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**SUMMATIVE (FORMAL) ASSESSMENT: MODULE 5D**

**GUERNSEY**

This is the **summative (formal) assessment** for **Module 5D** 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 5D**. 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 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: **[studentnumber.assessment5D]**. An example would be something along the following lines: 202021IFU-314.assessment5D. **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 “studentnumber” 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 2021**. The assessment submission portal will close at **23:00 (11 pm) GMT on 31 July 2021**. 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 **7 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 one of the following statements **correctly describes** the sources of Guernsey law?

1. Guernsey's laws mirror that of England and Wales.
2. Guernsey's law is all set out in statute adopted from England.
3. Guernsey's law is based on Norman customary law.
4. Guernsey substantive law is set out in statutes and the historic customary law and complimented by case law from persuasive jurisdictions.

**Question 1.2**

Which of the following types of security can be effectively taken over Guernsey **immovable property**?

1. A fixed charge / mortgage.
2. A lien.
3. A *hypothèque* by way of bond.
4. A security interest agreement.
5. A floating charge

**Question 1.3**

Which **two** of the following are **essential requirements** for a valid security agreement pursuant to the Security Interests Law?

1. Registration with the Guernsey registry.
2. Executed as a deed.
3. Identify the secured party.
4. Executed before the Court.
5. Be in writing.

**Question 1.4**

Which of the following parties **rank first in priority** in a Guernsey compulsory winding up:

1. Trade creditors.
2. Local tax creditors.
3. Money lent by a sole trader to the company.
4. Fees and expenses of the liquidator.
5. Fully paid up shareholders.

**Question 1.5**

Which one of the following procedures can be used to enforce against real property in Guernsey?

1. *Saisie*.
2. *Arret de Gages*.
3. *Arret de Personnes*.
4. *Désastre*.

**Question 1.6**

Which one of the following **is not** a standalone ground for the making of a compulsory winding up order as set out in the Companies Law?

1. Passing of a special resolution to wind up.
2. Deadlock on board of directors.
3. Suspension of business for a year.
4. Company is unable to pay its debts as they fall due.
5. Failure to hold a general meeting of members under specified provisions of the Companies Law.

**Question 1.7**

Which of the following **may not** be appointed as voluntary liquidator of a Guernsey company?

1. A director of former director.
2. A corporate entity.
3. A foreign resident individual.
4. A shareholder.
5. None of the above.

**Question 1.8**

Which one of the following parties **does not** have automatic statutory standing to make an application for an administration order in respect of a Guernsey company?

1. A shareholder.
2. The Registrar of companies.
3. A director.
4. A creditor.
5. None of the above.

**Question 1.9**

Which one of the following **is not** a ground for setting aside a judgment registered under the Reciprocal Enforcement Law?

1. The courts of the originating country did not have jurisdiction.
2. The enforcement of the Judgment would be contrary to public policy in Guernsey.
3. The enforcement of the Judgment would be contrary to public policy in the home jurisdiction.
4. The Judgment was obtained by fraud.
5. The rights under the Judgment are not vested in the person by whom the application for registration was made.

**Question 1.10**

It is advisable for a creditor to take **which one** of the following steps before commencing a *saisie* action?

1. Obtain a prohibitory injunction to prevent the debtor from disposing of the realty.
2. Register an interest in the realty at the *Greffe*.
3. Advertise in the local Gazette an intention to commence *saisie* proceedings against the debtor.
4. Exhaust the debtor's personalty (personal property) and register a claim in *Livre des Hypotheques* in the interim.
5. Enter into a security interest agreement with the debtor to ensure that the creditor's interest in the realty is protected.

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

**Question 2.1 [maximum 5 marks]**

What are the most common forms of security granted over immovable and movable property in Guernsey? Explain the formalities (if any) that the security documents, the secured creditor or the debtor must comply with.

[Type your answer here]

**Question 2.2 [maximum 5 marks]**

Michael was recently appointed liquidator of Dodge Co Limited, a Guernsey incorporated company. There are two directors of the company, Roger and Novak. The books and records of the company show that Novak paid £5,000 to purchase a car from the company two months prior to the company entering into liquidation. However, the fixed asset register had listed the car as having a value of £20,000.

Identify the issue with this transaction and explain the possible causes of action against the company or directors, as well as the possible remedies for recovery of the difference in value between the value and sale price of the asset.

[Type your answer here]

**QUESTION 3 (essay-type questions) [15 marks in total]**

**Question 3.1** **[maximum 7 marks**]

Guernsey has not adopted the UNCITRAL Model Law on Cross-Border Insolvency. Explain what methods are available to foreign insolvency officeholders seeking recognition in Guernsey and the limitations of those options.

[Type your answer here]

**Question 3.2 [maximum 8 marks]**

Write a short essay on the method of enforcing creditor's rights against real estate owned by individuals in Guernsey.

[Type your answer here]

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

In July 2016, Andy and Bob incorporated a company (Athletico Ltd) that specialised in selling novelty football T-shirts. Andy and Bob were the company’s only members and directors. For the past 18 months, the company has been experiencing financial difficulties. In September 2018, the company’s overdraft with Beardsley Bank plc had reached its limit of £250,000. In return for increasing the overdraft limit to £300,000, Beardsley Bank plc demanded security for the additional borrowing and took a bond over the company’s property (valued at £100,000). In December 2018, Athletico Ltd borrowed £100,000 from a friend, Barry Homeowner, who also took a bond over the same property.

The business continued to struggle and in February 2019 Andy and Bob were informed by the company’s auditor that insolvent liquidation was inevitable, although Andy and Bob disagreed and held out hope that the company’s financial prospects would improve. Andy and Bob decided to try and trade their way out of their financial difficulties by having a sale. Unfortunately, the sale failed to increase business and in May 2019 Athletico Ltd was wound up compulsorily. By this time, the company’s overdraft with Beardsley Bank amounted to £290,000.

Debbie and Rahid have been appointed as joint liquidators and have discovered several facts:

* in March 2019, Andy and Bob caused the company to repay an unsecured loan of £5,000, which Bob had made to the company some months before;
* in addition to the money owed to Beardsley Bank and Barry Homeowner, the company owes £10,000 to the Guernsey Revenue Service for unpaid tax, £30,000 to employees in wages, and £100,000 to unsecured creditors.

Debbie and Rahid estimate that the total remaining assets of Athletico Limited amount to £440,000. Debbie and Rahid's expenses in acting as liquidators amount to £3,000. Advise Debbie and Rahid, addressing the following:

1. the role of the joint liquidators;
2. how to pool the assets;
3. potential claims against the directors; and
4. how to manage distributions to creditors.

[Type your answer here]

**\* End of Assessment \***