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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: **[studentID.assessment5D]**. An example would be something along the following lines: 202122-336.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 “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 2023**. The assessment submission portal will close at **23:00 (11 pm) BST (GMT +1) on 31 July 2023**. 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 **9 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 (unless requested to select more). 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 one of the following **is not** a fiduciary duty of a director?

1. Exercise independent judgment.
2. Avoid conflicts of interest.
3. Act *bona fide* in the best interests of the company.
4. Act with skill and care.
5. Act for proper purposes.

**Question 1.3**

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 1.4**

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 1.5**

Which one of the following statements about Schemes of Arrangement is **incorrect**?

1. The process is broadly the same as that in the UK.
2. At the Court-convened meeting of creditors / members, a majority in number representing not less than 50 per cent in value of the members present and voting must approve the scheme before it is sanctioned by the court.
3. Notice of the meeting of the members of the company must be sent to each creditor or member.
4. A scheme may be used in conjunction with an administration.
5. A scheme could be used for restructuring.

**Question 1.6**

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 1.7**

Which of the following **two statements are correct** in respect of compulsory liquidations?

1. There is no statutory moratorium on creditors' claims.
2. Once the winding-up procedure has commenced, any transfer of shares is valid for a period of 30 days without the need to seek approval from the liquidator.
3. The company must not carry on any business upon the making of a compulsory winding-up order.
4. The courts usually impose time frames for the length of liquidation.
5. A company is dissolved at the start of the liquidation.

**Question 1.8**

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 1.9**

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**

Which of the following statements is **incorrect** in respect of misfeasance / breach of fiduciary duty?

1. The test for a breach of fiduciary duty is a subjective one.
2. Any claim must be brought within three (3) years from the date of breach.
3. The court may order the director to contribute towards the company's assets.
4. It may arise where a director has breached their fiduciary duty towards the company.
5. Any creditor of the company may apply to the court for an order against the director.

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

**Question 2.1 [maximum 4 marks]**

What are the most common forms of security granted over intangible movable assets in Guernsey? Explain what is required to ensure the security documents are valid and the consequences of failure to comply with any formalities.

[Type your answer here]

**Question 2.2 [maximum 4 marks]**

Outline the test for a company being unable to pay its debts. What considerations will a court take into account when assessing the solvency of a company?

[Type your answer here]

**Question 2.3 [maximum 2 marks]**

The following two statements relate to specific aspects of insolvency proceedings in Guernsey. Identify the concept described in each statement:

1. "*The mechanism used by creditors to enforce a judgment against immoveable property owned in common*".

2. "*The court process used to unwind or set aside a transaction the purpose of which is to commit a fraud on the creditors during a time in which the company is insolvent*."

[Type your answer here]

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

**Question 3.1 [maximum 5 marks]**

A creditor wishes to register or enforce an English judgment in Guernsey. Explain whether this is possible and what the creditor would need to do. How would your answer differ if the officeholder sought to register or enforce a judgment from the USA?

[Type your answer here]

**Question 3.2 [maximum 6 marks]**

Describe the process for enforcing creditor's rights against real property in Guernsey.

[Type your answer here]

**Question 3.3 [maximum 4 marks]**

Discuss the relationship between Guernsey law and the Insolvency Act 1986. When is this used and to what extent does it apply?

[Type your answer here]

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

Dawn and Tim have been asked to consider taking an appointment as insolvency officeholders over W Hogg Limited (WH Limited), a Guernsey incorporated company specialising in paintings and art. David and Gareth were the company's only members and directors.

For the last 18 months, the company has been experiencing financial difficulties as a result of an attempted expansion which saw a further store being opened in Guernsey and which failed to deliver the promised increase in sales and profitability.

The retail store premises is owned by Slough Trading Estate Limited (Slough) a company registered in England. Slough is owed rent payments in the sum of £60,000 covering the last six months and is owned by Chris (David's brother).

Following the failed launch of the new store, David and Gareth were informed by the company's auditor that insolvency was inevitable, although David and Gareth were adamant that they could solve the company's financial issues themselves. They thought it would be a good idea to get cash quickly injected back into the company and sold a number of expensive paintings for significantly less than their worth. This money was used to pay their outstanding rent payments to Slough.

The company now has no cash or liquid assets and cannot pay its major artist that is owed £100,000. It also cannot meet this month's salaries, rent for its other store and other trade debts. There is also £15,000 owed to the Guernsey Revenue Service for unpaid tax. David asked Gareth to arrange payment of the outstanding tax several months ago, but he forgot.

Dawn and Tim have been approached by David to help navigate the crisis. Gareth has fled to Florida, leaving the company in an even more perilous position having taken with him valuable paintings owned by the company and confidential supplier details.

Help Dawn and Tim to advise on the following issues:

1. The formal insolvency proceedings available to WH Limited under Guernsey law and the most appropriate course to follow in the circumstances. Your answer should draw support for your conclusion from the facts set out above.
2. What, if any, potential claims the insolvency officeholders may wish to investigate following their appointment. For these purposes, you may assume that WH Limited will ultimately be placed into compulsory liquidation.
3. How Dawn and Tim could seek assistance overseas in dealing with Gareth.

[Type your answer here]

**\* End of Assessment \***