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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 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 **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 **incorrectly describes** the sources of Guernsey law?

1. Guernsey's corporate insolvency law is entirely derived from the customary law regime.
2. There is no distinct statute dealing with the insolvency of companies.
3. There have been recent and substantial reforms to the Guernsey corporate insolvency framework.
4. English decisions in insolvency matters are of assistance in Guernsey.
5. The element of court involvement and control is a common theme in many aspects of Guernsey law.

**Question 1.2**

Which one of the following is a **recent reform** to Guernsey insolvency law?

1. The introduction of a *saisie* regime for personal bankruptcy.
2. Independency in the appointment of voluntary liquidators to insolvent companies.
3. A member of a company can apply to the court for directions concerning any aspect of a winding-up.
4. No statutory moratorium on creditors’ claims upon the making of a voluntary winding-up order or upon the passing of a resolution to voluntarily wind up.
5. Administration has no statutory effect on contracts of employment.

**Question 1.3**

Which statement is **incorrect** in relation to Preliminary Vesting Orders (PVO) in the *Saisie* procedure?

1. A PVO can be sought upon granting of judgment.
2. The effect of a PVO is that the debtor retains ownership of reality.
3. The creditor cannot evict the debtor and / or their family.
4. A PVO will be granted unless there is compelling reason to the contrary.
5. An application for a PVO amounts to leave to pursue debtor’s realty.

**Question 1.4**

Choose the **correct** statement in relation to the commencement of compulsory liquidation:

1. It is not necessary to file an affidavit setting out the reasons why the company should be put into liquidation.
2. Only the company can make the application.
3. A liquidator must send a copy of the compulsory winding-up order to the Registrar of Companies within seven days after being appointed.
4. In the case of a supervised company, the application needs to be served on the GFSC at least 14 days before the application hearing.
5. The Registrar of Companies will not publicise the fact that the company has been placed into liquidation.

**Question 1.5**

Which of the following **ranks first in priority** in a Guernsey compulsory winding up?

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

**Question 1.6**

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

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

**Question 1.7**

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

1. Companies can be dissolved at the end of administration directly rather than through a liquidation.
2. An administration order must specify the purpose for which it is made.
3. The administration process is rarely utilised where the intention is to save the company as a going concern.
4. The company can still pass resolutions during the period between the presentation of an application for an administration order and the making of such an order.
5. The courts rarely impose time frames for the length of administration.
6. The administrator can apply to the court for certain directions.

**Question 1.8**

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 1.9**

Which **two** of the following are **not essential requirements** for a valid security agreement pursuant to the Security Interests Law?

1. The security agreement must be dated.
2. The security agreement must be notarised and apostilled.
3. The security agreement must be identified and be signed by the debtor.
4. The security agreement must specify the events which constitute default.
5. The security agreement must be served on the court within seven days of being executed.

**Question 1.10**

Which of the following statements does **not** encompass a director’s duty:

1. Act *bona fide* in the interests of creditors whilst the company is solvent.
2. Exercise independent judgment.
3. Avoid conflicts of interest.
4. Act for proper purposes.
5. The duty of skill and care.

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

**Question 2.1 [maximum 4 marks]**

Consider the *saisie* process and explain the potential advantages to creditors of this type of enforcement procedure.

[Type your answer here]

**Question 2.2 [maximum 4 marks]**

Outline the aspects of the revised voluntary liquidation regime which improve creditor protections.

[Type your answer here]

**Question 2.3 [maximum 2 marks]**

The following two statements relate to an offence under the Companies Law. Confirm what the cause of action is and an appropriate remedy the liquidator may want to seek from the court.

1. “…if any business of a company is carried on with intent to defraud creditors… .”
2. “The phrases “with intent to defraud creditors” and “for any fraudulent purpose” require a finding of actual dishonesty.”

[Type your answer here]

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

**Question 3.1 [maximum 5 marks]**

What are the advantages of a scheme of arrangement over other forms of corporate rescue? What factors will the court consider when deciding whether to approve a scheme?

[Type your answer here]

**Question 3.2 [maximum 6 marks]**

Describe how the Guernsey Court may provide judicial assistance to other courts in insolvency matters.

[Type your answer here]

**Question 3.3 [maximum 4 marks]**

Discuss the types of security over real estate in Guernsey. What is the dominant form of security?

[Type your answer here]

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

Stewie and Brian have been appointed by the court as insolvency officeholders over the Happy-Go-Lucky Toy Factory Limited (HGL), a Guernsey incorporated company specialising in the manufacture of toys. Lois, Peter and Meg were the company’s only members and directors. Chris is employed by HGL as a manager and is the son of Lois and Peter.

HGL’s accountant phoned Meg and explained that she was concerned that the company was not in a position to pay its largest creditor, CostMart, due to increased production costs and inflation. Meg spoke to the other directors, and they agreed that it would look better for the business if they informed CostMart that the company was in a strong financial position and would be paying its outstanding invoices shortly, which total £ 40,000. In fact, the directors had no intention of ever paying CostMart.

In the meantime, anticipating that the company’s financial situation would worsen, the directors paid Chris an advance on his wages and a large bonus. HGL continued for four further months until CostMart issued a statutory demand and subsequently applied for a compulsory winding-up order, having received no response to the demand.

Stewie and Brian have started reviewing HGL’s records and notice that there are unpaid salaries of £ 20,000, overdue rent of £ 35,000 and unpaid utility bills of around £ 10,000. Meg also forgot to arrange payment of income tax in the region of £ 15,000 for the previous financial year. The company’s assets are in the region of £ 70,000. Stewie and Brian notice that Chris’ outstanding wages are lower than other managers on the same salary.

Lois and Peter now reside in Northern Ireland and have taken with them company laptops and other confidential financial records.

Help advise Stewie and Brian in respect of the following issues:

1. What, if any, potential claims the insolvency officeholders may wish to investigate following their appointment?
2. In what order should the creditors be paid?
3. How Stewie and Brian could seek assistance overseas in dealing with Lois and Peter.
4. Any additional reporting requirements Stewie and Brian should be aware of as a result of the recent insolvency reforms.

[Type your answer here]

**\* End of Assessment \***