



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: **[studentnumber.assessment5E]**. An example would be something along the following lines: 202021IFU-314.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 “studentnumber” 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 2021**. The assessment submission portal will close at **23:00 (11 pm) GMT on 31 July 2021**. 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. 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 £5,000 in Jersey?

- (a) Royal Court.
- (b) Court of Appeal and Privy Council.
- (c) Petty Debts Court.**
- (d) None of the above.

ANSWER: c - correct

Question 1.2

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

- (i) A dissolved company that was registered in Jersey under the Companies (Jersey) Law 1991.
- (ii) An individual who was ordinarily resident in Jersey until 18 months before, but has had no connection to Jersey since that time.
- (iii) An incorporated Limited Partnership.
- (iv) 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:

- (a) (i), (ii), (iii) and (iv).
- (b) (i), (iii) and (iv).
- (c) (ii) and (iv).
- (d) (i) and (iii).**

ANSWER: d - correct

Question 1.3

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

- (a) The Viscount.
- (b) The Jersey Financial Services Commission.
- (c) A creditor with a claim of at least £3,000.
- (d) The Debtor.

ANSWER: a - correct

Question 1.4

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

- (i) Summary Winding Up.
- (ii) Creditors' Winding Up.
- (iii) Just and Equitable Winding Up.
- (iv) *Désastre*.
- (v) *Dégrévement* or Realisation.
- (vi) Debt Remission Order.
- (vii) *Remise de Biens*.
- (viii) Compromises or Arrangements.

The answer is:

- (a) (i), (ii), (iii), (iv), (vi), (vii) and (viii).
- (b) (i), (ii), (iii) and (iv).
- (c) (i), (ii), (iii), (vii) and (viii).
- (d) All of the above.

ANSWER: a - correct

Question 1.5

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

- (i) Summary Winding Up.
- (ii) Creditors' Winding Up.
- (iii) Just and Equitable Winding Up.

The answer is:

- (a) (i) only.
- (b) (i) and (ii).
- (c) (i) and (iii).

(d) All of the above.

ANSWER: d - correct

Question 1.6

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

- (a) Jersey is part of Britain, the UK and the EU.
- (b) Jersey is part of Britain and the EU but not the UK.
- (c) Jersey is part of Britain but not the UK and not the EU.

(d) Jersey is not part of Britain, or the UK or the EU.

ANSWER: c - incorrect

Question 1.7

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

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

- (i) Low tax regime.
- (ii) Political independence.
- (iii) Rapidly expanding economy.
- (iv) Legal and regulatory infrastructure.

The answer is:

- (a) (i), (ii), (iii) and (iv).
- (b) (i), (iii) and (iv).
- (c) (i), (ii) and (iii).

(d) (i), (ii) and (iv).

ANSWER: d - correct

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?

(a) A conventional hypothec.

(b) A judicial hypothec.

(c) A pledge.

(d) A legal hypothec.

ANSWER: b - correct

Question 1.9

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

(i) Summary Winding Up.

(ii) Creditors' Winding Up.

(iii) Just and Equitable Winding Up.

(iv) *Désastre*.

(v) *Dégrévement* or Realisation.

(vi) Debt Remission Order.

(vii) *Remise de Biens*.

(viii) Compromises or Arrangements.

The answer is:

(a) (i), (ii) and (iii).

(b) (ii) and (iii).

(c) (i), (ii), (iii), and (viii).

(d) All of the above.

ANSWER: b - correct

Question 1.10

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

(a) Coroner.

(b) Data Protection.

(c) Farming and fishing.

(d) Prison services.

ANSWER: a - correct

Question 1: 9 out of 10

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.

The Viscount is the Chief Executive Officer of Jersey's court and the State of Jersey. The powers that are available to a Viscount in respect of a *Désastre* are:

- debtor's worldwide assets vest in the Viscount i.e., they are automatically declared *en Désastre*, and Viscount has the power to bring, institute or defend action in respect of such property,
- to compromise debts, claims and liabilities and to make compromises and arrangements,
- to dispose of property; on sale of immovable property by Viscount during *Désastre* all hypothecs secured against it are extinguished,
- to carry on business of debtor for beneficial winding-up,
- to borrow money,
- to pay creditors; the Viscount will realize the assets for the benefit of debtor's creditors,
- disclaim onerous property and contract leases; to void a security interest not perfected before bankruptcy,
- to pursue recovery in respect of antecedent transactions; the Viscount will conduct investigations to identify why insolvency occurred and whether any offences were committed,
- To adjudicate claims i.e., admit or reject,
- To guide foreign representatives on strategy for Jersey,
- to be indemnified by the applicant creditor for costs and liabilities incurred,
- to levy fees as they arise or take amounts equivalent to 12.5% of the amounts realised and distributed,
- to be paid in priority to creditors other than secured

The role of liquidator is to realise assets to enable a *pari passu* distribution amongst creditors according to their status with any surplus to be distributed to shareholders. The powers of liquidator in respect of winding-up are as follows:

- the director's powers vest in liquidator in summary winding-up under article 149 of Companies Law
- in a creditor's winding up powers include:
 - payment to creditors under article 170
 - disclaiming onerous property under article 171
 - pursuit of antecedent transactions and voidable transactions under article 176 to 179. Recovery action can be pursued for transactions at undervalue, preferences, wrongful trading, fraudulent trading, and extortionate credit transactions,
 - to investigate assets of the company
- in a just and equitable winding-up the liquidator's powers are determined by court and are likely to be in lines of summary/creditors winding-up depending on solvency/insolvency of company respectively,
- in case the court so grants in creditor's or just and equitable winding-up to trade the company to sell it.

ANSWER: Excellent answer (3 marks)

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.

The liquidator's ability to trade the company is restricted to winding up its affairs unless the power to trade and sell is specifically provided for by the Jersey court. Jersey does not have a corporate rescue procedure because it is an offshore financial center which is different from a typical onshore business. Jersey has an average of 1 company for every 3 persons as against 17 persons in UK. The reason for large per-capita companies in Jersey is arising from the inherent nature of offshore jurisdiction which is used for structuring, and finance related matters like banking, private wealth, and funds. Thus, Jersey companies are holding companies, special purpose vehicles as opposed to "traditional business" onshore. The nature of companies, therefore, make them more amenable to liquidation rather than rescue or turnaround processes.

ANSWER: Excellent answer (2 marks)

Question 2.3 [maximum 3 marks]

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

Mortgage is referred to as hypothec or *hypothèque* in Jersey. Mortgage in its simplest form means provided by a bank and secured over a property, registered with Jersey court and the proceeds of sale of property must be first applied to pay the mortgage. Jersey has three varieties of mortgage:

- Judicial hypothec – this occurs on a judgement passed by Jersey Court which acknowledges debt of a defined sum that is registered in Jersey Public Registry. An example would be where creditor asks the court to register a judgement for debt obtained against debtor which effectively becomes a mortgage over immovable property owned by the debtor i.e., an unsecured creditor can become secured.
- Conventional hypothec – 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.
- Legal hypothec – this is relatively rare and arises by operation of law in certain special cases, for example immovable property of deceased debtor in favour of creditors if certain steps are adhered to.

If there is more than one mortgage on the same property, the mortgagees have priority based upon the dates of mortgage with earlier mortgages having greater priority.

ANSWER: Excellent answer (3 marks)

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.

The Debtor Remission (Individuals) (Jersey) Law 2016 is a recent addition to Jersey law. It is available in restricted circumstances where the applicant has:

- assets worth less than JEP 5,000,
- less than JEP 100 of disposable income on monthly basis,
- debts of less than JEP 20,000,

In addition to above the applicant should have acted in good faith whilst incurring the debt. A Debt Remission Order creates a moratorium for the debtor for 12 months after which all the debts covered by Debt Remission Order are written off.

ANSWER: Excellent answer (2 marks)

Question 2: 10 out of 10

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*

Désastre is the most common method for a creditor to take enforcement action against a debtor for winding-up of the affairs of a company or an individual. An individual must have been ordinarily resident in Jersey at any time within 12 months immediately preceding the date of application of *Désastre* or have carried out business in Jersey at any time within a period of three years preceding the date of application or have immovable property in Jersey at the time of application. *Désastre* is also used for winding-up of an incorporated Limited Partnership or Limited Liability Partnership.

A creditor must have a valid claim of JEP 3,000 to apply for debtor's *Désastre*. The debtor must be insolvent but have realisable assets and the creditor must confirm in its application that they believe this to be the case. A debtor may also apply for their own *Désastre* i.e., to declare themselves en *Désastre*. In case of regulated business activity, the Jersey Financial Services Commission can also make an application. Jersey courts exercise discretionary powers in making of a *Désastre* order. It is usual for a personal *Désastre* to last 4 years, but it is possible to shorten or lengthen the term.

On making of the order the debtor's worldwide assets are automatically declared en *Désastre* i.e., they vest in the Viscount.

The Viscount will realise the assets for the benefit of debtor's creditors, will conduct investigation on causes of insolvency, and offences, if any. The Viscount has wide powers vis-à-vis property vested, i.e., carrying on business for beneficial winding-up, filing & defending suits, claims, compromises, disposals, borrowings, pursue recovery actions etc.

The applicant creditor is usually required to indemnify the Viscount for costs and liabilities incurred. The Viscount may levy fees as they arise or take amounts equivalent to 12.5% of the amounts realised and distributed. The Viscount's costs are paid in priority to all creditors except secured. Once the *Désastre* process is completed and if the debtor is a company the Viscount will file necessary with Registrar of Companies to dissolve the company. A debtor will cease to be liable for their debts provable in

Désastre once the Jersey court has made an order for discharge under Article 41 of Bankruptcy Law.

ANSWER: Incorporated Limited Partnerships and Limited Liability Partnerships can also be subject to *Desastre*; a personal *Desastre* lasts four years, but it is possible to shorten or lengthen the term. Good answer (6 marks)

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

Article 166 of the Companies Law pertains to creditors' winding up. It explains that the same rule prevails regarding the respective rights of secured and unsecured creditors, to debts payable, to the time and manner of proving debts, to the admission and rejection of proofs of debts and to the order of payment of debts as are in force under the bankruptcy law.

There is no statutory time-period for notices to be published for potential claims. It is generally agreed that a period of 60 days' notice is adequate. There is no statutory provision for publishing a notice for potential claims outside of Jersey. However, a liquidator should determine whether this would be prudent to avoid a subsequent challenge from claimant.

The process for proving claims in a *Désastre* is set out in Part 7 of the Bankruptcy law. All debts, liabilities, present, future, or contingent are provable. A creditor must prove their debt at the time and in the manner prescribed by the Jersey court and must bear the cost of proving the debt. Creditors are also entitled to examine other creditor's proofs at a time fixed by the Viscount.

Interest is provable the date of *Désastre*, if the debt bears interest, or to the date of payment if it is a secured debt.

The Viscount is to adjudicate claims and request further information as required. The Viscount is then to admit or reject creditors' claims. If a claim is rejected, then the Viscount must serve notice of rejection on the creditor. If dissatisfied, the creditor can request that the Viscount applies to the Jersey court to review the decision.

ANSWER: Relevant law is the Bankruptcy (Desastre) (Jersey) Law 1990, as specified in Article 166 of the Companies (Jersey) Law 1991; good answer (7 marks)

Question 3: 13 out of 15

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.**

Secured creditors in Jersey rank ahead of all others in *Désastre* or liquidation. According to the security law irrespective of whether the grantor is subject to insolvency in Jersey or elsewhere it does not affect the enforcement powers of secured party. Though, Big Bank PLC has a fixed and floating charge over assets it would be good to check whether a hypothec exists on the Jersey store, a security interest under Security Interest Jersey Law 2012 on intangible movables, if any, and pledge over tangible movable goods. All the aforesaid should be in order.

The power of enforcement is exercisable on an event of default. If the secured party wants to appropriate or sell collateral, it must give grantor 14 days' written notice. Notice is only required if the secured party intends to sell or appropriate. Secured creditors of immovable property may apply to Jersey courts for *Désastre* or *Dégrévement*. Secured creditors with security over movable property can apply to Jersey courts to enforce their contractual rights and can have direct recourse to property which is subject to pledge.

Article 49 of the Bankruptcy Law is the applicable provision in cross border insolvency cases. It sets out requirement for assistance and includes recognition of officeholders, disclosure of assets or information, freezing of assets etc. If the Jersey court receives a letter from the court of relevant country, which includes United Kingdom, then there is sufficient authority for courts to exercise in relation to the matters to which the request relates.

Finally, it is recommended that once an administrator is appointed in UK, the officeholder and their Jersey counsel should engage with Viscount regarding proposed strategy. Jersey will cooperate when sufficient connection exists between the debtor and the law under which foreign representative is appointed.

ANSWER: Excellent (3 marks)

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”))?

Jersey is not a signatory to Model Law and not a member of EU. Thus, Regulation (EU) 2015/848 and the Recast EIR is not applicable. Moreover, since ABC Limited is a separate company from XYZ Limited, clauses of Group insolvency are relevant for comparison, and not 2015/848 or Recast EIR which are applicable to the same company.

However, the Jersey Court has a long history of aiding overseas insolvency officeholders both under Article 49 of the Bankruptcy Law and on the basis of common law principles and on the grounds of comity. The extent of assistance under Article 49 is discretionary but it would typically be offered to relevant countries of which UK is one.

Foreign judgements cannot be directly enforced in Jersey. However, under Reciprocal Enforcement Jersey Law 1960, judgements given in superior courts of certain foreign jurisdictions (again UK is one of them) will be given effect. It is to be noted that foreign judgement is regarded as debt. Accordingly, Big Bank must sue on the debt and then apply for summary judgement.

The Jersey court also has discretion whether to apply Jersey law or the foreign law and has recognised the office of provisional liquidator and administrator even though it does not have these processes locally. (*OT Computers Ltd and Re Williams as Trustee in Bankruptcy of Collett*)

Also, Jersey will typically cooperate in foreign insolvency proceedings where there is a sufficient connection between the individual debtor and the law under which the foreign representative is appointed. Thus, it is important to establish connection between XYZ and ABC.

Thus, it may be possible to place ABC under English administration. However, one should keep in mind that the extent of assistance offered by the Jersey court under Article 49 of the Bankruptcy Law is “discretionary”. Nevertheless the pre-requisites for favourable consideration would be principles of equality of treatment of creditors as per the Bankruptcy law, protection of Jersey creditors, and not inconsistent with Jersey law and public policy. Also, it would be prudent to engage with Viscount before the event to discuss a suitable strategy.

ANSWER: Excellent (3 marks)

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?

There are alternate Jersey insolvency processes that will allow pre-packaged sale to occur.

- *Compromises and arrangement* – This is a pre insolvency procedure and can be proposed by way of an application to Jersey Court by the company, a creditor, a shareholder, or a liquidator. The relevant provisions are contained in Part 18A of the Companies Law. Jersey court may order a meeting of creditors or shareholders. If a majority in number and 75% by value present and voting agree to compromise or arrangement, it is binding on all creditors if sanctioned by Jersey court. Thus, if Big Bank PLC has sufficient votes it can apply for compromise and arrangement and the company can be sold as going concern in a pre-packaged deal.
- *Désastre* – Though, *Désastre*, is a process for winding-up the affairs of the company, the Viscount's role is, to realise the assets of the debtor for the benefit of the creditors. The Viscount has wide ranging powers which include to compromise debt, to dispose of the property and to carry on the business of the debtor for the beneficial winding-up. Jersey court can allow the liquidator to trade the company to sell in creditors and just and equitable winding-up. Thus, Viscount armed with order from Jersey court may allow pre-packaged sale to occur to the chosen buyer.
- *Dégrévement* – The judgement creditor can seek to enforce this. Thus, Big Bank PLC needs to step into the shoes of judgment creditor by getting an order from Jersey court. *Attournes* will be appointed, and creditors will be given an opportunity (in order of no-charge and thereafter inferior to superior charge) to buy subject to all secured charges. It is highly unlikely anyone will buy when the bidding starts. The pre-packaged chosen buyer can bid and buy and thereafter reach a settlement with Big Bank PLC.

The potential problems in going concern sale are that Jersey law does not provide for such a law i.e., English Administration or Chapter 11. However, Jersey court has shown a willingness to fashion creative and flexible solutions when necessary. The just and equitable winding up process has been used to affect a *quasi*-pre-packaged sale of assets.

ANSWER: Excellent (3 marks)

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?

The approach would not be different but Jersey store being a branch of XYZ would give more certainty to the procedure because of clarity in Article 49 vis-à-vis same company in cross border insolvency.

Article 49 of the Bankruptcy Law serves as a cooperation provision in cross insolvency cases and sets out requirements for the Jersey court to aid foreign courts. Article 49 covers recognition of officeholders, disclosure of assets or information, examination of witnesses, prevention of disclosure, freezing of assets and restricting

how information may be used. If the Jersey court receives letter from courts of UK, Isle of Man, Australia, Finland, and Guernsey (reciprocal countries) then there is sufficient authority for the court to exercise, in relation to matters to which the request relates, any jurisdiction which it or requesting court could exercise in relation to these matters if they otherwise fell its jurisdiction.

Article 49 also suggests that the Jersey Court have regard to the United Nations Commission on International Trade Law Model Law on Cross Border Insolvency and consider rules of private international law.

Practice Direction RC05/17 provides that the applicant must consult with the Viscount's department with a view to ensuring that the order sought in the representation while seeking to achieve the objects of the letter of request is drawn in terms which are suited to the Jersey's domestic law. Jersey court is likely to consider that the principles of equality of treatment of creditors as per the Bankruptcy law are upheld, Jersey creditors are protected, and it is not inconsistent with Jersey law and public policy.

ANSWER: Excellent (3 marks)

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?

As mentioned above Jersey is not a signatory to Model Law and not a member of EU. Thus, Regulation (EU) 2015/848 and the Recast EIR is not applicable. However, article 49 of the Bankruptcy Law serves as a cooperation provision in cross insolvency cases and sets out requirements for the Jersey court to aid foreign courts. Article 49 also suggests that the Jersey Court have regard to the United Nations Commission on International Trade Law Model Law on Cross Border Insolvency and consider rules of private international law.

If a request is received from Non-relevant country, it will likely help based upon common law principles of private international law and or comity and cooperation, under pre-existing customary law. This has been demonstrated on numerous occasions including in *Re Royco Investment Company Limited* and *Re F&O Finance AG*.

Thus, even if XYZ is a Polish company, subject to strategizing with Viscount the same approach as last question can be adopted and Jersey courts will cooperate and provide assistance.

ANSWER: Poland follows the UNCITRAL Model Law and the Recast EIR; the Jersey Court retains discretion and will consider amongst other things treatment of creditors and protection of interests of Jersey creditors and will want to ensure consistency with Jersey law (1.5 marks)

Question 4: 13.5 out of 15

TOTAL: 45.5 out of 50

*** End of Assessment ***