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

**JERSEY**

This is the **summative (formal) assessment** for **Module 5E** on 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 5E**. 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.assessment5E]**. An example would be something along the following lines: 202122-336.assessment5E. **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 2022**. The assessment submission portal will close at **23:00 (11 pm) BST (GMT +1) on 31 July 2022**. 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 **8 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 court** would be most appropriate in pursuing enforcement for a claim of JEP 5,000 in Jersey?

1. Royal Court.
2. Court of Appeal and Privy Council.
3. Petty Debts Court.
4. None of the above.

**Question 1.2**

Debtors that can become subject to *Désastre* in Jersey under the Bankruptcy (*Désastre*) (Jersey) Law 1990, include the following:

1. A dissolved company that was registered in Jersey under the Companies (Jersey) Law 1991.
2. An individual who was ordinarily resident in Jersey until 18 months before, but has had no connection to Jersey since that time.
3. An incorporated Limited Partnership.
4. An individual who has never been ordinarily resident in Jersey or carried on business in Jersey, but owns movable property in Jersey.

**The answer is:**

1. (i), (ii), (iii) and (iv).
2. (i), (iii) and (iv).
3. (ii) and (iv).
   1. (i) and (iii).

**Question 1.3**

Which party **cannot** make an application for *Désastre* under the Bankruptcy (*Désastre*) (Jersey) Law 1990?

1. The Viscount.
2. The Jersey Financial Services Commission.
3. A creditor with a claim of at least £3,000.
4. The Debtor.

**Question 1.4**

Which statutory processes provide a moratorium against action being brought by non-secured creditors?

1. Summary Winding Up.
2. Creditors’ Winding Up.
3. Just and Equitable Winding Up.
4. *Désastre*.
5. *Dégrèvement* or Realisation.
6. Debt Remission Order.
7. *Remise de Biens*.
8. Compromises or Arrangements.

**The answer is:**

1. (i), (ii), (iii), (iv), (vi), (vii) and (viii).
2. (i), (ii), (iii) and (iv).
3. (i), (ii), (iii), (vii) and (viii).
4. All of the above.

**Question 1.5**

Which liquidation processes under Part 21 of the Companies (Jersey) Law 1991, as amended, are available in respect of solvent companies?

1. Summary Winding Up.
2. Creditors’ Winding Up.
3. Just and Equitable Winding Up.

**The answer is:**

1. (i) only.
2. (i) and (ii).
3. (i) and (iii).
4. All of the above.

**Question 1.6**

Which one of the following statements **is correct**?

1. Jersey is part of Britain, the UK and the EU.
2. Jersey is part of Britain and the EU but not the UK.
3. Jersey is part of Britain but not the UK and not the EU.
4. Jersey is not part of Britain, or the UK or the EU.

**Question 1.7**

Which of the following statements **are correct**?

Jersey is an attractive destination for international finance, due in part to its:

1. Low tax regime.
2. Political independence.
3. Rapidly expanding economy.
4. Legal and regulatory infrastructure.

**The answer is:**

1. (i), (ii), (iii) and (iv).
2. (i), (iii) and (iv).
3. (i), (ii) and (iii).
4. (i), (ii) and (iv).

**Question 1.8**

What type of mortgage can be granted in Jersey, following judgment of the Jersey Court, to allow an unsecured creditor to obtain security over immovable property owned by a debtor?

1. A conventional hypothec.
2. A judicial hypothec.
3. A pledge.
4. A legal hypothec.

**Question 1.9**

In which statutory processes is it typical for an independent professional Insolvency Practitioner to be appointed?

1. Summary Winding Up.
2. Creditors’ Winding Up.
3. Just and Equitable Winding Up.
4. *Désastre*.
5. *Dégrèvement* or Realisation.
6. Debt Remission Order.
7. *Remise de Biens*.
8. Compromises or Arrangements.

**The answer is:**

1. (i), (ii) and (iii).
2. (ii) and (iii).
3. (i), (ii), (iii), and (viii).
4. All of the above.

**Question 1.10**

What other responsibilities are overseen by the office of the Viscount, besides insolvency functions?

1. Coroner.
2. Data Protection.
3. Farming and fishing.
4. Prison services.

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

**Question 2.1 [maximum 3 marks]**

**Describe** the powers that are available to a Viscount in respect of a *Désastre* and a Liquidator in respect of a Winding Up.

[Type your answer here]

**Question 2.2 [maximum 2 marks]**

**Briefly describe** the practical reasons why Jersey may not have a statutory or customary corporate rescue and turnaround procedure equivalent to an English administration or US Chapter 11.

[Type your answer here]

**Question 2.3 [maximum 3 marks]**

Describe the three varieties of mortgage available in Jersey in respect of **immovable property**.

[Type your answer here]

**Question 2.4 [maximum 2 marks]**

**Describe** the restricted circumstances in which a Debt Remission Order is available for a Jersey resident under the Debtor Remission (Individuals) (Jersey) Law 2016.

[Type your answer here]

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

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

Write a short essay on the *Désastre* process under the Bankruptcy (*Désastre*) (Jersey) Law 1990. In your essay, you should refer to at least the following:

* The parties who can be subject to *Désastre*
* The parties who can apply for *Désastre*
* Requirements for an application for *Désastre*
* The effect of *Désastre* upon the debtor
* The role of the Viscount
* The Viscount’s costs
* Conclusion of the *Désastre*

[Type your answer here]

**Question 3.2 [maximum 8 marks]**

Write a **short essay** describing in detail the creditor claims process in respect of a Creditors’ Winding Up. In your essay, you should refer to at least the following:

* The relevant Jersey law that applies
* Which areas are covered under the relevant Jersey law
* Advertising for claims and notice periods
* Which debts are provable
* Interest on debts
* Proof of debts and the cost of proving
* Examination of proofs of debts
* Adjudication and the process of admitting or rejecting claims

[Type your answer here]

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

XYZ Limited is a major high-street retailer registered in England with stores throughout England and a store in Jersey. Like many retailers, XYZ has struggled in recent times due to the change in shopping habits of the British public. Sales have fallen as customers increasingly look for cheaper alternatives online and XYZ is struggling to meet its ongoing rent commitments at its many stores. The majority of XYZ’s stores have been loss making for some time, including its store in Jersey. XYZ’s secured lender, Big Bank PLC, has become increasingly concerned at the situation. Big Bank has the benefit of fixed and floating charges over XYZ’s assets.

In December 2018, Big Bank confirmed that it would no longer continue to provide financial support and would not allow a further extension of facilities in order to meet the rental payments which were due on 25 December.

**Using the facts above and the additional facts below, answer the questions that follow**.

**Question 4.1 [maximum 3 marks]**

Big Bank has obtained legal advice in England in relation to its rights as secured creditor. You have been approached in Jersey to comment on Big Bank’s rights. **Please draft a note in which you set out your comments**.

[Type your answer here]

**Additional facts:**

The directors of XYZ identify a party who is interested in acquiring the business of XYZ. Following a brief period of negotiation conducted with the oversight of a proposed Administrator (and with the approval of Big Bank), the directors of XYZ begin the process of placing XYZ into Administration in England, in order to allow a “pre-packaged” sale of the business to occur.

**Question 4.2 [maximum 3 marks]**

The Jersey store is owned by a separate Jersey company, ABC Limited, but ABC’s centre of main interest (COMI) is considered to be in England. Will it be possible to place ABC under English Administration (following the Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on Insolvency Proceedings (Recast) (“the Recast EIR”))?

[Type your answer here]

**Question 4.3 [maximum 3 marks]**

If it is not possible to place ABC under English Administration, are there alternative Jersey insolvency processes that will allow a pre-packaged sale to occur? Are there any potential problems in achieving a sale as a going concern?

[Type your answer here]

**Question 4.4 [maximum 3 marks]**

Would the approach be different if the Jersey store was a branch of XYZ as opposed to a separate Jersey company? How might Article 49 of the Bankruptcy Law be used?

[Type your answer here]

**Question 4.5 [maximum 3 marks]**

What if XYZ Limited was a Polish company with Polish stores and a store in Jersey, but all other details remain the same (and assume that Poland has an Administration process the same as in England)? Would the UNCITRAL Model Law on Cross-Border Insolvency or the Recast EIR assist with recognition in Jersey?

[Type your answer here]

**\* End of Assessment \***