



SUMMATIVE (FORMAL) ASSESSMENT: MODULE 3B
THE INSOLVENCY SYSTEM OF THE UNITED KINGDOM
(ENGLAND AND WALES)

This is the **summative (formal) assessment** for **Module 3B** of this course and is compulsory for all candidates who **selected this module as one of their compulsory modules from Module 3**. Please read instruction 6.1 on the next page very carefully.

If you selected this module as **one of your elective modules**, please read instruction 6.2 on the next page very carefully.

The mark awarded for this assessment will determine your final mark for Module 3B. 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 MS Word format, using a standard A4 size page and a 11-point Arial font. This document has been set up with these parameters – **please do not change the document settings in any way. DO NOT** submit your assessment in PDF format as it will be returned to you unmarked.
3. No limit has been set for the length of your answers to the questions. However, please be guided by the mark allocation for each question. More often than not, one fact / statement will earn one mark (unless it is obvious from the question that this is not the case).
4. You must save this document using the following format: **[studentID.assessment3B]**. An example would be something along the following lines: 20222-514.assessment3B. **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.**
- 6.1 If you selected Module 3B as one of your **compulsory modules** (see the e-mail that was sent to you when your place on the course was confirmed), the final time and date for the submission of this assessment is **23:00 (11 pm) GMT on 1 March 2022**. The assessment submission portal will close at 23:00 (11 pm) GMT on 1 March 2022. No submissions can be made after the portal has closed and no further uploading of documents will be allowed, no matter the circumstances.
- 6.2 If you selected Module 3B as one of your **elective modules** (see the e-mail that was sent to you when your place on the course was confirmed), you have a **choice** as to when you may submit this assessment. You may either submit the assessment by **23:00 (11 pm) GMT on 1 March 2022** or by **23:00 (11 pm) BST (GMT +1) on 31 July 2022**. If you elect to submit by 1 March 2022, you **may not** submit the assessment again by 31 July 2022 (for example, in order to achieve a higher mark).
7. Prior to being populated with your answers, this assessment consists of **7 pages**.

ANSWER ALL THE QUESTIONS

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

Commented [JL2]: 9 out of 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

Please select the **most correct ending** to the following statement:

The Administration (Restrictions on Disposal etc to Connected Persons) Regulations 2021 restrict pre-pack sales which constitute a substantial disposal of the company's property to connected parties where the disposal occurs:

- (a) within 10 weeks of the commencement of the administration.
- (b) within 8 weeks of the commencement of the administration.**
- (c) within 4 weeks of the commencement of the administration.
- (d) on the day the company enters administration.

Question 1.2

What is the **maximum length** of a Moratorium under Part 1A of the Insolvency Act 1986 to which creditors can consent without any application to the court?

- (a) 40 business days.
- (b) One year and 20 business days.
- (c) One year and 40 business days.
- (d) One year.**

Question 1.3

Which of the following **is not** a requirement for a company that wishes to enter into a Restructuring Plan under Part 26A of the Companies Act 2006?

- (a) The company has encountered, or is likely to encounter, financial difficulties that are affecting, or will or may affect, its ability to carry on business as a going concern.
- (b) A compromise or arrangement is proposed between the company and its creditors, or any class of them, or its members, or any class of them.

(c) The purpose of the compromise or arrangement is to eliminate, reduce or prevent, or mitigate the effect of, any of the said financial difficulties.

(d) The company is, or is likely to become, unable to pay their debts, as defined under section 123 of the Insolvency Act 1986.

Question 1.4

In cases where the Administration (Restrictions on Disposal etc. to Connected Persons) Regulations 2021 apply and an independent report from an Evaluator is obtained, the independent report must be obtained by whom?

- (a) The administrator.
- (b) Any secured creditor with the benefit of a qualifying floating charge.
- (c) The purchaser.
- (d) The company's auditor.

Question 1.5

Which one of the following **is not** a debtor-in-possession procedure?

- (a) Administration.
- (b) Restructuring Plan.
- (c) Scheme of Arrangement.
- (d) Company Voluntary Arrangement.

Question 1.6

A liquidator may pay dividends to small value creditors based upon the information contained within the company's statement of affairs or accounting records. In such circumstances, a creditor is deemed to have proved for the purposes of determination and payment of a dividend where the debt is **no greater than how much?**

- (a) £500
- (b) £750
- (c) £1,000
- (d) £2,000

Question 1.7

Which one of the following **is not**, in itself, a separate ground for disqualification of a director under the Company Directors Disqualification Act 1986?

- (a) Wrongful trading.
- (b) Breach of fiduciary duty.

(c) Being found guilty of an indictable offence in Great Britain.

(d) Being found guilty of an indictable offence overseas.

Question 1.8

The administrator is under a general duty to provide a statement for creditors' consideration setting out proposals for achieving the purpose of administration. He or she must obtain a creditors' decision on whether or not to approve the proposals **within how many weeks** of the date the company entered administration?

(a) 6

(b) 8

(c) 10

(d) 12

Commented [JL3]: c

Question 1.9

Which of the following statements is **incorrect**?

(a) An insolvency officeholder from an EU Member State will be automatically recognised by the courts in the UK whether the officeholder was appointed before or after Brexit.

(b) An insolvency officeholder from an EU Member State is automatically recognised by the courts in the UK if appointed before Brexit.

(c) An insolvency officeholder from an EU Member State appointed after Brexit may apply to a UK court for recognition under the Cross Border Insolvency Regulations.

(d) An insolvency officeholder from an EU Member State cannot apply to a UK court for recognition under section 426 of the Insolvency Act 1986.

Question 1.10

Under section 216 of the Insolvency Act 1986, a director of a company which has been wound up insolvent may not, unless an exception applies, be a director of a company that is known by a prohibited name **for what period of time**?

(a) 6 months.

(b) 12 months.

(c) 2 years.

(d) 5 years.

QUESTION 2 (direct questions) [10 marks]

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Question 2.1 [maximum 5 marks]

Who may bring an action under: (i) section 423 of the Insolvency Act 1986; (ii) section 6 of the Company Directors Disqualification Act 1986; and (iii) section 246ZB of the Insolvency Act 1986?

- (i) Section 423 of the Insolvency Act 1986 provides that the following persons may bring an action in certain circumstances:
- a. where the company is being wound up or in is administration:
 - The official receiver;
 - The liquidator;
 - The administrator;
 - With permission from the Court, any victim of the transaction such as the creditor.
 - b. Where a victim is bound by the Company Voluntary Agreement (**CVA**), the supervisor of the CVA, or any victim of the transaction (whether bound by the CVA or not) may bring an action.
 - c. In any other case, the victim of the transaction.
- (ii) Section 6 of the Company Directors Disqualification Act 1986, provides that the Secretary of State may bring an action against a director for the Court to disqualify them from being a director. The Directors Disqualification Act 1986 provides that a liquidator has a statutory duty to make a report to the Secretary of State of any director that may be "unfit" to be a director. Once the Secretary of State receives this report from a liquidator, a determination is made as to whether or not an action ought to be brought against the director for him/her to be disqualified. Another benefit of an action under section 6 of Company Directors Disqualification Act 1986 is that based on the evidence the Court may order the unfit directors to compensate the creditor who suffered loss at the hands of the directors.
- (iii) Section 246ZB of the Insolvency Act 1986 provides that a liquidator or administrator may bring claim for wrongful trading against a director.

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Question 2.2 [maximum 5 marks]

List the **five (5)** qualifying decision procedures by which creditors may make decisions in the context of an insolvent company.

Rule 15.3 of the Insolvency Rules provides five (5) qualifying decision procedures by which creditors may make decisions in the context of an insolvent company. They are as follows:

1. Correspondence;
2. Electronic Voting;
3. Virtual Meeting;
4. Physical Meeting; or
5. Any other decision-making procedure which enables all creditors who are entitled to participate in the making of the decision to participate **equally**.

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

Commented [JL7]: 12 out of 15

Question 3.1 [maximum 6 marks]

Can an administrator who wishes to continue to operate the business of the company in administration require suppliers of goods and services to continue to supply those goods and services during the administration?

The Insolvency Act (the *Act*) provides that a company in administration can require suppliers to continue to supply goods and services during the administration. Section 233 of the Act provides this applies to electricity, gas, water and communication services which includes sale terminal, computer hardware and software, information and advice and technical assistance, data storage and processing and web hosting. The Act also provides that suppliers are not permitted to require payment of outstanding debts in order to secure new or continued supply to the company administration. However, section 233 provides that the supplier can stipulate that the administrator must personally guarantee payment of charges in respect of the supply.

Additionally, Section 233A provides that a supplier of such services is generally prohibited from relying on an "insolvency-related term" in a contract that would otherwise entitle the supplier to terminate the supply, alter the terms of the supply or compel higher payments for continued supply.

It is also important to note that in 2020 the Corporate Insolvency and Governance Act 2020 expanded the expanded restrictions on terminating the supply of goods in insolvency proceedings. Section 233B of the Corporate Insolvency and Governance Act 2020 prohibits clauses which allow the supplier of goods to terminate or "do any other thing" in relation to the contract if the company enters formal insolvency procedure. Therefore, not only will suppliers be prohibited from terminating the supply of goods or services if the company enters insolvency procedure but it they will also be prevented from making it a condition that pre-insolvency arrears are paid and from making other changes to the contract such as increasing the price of the goods or service. It is also worthy to note that section 233B of the Corporate Insolvency and Governance Act 2020 opens up the restriction in section 233A to all suppliers. Therefore, the duty to continue to supply not just those in section 233A except for limited number of exceptions such as insurers, banks, electronic money institutions, recognised investment exchanges and clearing houses, securitisation of companies; overseas and corresponding funds

Section 233B the Corporate Insolvency and Governance Act 2020 also provides that a contract can still be terminated by the supplier where the company or insolvent owner consents or by the Court where the Court is satisfied that the continued supply of the good pursuant to the contract will cause the supplier hardship. Therefore, the continued supply of goods can be terminated voluntarily by the administrator or by the Court.

It is also worthy to note that sections 233, 233A and 233B applies in administration, where the company has entered CVA, a moratorium or restructuring plan.

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Question 3.2 [maximum 9 marks]

Explain the order of priority of payments in a liquidation and explain the nature of the rights enjoyed by each class of creditor or expense.

The order of priority of payments in a liquidation pursuant to the Act are as follows:

1. Expenses of winding up including the liquidators' remuneration. Section 115 provides that a number of expenses of winding up are paid first and are payable in the order of priority:
 - a. Expenses properly incurred by the liquidator in preserving, realising or getting any of the assets including legal proceedings;
 - b. The cost of any security provided by the liquidator;
 - c. Any amount payable to a person to assist in the preparation of a statement of affairs or accounts;
 - d. Any necessary disbursements by the liquidator in the course of winding up
 - e. The remuneration of any person employed by the liquidator to perform any services for the company;
 - f. The remuneration of the liquidator;
 - g. The amount of corporation tax on chargeable gains accruing on the realising of any assets of the company;
 - h. Any other expenses properly chargeable by the liquidator in carrying out the functions in the winding up.

2. Preferential creditors as defined in section 386, 387 and Schedule 6: section 175 are paid second once the expenses related to the liquidation have been paid in full. There are two classes which are paid in the order as set out below:
 - a. Ordinary preferential debts; and
 - b. Secondary preferential debts which are paid in accordance with their respective classed:
 - i. Any sum owed on account on an employee's contribution to an occupational pension scheme in the period of 12 months before the relevant date;
 - ii. Any sum owed by the company on account of an employer's contribution to an occupational pension scheme in the period of 12 months before the relevant date;
 - iii. Remuneration owed by the company to a person who is or has been an employee of the debtor and is payable in respect of the whole or any part of the period of four months prior to the commencement of the winding up to a maximum total figure which is currently €800
 - iv. Any amounts owed by the company by way of accrued holiday remuneration in respect of any period of employment before winding up
 - v. Claims for monies advanced to pay wages or holiday remuneration;
 - vi. Levies on the production of coal and steel referred to in article 49 and article 50
 - vii. Claims for so much of any amount which is ordered to be paid by the company under the Reserve Forces (Safeguard of Employment) Act;
 - viii. So much of any amount by the company in respect of an eligible deposit as does not exceed the compensation that would be payable in respect of the deposit under the Financial Services Compensation Scheme to the person or persons to whom it is owed.
 - ix. So much any amount owed by the company to one or more eligible persons in respect of an eligible deposit as exceeds any compensation that would be payable in respect of the deposit under the Financial Services Compensation Scheme to that person or to those persons.
 - x. An amount owed by the company to one or more eligible person in respect of a deposit that-
 - (a) Was made through a non-UK branch of a credit institution authorized by the competent authority of the UK, and

- (b) Would have been eligible deposit if it had been made through a UK branch of that credit union.
- xi. PAYE income tax deductions, national insurance deductions, VAT payments, Construction Industry Scheme deductions and student loan payments.
3. Floating charge holders. The nature of the rights enjoyed by a floating charge holder is that priority will be given based on the date or creation of the charge.
4. Unsecured creditors are paid after all the above has been paid and enjoy the benefit of recouping their monies before any shareholders are paid.
5. Shareholder will enjoy the benefit of any surplus remaining which will be distributed in accordance with their respective shareholdings.

Commented [JL9]: 6
How floating Charge Holders are treated needs expanding – prescribed part.
No mention of the position of fixed charge holders.

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

Commented [JL10]: 10 out of 15

Prior to going into compulsory liquidation on 23rd December 2021, under pressure from its bank, Stercus Bank plc, and in order to prevent it from demanding repayment of the company's loans, Corfee Zero Limited ("the Company"), granted a debenture in favour of Stercus Bank plc in February 2021. The debenture contained a floating charge over the whole of the Company's undertaking.

The winding up order followed a creditor's winding up petition issued on 14th October 2021.

In July 2021, as the Company continued to suffer cash flow problems, the directors approved the sale of 5 coffee roasting machines to Ann Young (a director) for £10,000 in cash. The machines had been bought for £25,000 a year before.

A month before the winding up order was made, Ann Young received an email from Beans and Leaves Ltd, one of the Company's key suppliers. The supplier demanded immediate payment of all sums owing to it and informed the Company that further supplies would only be made on a cash on delivery basis. As the continued supply of coffee beans was seen as essential by the Company, the board authorised a payment of £8,000 to cover existing liabilities and agreed to further payments, on a cash on delivery basis, for further supplies which amounted to further payment of £3,000 up to the date of the winding up order.

The liquidator has asked for advice whether any action may be taken in respect of the floating charge in favour of Stercus Bank plc and the two subsequent transactions.

Using the facts above, answer the questions that follow.

Identify the relevant issues and statutory provisions and consider whether the liquidator may take any action in relation to:

Question 4.1 [maximum 5 marks]

The floating charge in favour of Stercus Bank plc;

A claim can be brought under section 245 of the Insolvency Act (the Act) for the floating charge to be deemed invalid. Section 245 is aimed at preventing a pre-existing creditor unsecured creditor from obtaining a floating charge shortly before the Company enters formal liquidation procedures. Based on the facts it is highly likely that the floating charge was granted when the company was cash flow insolvent. There is no evidence that the floating charge was "new" or that there was consideration given for the floating charge at the time it was granted or to the extent of consideration by way of discharge or reduction of debt to the company.

Section 245 provides that the liquidator would need to satisfy the Court that the person whose favour the floating charge is created is connected with the Company two years prior to the onset of the floating charge or that the floating charge was granted within twelve months prior to the Company entering into insolvent liquidation and that at the time of the creation of the floating charge, the Company was either unable to pay its debts or became unable to do so as a result of the floating charge.

There is no evidence to suggest that Stercus Bank plc is connected to the Company. However, based on the evidence the floating charge was granted February 2021 and the Company went into liquidation on the 23 December 2021. Therefore, floating charge would have been granted within twelve months of the Company's liquidation. The relevant evidence is as follows:

"Prior to going into compulsory liquidation on 23rd December 2021, under pressure from its bank, Stercus Bank plc, and in order to prevent it from demanding repayment of the company's loans, Corfee Zero Limited ("the Company"), granted a debenture in favour of Stercus Bank plc in February 2021."

Commented [JL11]: 5

It is important to note that the underlying debt would remain valid if the floating charge is set aside. Therefore, Stercus Bank plc will still be a creditor with a valid interest.

Once could also consider whether a claim could also be brought against the directors under section 239 of the Insolvency Act to avoid the preferential transaction. However to do this, the statutory requirements set out below must be met, which would be the following:

Commented [JL12]: Preference not possible due to time and desire.

- (i) Stercus Bank was a creditor at the time of the transaction (the creation of the floating charge)- it was;
- (ii) Something was done, or suffered to be done by the Company which had the effect of putting Stercus Bank in a better position, in event of the Company going into insolvent liquidation, than the position it would have been in if the floating charge had not been preferred- it is this is evident from the facts that they were placed in a better position than the other creditors;
- (iii) The company was, in giving the preference, influenced by a desire to produce the effect referred in (ii) above (the desire effect); and
- (iv) The preference occurred within two years prior to the onset of insolvency (for a connected person (or within six months within prior to the onset of insolvency (for an unconnected person).

Section 239 also provides that if the person to who preference is given is connected with the Company, there is a presumption that the Company was influenced by a desire to prefer.

In *Re MC Bacon Ltd* a claim for preference was made out where it was found that a creditor (a Bank) was put in a better position than the other creditors such by the granting of a

debenture and that this debenture was granted so that the Bank would not withdraw its support forcing the company into liquidation.

The facts of the case provides that “prior to going into compulsory liquidation on 23rd December 2021, under pressure from its bank, Stercus Bank plc, and in order to prevent it from demanding repayment of the company’s loans, Corfee Zero Limited (“the Company”), granted a debenture in favour of Stercus Bank plc in February 2021. The debenture contained a floating charge over the whole of the Company’s undertaking.”

In light of the similarities of the facts of the case and the circumstances hereto, it could be argued that *Re MC Bacon Ltd* is persuasive in nature and could be relied on. However, considering that the Company went into liquidation 23 December 2021 and the floating charge was granted in February 2021 it is necessary to consider whether the Stercus Bank plc is connected to the Company for the two-year proviso to apply or whether it would fall within six months proviso. Since there is no evidence to suggest, that Stercus Bank plc was a connected party to the Company it is necessary to consider the latter which based on the evidence would fall outside the six months.

Question 4.2 [maximum 6 marks]

The sale of the coffee roasting machines; and

There are several claims that can be brought against the directors for the sale of the five coffee roasting machines.

A claim can be brought under section 238 of the Insolvency Act (the *Act*) against the directors for the five (5) coffee roasting machines that were sold at an undervalue to Ann Young (a director).

Section 238 of the Act provides that in order to succeed on an application for avoidance of transactions at an undervalue, the following must be satisfied:

- (i) The transaction took place within two year prior to the commencement of the liquidation or administration (for a connected person) and six months (for an unconnected person). The evidence provides that the liquidation proceedings commenced on 23 December 2022 and that the sale of the coffee roasting machines to Ann Young (a connected person) was done in July 2021. This test will therefore be satisfied with ease as the sale was conducted with a connected person within two years of the liquidation proceedings.
- (ii) The consideration received by the Company for the sale of the machines was significantly less than the value of the machines; and
- (iii) At the time of transaction, the Company was either unable to pay its debts within the meaning of section 123 or became unable to pay its debts because of the sale.

The evidence provides that the Company was facing cash flow problems at the time of the sale of the coffee machines. The machines which were purchased for £25,000 had only been bought for a year and were resold for £10,000. Therefore, it is highly likely that the market value of the coffee machines at the date of sale is significantly less than the consideration £10,000 (the amount that was paid for the coffee machines). Further, they were sold to a connected party i.e. a director. There is no evidence to suggest that at time the Company

Commented [JL13]: What is the effect of a connected party sale?

entered into the transaction it did so in good faith and for the purpose of carrying on its business or that at the time it did so there were reasonable grounds for believing that the transaction would benefit the company.

A claim can also be brought for against all the directors including Ann Young for misfeasance under section 212 since a claim under misfeasance covers any misconduct by a director that causes a loss to the company or its creditors. This includes the retention or misapplication of company assets as well as breaches of both fiduciary duties which includes to avoid conflicts of interest. In this instance, the sale of the coffee machines to Ann Young is a clear case of conflict of interest. Further, the sale of the coffee machines at an undervalue can amount to a misapplication of the Company's assets.

Likewise, a claim can be brought for wrongful trading under sections 214 and 246ZB of the Insolvency Act against the directors of the Company. This is because the facts suggest that the Company had been facing cash flow problems for some time. Therefore they knew, or ought to have concluded that there was no reasonable prospect of avoiding insolvent liquidation and ought to have taken every step with a view to minimise the potential loss to the company's creditors. Yet there is no evidence to suggest that they had done so. This evidence provides that they approved the sale of five coffee machines to another director despite the fact that the coffee machines were vital to the continued operations Company. If the directors are found liable for wrongful trading, they may be ordered to contribute to the Company's assets.

An application can be brought under section 243 of the Insolvency Act that the transaction was to defraud the Company's creditors. For this to be satisfied, it is necessary to show that the Company entered into a transaction at an undervalue and for the purpose of putting the assets beyond the reach of the person who is making or may make, a claim against the Company or otherwise prejudicing the interest of such person in relation to the claim which he is making or may make. It could be argued that these requirements are met since the sale of the coffee machine for an undervalue has the effect of putting the machines (the assets of the Company) beyond the reach of creditors since no claim can be made on the machines once they have been sold to a third party.

Lastly, Section 6 of the Company Directors Disqualification Act 1986 provides that a liquidator has a duty to make report to the Secretary of State where they believe a director is unfit. The Company Directors Disqualification Act 1986 provides that the Secretary of State is then to determine whether an action ought to be brought against the reported director(s). A report could therefore be filed against the directors that based on the evidence they are unfit.

Commented [JL14]: 5

Question 4.3 [maximum 4 marks]

The payments to Beans and Leaves Ltd.

A claim for preferences can be brought under section 239 of the Insolvency Act for the payment of £8,000 to cover existing liabilities and the further payment of £3,000 up to the date of the winding up order for the payment to Beans and Leaves Ltd.

First, it is important to highlight section 233B of the Corporate Insolvency and Governance Act 2020 provides that suppliers are prohibited from terminating the supply of goods or services if the company enters insolvency and that they will also be prevented from making it a condition that pre-insolvency arrears are paid and from making other changes to the contract such as increasing the price of the goods or service. Therefore, there was no obligations on the

Company to pay up the arrears with Beans and Leaves Ltd as a condition for further supply of goods.

For THE preferential claim to be successful, the following must be proven:

- (1) Beans and Leaves was a creditor when the preferential payments were made;
- (2) The payments had the effect of putting Beans and Leaves Ltd in a better position than the other creditors;
- (3) The Company had the desire to do this- they believed the continued supply of coffee beans was essential by the continuation of the business the Company; and
- (4) The preference occurred within six months within prior to the onset of insolvency- they payment was made one month before the liquidation of the Company and was done in light of the email from Beans and Leaves Ltd, demanding immediate payment of all sums owing to it.

If the claim for preferences is successful, the court will set the transaction aside and may order that the Company be restored to the position as if the transaction had not taken place.

A claim can also be brought for wrongful trading under section 214 and 245ZB as the directors were aware from that the Company was having cash flow problems and continued to trade. Therefore, it can be argued that the directors failed to take 'every step' to minimise the potential loss to the company's creditors, as they knew or ought to have concluded that there was a reasonable chance that the Company would go into liquidation.

If the claim for wrongful trading is successful, the Court can order that they compensate the company by contributing to the Company's assets.

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Refer to p 64 in the Guidance Text.
This scenario deals with a disposition after the commencement of the company's insolvency proceeding.
Therefore, s 127 and not s 239 applies.

*** End of Assessment ***