

Employee Priority and the Moral Foundations of Insolvency Proceedings: A Comparative Inquiry

AUTHORS & ACADEMIC INFORMATION

Muhamad Yohaniz Atan

AFFILIATION PhD Researcher (Insolvency Law) and Legal Researcher, Graduate School of Management, Management and Science University, Shah Alam, Selangor, Malaysia

ORCID  0009-0005-3694-6652

Dr. Aimi Anuar

AFFILIATION Senior Lecturer and Program Manager (MBA-ODL Program), Faculty of Business Management and Professional Studies, Management and Science University, Shah Alam, Selangor, Malaysia

ORCID  0000-0002-2358-3742

CORRESPONDING AUTHOR - Muhamad Yohaniz Atan - muhamadyohaniz@gmail.com

PUBLICATION INFORMATION

RECEIVED	ACCEPTED	PUBLISHED	DOI
25 May 2026	13 July 2026	5 August 2026	 10.66978/8w75n395

ABSTRACT

Using Ronald Dworkin's theory of law as integrity as an external analytical framework, this article examines how selected Malaysian, United Kingdom, and Australian judgments address employee priority in corporate insolvency. A doctrinal-interpretative comparative method evaluates the judgments through fit, moral justification, and interpretive integrity. The Australian judgments are classified as integrity-consistent because statutory and doctrinal fit is reinforced by employee-protective justification and the Fair Entitlements Guarantee. The United Kingdom judgments are classified as intermediate-integrity because they preserve statutory ordering, creditor reliance, and collective administration while giving limited attention to employee vulnerability. The Malaysian judgments show high fit but limited justification because they do not fully explain how employee protection relates to creditor justice and institutional constraints. The article proposes a wage guarantee fund and judicial guidance for principled cross-doctrinal reasoning within clear statutory language, binding precedent, and legislated priorities.

Keywords: Employee priority, Comparative law, Insolvency law, Law as integrity, Malaysia

HOW TO CITE THIS ARTICLE

Atan, M. Y., & Anuar, A. (2026). Employee priority and the moral foundations of insolvency proceedings: A comparative inquiry. *JurisPolitica*, 2(1), 32-41. <https://doi.org/10.66978/8w75n395>

1. Introduction

Corporate insolvency distributes a depleted estate among claimants whose interests are ordered by statute, property rights, security arrangements, and collective procedures. Employees may lose wages, entitlements, and livelihoods, while creditors may legitimately rely on established priorities and predictable administration. The jurisprudential question is how courts can interpret the governing framework coherently while respecting employee protection, creditor justice, and institutional limits.

Employee priority is commonly analysed in economic terms. Employees are involuntary, non-adjusting creditors who cannot diversify their exposure to one employer or secure their claims in advance. Wage guarantees, prescribed-part reservations, and preferential claims respond to that vulnerability. Economic considerations remain relevant because priorities affect financing, creditor reliance, asset distribution, and collective administration. They are incomplete, however, if they exclude the moral dimensions of employment and involuntary loss during corporate distress.

Existing scholarship examines employee protection from doctrinal, comparative, and policy perspectives. Addison and Teixeira (2005) consider the employment effects of severance-pay requirements. Mucciarelli (2017) compares statutory priorities and wage guarantees, while Gant (2022) examines the position of involuntary and vulnerable stakeholders. This scholarship does not use Dworkin's law-as-integrity framework to compare judicial reasoning across the three jurisdictions examined here.

This article addresses that gap through three common law jurisdictions with shared legal influences but different institutional arrangements. Malaysia is the primary focus because its Companies Act 2016 preserves tensions between statutory priority and employee protection. The United Kingdom provides a precedent-based comparison with limited employee preferences and supplementary public protection. Australia offers the strongest comparative illustration under the article's framework because its Fair Entitlements Guarantee and selected judgments allow statutory fit and employee-protective justification to reinforce one another.

The article asks three questions. Under what conditions do courts in Malaysia, the United Kingdom, and Australia prioritise employee claims in corporate insolvency? To what extent does the reasoning in the selected judgments satisfy fit, moral justification, and interpretive integrity? What lessons does this comparison offer for Malaysian reform? The discussion proceeds through the methodology, theoretical framework, jurisdictional analysis, findings, and targeted reforms.

2. Methodology

This study uses a qualitative doctrinal-interpretative method. The doctrinal analysis establishes the governing law through statutes, subsidiary legislation, binding precedent, creditor hierarchy, and institutional context. Dworkin's concepts of fit, justification, and integrity are then used as an external analytical framework to evaluate the reasoning in the selected judgments. The analysis does not assume that the three legal systems formally adopt Dworkin's theory. It remains subject to statutory language, binding precedent, institutional competence, commercial predictability, and legislated priorities.

The jurisdictions were selected for their comparative value and relationship to Malaysian law. Malaysia is the primary jurisdiction. The United Kingdom directly influenced Malaysian corporate and insolvency law through legislative borrowing. Australia was selected because its statutory guarantee and jurisprudence provide a distinct institutional response to employee insolvency.

Cases were selected where the decision addressed an employee claim or an insolvency issue material to employee protection or collective distribution, contained sufficient reported reasoning, and was leading or illustrative. The corpus comprises *Goh Ying Ying v Reliance Shipping & Travel Agencies (Sarawak) Sdn Bhd* [2020] ILJU 265 and *Perwaja Steel Sdn Bhd v RHB Bank Berhad & 789 Others* [2019] MLJU 698 for Malaysia; *Re Nortel Networks* [2013] UKSC 52, *Lehman Brothers International (Europe) (In Administration)* [2012] UKSC 6, *Re Leyland Daf Ltd* [2004] UKHL 9, and *Re Toshoku Finance UK Plc* [2002] UKHL 6 for the United Kingdom; and *Carter Holt Harvey Woodproducts v Commonwealth* [2019] HCA 20, *Fair Work Ombudsman v Foot & Thai Massage Pty Ltd (in liquidation)* (No 4) [2021] FCA 1242, and *Commonwealth of Australia v Tonks* [2023] NSWCA 285 for Australia.

Each judgment is evaluated through three indicators. Fit concerns consistency with statutory language, binding precedent, and established doctrine. Justification concerns whether the reasoning gives a principled account of the outcome, including relevant consideration of fairness, employee vulnerability, creditor justice, and institutional limits. Integrity concerns whether fit and justification reinforce one another. The classifications are the author's qualitative analytical categories, not labels adopted by the courts.

The thresholds are qualitative and non-exhaustive. Fit is high where the reasoning closely applies the governing law, intermediate where it remains generally consistent but incomplete or unresolved, and limited where material authority is overlooked or departed from without adequate explanation.

Justification is high where a principled rationale is expressly connected to the legal reasoning, intermediate where that rationale is partial, implicit, or secondary, and limited where it is absent, asserted without explanation, or disconnected from the outcome.

Overall integrity is not an arithmetic score. It is high where strong fit and justification mutually reinforce one another, intermediate where legal fit is maintained but justification is restrained or incompletely integrated, and limited where justification is absent or legal fit is insufficient.

3. Dworkinian Interpretivism and Law as Integrity

3.1. Interpretive Theory of Law

Ronald Dworkin's jurisprudence challenges legal positivism by treating principles, as well as rules, as part of legal reasoning. Law is not merely a collection of social facts but a practice of principled reasoning about legitimate political coercion, in which morality informs legal interpretation through integrity (Valles Santillán, 2022, p. 115). Dworkin's ideal judge, Hercules, seeks the interpretation that best fits legal practice and provides its strongest principled justification (Jakab, 2013; Walters, 2008; Wang, 2023). This model constrains personal preference by requiring fidelity to legal history and reasons grounded in justice and fairness (Nsubuga, 2018a; Wang, 2023).

In *Law's Empire*, Dworkin explains integrity through the chain-novel analogy. A judge resembles a successive author who must continue a shared work without discarding its established plot. Prior decisions constrain later interpretation, while the new chapter must present the legal practice as coherently as possible. The analogy therefore joins fidelity to institutional history with principled justification.

Dworkin's model is not uniformly reflected in judicial practice, including in the United Kingdom and Australia (Allan, 2016; Bennion, 2009; Nsubuga, 2018a; Sunstein & Vermeule, 2003). This gap matters in insolvency law, where economic and social considerations intersect.

3.2. Law as Integrity

Law as integrity asks judges to interpret statutes and precedents as parts of a coherent scheme rather than as isolated acts. Here, that proposition is an external evaluative standard, not a statement of positive law or a theory attributed to the courts examined. Its use is confined to the interpretive space permitted by statutory language, binding precedent, legislated priorities, and institutional competence. Integrity therefore requires legal history and principled justification to operate together, rather than authorising unrestricted discretion (McCaffery, 1997; Solove, 1997; Sunstein & Vermeule, 2003).

Applied to insolvency, integrity permits examination of whether creditor priorities and labour protections are interpreted coherently within the governing legal framework. Different systems may legitimately place different weight on efficiency, creditor reliance, collective administration, and social protection. Moral coherence must therefore be assessed together with legal certainty and the institutional allocation of law-making authority, not as a licence to displace clear statutory priorities.

Although Crowe (2007) questions integrity's independent moral significance, the theory remains useful as an evaluative framework for contested regulatory fields (Bustamante, 2019).

Integrity is used here as an aspirational comparative benchmark rather than a claim that any jurisdiction fully realises Dworkin's theory (Scott, 2023).

3.3. Fit and Justification as Interpretive Criteria

Dworkin's framework has two linked dimensions. Fit asks whether an interpretation remains connected to authoritative legal materials, including statutes, precedent, and doctrine. Justification asks whether the interpretation provides a principled account of those materials and the outcome. Law as integrity requires both dimensions to be considered together without treating moral reasoning as authority to disregard the governing law (Sunstein, 2006).

This article operationalises the framework through fit, moral justification, and interpretive integrity. Fit concerns legal consistency. Moral justification concerns the principled reasons offered for the result, including relevant engagement with employee vulnerability and creditor justice. Interpretive integrity concerns whether those dimensions are coherent within the applicable statutory, precedential, and institutional limits (Bustamante, 2019).

The assessment first establishes the governing legal and institutional context. It then evaluates fit and justification and derives an overall classification. Integrity-consistent reasoning reflects high fit and high justification. Intermediate-integrity reasoning preserves fit but offers partial or restrained justification. Textual-limited reasoning shows strong adherence to authoritative text with limited principled explanation. These categories describe the article's assessment of selected judgments and do not imply that the courts adopted Dworkin's theory.

Figure 1 presents this article's adaptation of Dworkin's interpretivist model, showing the iterative relationship between legal fit, moral justification, and interpretive integrity. The cycle provides an analytical framework for assessing judicial reasoning and does not describe a method expressly adopted by the courts examined.

Figure 1. Dworkinian Analytical Framework for Judicial Reasoning.

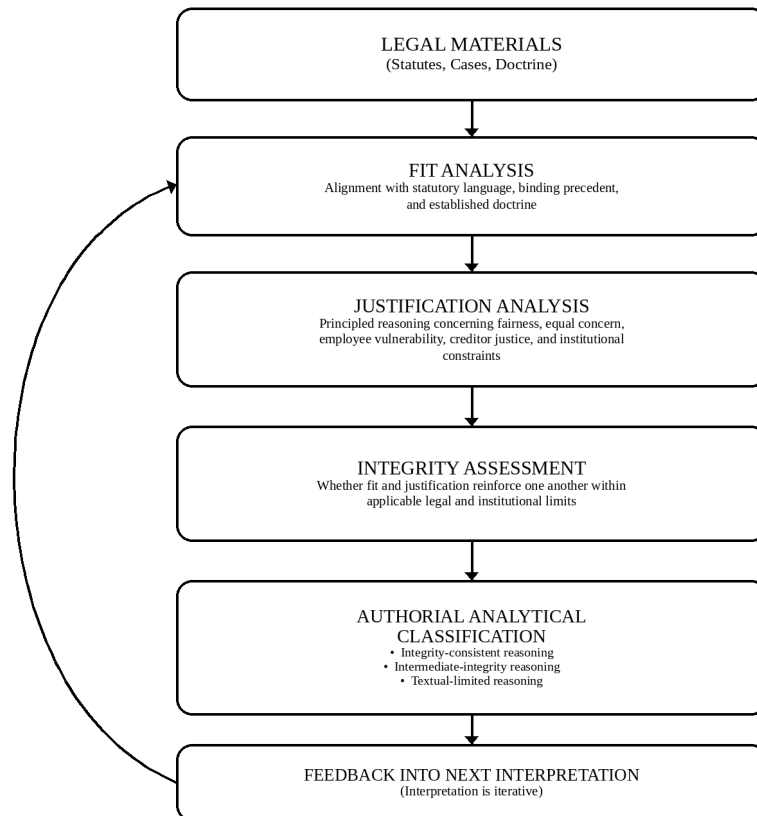


Figure 1 summarises the relationship between fit, moral justification, and interpretive integrity within the article's Dworkinian analytical framework.

4. International Standards and the Scholarship on Employee Priority

4.1. The International Legal Framework

The protection of employees in insolvency has attracted international attention through the International Labour Organization, whose Convention No. 173 supports privileges that rank employee claims above ordinary unsecured creditors. The Convention articulates an international normative position that the involuntary, non-adjusting character of the employment relationship generates a moral obligation that insolvency law must acknowledge even when an employer's estate is depleted. Malaysia has not ratified the Convention; Australia has likewise not ratified it, although the Fair Entitlements Guarantee Act 2012 reflects several of its employee-protection objectives.

The European Union provides comparable protection through Directive 2008/94/EC, concerning the protection of employees in the event of employer insolvency. In the United Kingdom, comparable statutory protection is provided through the National Insurance Fund, from which the Insolvency Service makes payments to employees in respect of arrears of wages, holiday pay, notice pay, and basic redundancy. These payments supplement, but do not replace, the preferential debt provisions of the Insolvency Act 1986 (Karaleu, 2020).

Australia's Fair Entitlements Guarantee Act 2012 provides a comparatively extensive statutory response to employee insolvency risk within the three jurisdictions examined. The FEG protects specified entitlements, including unpaid wages, annual leave, long service leave, payment in lieu of notice, and redundancy pay, subject to statutory conditions and limits. It may provide eligible employees with payment when the insolvent estate is insufficient, reducing the uncertainty that remains where protection depends only on priority within a depleted estate (Australian National Audit Office, 2015).

The FEG thus reduces the extent to which eligible employees bear losses arising from corporate insolvency. Employee vulnerability may also be intensified by their subordinate position within the corporate hierarchy and by the absence of a universal definition of "employee" in international labour standards (De Stefano, 2021). Unlike the UK's National Insurance Fund, which covers limited arrears (eight weeks' wages, holiday pay, notice, and basic redundancy) before subrogating to preferential creditor status with uncertain recovery (Karaleu, 2020). Australia's FEG may provide eligible employees with broader coverage, subject to statutory eligibility requirements and limits, including up to 13 weeks' unpaid wages, full annual and long service leave, five weeks' notice pay, and four weeks' redundancy per year of service, paid directly by the government regardless of estate sufficiency (Department of Employment and Workplace Relations, 2026).

4.2. Scholarly Debates and the Gap This Article Addresses

Scholarship on employee priority contains economic and socio-legal strands. Economic analysis treats priority as a policy tool affecting credit costs, rescue incentives, and efficient distribution. Socio-legal work emphasises employees' involuntary exposure and limited capacity to diversify insolvency risk. Mucciarelli (2017) compares statutory priorities and wage guarantees, Gant (2023) applies vulnerability theory, and Graham et al. (2023) document the wider costs borne by employees in corporate bankruptcy.

This debate also concerns the standard-setting and equalising functions of employment law in segmented labour markets (Cooney, 2022; Mückenberger & Dingeldey, 2022). Malaysian research identifies a gap between statutory priority and employees' practical participation and recovery in insolvency proceedings (Atan et al., 2025).

Under the Companies Act 2016, employee priorities remain within a hierarchy that preserves significant secured-creditor rights. Unlike Australia's government-backed guarantee or the United Kingdom's supplementary fund, Malaysian recovery depends more heavily on the assets available for distribution. The selected Malaysian judgments give limited explanation of how employee vulnerability relates to the protective purpose of priority rules. This article examines that relationship without treating statutory recognition as proof of actual payment.

While the existing scholarship is rich and multifaceted, it has not systematically applied a moral-jurisprudential framework such as Dworkin's law as integrity to compare judicial reasoning across these jurisdictions. This gap is significant because the treatment employees receive depends not only on statutory priority rules but also on how courts interpret and apply them when disputes, ambiguity, or competing legal claims arise. This article addresses that gap by analysing how principled judicial reasoning can contribute to employee protection while remaining consistent with statutory text, precedent, and the limits of judicial interpretation.

5. Jurisdictional Analysis

5.1. Framework for Evaluating Judicial Reasoning

For the purposes of this article, the qualitative assessment of fit and justification generates three authorial analytical classifications. Integrity-consistent reasoning denotes high fit and high justification that mutually reinforce one another. Intermediate-integrity reasoning denotes an intermediate overall classification, commonly where fit is maintained but justification is partial, restrained, or incompletely integrated. Textual-limited reasoning denotes limited overall integrity, particularly where justification is limited, absent, or disconnected from the legal analysis, or where insufficient fit prevents coherent integration of the two dimensions. These classifications are derived through reasoned, non-numerical analysis. They do not suggest that the selected courts adopt Dworkin's theory or that moral justification permits departure from clear statutory language, binding precedent, or legislated creditor priorities. Table 1 summarises the indicators used in applying this framework.

Table 1. Judicial Reasoning Coding Framework (Fit–Justification–Integrity Indicators)

Indicator	Definition	Sample Coding Questions
Fit	Alignment with statutory text, binding precedent, and doctrine	Does the judgment follow the statutory hierarchy? Does it identify and apply the relevant authorities?
Justification	Principled rationale supporting the outcome, including engagement with fairness, employee vulnerability, creditor justice, and institutional constraints	Does the court explain the principles supporting the outcome? Does the reasoning address employee vulnerability together with creditor interests and the statutory scheme?
Integrity	Mutual reinforcement of fit and justification	Does the decision integrate the governing legal materials with its stated justification? Are fit and justification coherent within the applicable statutory, precedential, and institutional limits?

5.2. Australia: Integrity as Institutional Practice

Australia's insolvency jurisprudence provides the strongest comparative illustration among the three jurisdictions of integrity-consistent reasoning under this article's external analytical framework. This is not because Australian courts formally adopt Dworkin's theory or have resolved all tensions between creditor hierarchy and employee protection, but because the institutional design of the FEG and the interpretive approach of the courts together provide conditions in which doctrinal fit and employee-protective justification may reinforce one another within the limits of governing statutory language, binding precedent, and legislated creditor priorities.

Carter Holt Harvey Woodproducts v Commonwealth [2019] HCA 20 demonstrates the High Court's capacity to draw on trust law principles to prevent formal ownership structures from defeating employee entitlements. The Court revisited century-old doctrines to address a situation in which the formal allocation of assets might have been used to circumvent the Commonwealth's subrogated claims under the FEG. Fit was high because the Court traced its reasoning through an established line of trust and property cases without departing from settled principles. Justification was also high because the reasoning articulated an explicit account of why the state's guarantee obligation must be protected against formal devices that would deplete the estate. The decision's overall integrity lies in the Court's demonstration that doctrinal consistency and moral purpose are compatible and mutually supporting.

Fair Work Ombudsman v Foot & Thai Massage Pty Ltd (in liquidation) (No 4) [2021] FCA 1242 illustrates a complementary dimension. The Federal Court's scrutiny of payroll practices, working-hours records, and compliance with the Fair Work Act treated the identified failures as breaches of substantive employment obligations rather than as merely technical deficiencies. The procedural dimension of the decision lies in its emphasis on transparent records, evidential accountability, and lawful enforcement processes, while its distributive significance lies in securing the employees' monetary entitlements. Under this article's framework, fit is high because the Court closely applied the statutory requirements governing employment records and employee entitlements. Justification is also high because the reasoning recognised the protective purpose of those requirements and the vulnerability of the affected employees. The judgment therefore illustrates integrity-consistent reasoning insofar as statutory compliance and employee-protective justification reinforce one another. This classification does not equate procedural justice with doctrinal correctness, nor does it suggest that the Court altered the statutory hierarchy governing insolvency distribution. Rather, it recognises that the decision's legal fit and its concern with the practical protection of employees operate as distinct but mutually

supporting dimensions. The assessment remains confined to the particular statutory context and does not extend employee protection beyond the issues before the Court.

Commonwealth of Australia v Tonks [2023] NSWCA 285 provides a further illustration of what this article characterises as reflexive integrity. The New South Wales Court of Appeal acknowledged the binding force of the statutory hierarchy while also recognising concerns associated with the outcome it was required to reach. Under this article's framework, this combination preserves awareness of the moral dimension while maintaining fidelity to statutory authority. The judgment may therefore be understood as illustrating integrity under legal constraint and as drawing attention to a gap between the statutory outcome and broader moral considerations that remains for the legislature to address. Together with the preceding decisions, *Tonks* supports placing the selected Australian judgments within the integrity-consistent category, characterised by strong fit with statutory and doctrinal authority and strong moral justification. The classification of *Tonks* as having high fit and high justification reflects the article's assessment that recognition of tension between the statutory outcome and broader moral considerations can coexist with, and reinforce, the legitimacy of statutory interpretation, consistent with Dworkinian interpretive principles (Dworkin, 1967; Crowe, 2007).

Taken together, these cases support the article's classification of the selected Australian judgments as integrity-consistent, not because they evade statutory authority, but because doctrinal precision and employee-protective justification operate as mutually reinforcing considerations.

5.3. The United Kingdom: Intermediate Integrity through Doctrinal Balance

The selected United Kingdom judgments occupy an intermediate position. Limited employee preferences and the National Insurance Fund operate within a wider system that recognises creditor reliance, property and security interests, equal treatment within statutory classes, and predictable collective administration. These values are not merely obstacles to employee protection. They form part of creditor justice and the legislative settlement that courts must respect (*Gant*, 2014).

Re Nortel Networks [2013] UKSC 52 concerned the ranking of liabilities arising under the Pensions Act 2004. The Supreme Court held that liabilities based on pre-insolvency circumstances were provable debts, rather than administration expenses. Equal ranking avoided a priority not authorised by the statutory scheme and preserved certainty in collective administration. The case concerned employee pension protection, but not wage priority. Fit is classified as high, justification as intermediate, and overall integrity as intermediate.

Lehman Brothers International (Europe) (In Administration) [2012] UKSC 6 concerned the CASS 7 client-money rules. The majority held that the statutory trust arose on receipt, that identifiable client money in house accounts entered the pool, and that participation did not depend on actual segregation. The interpretation pursued the protective purpose of the scheme and equal treatment among clients. Employees were not involved, so its relevance is indirect. It illustrates how protective purpose, equal treatment, and predictable collective distribution may coexist within a statutory scheme.

Re Leyland Daf Ltd [2004] UKHL 9 concerned whether general liquidation expenses could be paid from assets subject to a crystallised floating charge ahead of the charge-holder. The House of Lords held that they could not. It treated the charge-holder's proprietary interest as subject only to incursions authorised by Parliament, including statutory preferential debts, and recognised the financing function of floating-charge security. Employee claims were not directly in issue, although the judgment referred to statutory protection for unpaid wages. Its relevance lies in showing that employee protection operates within a legislated order that also protects creditor reliance and property rights. Parliament's later insertion of section 176ZA further shows that alteration of that order is principally legislative. Fit is high and justification and overall integrity are intermediate.

Re Toshoku Finance UK Plc [2002] UKHL 6 concerned the ranking of post-liquidation corporation tax. The House of Lords applied the statutory order of liquidation expenses and rejected an implied fairness qualification that would alter it. Employees were not involved. The decision is indirectly relevant because it treats consistent statutory ordering and institutional competence as components of creditor justice. Fit is high, while justification and overall integrity are intermediate.

The United Kingdom classification therefore does not treat commercial certainty as morally neutral or inherently opposed to employee protection. Predictability supports legitimate reliance, equal treatment, financing, and effective collective administration. The selected judgments provide strong legal fit and principled reasons for respecting the statutory scheme, but they engage only partly with employee vulnerability. This produces intermediate rather than high justification under the article's framework.

5.4. Malaysia: Textual-Limited Reasoning

The selected Malaysian judgments are classified in this article as exhibiting textual-limited reasoning. They closely follow the applicable statutory framework, while their reasoning provides limited explicit discussion of the moral basis of employee priority or the broader normative context. Under the article's qualitative framework, this supports a classification of high fit, limited justification, and limited overall interpretive integrity.

Goh Ying Ying v Reliance Shipping & Travel Agencies Sdn Bhd [2020] ILJU 265 involved employee claims for unpaid wages during company winding up. The court applied the governing statutory priority framework without extended discussion of its broader normative basis. Under this article's framework, fit was high and justification was limited.

Perwaja Steel Sdn Bhd v RHB Bank Berhad & 789 Others [2019] MLJU 698 addressed employee entitlements and preferential status amid competing secured creditor claims in corporate liquidation. This decision illustrates what this article describes as 'acknowledged but non-operational fairness'. The judgment acknowledges fairness concerns, but those concerns are not developed as part of its interpretive analysis. Fit was high; justification remained limited.

Three themes emerge in the selected Malaysian judgments. First, the judgments adhere to statutory hierarchy and treat legal certainty, established priorities, and avoidance of judicial overreach as significant rule-of-law values. These considerations may themselves form part of justice and interpretive integrity, but the judgments provide limited explanation of how they are reconciled with employee vulnerability and the protective purpose of employee priority. Second, the judgments provide limited explicit discussion of employee wellbeing, and references to fairness are not developed further within the interpretive reasoning. Third, the statutory scheme assigns substantial responsibility to liquidators in administering distributions, while the judgments provide limited discussion of employee notice, participation, opportunity to present claims, access to enforcement, or the principles guiding that collective process. High fit is therefore accompanied by limited justification, producing doctrinally coherent reasoning with limited normative justification.

This posture must be understood within institutional constraints rather than attributed solely to unwillingness to engage with principle. Without a wage guarantee, courts cannot create public protection through interpretation, and clear priority rules limit judicial choice. Malaysian formalism may preserve certainty and creditor reliance, but the selected judgments offer little explanation of how those values relate to employee vulnerability (Atan et al., 2025; Balasubramaniam, 2022). The classification therefore concerns the reasoning given, not the legality of the outcomes.

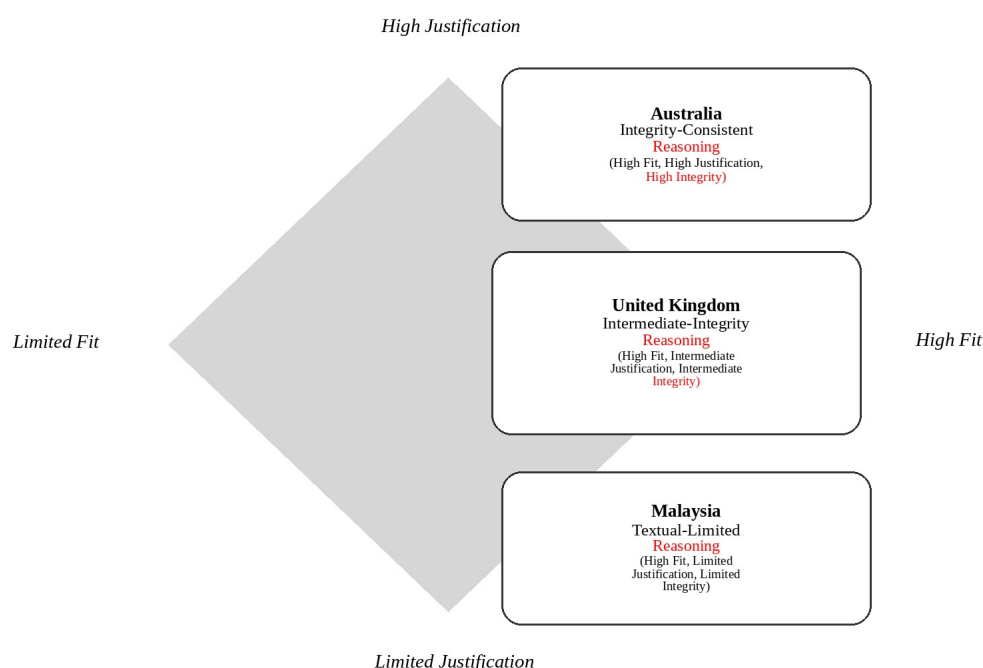
6. Findings and Discussion

6.1. A Classification of Judicial Postures

The comparative analysis uses three authorial classifications. The selected Australian judgments are classified as integrity-consistent, with high fit and justification. The United Kingdom judgments are classified as intermediate-integrity, with high fit and intermediate justification. The Malaysian judgments are classified as textual-limited, with high fit and limited justification. These classifications are qualitative and case-specific. They do not rank entire legal systems or claim that any court formally applies Dworkin's theory.

Justice is not measured solely by improved employee recovery. The analysis also considers predictable statutory priorities, equal treatment within classes, legitimate reliance on property and security interests, and effective collective administration. Courts may influence outcomes only where the governing law permits an interpretive choice. The classifications therefore assess how the selected judgments connect authoritative law with their stated principles while remaining within statutory and institutional constraints (Dworkin, 1986).

Figure 2. Tri-Jurisdiction Authorial Classification Map: Fit-Justification-Integrity Framework.



The figure presents the article's authorial classification of the selected judgments according to the relationship between doctrinal fit and moral justification. Within this framework, the selected Australian judgments are classified as exhibiting integrity-consistent reasoning, the selected United Kingdom judgments as exhibiting intermediate-integrity reasoning, and the selected Malaysian judgments as exhibiting textual-limited reasoning.

Table 2. Comparative Case Table: Key Judicial Authorities

Case	Jurisdiction	Fit	Justification	Integrity	Effect on Employees
Carter Holt Harvey [2019] HCA 20	Australia	High	High	High	Protects the FEG-related recovery position against formal ownership structures without establishing individual employee payment
Foot & Thai Massage [2021] FCA 1242	Australia	High	High	High	Supports transparent employment records and the identification and substantiation of pay claims
Tonks [2023] NSWCA 285	Australia	High	High	High	Identifies a statutory limitation affecting recovery without itself securing employee payment
Re Nortel Networks [2013] UKSC 52	UK	High	Intermediate	Intermediate	Direct relevance to pension beneficiaries, but not employee wage priority; liabilities rank as provable unsecured debts without establishing actual recovery or payment
Lehman Brothers International (Europe) (In Administration) [2012] UKSC 6	UK	High	Intermediate	Intermediate	No direct employee effect; indirect relevance to equal treatment and collective distribution without establishing employee entitlement, recovery, or payment
Goh Ying Ying [2020] ILJU 265	Malaysia	High	Limited	Limited	Identifies the statutory position of employee claims relative to secured creditors without establishing actual recovery
Perwaja Steel [2019] MLJU 698	Malaysia	High	Limited	Limited	Addresses employee entitlements and preferential status within the statutory hierarchy without establishing actual recovery or payment

6.2. The Moral Significance of Institutional Design

Institutional design shapes the scope of permissible interpretation. Australia's FEG supplements, rather than alters, distribution from the estate. A purposive interpretation of the FEG can therefore support employee protection while remaining anchored in the statutory scheme (Al Bhadily & Hosie, 2016; Nsubuga, 2018a).

Moral coherence cannot be assessed separately from institutional structure. A guarantee scheme may improve payment without judicially changing creditor priorities, while strict adherence to a hierarchy may protect legitimate reliance and collective administration. The practical question is whether employee protection, creditor justice, and commercial predictability are reconciled through the proper institution. Courts interpret within the statutory space available to them; legislatures determine whether stronger protection requires new funding or a changed priority.

Malaysia has no equivalent to the FEG or the United Kingdom's National Insurance Fund. Section 527 gives specified employee claims priority over unsecured debts and, in defined circumstances, floating-charge claims, while section 524 preserves secured-creditor rights. This may limit recovery when the relevant asset pool is insufficient, but it also forms part of a collective scheme that protects legal certainty, class equality, creditor reliance, and financing expectations. The absence of a public guarantee supports legislative consideration of a guarantee mechanism. It does not authorise judicial alteration of statutory priorities (Atan et al., 2025; Gant, 2022; Mucciarelli, 2015, 2017).

6.3. Organisational Justice and Procedural and Distributive Dimensions

Organisational justice distinguishes procedural from distributive justice. Procedural justice concerns how claims are presented and determined, including notice, participation, transparency, consistency, impartiality, and access to enforcement. Distributive justice concerns the allocation and actual recovery of entitlements. Doctrinal correctness and statutory priority may support legal fit, but neither alone establishes procedural or distributive justice.

Australia offers stronger distributive protection because eligible employees may receive FEG payments when estate assets are insufficient. Procedural justice remains a separate question requiring fair notice, participation, transparent decision-making, and access to enforcement (Al Bhadily & Hosie, 2016; Mucciarelli, 2015).

In the United Kingdom, compliance with the statutory hierarchy supports legal fit and predictability. It does not by itself establish procedural justice. Distributive justice depends on the content of employee preferences, access to the National Insurance Fund, and actual recovery.

In Malaysia, section 527 creates an entitlement and priority within the insolvency hierarchy. Access to claim and enforce that entitlement, and actual recovery, remain distinct. The absence of a guarantee may widen the gap between priority and payment, but it does not justify the categorical claim that Malaysia achieves neither form of justice.

The comparison therefore separates legal entitlement, procedural access, priority within the hierarchy, and actual payment. No single element conclusively establishes procedural or distributive justice.

Employee protection may reflect the state's responsibility to treat workers with equal concern (Mucciarelli, 2017). Employees' involuntary and undiversified exposure also supports distinct reform measures (Gant, 2022). A wage guarantee would principally strengthen distributive protection by improving payment, while notice, participation, and enforcement mechanisms would address procedural justice (Atan et al., 2025).

Table 3. Comparative Priority Framework and Employee Protection Mechanisms in Corporate Insolvency

Priority Level	United Kingdom	Australia	Malaysia
1. Secured Creditors	Secured creditors (fixed charge)	Secured creditors (outside statutory waterfall)	Secured creditors
2. Employee Priority	Preferential employee debts (including capped wages and holiday pay)	Employee entitlements under section 556; eligible claims may also be paid through the FEG	Specified employee claims under section 527 of the Companies Act 2016
3. Intermediate Priority	Prescribed Part for unsecured creditors	—	Other preferential debts (e.g., taxes)
4. Subsequent Creditors	Floating charge holders	Unsecured creditors	Unsecured creditors
5. Remaining Claims	Unsecured creditors	Residual distributions	Residual distributions

Note: The table provides a simplified comparison. The FEG is an institutional guarantee mechanism rather than a level within Australia's statutory insolvency priority hierarchy.

6.4. Reform Implications for Malaysia

The first reform priority is institutional. Malaysia could establish a wage guarantee fund modelled partly on Australia's FEG for eligible claims where estate assets are insufficient (Al Bhadyly & Hosie, 2016). A legislatively designed funding and recovery model could improve payment without judicially altering established priorities. German and French guarantee schemes show that employee protection can operate alongside creditor interests and social-security funding (Mucciarelli, 2017).

The second priority is interpretive. Higher-court guidance could support purposive interpretation of section 527 where the statutory text permits. Relevant labour-law principles and international standards may inform that inquiry as lawful contextual aids, but they cannot override the statutory hierarchy or binding authority (Nsubuga, 2018a). Such guidance could encourage a clearer explanation of how employee protection relates to creditor justice and institutional constraints.

The third priority is jurisprudential. Dworkin's chain-novel metaphor can guide cross-doctrinal reasoning within the legally available interpretive space. Courts may consider relevant labour-law, constitutional, and international principles where the governing law permits. They remain bound by clear statutory language, precedent, legislated priorities, institutional competence, creditor reliance, financing expectations, equal treatment, commercial predictability, and collective administration. Interpretation cannot create a different priority order. Where stronger protection requires that result, reform belongs to the legislature (Bustamante, 2021; Nsubuga, 2018a).

7. Conclusion

Employee justice in insolvency depends on four distinct matters: legal entitlement, procedural access, statutory priority, and actual recovery. Their operation is shaped by institutional design and legally constrained interpretation.

Using Dworkin's theory as an external framework, the article identifies different relationships between employee protection, creditor justice, statutory hierarchy, and collective administration in the selected judgments.

Dworkin's framework evaluates whether legal fit and principled justification reinforce one another. Organisational justice separately evaluates claim procedures and the distribution and recovery of employee entitlements.

The differences do not arise from interpretive culture alone. Statutory structure, institutional support, financing expectations, and the available scope of interpretation also matter.

The Australian judgments are classified as integrity-consistent because statutory and doctrinal fit is reinforced by employee-protective justification and institutional support. This is an authorial classification, not a claim that Australian courts adopt Dworkin's theory.

The United Kingdom judgments are classified as intermediate-integrity. Their fidelity to statutory ordering, creditor reliance, class equality, financing expectations, and collective administration has principled significance, but the judgments engage only partly with employee vulnerability and several are indirectly relevant to employee priority.

The Malaysian judgments are classified as textual-limited because they show high legal fit but give limited explanation of how employee protection relates to creditor justice and institutional constraints.

The theoretical contribution is a structured comparison of how fit and justification operate in employee-priority jurisprudence beyond a simple employee-friendly or creditor-friendly division.

The practical contribution is a reform pathway that combines institutional protection with judicial guidance. A wage guarantee could improve employee recovery without displacing creditor rights. Judicial guidance could encourage principled cross-doctrinal reasoning within statutory language, precedent, legislated priorities, and institutional competence. Together, these measures could strengthen employee protection while preserving legal certainty, legitimate reliance, financing expectations, class equality, and effective collective administration.

Insolvency law expresses commitments to employees, creditors, and other claimants. Interpretive integrity therefore requires employee vulnerability to be considered alongside statutory ordering, property rights, legitimate reliance, and collective administration. Dworkin's framework may assist where the governing law permits interpretation, but it does not authorise courts to disregard clear text or legislated priorities. Any reform that changes that hierarchy remains primarily a legislative and institutional responsibility.

References

- Addison, J. T., & Teixeira, P. (2005). What have we learned about the employment effects of severance pay? Further iterations of Lazear et al. *Empirica*, 32, 345–368. <https://doi.org/10.1007/s10663-005-4934-6>
- Al Bhadily, M., & Hosie, P. (2016). Australian employee entitlements in the event of insolvency: Is an insurance scheme an effective protective measure? *Adelaide Law Review*, 37(1), 247–281. <http://hdl.cqu.edu.au/10018/1219255>
- Allan, T. R. S. (2016). Interpretation, injustice, and integrity. *Oxford Journal of Legal Studies*, 36(1), 58–82. <https://doi.org/10.1093/ojls/gqv014>
- Atan, M. Y., Anuar, A., & Kamaruddin, S. (2025). Examining procedural and legal exclusion of employees in Malaysian corporate insolvency. *Malaysian Journal of Social Sciences and Humanities*, 10(8). <https://doi.org/10.47405/mjssh.v10i8.3539>
- Australian National Audit Office. (2015). *Administration of the Fair Entitlements Guarantee* (ANAO Report No. 32, 2014–15). <https://www.anao.gov.au/work/performance-audit/administration-fair-entitlements-guarantee>
- Balasubramaniam, R. (2022). Constitutional statecraft in Malaysian courts: A naive 'Schmittian' misappropriation. *Asian Journal of Comparative Law*, 17(1), 106–133. <https://doi.org/10.1017/asjcl.2022.9>
- Bennion, F. A. R. (2009). The jurisprudential basis of the common law method. In *Understanding common law legislation* (pp. 157–166). Oxford University Press. <https://doi.org/10.1093/acprof:oso/9780199564101.003.0017>
- Bustamante, T. (2019). Law, moral facts and interpretation: A Dworkinian response to Mark Greenberg's moral impact theory of law. *Canadian Journal of Law & Jurisprudence*, 32(1), 5–43. <https://doi.org/10.1017/cjlj.2019.1>
- Bustamante, T. (2021). Is Protestant interpretation an acceptable attitude toward normative social practices? An analysis of Dworkin and Postema. *The American Journal of Jurisprudence*, 66(1), 1–25. <https://doi.org/10.1093/ajj/auab004>
- Cooney, S. (2022). Legal segmentation in China, India, Malaysia and Viet Nam. *International Labour Review*, 161(4), 573–591. <https://doi.org/10.1111/ilr.12349>
- Crowe, J. (2007). Dworkin on the value of integrity. *Deakin Law Review*, 12(1), 167–180. <https://doi.org/10.21153/dlr2007vol12no1art170>
- Department of Employment and Workplace Relations. (2026). *Making a Fair Entitlements Guarantee claim*. <https://www.dewr.gov.au/fair-entitlements-guarantee/claimants/making-feg-claim>
- De Stefano, V. (2021). Not as simple as it seems: The ILO and the personal scope of international labour standards. *International Labour Review*, 160(3), 387–406. <https://doi.org/10.1111/ilr.12201>
- Dworkin, R. (1967). The model of rules. *The University of Chicago Law Review*, 35(1), 14–46. <https://doi.org/10.2307/1598947>
- Dworkin, R. (1986). *Law's empire*. Harvard University Press.
- Gant, J. L. L. (2014). Social policy and insolvency: Struggles towards convergence. *Nottingham Insolvency and Business Law e-Journal*, 2(4), 49–79. <https://doi.org/10.2139/ssrn.3842886>
- Gant, J. L. L. (2022). Floating charges and moral hazard: Finding fairness for involuntary and vulnerable stakeholders. In *Floating charges in comparative perspective* (pp. 228–270). Edinburgh University Press. <https://doi.org/10.3366/edinburgh/9781474458726.003.0006>
- Gant, J. L. L. (2023). Vulnerability theory and insolvency law. In E. Ghio, J. M. Wood, & J. L. L. Gant (Eds.), *Re-examining insolvency law and theory: Perspectives for the 21st century* (pp. 166–188). Edward Elgar Publishing. <https://doi.org/10.4337/9781803928760.00017>
- Graham, J. R., Kim, H., Li, S., & Qiu, J. (2023). Employee costs of corporate bankruptcy. *The Journal of Finance*, 78(4), 2087–2137. <https://doi.org/10.1111/jofi.13251>
- Jakab, A. (2013). Judicial reasoning in constitutional courts: A European perspective. *German Law Journal*, 14(8), 1215–1275. <https://doi.org/10.1017/S207183220000225X>
- Karaleu, Y. Y. (2020). Interaction between institutional technologies, wage guarantee schemes and corporate social responsibility in respect of the protection of workers' benefits in case of company insolvency. *RUDN Journal of Economics*, 28(2), 225–238. <https://doi.org/10.22363/2313-2329-2020-28-2-225-238>
- McCaffery, E. J. (1997). Ronald Dworkin, inside-out. *California Law Review*, 85(4), 1043–1086. <https://doi.org/10.2307/3481131>
- Mucciarelli, F. M. (2015). Employee priorities in insolvency proceedings and wage guarantees: A critical assessment. SSRN. <https://doi.org/10.2139/ssrn.2709564>
- Mucciarelli, F. M. (2017). Employee insolvency priorities and employment protection in France, Germany, and the United Kingdom. *Journal of Law and Society*, 44(2), 255–282. <https://doi.org/10.1111/jols.12025>
- Mückenberger, U., & Dingeldey, I. (2022). Introduction: Worldwide patterns of legal segmentation in employment law. *International Labour Review*, 161(4), 511–534. <https://doi.org/10.1111/ilr.12355>
- Nsubuga, H. J. (2018a). The interpretative approach to bankruptcy law. *International Journal of Law and Management*, 60(3), 824–841. <https://doi.org/10.1108/IJLMA-03-2017-0079>
- Nsubuga, H. J. (2018b). *The rights of employees on corporate insolvency: A UK and US perspective* (Doctoral dissertation, Nottingham Trent University). Nottingham Trent University Institutional Repository. <https://irep.ntu.ac.uk/id/eprint/32934/>
- Scott, S. P. (2023). *The necessity of integrity and stare decisis in Anglo-American judicial systems* (Master's thesis, Kent State University). OhioLINK Electronic Theses and Dissertations Center. https://etd.ohiolink.edu/acprod/odb_etd/ws/send_file/send?accession=kent1681721069841956&disposition=inline
- Solove, D. J. (1997). Postures of judging: An exploration of judicial decisionmaking. *Cardozo Studies in Law and Literature*, 9(2), 173–227. <https://doi.org/10.1525/lal.1997.9.2.02a00030>
- Sunstein, C. R. (2006). *Second-order perfectionism*. SSRN. <https://doi.org/10.2139/ssrn.948788>
- Sunstein, C. R., & Vermeule, A. (2003). Interpretation and institutions. *Michigan Law Review*, 101(4), 885–951. <https://doi.org/10.2307/1290510>
- Valles Santillán, G. G. (2022). Ronald Dworkin's legal non-positivism: Main characteristics and its confrontation with legal positivism of the twentieth century (H. L. A. Hart). *Mexican Law Review*, 14(2), 107–117. <https://doi.org/10.22201/ij.24485306e.2022.2.16570>
- Walters, M. (2008). Legal humanism and law-as-integrity. *The Cambridge Law Journal*, 67(2), 352–375. <https://doi.org/10.1017/S0008197308000391>
- Wang, L. (2023). Can AI become Judge Hercules? *Beijing Law Review*, 14(4), 2041–2053. <https://doi.org/10.4236/blr.2023.144113>