



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: **[studentID.assessment5E]**. An example would be something along the following lines: 202122-336.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 “studentID” with the student number allocated to you). Do not include your name or any other identifying words in your file name. **Assessments that do not comply with this instruction will be returned to candidates unmarked.**
5. Before you will be allowed to upload / submit your assessment via the portal on the Foundation Certificate web pages, you will be required to confirm / certify that you are the person who completed the assessment and that the work submitted is your own, original work. Please see the part of the Course Handbook that deals with plagiarism and dishonesty in the submission of assessments. **Please note that copying and pasting from the Guidance Text into your answer is prohibited and constitutes plagiarism. You must write the answers to the questions in your own words.**
6. The final submission date for this assessment is **31 July 2022**. The assessment submission portal will close at **23:00 (11 pm) BST (GMT +1) on 31 July 2022**. No submissions can be made after the portal has closed and no further uploading of documents will be allowed, no matter the circumstances.
7. Prior to being populated with your answers, this assessment consists of **8 pages**.

ANSWER ALL THE QUESTIONS

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

Questions 1.1. – 1.10. are multiple-choice questions designed to assess your ability to think critically about the subject. Please read each question carefully before reading the answer options. Be aware that some questions may seem to have more than one right answer, but you are to look for the one that makes the most sense and is the most correct. When you have a clear idea of the question, find your answer and **mark your selection on the answer sheet by highlighting the relevant paragraph in yellow**. Select only **ONE** answer. Candidates who select more than one answer will receive no mark for that specific question.

Question 1.1

Which court would be most appropriate in pursuing enforcement for a claim of JEP 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 – Correct]

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: 10 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.

(i) *Désastre*

According to Part VI, Article 26 of Bankruptcy (*Désastre*) (Jersey) Law 1990 „the Viscount may

(b) *bring, institute, or defend any action or other legal proceedings relating to the property of the debtor whether situated in the Island or elsewhere;*

(c) *refer any dispute to arbitration, or at his discretion compromise all debts, claims, and liabilities, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist, between the debtor and any person who may have incurred any liability to the debtor on such terms as may be agreed upon;*

(d) *make such compromise or other arrangements as are thought expedient with creditors, or persons claiming to be creditors, in respect of any debts provable under the declaration;*

(e) *make such compromise or other arrangements as are thought expedient with respect to any debt or other claim secured upon the property of the debtor by a judicial or conventional hypothec obtained against or created or consented to by any predecessor in title of the debtor;*

(f) *accept for the sale of any property of the debtor a sum of money payable at a future time, subject to such conditions as to security and otherwise as the Viscount thinks fit;*

(g) *make such compromise or other arrangements as are thought expedient with respect to any claim arising out of or incidental to the property of the debtor made or capable of being made on the Viscount by any person or by the Viscount on any person;*

(h) *carry on the business of the debtor as far as is necessary or expedient for the beneficial disposal of the same and for that purpose may employ and pay the debtor or any other person;*

(i) *expend money of the debtor for the repair, maintenance, upkeep, or renovation of the property of the debtor, whether or not the work is necessary for the purpose of the salvage of the property;*

(j) *borrow any money and charge any property of the debtor;*

(k) *employ any person to transact any business or do any act required to be transacted or done in the course of administration of a “*désastre*”, including the receipt and payment of money;*

(l) *prove and draw a dividend in respect of any debt due to the debtor;*

(m) *divide in its existing form amongst the creditors according to its estimated value any property which from its peculiar nature or other special circumstances cannot readily or advantageously be sold;*

(n) *give receipts and execute discharges and releases for any money received by him, which receipts, discharges, or releases shall effectively discharge the person paying the money from all responsibility in respect of the application thereof, and execute any powers of attorney, deeds, and other instruments for the purpose of carrying into effect the provisions of this Law;*

(o) *exercise any voting rights on shares owned by the debtor;*

(p) *exercise any authority or power or do any act in relation to the debtor's property which the debtor could have exercised or done if it were not for the declaration;*

(q) *from time to time appoint an agent by power of attorney or otherwise to act for him, either in or out of the Island, in respect of any particular property and delegate to any such agent all or any of the powers hereby conferred upon the Viscount in respect of the property and from time to time revoke any such appointment and fix the remuneration for any such agent, which shall be paid out of the debtor's property [...].¹⁾*

¹⁾<https://www.jerseylaw.je/laws/enacted/Pages/L-08-1990.aspx>

(i) Winding Up

In General, the power of the liquidator is limited to the realization of the assets, discharge of liabilities and distribution of assets.

According to Section 170 of the Jersey Company law, *the liquidator in a creditors' winding up may [...] pay a class of creditors in full; compromise any claim by or against the company. The Liquidator may, without sanction, exercise any other power of the company as may be required for its beneficial winding up. He may settle a list of contributories [...], make calls; and summon general meetings of the company for the purpose of obtaining its sanction by special resolution or for any other purpose the liquidator may think fit.²⁾*

²⁾ https://www.jerseylaw.je/laws/current/Pages/13.125.aspx#_Toc96966427

Article 171 of the Jersey Company law confers the liquidator the power to disclaim onerous property. He also has the power to pursue antecedent transactions under Articles 176 to Article 179. In a just and equitable winding-up, the liquidator's powers are determined by court.

ANSWER: In a just and equitable winding up, the liquidator will have specific powers as granted by the Jersey court (2 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.

- (i) Jersey law does not have any statutory or customary corporate rescue and turnover procedure. In practice, the just and equitable winding up procedure

can be initiated *to reinstate companies and so that a liquidator is appointed to gather in the assets and make distributions*. This means that even though the main objective of the just and equitable procedure is to wind up the company, this can be used in the way that liquidator, for instance, only sells parts of the business and saves the remaining part as a going concern.

- (ii) Further, the just and equitable seems to be more flexible than a restructuring proceeding since it considers the interests of the creditors on a case by case basis.
- (iii) Further, it could be argued that not having any statutory or customary corporate rescue and turnover procedure is a way for Jersey to reinforce its international reputation of financial centre, where the growth of the finance industry is highly supported and encouraged. Jersey companies are most of the time special purpose vehicles, holding companies or other group companies and companies having a “trading businesses”, thus the need for rescue and turnaround processes is low.

ANSWER: Your answer is not entirely clear, but I agree at point 3 that Jersey companies are typically not traditional trading entities and therefore there is less requirement for a rescue and turnaround process (1 mark)

Question 2.3 [maximum 3 marks]

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

- (i) Judicial hypothec: This type of mortgage is obtained through a court judgement acknowledging the debt, which constitutes a defined sum of money. After obtention of the judgement, it must be registered in the Public Registry.
- (ii) Conventional hypothec: A conventional hypothec is an agreement entered into between two or more parties before the Jersey Court. This agreement sets the conditions under which a party borrows a certain sum of money from the other and accepts to grant a hypothec to the lender.
- (iii) Legal hypothec: This type of mortgage is rare and it arises by operation of law.

ANSWER: Very good (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 Debt Remission (Individuals) (Jersey) Law 2016.

A Jersey resident is eligible for a DRO if the following criteria are fulfilled:

- (i) **Personal requirement**: The resident must be over the age of 18 and must have lived in Jersey for the last five years. Further, he cannot be bankrupt and must not have been granted a DRO in the last five years.

- (ii) Assets: The resident must not own assets having a value of more than £5,000 (except the car, which value cannot exceed £2,000) and have a monthly disposable of less than £100 after tax, social security and normal household expenses.
- (iii) Debt: The debt to be recovered by the DRO must be less than £20,000.
- (iv) Good faith: The concerned resident must act in good faith.

ANSWER: Good (2 marks)

Question 2: 8 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*
- (i) Filing: A creditor can file an application with the Royal Court requesting that an individual or company, including a incorporated Limited Partnership or a Limited Liability Partnership, be declared en *désastre*. The concerned creditor is entitled to do so if his claim amounts to more than £3000. Debtors can file an application for the opening of *désastre* proceedings over their own assets. Further, the Jersey Financial Services Commission (JFSC) can also file an application.
- (ii) Cost of the proceedings, including costs of the Viscount, will usually be carried by the applying creditor. Depending on the proceedings, the Viscount may levy his fees or take amounts equivalent to 12.5% of the amounts realised and distributed. These costs are paid before secured creditors.
- (iii) Requirement for the opening of the proceedings: The *désastre* proceedings can be opened over a debtor if he is insolvent and still have realisable assets. The creditor must confirm in its application that he believes this to be the case.
- (iv) Court decision: The issuance of a decision is not automatic. Upon issuance of such an order placing the debtor en *désastre*, all his property will be vested to the Viscount and during a moratorium period, creditors will not be able to take any actions against the debtor.
- (v) Power of the Viscount: The Viscount will try to sell the debtor's property and distribute the realisations. He will have the power, among others, to bring, institute, or defend any action or other legal proceedings relating to the property of the debtor and make such compromise or other arrangements.
- (vi) Conclusion of the *désastre* proceedings: Upon completion of the proceedings and if the debtor is a company, the Viscount will dissolve the company by filing the necessary forms with the he Registrar of Companies.

ANSWER: The applicant creditor is usually required to indemnify the Viscount for costs and liabilities. The Viscount may levy fees as they arise or take amounts equivalent to 12.5% of the amounts realized and distributed. A personal Desastre will last four years. (5 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

The creditors' winding-up procedure applies generally to insolvent companies or companies that are actually solvent but where the directors refuse to sign a statement of solvency. The relevant Jersey law that applies to this kind of proceedings is Part 21, Chapter 4 - Articles 156-186 of the Jersey Company Act. The areas covered under these regulations are the following.

Commencement of the proceedings: A creditors' winding up always commences on the passing of a special resolution by the shareholder of the debtor. Within 14 days after passing the special resolution, the company needs to publish a notice in the Jersey Gazette advising that the special resolution has been passed.

First meeting of creditors: A meeting of creditors must be convened to take place in Jersey on the same day as, and immediately after, the meeting of the shareholders. The company must notify its creditors of the meeting by giving them at least 14 days' notice by post and by publishing an advertisement in the Jersey Gazette at least 10 days prior to the meeting. The actions described in the following paragraphs will take place at the first meeting of creditors:

- Statement of affairs: The directors must present to the meeting a statement of affairs of the company, which must be verified by an affidavit sworn by some or all of the directors.
- Liquidation committee: The creditors may appoint a liquidation committee consisting of up to five persons. In addition, the company may appoint up to five persons to be members of the liquidation committee, unless the creditors resolve that some or all of such persons shall not be members of the committee, in which case, such persons will not be members unless the court directs otherwise. The Companies Law confers limited powers on the liquidation committee relating to the conduct of the winding up, including power to agree on the liquidator's remuneration, sanction the continuance of

any powers of the directors and sanction the liquidator paying out a class of creditors in full or compromising any claim by or against the company.

Creditor Claims, proving and interest: The Creditor's winding-up procedures follow the Bankruptcy Law regulations with regard to creditor claims and order of priority. The regulations enacted in Article 166 of the Companies Law, which governs the creditors' winding-up, make clear that the same rules apply in relation to the respective rights of secured and unsecured creditors, to proving of debts (particularly the time and manner of proving debts), to the admission and rejection of evidence regarding proving of debts and to the payment order, as those which are foreseen under the Bankruptcy Law. No statutory time period is foreseen for notices for potential claims in a winding-up, however, the prevailing opinion is that a 60 days' notice is an appropriate period for a creditors' winding-up. The referred regulations of Bankruptcy Law regarding proving of debts state that all debts and liabilities, irrespective whether present, future, or contingent, are provable as foreseen in the regulations for Désastre. If the claim or debt bears interest, the respective interest claim needs to be proven as of the date of Désastre, or as of the date of payment if it is a secured debt. A creditor must also bear the cost of proving their debt and creditors are also entitled to examine other creditors' evidence. The Viscount is responsible to adjudicate claims and request further information from creditors if required, and to finally admit or reject in whole or in part submitted creditor claims. If a claim is rejected, a notice of rejection is delivered to the creditor and, if dissatisfied, the creditor may request that the Viscount applies to the Jersey Court to review the initial decision.

Final meetings: Once the affairs of the company have been wound up, the liquidator must prepare an account of the winding up which shows how the winding up was conducted and how the company's assets were distributed and present it to a meeting of members and a meeting of creditors. At least 21 days' notice of each meeting must be given by post together with a copy of the liquidator's account.

ANSWER: Very good (8 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.**

(i) Priority

Secured creditors must be paid first. The assets resulting on the sale of XYZ Limited's property will be used to satisfy Big Bank PLC's claims.

(ii) Immovable property

Assuming that XYZ Limited has immovable properties, which are mortgage secured in favour of Big Bank PLC's, the hypothecs secured against it will be extinguished upon sale of the property, but Big Bank PLC, as secured creditor, will have preferential rights in relation to the sale proceeds.

(iii) Power of the secured creditor

The Section 43 Part 7 of the Security Interests Law confers the secured creditor the right to exercise powers of enforcement in relation to the respective security without the consent of neither the Viscount.

(iv) Pre-packaged sale of the business

The pre-packaged sale is in general possible under the just and equitable proceedings. The conditions of the sale have to be negotiated under consideration of the creditors' interests. It shall, among others, answer the question the purchaser would acquire the business free from any encumbrance.

ANSWER: In Jersey, the power of enforcement is exercisable once an event of default has occurred and written notice of this fact has been served on the grantor. The options available for Big Bank depend upon what security it has (and it is noted that there is no equivalent to a floating charge in Jersey). If Big Bank has security over Jersey immovable property (e.g. a mortgage over the building) then they can apply to Court in Jersey for a Désastre or Dégrèvement. If they have security over movable property then they may apply to Court in Jersey to enforce their contractual rights. (1 mark)

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”))?

The UK Administration falls into the scope of the Recast EIR. However, Jersey is not Member of the EU and thus the Recast EIR is not applicable in the case at hand.

Further, the information provided does not mention that ABC Limited is insolvent or has financial difficulties. Indeed, the aim of the UK Administration is to rescue a company that is insolvent. ABC Limited is not the insolvent company in the case at hand, but rather XYZ. Since this requirement is not fulfilled, one may assert that it may not be possible to achieve a sale as a going concern by placing ABC under English Administration by applying to the Jersey Court for a letter of request requesting the UK court.

ANSWER: Also discuss COMI e.g. if it can be shown that management and control is in England then the Court may agree to place ABC in to administration under English Law. It would be necessary to prove insolvency (as you note) and also that English Administration would be likely to achieve a better outcome for the debtor and creditors than a local process, with emphasis on the proposed pre-packaged sale (1 mark)

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 is a statutory procedure under Jersey law that would enable the rescue of XYZ as a going concern. Neither the désastre, nor the winding up proceedings, would permit to achieve that goal.

ANSWER: The Jersey Court has shown willingness to fashion creative and flexible solutions where necessary and the J&E process has been used to effect a quasi pre-packaged sale of assets (1 mark)

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?

(i) Rescue of XYZ / Letter of request

XYZ is a company incorporated under the laws of Jersey and having its COMI in Jersey. If the store is a branch of XYZ, this means that this legal case does have no

cross-border effect. However, according to the information provided, it is intended to rescue the company as a going concern. Since there is no statutory procedure in Jersey law that would make it possible, the only way to achieve this is to address a letter of request to the Jersey court requesting the opening of English administration proceedings. This letter of request will then be issued from the Jersey court to the English court.

(ii) Recognition of the UK Administration proceedings

Since XYZ is subject to foreign insolvency proceedings, the English Administration, the decisions rendered by the UK courts will need to be recognized in Jersey. The Jersey court will thus assist the UK court in implementing its decision in accordance to Article 49 of the Bankruptcy Act 1990.

ANSWER: Good (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?

- (i) Since the COMI of XYZ is located in Poland, Polish courts are competent for the opening of insolvency proceedings over the assets of XYZ. Under the assumption that Poland is to be considered a “relevant” country under Jersey law, Jersey courts could issue a letter of request for the opening of Administration proceedings in Poland.
- (ii) The UNCITRAL Model Law on Cross-Border Insolvency and the Recast EIR are not applicable to Jersey. However, the Jersey Court may provide assistance to foreign insolvency officeholders other than under Article 49 of the Bankruptcy Law and on the basis of the common law principles and on the grounds of comity.

ANSWER: If the Jersey Court receives a request from a non-relevant country then it is likely that the Jersey court will provide assistance based upon common law principles of private international law and/or comity and cooperation (2 marks)

Question 4: 8 out of 15

TOTAL: 39 out of 50

*** End of Assessment ***