conclusion. First, a claim to seek compensation for wrongful trading is inefficient to solve the inequality of creditors. Second, due to the high cost of proceedings in the UK, such a claim would lead to a decrease in the company's assets, with the result that it will decrease the amount of compensation to creditors. In other words, such a claim may harm the company creditors.

