



SUMMATIVE (FORMAL) ASSESSMENT: MODULE 5D

GUERNSEY

This is the **summative (formal) assessment** for **Module 5D** 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 5D. 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.assessment5D]**. An example would be something along the following lines: 202021IFU-314.assessment5D. **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 **7 pages**.

ANSWER ALL THE QUESTIONS

QUESTION 1 (multiple-choice questions) [10 marks in total]

Commented [DJ1]: Total 10/10

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 one of the following statements **correctly describes** the sources of Guernsey law?

- (a) Guernsey's laws mirror that of England and Wales.
- (b) Guernsey's law is all set out in statute adopted from England.
- (c) Guernsey's law is based on Norman customary law.
- (d) Guernsey substantive law is set out in statutes and the historic customary law and complimented by case law from persuasive jurisdictions.**

Commented [DJ2]: Correct

Question 1.2

Which of the following types of security can be effectively taken over Guernsey **immovable property**?

- (a) A fixed charge / mortgage.
- (b) A lien.
- (c) A hypothèque by way of bond.**
- (d) A security interest agreement.
- (e) A floating charge

Commented [DJ3]: Correct

Question 1.3

Which **two** of the following are **essential requirements** for a valid security agreement pursuant to the Security Interests Law?

- (a) Registration with the Guernsey registry.
- (b) Executed as a deed.
- (c) Identify the secured party.**
- (d) Executed before the Court.
- (e) Be in writing.**

Commented [DJ4]: Correct

Question 1.4

Which of the following parties **rank first in priority** in a Guernsey compulsory winding up:

- (a) Trade creditors.
- (b) Local tax creditors.
- (c) Money lent by a sole trader to the company.
- (d) Fees and expenses of the liquidator.
- (e) Fully paid up shareholders.

Commented [DJ5]: Correct

Question 1.5

Which one of the following procedures can be used to enforce against real property in Guernsey?

- (a) Saisie.
- (b) Arret de Gages.
- (c) Arret de Personnes.
- (d) Désastre.

Commented [DJ6]: Correct

Question 1.6

Which one of the following **is not** a standalone ground for the making of a compulsory winding up order as set out in the Companies Law?

- (a) Passing of a special resolution to wind up.
- (b) Deadlock on board of directors.
- (c) Suspension of business for a year.
- (d) Company is unable to pay its debts as they fall due.
- (e) Failure to hold a general meeting of members under specified provisions of the Companies Law.

Commented [DJ7]: Correct

Question 1.7

Which of the following **may not** be appointed as voluntary liquidator of a Guernsey company?

- (a) A director or former director.
- (b) A corporate entity.
- (c) A foreign resident individual.
- (d) A shareholder.

(e) None of the above.

Commented [DJ8]: Correct

Question 1.8

Which one of the following parties **does not** have automatic statutory standing to make an application for an administration order in respect of a Guernsey company?

- (a) A shareholder.
- (b) The Registrar of companies.
- (c) A director.
- (d) A creditor.
- (e) None of the above.

Commented [DJ9]: Correct

Question 1.9

Which one of the following **is not** a ground for setting aside a judgment registered under the Reciprocal Enforcement Law?

- (a) The courts of the originating country did not have jurisdiction.
- (b) The enforcement of the Judgment would be contrary to public policy in Guernsey.
- (c) The enforcement of the Judgment would be contrary to public policy in the home jurisdiction.
- (d) The Judgment was obtained by fraud.
- (e) The rights under the Judgment are not vested in the person by whom the application for registration was made.

Commented [DJ10]: Correct

Question 1.10

It is advisable for a creditor to take **which one** of the following steps before commencing a *saisie* action?

- (a) Obtain a prohibitory injunction to prevent the debtor from disposing of the realty.
- (b) Register an interest in the realty at the *Greffe*.
- (c) Advertise in the local Gazette an intention to commence *saisie* proceedings against the debtor.
- (d) Exhaust the debtor's personalty (personal property) and register a claim in *Livre des Hypotheques* in the interim.
- (e) Enter into a security interest agreement with the debtor to ensure that the creditor's interest in the realty is protected.

Commented [DJ11]: Correct

QUESTION 2 (direct questions) [10 marks]

Commented [DJ12]: Total 10/10

Question 2.1 [maximum 5 marks]

What are the most common forms of security granted over immovable and movable property in Guernsey? Explain the formalities (if any) that the security documents, the secured creditor or the debtor must comply with.

Two forms of security can be granted over immovable property (rente foncière or a hypothèque). There are two forms of hypothèque (rente hypothèque or a hypothèque conventionnel), the first however not being very common and therefore not entering the scope of the question:

Commented [DJ13]: Half mark

- Rente foncière: ground rents payable as a fixed annual sum, without a time limit / for a perpetual timeframe. They are redeemable at the debtors will.
- Hypothèque conventionnel: is a bond, so a personal obligation that creates a charge over the debtor's assets. The charge can be a general or specific charge. They must be made in writing, must be consented to by the debtor before the Royal Court of Guernsey (that is sitting as the Contract Court), then be registered at the Greffe of the Royal Court. If the court does not ratify the bond, it is invalid. If the bond is not registered effectively with the Greffe, the security will not become or be effective.

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Commented [DJ15]: Half mark

Commented [DJ16]: Half mark

Concerning security granted over movable property, it is necessary to distinguish between tangible and intangible assets. In any case, one of the conditions for taking security granted over movable property is that the movable property concerned by the security must be movable property in Guernsey.

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Commented [DJ18]: Half mark

The most common forms of security over movable property over tangible assets are liens, pledges, a landlord's right to priority, reservation of title clause, mortgage.

Commented [DJ19]: Half mark

Over intangible assets, there are two forms of security that can be taken:

- Security interest under the Security Interests Law 1993: this can be created by a security agreement over any intangible movable property except for a lease, by the secured party in possession of certificate of title or policy documents.

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To be valid, the security agreement must conform with several criteria (be written, be dated, identify the debtor and the secured party, be signed by the former, precisions concerning the collateral that enable its identification easily at any time, specify the events that constitute a default under the agreement and the payment, performance, or obligations to be secured).

Commented [DJ21]: Half mark

- Set off agreement under the Law of Property 1979: it's an agreement in which any debt from one party is to be set off against any debt from the other. If the set off agreement provides to assign the debt to a third-party, the assignor must execute it in writing and express notice in writing of the assignment must be served on the debtor (or any other person from whom the assignor would have been able to claim the debt).

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Question 2.2 [maximum 5 marks]

Michael was recently appointed liquidator of Dodge Co Limited, a Guernsey incorporated company. There are two directors of the company, Roger and Novak. The books and records of the company show that Novak paid £5,000 to purchase a car from the company two months

prior to the company entering into liquidation. However, the fixed asset register had listed the car as having a value of £20,000.

Identify the issue with this transaction and explain the possible causes of action against the company or directors, as well as the possible remedies for recovery of the difference in value between the value and sale price of the asset.

There are several issues raised by this transaction, globally relating to directors' duties. Indeed, directors owe fiduciary and non-fiduciary duties to the company they direct. These duties imply that the directors act in the best interests of the company, for proper purposes, exercising independent judgment and avoiding conflict of interests. Directors also have a duty of skill and **care**.

Commented [DJ23]: One mark

The transaction in the case at hand could be seen to be problematic concerning these duties, because it seems that the transaction has been made at an undervalue and to connected **party**.

Commented [DJ24]: One mark

Under Guernsey's customary law, there is a possibility to claim that the director's may have committed an equitable wrong in allowing this transaction, in the absence of a codified law in Guernsey specifically relating to transactions made at an undervalue.

Indeed, if it could be proved that the recipient of the company's assets had knowledge that the director was acting in breach of their fiduciary duties (in the case at hand by selling an asset, the car, at an undervalue, that is £5,000 instead of £20,000), then it would be possible to claim that the director committed an equitable **wrong**.

Commented [DJ25]: One mark

In the case at hand, this condition is characterised easily, as the recipient of the action is the director himself.

Another possibility would be to bring a Pauline action, (action paulienne), finding its basis in customary law also. It is necessary in this case to prove that the debtor was insolvent on a balance sheet basis at the time of the transaction (a condition that we do not know in function of the facts of the case given above) and that the debtor carried the transaction out with the intention of defrauding **creditors**.

Commented [DJ26]: One mark

The consequence of both actions is to set the transaction aside without compensation.

The actions of the director that characterise the possibility to act on the basis of 422 of Companies Law. Indeed, under this provision, if it appears during liquidation that a director has appropriated the company's assets or breached a fiduciary duty in relation the company, the liquidator or any Creditor can apply to the Court, aiming to obtain an order against the director in his personal capacity.

It is important to bring forward the fact that the director didn't honestly consider his or her action to be in the best interests of the company. If the liquidator or creditor is successful, the court may order the director to repay, restore or account for the money or property transferred, contribute towards to the company's assets and/or pay **interest**.

Commented [DJ27]: One mark – this is generally a very good answer.

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

Commented [DJ28]: Total 15/15

Question 3.1 [maximum 7 marks]

Guernsey has not adopted the UNCITRAL Model Law on Cross-Border Insolvency. Explain what methods are available to foreign insolvency officeholders seeking recognition in Guernsey and the limitations of those options.

Foreign insolvency officers seeking recognition in Guernsey of foreign proceedings have two options: recognition on the basis of section 426 of the UK Insolvency Act 1986 that has been extended to Guernsey by the Insolvency Act 1986 (Guernsey) Order 1989 and Common Law.

Commented [DJ29]: One mark

Firstly, recognition can be obtained on the basis of the Insolvency Act, the courts of England and Wales, Scotland, Northern Ireland, the Isle of Man, Jersey can provide assistance to the Royal Court of Guernsey, and vice versa.

Commented [DJ30]: This is correct but the answer may have made reference to how the act has been extended to Guernsey

In this procedure, a Representation application is made to the Royal Court by the Guernsey officeholder. The Royal Court issues a letter of Request seeking assistance of the chose court under section 426. The Request will be issued by order of the foreign court. An application is then made seeking assistance of the appropriate court as set out in the Request.

Commented [DJ31]: One mark

The foreign court must be the court with jurisdiction in insolvency matters. The receiving court can assist the requesting court in a wide variety of circumstances, if the receiving court considers that the assistance is properly granted. If not, it should not be granted.

The assistance is considered properly granted when it is in accordance with the receiving courts' own general jurisdiction and powers, its own insolvency laws or the insolvency law applicable by the requesting court to comparable matters within its jurisdiction.

Commented [DJ32]: One mark

Secondly, recognition can be obtained under common law. The conditions can be found in jurisprudence, and notably the recent decision *Singularis Holdings Limited v PriceWaterhouseCoopers (2014) [2014] UKPC 36*. In this decision, it was decided that common law power does not enable the officeholder to do something which they could not do on the basis on the law under which they were appointed. Also, the order sought must be consistent with the substantive law and public policy of the assisting State. Under these conditions, the Court can grant relief requested.

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Commented [DJ34]: One mark

It can also be noted that recent decisions of the Royal Court point towards a broad cooperation in foreign insolvency proceedings. We can note that the decision *EFG Private Bank (Channel Islands) Limited v BC Capital group Limited & Ors (Royal Court 34/2013)*, the royal Court set out principles it should consider when considering the nature and extent of the assistance the Royal Court should provide. In view of modified universalism, the discretion of the Royal Court must try to achieve fairness and justice between all parties, and take into account if a party seeks to take an unfair advantage by asking for recognition or relief in Guernsey.

Commented [DJ35]: One mark

One of the limits to this approach was arose in the Case *Re X (Royal Court Judgment 36/2015)*. Indeed, the Court must consider if the assistance sought exists and finds an origin in Guernsey's law, could exist, or should not be exercised in view of public policy or the law principles of Guernsey.

Commented [DJ36]: One mark

Question 3.2 [maximum 8 marks]

Write a short essay on the method of enforcing creditor's rights against real estate owned by individuals in Guernsey.

In the case where a creditor wishes to enforce their rights against any real estate owned by an individual debtor, the Saisie procedure can be used in order to distribute the realty owned by the individual between 2 or more creditors.

A creditor can act if a judgment has been granted in favour of the **creditor**.

Commented [DJ37]: One mark

There are three stages to this procedure: the Preliminary Vesting Order (PVO), the Interim Vesting Order (IVO) and the Final Vesting Order (**FVO**).

Commented [DJ38]: One mark

A PVO can be sought when the creditor has a judgment in his favour taken with or without notice of the debtor, or after the debtor has been summoned to the hearing that led to the judgment. A PVO will be granted unless there is a very good reason to not grant it, notably when the debtor has a valid appeal or can show that they can honour the **payment**.

Commented [DJ39]: One mark

The debtor retains ownership of their real property after the issuing of a PVO, and can sell the realty, but only with the consent of the PVO holder and the secured creditors. The creditor can use the property (or let or possess it, or benefits from the fruits of the property, such as receiving the payment of rent of the real property).

The second stage is the IVO. In order to obtain an IVO, the debtor is summoned before the Jurat Commissioner to determine whether there is a dispute of the amount claimed. The creditor must produce proof during the hearing of the sum left due after subtracting the sums already received. If the debtor disputes the payment, the Commissioner will hear the debtor, then establish a report declaring the amount the debtor must pay to the **creditor**.

Commented [DJ40]: One mark

Then debtor is summoned before the Royal Court next for the Plaids d'Heritage. The debtor must pay the amount due, and if they don't, then the IVO is granted. The effects of the IVO for the debtor are that it extinguishes the debtor's right and title in the realty. The creditor can act as trustee for all claimants in the realty, by administrating the property and opening a register of claims. Every creditor that registers a claim (after the regular publications in the Gazette Officielle and the 28-day delay for creditor claims after the second publication) will be summoned by the creditor. The creditor reports to the Commissioner, setting out all the claims of creditors in amount and priority. All the Creditors appear before the Commissioner, to check the claims, authenticate them and fix the end date of the procedure. Before issuing a report, the creditor can decide to obtain an FVO, but by doing so at this stage, cannot challenge the amount of a registered **claim**.

Commented [DJ41]: One mark

The Creditor can then summon each claimant before the Plaids d'Heritage, to state their positions on whether they wish for the realty to vest in them on condition that they pay all the higher ranked creditors, or if they renounce to the realty. The creditors go in order of lowest to highest priority. If the creditor renounces, he loses the right to pursue his claim. If the creditor accepts, they are granted the FVO and must pay all the higher-ranking creditors in a delay of 5 days (or the time limit given in the FVO). If the creditor does not respect the terms of the FVO, the creditors can claim against that creditor or seek the modification of the FVO for the next ranking creditor who will accept the **realty**.

Commented [DJ42]: One mark

The limits of this procedure lie in the fact that once the procedure has been used, regardless of whether the debt has been satisfied or not, the creditor has no further rights against the debtor, notably against the debtor's personality. For this reason, creditors are often advised to exhaust debtor's personality before considering the Saisie procedure and to register a claim in the Livre des **Hypothèques**.

Commented [DJ43]: One mark

Also, there can only be one creditor that "wins" the procedure and must, after accepting the security and taking the property, pay off all the claims above their own in a very short delay (which could be an insufficient time to sell the property depending on what the property is).

In conclusion, the risk is that if you are a low-ranking creditor, you will not be paid and lose your right to enforce against the debtor's moveable property indefinitely. If you take the risk t

engage and accept the property, then you risk having to pay all the creditors ranking above you, that might even exceed the amount of the property. It seems therefore that the only creditor for which the saisie procedure is interesting is very high ranking / the highest-ranking creditor.

Commented [DJ44]: One mark – again this is a very good answer with admirable consideration of the practical limitations of the process.

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

Commented [DJ45]: Total 13/15

In July 2016, Andy and Bob incorporated a company (Athletico Ltd) that specialised in selling novelty football T-shirts. Andy and Bob were the company's only members and directors. For the past 18 months, the company has been experiencing financial difficulties. In September 2018, the company's overdraft with Beardsley Bank plc had reached its limit of £250,000. In return for increasing the overdraft limit to £300,000, Beardsley Bank plc demanded security for the additional borrowing and took a bond over the company's property (valued at £100,000). In December 2018, Athletico Ltd borrowed £100,000 from a friend, Barry Homeowner, who also took a bond over the same property.

The business continued to struggle and in February 2019 Andy and Bob were informed by the company's auditor that insolvent liquidation was inevitable, although Andy and Bob disagreed and held out hope that the company's financial prospects would improve. Andy and Bob decided to try and trade their way out of their financial difficulties by having a sale. Unfortunately, the sale failed to increase business and in May 2019 Athletico Ltd was wound up compulsorily. By this time, the company's overdraft with Beardsley Bank amounted to £290,000.

Debbie and Rahid have been appointed as joint liquidators and have discovered several facts:

- in March 2019, Andy and Bob caused the company to repay an unsecured loan of £5,000, which Bob had made to the company some months before;
- in addition to the money owed to Beardsley Bank and Barry Homeowner, the company owes £10,000 to the Guernsey Revenue Service for unpaid tax, £30,000 to employees in wages, and £100,000 to unsecured creditors.

Debbie and Rahid estimate that the total remaining assets of Athletico Limited amount to £440,000. Debbie and Rahid's expenses in acting as liquidators amount to £3,000. Advise Debbie and Rahid, addressing the following:

- (a) the role of the joint liquidators;
- (b) how to pool the assets;
- (c) potential claims against the directors; and
- (d) how to manage distributions to creditors.

- a) The liquidator must send a copy of the compulsory winding-up order to the Registrar of Companies within seven days of their appointment.

The liquidator supervises the procedure, and is invested with large power to accomplish any act relating to the winding up, for example to bring or defend any civil actions on behalf of the company, carry on the business of the company for the purposes of winding up if beneficial (replacing the directors, as their power ceases from the appointment of the liquidator and the compulsory winding up order), make capital calls (money promised from an investor).

Commented [DJ46]: One mark – I would have preferred to see a reference to the liquidator's primary function being to realise assets but credit is given as it appears below.

Once the business is finished, the liquidator must terminate all employee contracts, and the liquidator must realise all the company's assets, then apply for the appointment of a Court Commissioner to examine their accounts and distribute the funds from the company's assets. It is noted that to start realising the assets, the liquidator does not have to wait until the activity has ceased if they continue trading for the benefits of the liquidation.

Commented [DJ47]: One mark

The liquidator, within 15 days from the day of final distribution of the company's assets, must apply to the court for an order declaring the dissolution of the company.

If in doubt of what action to take, the liquidator can also consult with the Royal court on any matter of the winding up, for direction.

Commented [DJ48]: One mark

- b) Unless mistaken, there would be no cause for asset pooling in this case, as there is only one entity, and not several entities of a group where the assets are inextricably mingled that it would be too difficult to separate them (as in the matter of *Huelin-Renouf Shipping Limited in Liquidation 2015*). Therefore, the assets shall just be realised in conformity with the liquidator's duties and powers.

Commented [DJ49]: One mark

- c) As well as possibly breaching general fiduciary duties in paying back a loan to a "connected party" when the company was possibly already insolvent (and after the Auditor of the company having alerted the directors to the inevitability of an insolvent liquidation), it is necessary to consider the regime of preferences.

Indeed, Bob, being a director, was aware of the insolvency of the Athletico Ltd, and knowingly paid back his unsecured loan of £5,000 before the compulsory liquidation procedure. By doing so, he gave himself as a creditor a preferential position to that which he would have had in the liquidation procedure had he not paid it back beforehand.

Commented [DJ50]: One mark

The liquidators could therefore apply to the court for an order to set aside this transaction, because the company was insolvent. Because the transaction was with a connected party, it is presumed that this transaction was out of the course of normal business and done in the aim of giving that creditor a preferential treatment.

The Court could decide therefore to set aside the transaction, restoring the situation of the company to that before the transaction, and eventually could consider making the director personally liable to the company's debts.

Indeed, as well as this preferential transaction, it could be argued in the case at hand that there are grounds for invoking a breach of fiduciary duties of the directors and eventually wrongful trading. It would be necessary to consider whether, especially after the Auditor's alert to the directors, it was reasonable to carry on trading and if the directors did this in view and true belief that the situation could be turned around. If there was no reasonable prospect of turning the company around and the directors could not have believed otherwise, the court, upon demand of the liquidator, could declare the directors personally liable to contribute to the company's assets.

Commented [DJ51]: One mark

It could be noted that the liquidator could argue that the fact a connected person decided to pay back their loan two months before the opening of compulsory liquidation and one month after the Auditor's warning showed that this person knew an insolvency procedure was inevitable.

Commented [DJ52]: One mark - it should be noted that a further defence to wrongful trading does exist where every step is taken with a view to minimizing the potential loss to creditors (even if there is no prospect of avoiding insolvent liquidation).

- d) In liquidation, distribution of the proceeds from the insolvent company's assets follows a specific order of priority. The creditors therefore need to be apprehended in two

stages in the case at hand: firstly, the secured creditors (so those holding bonds), and secondly the other **creditors**.

Commented [DJ53]: One mark

For the second stage, once the secured creditors have been satisfied, inside this priority order and inside each class, there is the application of a *pari passu* principle if the liquidation is insolvent, so all creditors participate in the common pool of assets in proportion to the size of their admitted **claims**.

Commented [DJ54]: One mark

Starting with the secured creditors, assuming that both secured creditors, in the chronological order exposed in the case, regularly completed the formalities to complete the bonds (registration with the Greffe of the Royal Court then ratified by the Royal Court sitting in the Contract Court formation), then both creditors are entitled to be repaid from the realisation of the property to which their security relates. The claims of secured creditors will be prioritised in the chronological order that they were taken, so in the case at hand, firstly the claim of the Beardsley Bank plc, then the claim of Barry **Homeowner**.

Commented [DJ55]: One mark

In the case at hand, it is not specified if the bonds conferred a general or specific charge to the beneficiary: we only know that it was taken over some or all the company's property of which the estimated value is £100.000. A bond can only be taken over immovable property.

The Bank took a bond for the extension of the overdraft (so the extra £50.000 for extending the overdraft). It is my understanding of the facts that the bond taken guarantees only this amount, and not the existing overdraft of £250.000).

Barry Homeowner took a bond to guarantee all of his loan, of £100.000.

However, there is a problem of valued property of £100.000 guaranteeing £150.000 of bonds.

The successor in title of the immovable property becomes guarantor to the creditor of the bond. Therefore, the successor will either have to make good of the claims, or surrender the property to the liquidation proceedings, other than certain exceptions.

We can assume that the liquidator would have to first pay the £50.000 to the bank, then deal with the £100.000 secured loan of Barry Homeowner. **Indeed**, the other creditors cannot be paid unless the secured creditors are paid in full. We know that the company has assets for £440.000, so the unsecured creditors will be able to be paid in full, thanks to asset **pooling**.

Commented [DJ56]: One mark

Commented [DJ57]: The secured creditor are only "secured" in respect of the assets over which they hold security – in this case the real property. They have no claim to unsecured assets. As such, the shortfall to the secured creditor would rank unsecured as part of the general pool.

As for the unsecured creditors, the order of priority would be the following:

- a. Expenses of the liquidation (in the case at hand for £3.000),
- b. Preferential debts (so in the case at hand, the wages for £30.000, and unpaid tax for £10.000).
- c. Unsecured **creditors**.

Commented [DJ58]: One mark – the analysis may have made reference to the limits of a preferential claim by employees.

The following monetary approach is subject to be reviewed in case of extra liquidator fees, fees, and expenses to realise the assets, and the recuperation of the preferential payment of £5.000 to Bob the director and eventual personal director liability holding them liable to contribute to the insufficient asset **pool**.

Commented [DJ59]: One mark

Assets (£)	Debts	Amount (£)	Paid	Amount left after payment (£)

440.000	Secured creditors	140.000	In full	300.000
	Expenses liquidators	3.000	In full	297.000
	Priority claims (Wages + Tax)	40.000	In full	257.000
	Unsecured creditors	350.000 (250.000 unsecured overdraft 100.000 unsecured creditors)	Paid 73,43 % to a pound (so respectively £183.571 and £0,73 to a pound applied to each creditors debt)	0

*** End of Assessment ***

Commented [DJ60]: Total mark of 48/50