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

**JERSEY**

This is the **summative (formal) assessment for Module 5E** 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 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: 202223-336.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 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.

**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 can **hear an appeal** in respect of a Jersey legal matter?

1. Royal Court.
2. Court of Appeal.
3. Petty Debts Court.
4. Privy Council.

Choose the **correct answer**:

1. Option (ii).
2. Options (ii) and (iv).
3. Option (i).
4. All of the above are correct.

**Question 1.2**

Which statements are correct in relation to the role of liquidators, their powers and duties:

1. Directors’ powers cease upon appointment of a liquidator in a summary winding-up, and a liquidator can exercise those powers if approved by the court.
2. In a just and equitable winding-up, the liquidator’s powers will be determined by the court.
3. In a provisional liquidation, the provisional liquidator will have such powers as specified in the resolutions appointing him.
4. Liquidators are obliged to report possible criminal offences as specified in the Companies Law.

Choose the **correct answer**:

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

**Question 1.3**

Which parties can **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 GBP 2,000.
4. The debtor.

Choose the **correct answer**:

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

**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.

Choose the **correct answer**:

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

**Question 1.5**

Which antecedent transactions can the liquidator of a summary winding up pursue under the Companies Law?

1. Transactions at an undervalue.
2. Preferences.
3. Wrongful trading.
4. Fraudulent trading.
5. Extortionate credit transactions.

Choose the **correct answer**:

1. All of the above.
2. Options (i) and (ii).
3. Options (i), (iii) and (iv).
4. None 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**

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

1. Tax neutrality.
2. Political independence.
3. Economic stability.
4. Legal and regulatory infrastructure.

Choose the **correct answer**:

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

**Question 1.8**

Which **type of mortgage** can be created by agreement between two or more parties as to the granting and taking of security expressed in the form of a contract passed before the Jersey court?

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

**Question 1.9**

Which statutory processes require a liquidator to be on the **approved register of liquidators**?

1. Summary winding-up.
2. Creditors’ winding-up through court.
3. Just and equitable winding-up.
4. Creditors’ winding-up not through court.

Choose the **correct answer**:

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

**Question 1.10**

Which **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 in total]**

**Question 2.1 [maximum 3 marks]**

Describe the points both in favour and against the 2022 introduction of a register of approved liquidators in Jersey. What are the criteria to be eligible for the register?

[Type answer here]

Question 2.2 [maximum 2 marks]

Describe briefly 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 proceeding.

[Type answer here]

Question 2.3 [maximum 2 marks]

Describe the appointment process in respect of the liquidation of a limited duration company.

[Type answer here]

Question 2.4 [maximum 3 marks]

What claims potentially rank as priority claims in a *Désastre*?

[Type answer here]

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

Question 3.1 [maximum 7 marks]

Write a short essay to describe the personal insolvency options available in Jersey, being *Désastre*, *Degrevement* and Realisation, Debt Remission Order and *Remise de Biens*.

[Type 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:

1. The relevant Jersey law that applies.
2. Which areas are covered under the relevant Jersey law.
3. Advertising for claims and notice periods.
4. Which debts are provable.
5. Interest on debts.
6. Proving of debts and the cost of proving.
7. Examination of proofs of debts.
8. Adjudication and the process of admitting or rejecting claims.

[Type answer here]

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

XYZ Limited (XYZ) is a major high-street retailer registered in England with stores throughout England as well as 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 (Big Bank), 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.

1. 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 this regard. (3 marks)

[Type answer here]

The directors of XYZ identify a party that is interested in acquiring the business of XYZ. Following a brief period of negotiation conducted with the oversight of a proposed administrator, and with approval of Big Bank, the directors of XYZ began the process to place XYZ into administration in England, in order to allow a “pre-packaged” sale of the business to occur.

1. The Jersey store is owned by a separate Jersey company, ABC Limited (ABC), but ABC’s centre of main interest is considered to be in England. Is it possible to place ABC into 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)? (3 marks)

[Type answer here]

1. If it is not possible to place ABC into English administration, then are there alternative Jersey insolvency processes that will allow a pre-packaged sale to occur? Are there any potential problems with achieving a sale as a going concern? (3 marks)

[Type answer here]

1. 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? (3 marks)

[Type answer here]

1. 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 that is the same as that in England)? Would the UNCITRAL Model Law on Cross-Border Insolvency 1997 (the Model Law) or the Recast EIR assist with recognition in Jersey? (3 marks)

[Type answer here]

**\* End of Assessment \***