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**SUMMATIVE (FORMAL) ASSESSMENT: MODULE 7D**

**SOUTH AFRICA**

This is the **summative (formal) assessment** for **Module 7D** 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 7D**. 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.assessment7D]**. An example would be something along the following lines: 202122-336.assessment7D. **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**

The following categories of claims in these respective amounts have been proved against an insolvent estate:

Secured claims: ZAR 2,000,000

Statutory preferent claims: ZAR 1,500,000

Concurrent claims: ZAR 1,000,000

Choose the **correct statement**:

1. The total amount of unsecured claims against the estate is ZAR 1,000,000.
2. The total amount of unsecured claims against the estate is ZAR 2,500,000.
3. The total amount of secured claims against the estate is ZAR 3,500,000.
4. The total amount of unsecured claims against the estate is ZAR 4,500,000.
5. None of the above is correct.

**Question 1.2**

Choose the **correct statement** in relation to impeachable dispositions and the powers of the officeholder to have dispositions sets aside –

1. A disposition not for value made by the company prior to being placed under liquidation may be set aside in terms of the provisions of section 26 of the Insolvency Act 24 of 1936.
2. A disposition preferring one creditor above another made by the company prior to being placed under business may be set aside in terms of the provisions of section 29 of the Insolvency Act 24 of 1936.
3. A disposition with the intention to prefer one creditor above another made by the company prior to being placed under business may be set aside in terms of section 30 of the Insolvency Act 24 of 1936.
4. None of the above are correct.

**Question 1.3**

Choose the **correct option** in relation to the following statement: After sequestration, the assets of the insolvent vests in the Master until a business rescue practitioner is appointed.

1. The statement is correct.
2. The statement is incorrect, as the assets remain under the control of the insolvent until the officeholder is appointed.
3. The statement is incorrect as the officeholder in sequestration is a trustee.
4. Options (b) and (c) are correct.

**Question 1.4**

Which of the following does a debtor not have to prove when bringing an application for voluntary surrender:

1. That sequestration will be to the advantage of creditors.
2. That there is reason to believe that sequestration will be to the advantage of creditors.
3. That an act of insolvency was committed by the debtor.
4. That there will be sufficient free residue to cover the costs of sequestration.

Choose the **correct answer**:

1. Option (ii).
2. Options (ii) and (iv).
3. Option (iii).
4. Options (ii) and (iii).

**Question 1.5**

In February 2021 Company X was placed in liquidation. The liquidator of Company X became aware of the fact that Company X disposed of property worth ZAR 12,000 to Company Z for an amount of ZAR 7,000 during September 2020. Directly after the disposition, Company X’s liabilities exceeded its assets by ZAR 8,000. **If the disposition is set aside** –

1. Company Z will be required to return ZAR 12,000 to the liquidator of Company X.
2. Company Z will be required to return ZAR 8,000 to the liquidator of Company X.
3. Company Z will be required to return ZAR 7,000 to the liquidator of Company X.
4. Company Z will be required to return ZAR 5,000 to the liquidator of Company X.

**Question 1.6**

Which of the following is correct in relation to jurisdiction in insolvency related matters:

1. The High Court has exclusive jurisdiction in insolvency related matters.
2. The High Court has exclusive jurisdiction to grand liquidation orders.
3. The Insolvency Court has exclusive jurisdiction in insolvency related matters.
4. A Magistrate’s Court with jurisdiction may in certain instances hear matters related to the insolvent estate.

Choose the **correct answer**:

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

**Question 1.7**

A cause of action established by a foreign judgment can be enforced if certain common law requirements are met. Which of the following is **not** such a common law requirement:

1. The foreign court must have had international competence as determined by South African law.
2. The enforcement of the judgment must not be contrary to South African public policy or the concept of natural justice, but the judgment need not be final and conclusive.
3. The enforcement of the judgment must not be contrary to South African public policy or the concept of natural justice.
4. The judgment must not have been obtained fraudulently.

**Question 1.8**

Company A wishes to obtain funding to utilise as working capital in order to expand its exploration and mining enterprises. Company A has various subsidiaries, and Bank XYZ, as lender, requires Company A to provide some of its shares in its subsidiaries as security to the bank in order to secure the loan. This form of security is known as a –

1. Pledge.
2. Hypothec.
3. Cession in security of a debt (*in securitatem debiti*).
4. Special notarial bond.

**Question 1.9**

An insolvent debtor **may not** hold the following office, unless exemption has been granted by a court:

1. A trustee of an insolvent estate.
2. A member of the National Assembly.
3. A business rescue practitioner.
4. A director of a company.

**Question 1.10**

In accordance with the South African common law dealing with cross-border insolvency, the assets of an insolvent are governed as follows:

1. Movable property is governed by the law of the natural person’s domicile (*lex domicilii*).
2. Movable property is governed by the law of the natural person’s domicile *(lex situs*).
3. Immovable property is governed by the law of the place where the immovable property is situated (*lex domicilii*).
4. Immovable property is governed by the law of law of the natural person’s domicile (*lex situs*).

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

**Question 2.1** **[maximum 2 marks]**

Briefly **differentiate** **between the commencement** of voluntary and compulsory business rescue proceedings.

[Type your answer here]

Question 2.2 [maximum 8 marks]

Briefly set out and explain the **threshold** for a company to enter business rescue proceedings.

[Type your answer here]

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

ABC Limited conducts smelting operations for a local gold mine, which gold mine has recently sunk two new shafts. As a result thereof, the amount of gold ore extracted has increased significantly, and ABC Limited is not able to process all of the ore with the existing smelters that it has. The board of ABC Limited has taken the decision to apply for funding in order to build and install new smelters. ABC Limited’s bank, XYZ Bank, has indicated its willingness to provide ABC Limited with the required funds, but subject to a significant security package. ABC Limited owns the following unencumbered property, or has the following available to provide as possible security: (i) the land on which the smelting operations are located; (ii) the existing freestanding and movable smelters; (iii) 100% shares in one of its subsidiaries, DEF Limited; and (iv) various business insurance policies.

**Question 3.1 [maximum 10 marks]**

Advise ABC Limited as to the various types of security that XYZ Bank may be willing to consider, based on the list of available items above. Your answer should also include any practical considerations that XYZ Bank would bear in mind when deciding what to take as security, as well as a brief description of each type of security to be taken.

[Type your answer here]

**Question 3.2 [maximum 5 marks]**

For this question 3.2 only, assume that XYZ Bank has provided ABC Limited with the required funding, and has taken security as per your answer in question 3.1 above. Due to a downswing in the economy and a global decrease in the demand for gold, ABC Limited is unable to repay its obligation towards XYZ Bank. XYZ Bank has brought a liquidation application in the High Court, and a final liquidation order has been granted against ABC Limited. How would XYZ Bank go about enforcing its security?

*(Please note that the guidance text does not contain comprehensive information on enforcement in relation to all of the applicable forms of security in this set of facts, as it falls outside of the scope of this certificate. Students are simply required to answer this question with reference to the available material, and no other further research is required.)*

[Type your answer here]

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

Money Problems NZ Limited (Money Problems NZ) is a company duly registered in terms of New Zealand company law. Money Problems SA Limited (Money Problems SA) is registered in South Africa as an external company and is a subsidiary of Money Problems NZ. Money Problems NZ was placed under liquidation in New Zealand on 31 August 2020 as a result of inability to pay its debts. Shortly thereafter Mrs B was appointed as the liquidator of Money Problems NZ. On 17 October 2020 a creditor of Money Problems SA made it clear that he intended approaching the High Court in South Africa for an order to wind-up Money Problems SA in terms of the Companies Act 61 of 1973 on the ground that it is unable to pay its debts. Mrs B has not yet approached the High Court in South Africa for recognition. The affairs of Money Problems NZ seem to be rather convoluted and only on 10 October 2020 did Mrs B come to learn that Money Problems NZ has assets in South Africa. Mrs B plans to apply to the South African High Court for recognition in due course.

You are required to draft an opinion addressed to Mrs B on the possible conclusions that may be reached by the South African High Court under the present circumstances. Your opinion should include specific reference to, among other things, –

1. whether the court might recognise the foreign proceedings or the foreign officeholder;
2. whether the court might order the liquidation of Money Problems SA given the current liquidation of Money Problems NZ;
3. factors that the court will take into consideration when drawing a conclusion; and
4. the content of a possible declaratory order that the court may make.

If you are of the opinion that you need additional facts in order to answer the question effectively, please indicate what facts you would require and how these facts would affect your answer.

[Type your answer here]

**\* End of Assessment \***