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**SUMMATIVE (FORMAL) ASSESSMENT: MODULE 8E**

**SINGAPORE**

This is the **summative (formal) assessment for Module 8E** 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 8E**. 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 or Avenir Next 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.assessment8E]**. An example would be something along the following lines: 202223-336.assessment8E. **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 of the following is not a type of winding-up under the Insolvency Restructuring and Dissolution Act (the IRD Act)?

1. Court-ordered winding-up.
2. Creditors’ voluntary winding-up.
3. Members’ voluntary winding-up.
4. Director’s voluntary winding-up.

**Question 1.2**

**Who may apply** to court to place a company into judicial management?

1. The debtor company’s creditors.
2. The debtor company.
3. The debtor company’s directors.
4. Any of the above.

**Question 1.3**

Which of the following is the **least** relevant consideration for determining if a foreign company has a substantial connection with Singapore, so as to be eligible to be wound up under the IRD Act?

1. Many of the company’s creditors are located in Singapore.
2. The company’s key employees and business are located in Singapore.
3. Singapore law is the governing law of the company’s contracts.
4. Singapore has adopted the UNCITRAL Model Law on Cross-Border Insolvency.

**Question 1.4**

When will a scheme of arrangement be effective?

1. When a majority in number representing 75% in value of each class of creditors votes in favour of the scheme.
2. When the results of the voting are advertised in the Government Gazette and a local English daily newspaper.
3. When the Court order sanctioning the scheme is lodged with the Registrar of Companies.
4. When notice of the Court order sanctioning the scheme is issued to all secured creditors of the company.

**Question 1.5**

Which of the following is not a requirement in making an application to the Court for a moratorium under section 64 of the IRD Act?

1. The applicant must provide a detailed draft of the proposed scheme of arrangement.
2. The applicant must provide a list of its top 20 unsecured creditors.
3. The applicant must advertise the application in the Government Gazette and a local English and Chinese daily newspaper.
4. The applicant must show evidence of support from its creditors on the proposed scheme of arrangement.

**Question 1.6**

Which of the following is not a prior transaction which may be adjusted under the IRD Act when a company is in liquidation or under judicial management, and occurs during the relevant period?

1. A contract entered into at fair value.
2. A dividend payment.
3. A payment to a creditor to discharge a debt.
4. The creation of a floating charge.

**Question 1.7**

Which of the following is **not** regarded as an act of an insolvency practitioner?

1. Acting as a nominee for a voluntary arrangement.
2. Acting as a scheme manager.
3. Acting as a liquidator.
4. Acting as a judicial manager.

**Question 1.8**

A bankruptcy application may be made against a debtor, if at the time of the application, the debt amount is not less than \_\_\_\_\_\_\_\_\_\_.

1. S$10,000.
2. S$15,000.
3. S$20,000.
4. S$25,000.

**Question 1.9**

U Pte Ltd (U) is currently unable to pay its debts as they fall due, and it seems unlikely that U can satisfy any future debt in full. P, the sole director of U, decided to continue the business in the hope of revitalising the company and continued taking up new loans and purchased new inventory on credit. Which of the following is correct?

1. For P to be liable for wrongful trading, she must have intended to put U’s assets out of reach of U’s creditors.
2. For P to be liable for wrongful trading, she must first have been convicted of a criminal offence.
3. For P to be liable for wrongful trading, she must or ought to have reasonably known that U was unable to meet its debts in full.
4. For P to be liable for wrongful trading, a majority of U’s creditors must pass a resolution stating that P has traded wrongfully.

**Question 1.10**

Who may apply to court to place a company into **liquidation**?

1. A creditor of a company.
2. A shareholder of a company.
3. A judicial manager.
4. Any of the above.

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

**Question 2.1 [maximum 4 marks]**

State four powers of the liquidator in a compulsory winding up.

The liquidator may only exercise certain powers in a compulsory liquidation with the authorisation of the court or the inspecting committee. As the question is openly formulated, two powers of the liquidator are listed below, for which the liquidator requires authorisation from the court or the inspection committee, and a further two powers for which the liquidator can decide independently.

1. Make any Compromise or Arrangement

With the authorisation of the court or the Board of Inspectors, the liquidator may conclude compositions or agreements with creditors who have claims against the debtor or at least claim to have such claims.

1. Continuation of the Business

If the debtor enters into liquidation, the liquidator is also authorised, with the authorisation of the court or the inspection committee, to continue the debtor's business to the extent that this proves necessary for the economic liquidation of the debtor. If it is only a matter of 4 weeks after the liquidation order, authorisation is not required.

1. Sale of the Company's Property

In any case, the liquidator is authorised to sell the debtor's immovable and movable assets at public auctions, tenders or by private treaty. There is also nothing to prevent the sale to just one person.

1. Issuing Bills of Exchange or Promissory Notes

The liquidator may otherwise draw, accept, create and endorse bills of exchange or promissory notes in the name of and on behalf of the company. This action has the same effect as if it had been carried out directly by the company or on behalf of the company.

The fact that the liquidator's actions based on these powers are always subject to review by the court must be taken into account. The exercise of these powers can be applied for.

**Question 2.2 [maximum 2 marks]**

Name two objectives of judicial management.

The company, its directors or creditors may apply to the High Court of Singapore to place a company that is insolvent or likely to become insolvent into judicial management.

In addition to the scheme of arrangement, judicial management is a procedural variant for the rehabilitation of companies.

The objectives of judicial management include the following:

1. Temporary Moratorium

A key objective of judicial management is to give viable companies in financial difficulties some breathing space in order to reorganise them and make them profitable again. When the application for judicial management is filed, a statutory moratorium on legal proceedings against the company comes into force. It is at the discretion of the court or the judicial administrator to authorise the initiation or continuation of proceedings or enforcement measures against the debtor.

The moratorium extends to the initiation of legal proceedings, the enforcement of securities, the repossession of goods under a hire-purchase agreement, an equipment leasing agreement or an agreement on retention of title, the enforcement of a judgement and foreclosure.

1. Alternative to Liquidation

Another aim is to liquidate insolvent companies in an orderly manner. The court therefore examines in detail whether judicial administration can lead to more economical results than liquidation.

**Question 2.3 [maximum 4 marks]**

Briefly set out the steps in which the company commences a voluntary creditors’ winding-up.

If a situation arises in which a company is no longer in a position to service its liabilities and the management is no longer in a position to issue solvency declarations for the company, liquidation can also be initiated by the creditors of this company.

Two resolutions are required to initiate liquidation from among the creditors.

Firstly, a shareholder resolution must be passed within the company to determine the dissolution of the company.

A creditors' meeting must then be convened to consider and approve the request for voluntary liquidation.

The company then appoints a liquidator, whereby the creditors can appoint an alternative liquidator.

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

**Question 3.1 [maximum 8 marks]**

Write a brief essay on

(i) rescue financing; and

(ii) wrongful trading

under the IRD Act.

1. Rescue Financing under the IRD Act

When so-called "rescue financing" are referred to on the basis of the IRD Act, reference is made on the one hand to payments that are necessary for the debtor's survival or also to payments that lead to a more favourable realisation of the debtor than could be achieved in liquidation.

It is obvious that rescue financing plays a key role in proceedings aimed at preserving the company, in other words the restructuring and reorganisation of the company. Under the IRD Act, rescue financing therefore occurs in both schemes of arrangement and judicial management.

Rescue financing is governed by Section 67 of the IRD Act and allows the relevant court to order that rescue financing be given priority status where a company has made an application to convene a meeting for the purpose of a scheme of arrangement or moratorium.

The court may, in dealing with a rescue financing in section 67 over 4 priority steps, treat the rescue financing as part of the costs and expenses of the winding up (section 67(1)(a)), give priority over any specified preferential debt and any other unsecured debt (section 67(1)(b)), by a security interest in land, which is not otherwise subject to a security interest or which is subordinate to an existing security interest (section 67(1)(c)) or by a security interest in land which is subject to an existing security interest ranking pari passu with or senior to that existing security interest (section 67(1)(d)).

The courts require for all types of priority requested rescue financing that the debtor must prove that it would not have been able to obtain rescue financing from a person other than the one requested.

Rescue financing is also mentioned in section 64 of the IRD Act in connection with the Debtor-in-Possession procedure. This provides for debtor-in-possession (DIP) financing or, following the American model, rescue financing.

1. Wrongful Trading

The term "wrongful trading" is used where, in the course of the administration or winding up, it appears that the debtor has incurred debts despite being unable to pay them without any reasonable prospect of paying them in full or without any reasonable prospect of paying them in full and this results in the company becoming insolvent.

On the application of the liquidator or any creditor or contributory of the company, the court may declare that any person who knowingly carries on or has participated in any such business shall be personally liable, without limitation of liability, for all or any of the debts or other liabilities of the company. Personal liability arises from section 239 of the IRD Act.

This person must either have known that the company had acted unlawfully or, as a leading officer of the company, should at least have known under all circumstances that the company had acted unlawfully. However, this person can also exculpate themselves. To do so, they must declare that they acted honestly and that liability is out of the question as an exception.

**Question 3.2 [maximum 7 marks]**

Write a **brief essay** in which you discuss the similarities and differences between judicial management and liquidation. Explain some factors you would consider when advising your client on electing between either option.

Judicial management, together with the scheme of arrangement, are alternatives to formal liquidation proceedings. The objectives of judicial management and liquidation are fundamentally at opposite ends of the spectrum. As a restructuring procedure, judicial management is primarily aimed at reorganising a company that is in financial or economic trouble and therefore ailing. Liquidation, on the other hand, is no longer geared towards rescuing a company. Rather, in liquidation it is clear that the company is at an end and that the only thing that can be done is to realise the company's assets. Liquidation is primarily aimed at ensuring a fair and orderly distribution of the company's assets among the creditors.

However, an overlap may arise from the range of functions of judicial management, where this is geared towards the realisation of the company's assets in the same way as liquidation. For example, judicial management can also be geared towards the "more advantageous" realisation of the company's assets. This is a declared second objective of judicial administration.

What the judicial management and liquidation have in common here is the aim of realising the company's assets as profitably as possible so that they can then be distributed fairly among the creditors.

What they also have in common is the appointment of an administrator who takes care of the realisation. However, judicial management is an entirely voluntary procedure that is introduced upon application to the court or by a resolution of the creditors' meeting.

Liquidation can also be carried out on a voluntary basis by the shareholders or creditors. In any case, however, the company must still be solvent when it is liquidated by the shareholders. In contrast to judicial administration, liquidation is also carried out by law. It usually takes place when the company can no longer service its liabilities. In this case, voluntary liquidation is no longer possible.

In the event of liquidation, the business operations of the company concerned shall be terminated upon the commencement of liquidation. The company's assets are analysed and all efforts are directed towards realising them.

This can be a significant advantage in terms of the effectiveness of realisation via judicial management. This initially provides for the at least temporary continuation of the company with the management. This also allows future incoming payments to be taken into account in the realisation. If a company that is temporarily insolvent but from which a very high cash inflow is expected from an ongoing project is put into judicial administration, the company can be protected from third-party creditors due to the moratorium while it works towards realising the potential cash inflow.

In the event of a simple liquidation, this realisation will probably not be possible, as the company is strictly geared towards dissolution.

When it comes to the question of which procedure is more favourable, judicial management should generally be preferred to simple liquidation. This route still opens up the option that a rescue is possible, but in any case helps with the effective realisation of the company if this is to be achieved.

However, as judicial management is largely voluntary, depending on the initial economic situation, it is to be expected that the court will deny this option and liquidation will take place.

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

Using the facts below for each section, answer the following questions.

Oldway Pte Ltd (Oldway) and Swift Pte Ltd (Swift) are music instrument suppliers. Oldway manufactures high-quality pianos, while Swift makes hand-built custom guitars. Both Oldway and Swift would sell their instruments to various retailers in Singapore, and are renowned for creating high-quality instruments and preserving the traditional style of manufacturing musical instruments.

In March 2023, Oldway was experiencing serious supply chain issues, caused in part by severe wildlife poaching reducing the supply of ivory for Oldway to manufacture its piano keys. Oldway was not able to pay one of its creditors, Spruce Pte Ltd (Spruce), a supplier of piano wood, the S$500,000 for the most recent delivery of piano wood to Oldway. After issuing a warning, Spruce issued a statutory demand against Oldway for the sum of S$500,000.

Martinus, one of Oldway’s directors, remembered that a year ago, Spruce had delivered a bad cargo of rotten wood, causing some pianos to collapse and caused about S$750,000 in losses. Out of goodwill, Oldway had not commenced legal action against Spruce to maintain their business relationship. Martinus was wondering if the time was nigh to sue Spruce.

Question 4.1 [maximum 3 marks]

Briefly describe the process in which Spruce would apply to Court for the winding-up of Oldway on the basis that the statutory demand went unsatisfied. Would Oldway be able to resist the winding-up application?

1. Process of Winding up

When Spruce applies to the competent court for the opening of liquidation proceedings, the opening is made as such for a compulsory liquidation (CL). As a creditor of Oldway, Spruce is authorised to file an application.

To do this, Spruce must apply to the court to dissolve Oldway, stating a specific reason. The main reason for this is that Oldway is not meeting its obligations to Spruce because it is unable to do so.

The court will then examine Oldway's ability to pay in order to determine the extent to which the allegation that Oldway can no longer service its liabilities and is therefore insolvent is correct.

If the court finds that Oldway is insolvent, it will in a first step initiate liquidation proceedings and in a second step appoint a liquidator as proposed by Spruce.

1. Resisting Winding up Application

The court will publicly announce Spruce's application for dissolution and then hear Oldway's defence. These measures will be taken without the court conducting its own examination of the merits.

If Oldway, as the company concerned, wishes to defend itself against the winding-up petition, Oldway can lodge an "objection" to Spruce's petition before the official hearing. To do so, Oldway must submit an affidavit to the court. In the hearing, Oldway can then comment on the lack of justification for the application.

Oldway can only cite reasons against the winding-up proceedings being opened. As the winding-up petition is only justified if it can be proven that Oldway can no longer service its liabilities and the petitioner itself is actively affected, Oldway would have to explain why Oldway is still solvent and / or why Spruce cannot apply for the winding-up to be opened.

Against the background of the service relationship between Spruce and Oldway, it appears possible, if necessary, to rely on Spruce's legal standing. The requirement of standing establishes the necessary legal and factual link between a particular claimant and a particular defendant which makes it appropriate to extend the court's discretion to make a winding up order against the defendant. This ensures that the petitioner has a genuine interest in the winding up of the respondent and has some basis for imposing on the company the drastic consequences arising from the mere making of a winding up petition (Founder Group (Hong Kong) Ltd (in liquidation) v Singapore JHC Co Pte Ltd, [2023] SGHC 159).

According to the facts of the case, Oldway has had an outstanding claim against Spruce for 750,000 S$ for a year, as Spruce supplied defective timber to Oldway. To date, Oldway has not settled this claim as a gesture of goodwill. Oldway could, if necessary, declare a set-off against Spruce's claim, which would result in Spruce simply no longer having an outstanding claim against Oldway and therefore no longer being affected by a possible insolvency.

It is possible that Oldway could achieve this by asserting its claims against Spruce out of court so that Spruce withdraws the application to open the liquidation. Alternatively, Oldway could also bring an action against Spruce and provoke a set-off. If the application has already been made by Spruce, Oldway could move the court to prohibit Spruce from making the winding-up petition.

Question 4.2 [maximum 5 marks]

Oldway and Spruce eventually entered into a settlement agreement, and Oldway was not wound up. However, its financial woes were far from over. A new instrument manufacturer, JazzGPT Pte Ltd (Jazz), had entered the market and had a hot start. Jazz harnessed the power of technology, using artificial intelligence to programme the instruments’ blueprints and 3-D printing to manufacture the envisioned product. As such, Jazz was able to produce instruments at a staggering 100 times the rate of Oldway and Spruce and sell its products at a fraction of the price. Many experts, during blind reviews, have also admitted that the sound quality of Jazz’s instruments was indistinguishable from traditionally-made instruments. Most musicians started turning to Jazz.

Hence, Oldway’s sales continued to plummet and it soon faced a financial crisis. At a board meeting, Martinus decided that it was in the best interests of Oldway to place itself under judicial management.

Briefly describe (i) what Oldway must demonstrate to the court in order to obtain a judicial management order; and (ii) the effect of a judicial management order.

1. Proof for Judicial Management

Oldway must make an application to the court for judicial management. This application must be accompanied by an affidavit in support of the application.

In the application, Oldway must appoint a judicial manager, who must be a licensed insolvency practitioner who is not the company's auditor.

Oldway must first make a plausible case in support of its application that, on balance of probabilities, it is not or will not be able to pay its debts.

Oldway must first make a plausible case in support of its application that, on balance of probabilities, it is not or will not be able to pay its debts. It must then be explained that there is a real possibility that the making of a judicial management order will ensure Oldway's continued existence in whole or in part. The order may also be directed towards a scheme of compromise or arrangement or, in any event, it may be possible to achieve a more advantageous realisation of the company's assets through the order than in a formal liquidation.

It must be made clear that judicial management is significantly advantageous and leads to a better result than, for example, liquidation.

1. Effect of a Judicial Management Order

Once a judicial management order is made, the functions and powers of the Oldway board of directors are transferred to a judicial manager. The only exception is the convening of a shareholders' meeting, with the exception of meetings required by the administrator to fulfil his duties.

The court-appointed manager takes control of the business and assets of the company for a period of 180 days, subject to any further extensions granted by the court.

The order imposes a moratorium in Oldway's favour, which prevents third parties from taking action against the company, at least during the judicial administration. This includes the enforcement of seizures or other securities on Oldway's property.

**Question 4.3 [maximum 3 marks]**

Oldway was placed under judicial management on 30 June 2023 and Messrs Buckman and Berryland of Pacific Advisory Services Pte Ltd were appointed as the joint and several judicial managers of Oldway (Judicial Managers). Mayer, one of Swift’s directors, genuinely wanted to assist Oldway in its restructuring, as Mayer wanted to uphold the traditional way of manufacturing musical instruments. Mayer wanted to know how Swift could aid Oldway financially but ensure that any financial aid given would be granted priority in the event that Oldway was wound up.

What are the considerations a Court will take in granting super-priority of Swift’s financial assistance, and what would the effect of such an order be?

The court may, in the context of a receivership, confirm on Oldway's application that so-called "rescue financing" is provided by a third party and accepted by Oldway.

The court must consider whether to accept an offer of finance from a competitor or, where appropriate, a creditor. The decisive factor here is the conditions under which this financing is granted. The court must consider how the authorisation may affect the proceedings, in particular the impact on other creditors and, of course, Oldway's own assets.

Typically, such funding is granted subject to numerous conditions as it often involves significant risk. The approach to third parties who would grant financing must offer some attraction.

The court may treat the financing as part of the costs and expenses of the proceedings in the event of a subsequent liquidation (1) (hence “super-priority”) and, in particular, prioritise this financing over preferential claims (2). In addition, the court may designate security from Oldway's unsecured assets (3) or downgrade the priority of the security (4).

In prioritising the financing, the court must consider whether other creditors are disadvantaged or rather receive advantages. It must also consider how this rescue funding will actually be utilised and how any value will be added to Oldway. Finally, it must consider whether alternative financing is possible that does not require prioritisation and whether the conditions attached to the financing are appropriate.

In order for Mayer to ensure that the court grants the funding, the court's recitals for approving the funding must be taken into account. Funding should be granted with a clear earmarking so that the court can understand the utilisation. In addition, the conditions should be kept low so that the hurdles for the court's assessment are minimal. It will have to be emphasised that (other) creditors are not disadvantaged. Rather, the clear added value and advantages that can arise from the financing should be emphasised.

In conclusion, Mayer will "only" make the provision of rescue financing dependent on the prioritisation of the financing over other claims in the event of liquidation.

**Question 4.4 [maximum 4 marks]**

Initially, Oldway’s Judicial Managers contemplated proposing a scheme of arrangement with Oldway’s creditors to restructure its debts. Upon investigating Oldway’s books, the Judicial Managers noticed, in particular, the following transactions:

1. A legal bill of S$25,000 paid on 10 April 2023 to a law firm, for work done in relation to advising Oldway on its restructuring and liquidation options.
2. On 11 April 2023, Oldway made a partial repayment of S$100,000 to Martinus’ childhood best friend, Clarence, for a loan in the sum of S$600,000 which Clarence had given Oldway in May 2022. There are no written records documenting the terms of this loan.
3. On 15 April 2023, Oldway sold to Martinus’ daughter a Steinway piano at the price of S$200,000. Oldway had purchased this Steinway piano on 15 September 2022 for S$1,000,000 for the purposes of placing it as the centrepiece of Oldway’s showroom.

You act for the Judicial Managers, who have asked you for advice in relation to the recovery of Oldway’s assets.

In the present case, payments were made by Oldway to third parties. In connection with the realisation of Oldway's assets, these payments lead to a need for an audit with regard to the

possible dispute of the payments in order to recover them from Oldway's assets.

A dispute in connection with insolvency proceedings in Singapore is not possible in all proceedings arising by law. If, as described here in the initial situation, the plan is to offer a scheme of arrangement, i.e. to reach a settlement, the payments listed cannot be disputed.

The situation is different, however, if a liquidation takes place or, as is the case here, there is judicial management. If a company is under judicial management, the judicial manager can apply to the court to reclaim previously transferred assets. This is possible if the payment has unfairly favoured this creditor or the transaction has been made below its value.

For dispute in the case of preferential treatment, it must be proven that (1) the payee was a creditor, (2) the company was already insolvent when the payment was made, (3) the payee was placed in a better position by the payment than it would have been in the event of liquidation and (4) this party should also be favoured. The latter is assumed to be the case with an affiliated companies.

With regard to the payments described under (a) and (b), the payees are initially creditors of Oldway. The latter was already no longer solvent at the time on 10 and 11 April 2023. This can be assumed on the basis of the facts described above, as Oldway was no longer able to service its liabilities in March 2023. As a result, both the law firm and Clarence were in a better position than they would have been in the event of liquidation. After all, they received full satisfaction of their claims, which would not have been likely in the event of liquidation and a distribution of proceeds. Instead, a quota would have been expected here.

However, with regard to the law firm, it can be assumed that it should not be favoured with its payment. The fact that their advice was specifically focussed on examining restructuring and reorganisation options must be taken into account here. It cannot be assumed here that the payment to the law firm was intended to favour it over other creditors. Contesting the payment under point (a) is unlikely to have much chance of success.

The situation could be different with the repayment of the loan to Martinus' close friend. Preferential treatment is assumed in the case of a close relationship with the payee. The situation could be different with the repayment of the loan to Martinus' close friend. Preferential treatment is assumed in the case of a close relationship with the payee. The fact that the documents relating to the loan agreement are no longer available should not be unproblematic here. However, the claim must be based on the payment in the period of the avoidance, regardless of the nature of the contract with Clarence. It is certain that almost 17% of the loan was paid out on a contract from May 2022 in the avoidance period when Oldway was no longer solvent. The close relationship here, even irrespective of the reference to "affiliated companies", speaks in favour of the repayment being disputable.

Finally, the sale of the piano below its value is also to be considered contestable. The piano was sold after 7 months for only 20% of its original value. It is not apparent that such a loss in value could possibly have occurred. Rather, it can be assumed that liquidity was to be procured in the short term. During the contestation period, the piano was sold for considerably less than the value of the counter-performance at a time when Oldway was no longer solvent.

A dispute should be considered both against Clarence and with regard to the sold piano.

**\* End of Assessment \***