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**SUMMATIVE (FORMAL) ASSESSMENT: MODULE 4C**

**CANADA**

This is the **summative (formal) assessment for Module 4C** of this course and must be submitted by all candidates who **selected this module as one of their elective modules**.

**The mark awarded for this assessment will determine your final mark for Module 4C**. In order to pass this module, you need to obtain a mark of 50% or more for this assessment.

**INSTRUCTIONS FOR COMPLETION AND SUBMISSION OF ASSESSMENT**

**Please read the following instructions very carefully before submitting / uploading your assessment on the Foundation Certificate web pages.**

1. You must use this document for the answering of the assessment for this module. The answers to each question must be completed using this document with the answers populated under each question.

2. All assessments must be submitted electronically in **Microsoft Word format**, using a standard A4 size page and an 11-point Arial or Avenir Next font. This document has been set up with these parameters – **please do not change the document settings in any way**. **DO NOT** submit your assessment in PDF format as it will be returned to you unmarked.

3. No limit has been set for the length of your answers to the questions. However, please be guided by the mark allocation for each question. More often than not, one fact / statement will earn one mark (unless it is obvious from the question that this is not the case).

4. You must save this document using the following format: **[studentID.assessment4C]**. An example would be something along the following lines: 202223-336.assessment4C. **Please also include the filename as a footer to each page of the assessment** (this has been pre-populated for you, merely replace the words “studentID” with the student number allocated to you). Do not include your name or any other identifying words in your file name. **Assessments that do not comply with this instruction will be returned to candidates unmarked**.

5. Before you will be allowed to upload / submit your assessment via the portal on the Foundation Certificate web pages, you will be required to confirm / certify that you are the person who completed the assessment and that the work submitted is your own, original work. Please see the part of the Course Handbook that deals with plagiarism and dishonesty in the submission of assessments. **Please note that copying and pasting from the Guidance Text into your answer is prohibited and constitutes plagiarism. You must write the answers to the questions in your own words**.

6.The final submission date for this assessment is **31 July 2024**. The assessment submission portal will close at **23:00 (11 pm) BST (GMT +1) on 31 July 2024**. No submissions can be made after the portal has closed and no further uploading of documents will be allowed, no matter the circumstances.

7. Prior to being populated with your answers, this assessment consists of **10 pages**.

**ANSWER ALL THE QUESTIONS**

**QUESTION 1 (multiple-choice questions) [10 marks in total]**

Questions 1.1. – 1.10. are multiple-choice questions designed to assess your ability to think critically about the subject. Please read each question carefully before reading the answer options. Be aware that some questions may seem to have more than one right answer, but you are to look for the one that makes the most sense and is the most correct. When you have a clear idea of the question, find your answer and mark your selection on the answer sheet by highlighting the relevant paragraph **in yellow**. Select only **ONE** answer. Candidates who select more than one answer will receive no mark for that specific question.

**Question 1.1**

Which of the following statements accurately describes a **difference** between restructuring under the Bankruptcy and Insolvency Act (BIA) and the Companies' Creditors Arrangement Act (CCAA)? Select the **correct answer** from the options below:

1. The BIA has more procedural steps and strict timeframes, while the CCAA is more discretionary and judicially-driven.
2. The BIA involves more professionals and court attendances, resulting in higher costs, while the CCAA has stricter rules and guidelines.
3. The BIA contains a total of 63 sections, while the CCAA has 285 sections.
4. The BIA is court-intensive and involves more professionals, while the CCAA has more procedural steps and strict timeframes.

**Question 1.2**

Which of the following statements accurately describes a role of the Office of the Superintendent of Bankruptcy? Select the **best answer** from the options below:

1. Maintaining public records regarding the filing of proposals, bankruptcies, license issues and appointments of receivers under the BIA.
2. Taking control of management of the company if it is clear that management is no longer acting or capable of acting in the best interests of the company or its stakeholders.
3. Making the final application to the bankruptcy court for approval of the proposal if it is accepted by creditors.
4. Both options (b) and (c).
5. All of the above.

**Question 1.3**

Indicate whether the statement below is **true or false**:

A secured creditor’s enforcement remedies against collateral are regulated by the liquidating provisions of the BIA and are subject to the automatic stay of proceedings that occurs when a company or individual is assigned into bankruptcy.

1. True
2. False

**Question 1.4**

Select the **best answer** from the options below:

Under the BIA, to **successfully establish an application** for an involuntary bankruptcy order, the applying creditor(s) must –

1. be owed in excess of CAD 1,000 of unsecured debt.
2. provide evidence that the debtor has committed an “act of bankruptcy” within six months of the date of the filing of the application.
3. provide proof that the debtor currently carries on business or resides in Canada, or currently has assets in Canada.
4. Both options (a) and (b).
5. All of the above.

**Question 1.5**

Select the **correct answer** from the options below:

Which of the following is an **act of bankruptcy** under section 42 of the BIA?

1. In Canada or elsewhere the bankrupt makes an assignment of property to a trustee for the benefit of creditors.
2. Giving notice to creditors that the debtor has suspended or is about to suspend payment of debts.
3. The debtor assigns, removes, secretes or disposes of or attempts or is about to do same with his property with the intent to defraud, defeat or delay his creditors or any of them.
4. In Canada or elsewhere the debtor makes a fraudulent gift, delivery or transfer of the debtor’s property or of any part of it.
5. All of the above.

**Question 1.6**

Indicate whether the statement below is **true or false**:

The CCAA is a debtor-in-possession restructuring statute designed for the reorganization of insolvent companies with debts under CAD 5 million.

1. True.
2. False.

**Question 1.7**

Select the **best answer** from the options below:

Which of the following is required to **establish an application** for an initial stay order under the CCAA?

1. A statement indicating the projected cash flow of the debtor company.
2. Representations of the debtor regarding the preparation of cash-flow projections.
3. A report containing information about the debtor and its operations.
4. Copies of the financial statements from the previous year.
5. Options (a), (c) and (d).

1. All of the above.

**Question 1.8**

Select the **best answer** from the options below:

In CCAA proceedings, the minimum powers of the Monitor include –

1. overseeing the steps taken by the company while in CCAA proceedings as an officer of the court and on behalf of all stakeholders.
2. assisting with the preparation of the cash-flow statements as well as the negotiation of the plan between the company and its stakeholders.
3. engaging in litigation on behalf of the debtor company.
4. filing periodic reports with the court and creditors.
5. Options (a), (b) and (d).
6. All of the above.

**Question 1.9**

Indicate the **correct** answer:

Under Canadian law, when a company enters the **“zone of insolvency”**, the directors of a company –

1. continue to have a fiduciary duty to act honestly and in good faith with a view to the best interests of the company.
2. no longer have a fiduciary duty to act honestly and in good faith with a view to the best interests of the company.
3. cannot be held personally liable for any of the company’s debts.
4. cannot consider, under any circumstances, the interests of creditors, consumers, governments, employees, or any other stakeholder in discharging their duties.

**Question 1.10**

Select the **best answer** from the options below:

Section 65.11 of the BIA and section 32 of the CCAA prohibit **disclaimers** for the following types of agreements:

1. Contracts entered into after the date that proceedings began.
2. A financing agreement if the company is the borrower.
3. Commercial leases where the debtor is the lessor.
4. Eligible financial contracts.
5. Collective bargaining agreements (union contracts).
6. Options (b), (d) and (f).
7. All of the above.

**QUESTION 2 (direct questions) [10 marks in total]**

**Question 2.1 [maximum 2 marks]**

List and describe at least two remedies that are available to an unsecured creditor to enforce their rights outside of a formal insolvency process.

[Type your answer here]

Question 2.2 [maximum 4 marks]

List and describe the four statutory requirements that corporations must satisfy to restructure under section 192 (the plan of arrangement provision) of the CBCA.

[Type your answer here]

Question 2.3 [maximum 2 marks]

List the three main requirements under the BIA and CCAA for Canadian courts to recognize foreign proceedings.

[Type your answer here]

Question 2.4 [maximum 2 marks]

List and briefly describe at least two of the main provincial statutes governing insolvency proceedings in Canada.

[Type your answer here]

**QUESTION 3 (essay-type question) [15 marks]**

Question 3.1 [maximum 8 marks]

Write a short essay that summarizes the general organizing principle of good faith in contractual performance and how it may apply in insolvency proceedings.

Your essay should refer to **at least the following**:

1. the statutory provisions in the BIA and the CCAA which codify the duty of good faith; and
2. an example of cases where the Canadian Courts have imported principles of good faith in the context of insolvency proceedings

[Type your answer here]

Question 3.2 [maximum 7 marks]

Write a short essay that identifies the similarities and differences between the UNCITRAL Model Law and the applicable provisions in the BIA.

[Type your answer here]

**QUESTION 4 (fact-based application-type question) [15 marks]**

You are a lawyer in Canada. You are consulted by counsel in a foreign jurisdiction who is representing an agent operating under the law of the foreign jurisdiction and who is empowered by the legislation and courts of that foreign jurisdiction to deal with the assets of insolvent companies. The online seller has a fulfilment office and warehouse in Canada. The foreign agent has taken control of the assets of an online seller of clothing with a head office that is registered in the foreign jurisdiction where senior management of the company have their offices. The business sells clothing around the world, including to customers in Canada. Due to currency exchange- and supply-related issues, the company has been unable to maintain liquidity and has defaulted on various loans to its foreign-based secured lenders who are owed CAD 200 million plus and as a result has stopped fulfilling orders in process, including to Canadian customers. As a result, a class action lawsuit has been filed by a Canadian law firm seeking damages on behalf of customers for monies paid in respect of unfulfilled orders in the amount of CAD 2 million. That lawsuit in Canada is still in the pleadings phase. It also appears that the Canadian resident in charge of the fulfilment office and warehouse in Canada may have been diverting funds improperly. The foreign agent wants to further investigate. The foreign agent consults you about seeking recognition of the foreign proceeding in Canada in order to maximise recoveries and provide for an equitable distribution of value among all creditors.

Using the facts above, answer the questions that follow.

Question 4.1 [maximum 5 marks]

The foreign agent wants to understand the likelihood of satisfying the formal proof requirements to obtain recognition of the foreign proceeding in Canada and the implications if the Canadian court holds that the foreign proceedings are recognized as a “foreign main proceeding” versus a “foreign non-main proceeding”. What would you inform the foreign agent in this regard?

[Type your answer here]

Question 4.2 [maximum 5 marks]

The foreign agent wants to understand whether or not you believe the Canadian court can grant an order for the Canadian resident who was in charge of the fulfilment office and warehouse in Canada to produce financial statements and inter-company correspondence of the online seller in accordance with the civil procedure of the foreign jurisdiction. What would you inform the foreign agent in this regard?

[Type your answer here]

Question 4.3 [maximum 5 marks]

The foreign agent wants to understand whether any public policy considerations would influence the court to refuse to act even if the foreign proceeding meets the requirements under either the BIA or CCAA. What would you inform the foreign agent in this regard?

[Type your answer here]

**\* End of Assessment \***