



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: 202223-336.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 2023. The assessment submission portal will close at 23:00 (11 pm) GMT on 1 March 2023. 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 2023 or by 23:00 (11 pm) BST (GMT +1) on 31 July 2023. If you elect to submit by 1 March 2023, you may not***

submit the assessment again by 31 July 2023 (for example, in order to achieve a higher mark).

7. Prior to being populated with your answers, this assessment consists of 8 pages.

ANSWER ALL THE QUESTIONS

Commented [WPA1]: 44/50 = 88% a very good effort

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

Commented [WPA2]: 9/10

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) GBP 500

(b) GBP 750

(c) GBP 1,000

(d) GBP 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

Commented [WPA3]: B is the correct answer

(c) 10

(d) 12

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]

Commented [WPA4]: 10/10

Question 2.1 [maximum 5 marks]

Commented [WPA5]: 5/5

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) *S.423 IA 1986 provides for the ability to attack transactions defrauding creditors. S.424 of the Act provides that an application for an order under s.423 can be made*
- a. *If the debtor has been adjudged bankrupt or is a company being wound up or which is in administration, by the Official Receiver, or a trustee in bankruptcy (where the debtor is a bankrupt), a liquidator or administrator of the company or any victim of the transaction, which means a person who is, or is capable of being, prejudiced by the transaction (s.423(5) IA 1986);*
 - b. *If there is a company voluntary arrangement or individual voluntary arrangement in place, by the supervisor of that arrangement or any victim of the transaction (regardless of whether they are bound by the arrangement)*
 - c. *In any other case, by a victim of the transaction. Notably, an application under any of the subparagraphs of s.424(1) is treated as though it were made on behalf of every victim of the transaction (s.424(2) IA 1986).*
- (ii) *S.6 CDDA 1986 provides for the Court's duty to make a disqualification order on an application under that section by:*
- a. *The Secretary of State or,*
 - b. *If the director is or has been a director of a company which is being or has been wound up and the Secretary of State so directs, the Official Receiver (s.7 CDDA 1986)*
- (iii) *S.246ZB IA 1986 provides for the Court's jurisdiction to make a declaration in cases of wrongful trading as defined in that section against a director or former director of a company which has gone into administration. The application may be made by the company's administrator (s.246ZB(1) IA 1986).*

Question 2.2 [maximum 5 marks]

Commented [WPA6]: 5/5

List any five (5) of the debts which do not form part of the payment holiday under Part A1 of the Insolvency Act 1986 when a company is subject to a Moratorium.

By s.A18 of Part A1 IA 1986, the following do not form part of the payment holiday:

- (1) The remuneration of, or expenses incurred by, the monitor of the Moratorium, not including remuneration in respect of anything done by a proposed monitor before the Moratorium begins (s.A18(7))*
- (2) Goods or services supplied during the Moratorium*
- (3) Wages or salary arising under a contract of employment, including holiday pay, pay for sickness or other leave for which there is good cause, payment in lieu of holiday, and contributions to an occupational pension scheme (s.A18(7))*
- (4) Rent in respect of a period of the Moratorium*

(5) Redundancy payments as defined in s.A18(7).

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

Commented [WPA7]: 13/15

Question 3.1 [maximum 6 marks]

Commented [WPA8]: 6/6

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?

1. S.233 IA 1986 provides for the provision of basic supplies of goods and services to a company, including gas, electricity and water, after it has gone into administration on the request of the administrator. The supplier is permitted to grant that request subject to a condition that the administrator personally guarantee the payment of charges in respect of the supplies after the request is granted. The supplier is not permitted to withhold supplies until such time that outstanding debts for supplies given to the company before it went into administration are paid (s.233(2) IA 1986). Therefore, the administrator may require the suppliers of those goods and services referred to in s.233 IA 1986 to continue to make supplies to the company as long as the administrator personally guarantees the charges for the supplies, if the supplier so requires.
2. Pursuant to s.233A IA 1986, contracts for the supply of essential goods and services as defined by s.233 IA 1986 are also protected from "insolvency related terms" which are terms entitling the supplier to terminate the supply, to "do any other thing" including, for example, raising prices, or otherwise alter the terms of the supply.
3. The Corporate Insolvency and Governance Act 2020 introduced s.233B IA 1986, which restricts the use of insolvency related terms. If a contract for the supply of goods or services contains a provision entitling a supplier to terminate the contract upon the administration, s.233B IA 1986 takes effect to make that provision ineffective upon the company entering administration (s.233B(3) IA 1986). Therefore, an administrator could enforce the continued operation of an agreement for the supply of goods and services during the administration, even if the agreement contains an insolvency related term.
4. The administrator would also be able to enforce the continued supply of goods and services at the same price or otherwise on the same terms as before the administration, even if the agreement entitled the supplier to change those terms as a result of the administration as s.233B(3) also prevents the supplier from doing "any other thing" because of the insolvency event.
5. If the supplier became entitled before the administration to terminate the contract or the supply of goods or services because of an event which occurred before the administration, the supplier is prevented by s.233B(4) IA 1986 from

exercising that entitlement until the end of the administration (as defined by s.233B(8)(b)).

6. The limitations imposed on suppliers under ss.233B(3) and (4) are subject to some exceptions. The supplier may terminate the agreement if:
- The administrator consents to the termination;
 - The court is satisfied that the continuation of the contract would cause the supplier hardship and the Court grants permission for the termination of the contract.

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. How would this priority change if the company had been subject to a Moratorium under Part A1 of the Insolvency Act 1986 during the 12 week period prior to the commencement of the liquidation?

- By s.115 of the 1986 Act, there are a number of expenses which are given priority over preferential creditors, floating charge-holders and unsecured creditors. These expenses are given the following order of priority:
 - The liquidator's expenses which are properly incurred in preserving, realising or getting in the company's assets, which includes legal costs;
 - Costs of security provided by the liquidator;
 - Amounts payable to any person for the preparation of a statement of affairs or accounts;
 - The liquidator's disbursements incurred in the course of the winding up;
 - Remuneration payable to any person employed by the liquidator to provide services to the company;
 - The liquidator's remuneration;
 - Tax payable on realization of company assets;
 - Other expenses incurred by the liquidators in carrying out his or her duties in the winding up.
- After these expenses have been paid in full, the company's assets are used to pay the company's secured creditors, followed by preferential creditors, then by floating charge-holders and finally unsecured creditors.
- Secured creditors are usually paid in order of the creation of the security (subject to issues surrounding perfection of the security interest). It is worth noting that secured creditors can agree to subordinate their priority to another, for example a company director may agree to subordinate the priority he or she would have enjoyed to a bank's security in order to achieve lending. This type of agreement does not disturb the *pari passu* principle as long as it does not affect the position of other creditors.
- Preferential debts can be 'ordinary' (as defined in paragraphs 8 to 15B of Schedule 6 (contributions to occupational pension schemes, remuneration etc. of employees, levies on coal and steel production, debts owed to the Financial

Commented [WPA9]: 7/9 a strong answer. The discussion of secured creditor priority could have been clearer - it appears to refer to fixed security but is not clear. The detail of s 176A would have been helpful.

Services Compensation Scheme, deposits covered by Financial Services Compensation Scheme) or 'secondary' (as defined in paragraph 15BA,15BB (other deposits) or 15D (certain HMRC debts) of Schedule 6).

5. It is notable that para.15D of Schedule 6 has reintroduced Crown preference, which was abolished by the Enterprise Act 2002. This was a controversial development which negatively impacted business and lending confidence (<https://www.icaew.com/insights/viewpoints-on-the-news/2020/dec-2020/business-finance-concerns-as-crown-preference-comes-into-effect>. Accessed March 2023) Its effect was to give the Crown preference over the biggest bodies of creditors, namely floating charge-holders and unsecured creditors.
6. Ordinary preferential debts are paid out ahead of secondary preferential debts. Within these two categories, debts rank equally and are paid out in equal proportion if there are insufficient company assets to pay those debts in full.
7. Floating charge-holders will usually rank in accordance with the date on which the charge was created. Where the floating charge was created after 15 September 2003, the distribution of assets to the charge-holder is subject to the application of s.176A of the 1986, which provides for the retention by the liquidator of a "prescribed part" of the company's assets for the satisfaction of unsecured debts. The prescribed part is essentially a ring-fenced fund for the payment of the company's unsecured creditors. The liquidator will not pay any part of the "prescribed part" to the floating charge-holder unless there is a surplus after distribution to the unsecured creditors. The liquidator may disapply the duty to make a distribution of the prescribed part if the assets of the company are less than £10,000 and the costs of making the distribution are disproportionate to the benefits.
8. It is worth noting that neither the floating charge-holder nor any secured creditor may participate in the distribution of the prescribed part in respect of any amount outstanding after the distribution; the term *unsecured creditors* in the Insolvency Act 1986 s.176A refers only to those creditors whose debts were initially unsecured, rather than those whose security has proved to be insufficient. (*Goode and Gullifer on Legal Problems of Credit and Security* 7th Ed., 5-071.)
9. If there remains a surplus after payment of all creditors and interest on those debts, a distribution will be made to shareholders in accordance with their shareholding.
10. Part A1 contains the standalone moratorium provisions introduced by CIGA 2020. If the company enters liquidation within 12 weeks of the end of the moratorium, the effect of the moratorium may be that the priority of debts which would have existed before the moratorium is altered. S.174A provides that in the winding up, the following are payable out of the company's assets (in the order of priority shown) in preference to all other claims:
 - a. any prescribed fees or expenses of the official receiver acting in any capacity in relation to the company;
 - b. moratorium debts and priority pre-moratorium debts.

11. Therefore, those moratorium debts and priority pre-moratorium debts are granted "super priority" ahead other debts, even the liquidators fees and expenses, which they might not have enjoyed had the moratorium not been granted.

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

Commented [WPA10]: 12/15

Prior to going into compulsory liquidation on 23rd December 2022, under pressure from its bank, Fretus Bank plc, and in order to prevent it from demanding repayment of the company's loans, Marbley Q Limited ("the Company"), granted a debenture in favour of Fretus Bank plc in February 2022. 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 2022.

In July 2022, as the Company continued to suffer cash flow problems, the directors approved the sale of two (2) marble cutting machines to Rita Perkins (a director) for GBP 10,000 in cash. The machines had been bought for GBP 25,000 a year before.

A month before the winding up order was made, Rita Perkins received an email from Hard and Fast 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 marble was seen as essential by the Company, the board authorised a payment of GBP 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 GBP 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 Fretus 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]

Commented [WPA11]: 3/5 - the discussion of s 239 misses the time limit of 6 months for an unconnected party being preferred. Section 239 is not therefore a viable option. More detail on s 245 was needed as it is the only possible option for the liquidator.

The floating charge in favour of Fretus Bank plc;

The liquidator will want to consider whether the granting of security in the form of the debenture in respect of the company's pre-existing indebtedness to the bank amounts to a voidable preference pursuant to s.239 IA 1986. This provides that a company gives a preference to a person if–

(a) that person is one of the company's creditors and
(b) the company does anything or suffers anything to be done which (in either case) has the effect of putting that person into a position which, in the event of the company going into insolvent liquidation, will be better than the position he would have been in if that thing had not been done.

S.239(4) applies, given that the debenture was granted within two years of the winding up order being made (a "relevant time" pursuant to s.240 IA 1986) and places the bank in a better position as creditor than it was in before.

It is a requirement of s.239 that the company was influenced in deciding to give the preference by a desire to place the bank in a better position in the winding up than it would have been. The critical word in s.239 is "desire"; it is not sufficient that the company intended to prefer the bank but it must have been motivated by the "desire" to do so. Nor is it sufficient that the company desired to create the security; it must have been influenced by the desire to prefer (*Re MC Bacon Ltd [1990] BCC 78*, at 87 per Millet J).

In *Re MC Bacon*, Millet J accepted the evidence of the company's officers that the company granted a debenture to a bank in respect of the company's pre-existing indebtedness to avoid the bank calling in the company's overdraft and to continue trading. This was the only desire to grant the debenture, not the desire to prefer the bank. [*ibid.* at 89].

In this case, there are no facts which suggest that the company was motivated by any desire other than to prevent the bank from calling in the loans. Therefore, and in accordance with the authority in *Re MC Bacon*, it is very unlikely that entering into the debenture would amount to a preference.

The liquidator will want to ensure that the bank would have been entitled to call in the company's loans, which would require consideration of the relevant loan documents. If it was entitled to do so, then the consideration for the debenture was its forbearance from calling in the loans. If so, it could not be said that the transaction was for no consideration and subject to the provisions of s.238 in respect of transactions at an undervalue (this point was also considered in *Re MC Bacon*, *ibid.* at 92.)

The liquidator should also consider whether the loan was previously secured; if not, it may fall under the provisions of s.245 IA 1986, which provides that a floating charge is void if granted in the 12 months prior to the winding up (in the case of an unconnected person) otherwise than for 'appropriate new value' (as defined in *Goode on Principles of Corporate Insolvency Law, 5th Ed.* at 13-107). If s.245 applies, the charge will be invalid, even though the underlying debt will remain valid.

Question 4.2 [maximum 6 marks]

Commented [WPA12]: 6/6

The sale of the marble cutting machines; and

The directors approved the sale of the marble cutting machines in July 2022 at a time in which the company was suffering cash flow difficulties. The sale was to a company director for £10,000 in cash, around £15,000 less than they had cost the company in or around July 2021. The liquidator will want to consider whether the sale of the machines was at an undervalue pursuant to s.238 IA 1986.

The transaction was at a relevant time pursuant to s.238(2), having been made within 2 years of the winding up order being made (s.240). It is a requirement of the Act that the company was unable to pay its debts at the time pursuant to s.123 of the Act or became unable to pay its debts as a consequence of the transaction. This requirement will be presumed to be satisfied because the sale was made to the director, who is a person who is connected to the company (s.240(2)).

There are complex considerations to be taken into account when considering whether the sale was at an undervalue; it is not simply a question of comparing what was paid by the company in contrast to what was paid by the director. The test is whether the consideration paid by the director for the machines is significantly less than the value, in money or money's worth, of the consideration provided by the company. This does not mean the consideration provided by the company for the goods when it purchased them, but the consideration provided by the company for the £10,000 paid by the director. This is of course the machines themselves but may also include a number of other detriments suffered by the company as a result of the loss of the machines. The fact that the company paid £25,000 for the same machines a year before the sale is not especially helpful in determining whether there has been a sale at an undervalue, as there is no evidence as to the condition of the machines now in comparison to the year before, whether the original purchase price was particularly high or low, or what other value the machines might have had to the company which goes beyond their market value.

A starting point would be obtaining a retrospective market valuation of the assets as at July 2022. This may give an indication as to whether the director paid a fair price for the goods but may not provide a conclusive answer.

*The test in s.238(4)(b) is to be viewed from the company's perspective (*Goode on Principles of Corporate Insolvency Law*, 5th Ed. paras.13-25 - 13-27). The liquidator will need to consider the benefits obtained by the company as part of the transaction, including for example that the machines were surplus to requirement, that retaining them created some other burden or that a quick purchase for cash held some other benefit. The liquidator will then need to consider whether the company suffered some other detriment as a result of the sale, for example if sale of the machines inhibited its ability to trade or otherwise affected the value of its other assets.*

As such, even if the director paid full market value for the machines as at July 2022, the sale may nevertheless have been at an undervalue:

"In valuing the consideration on either side for the purpose of determining whether there is a significant inequality of exchange...it is necessary to look at the whole of the transaction and the totality of the benefits the party dealing with the company will receive, not merely the market value in isolation from other factors." (ibid. para.13-27).

If the test under s.238(4)(b) is satisfied, the liquidator will also want to consider whether the director has a statutory defence to the claim under s.238(5), which provides that the court shall not make an order if it is satisfied

(a) that the company which entered into the transaction did so in good faith and for the purpose of carrying on its business, and

(b) that at the time it did so there were reasonable grounds for believing that the transaction would benefit the company.

Some relevant factors might include that the machines were surplus to requirement, that there might have been difficulties selling the machines on the open market or that there were some other benefits to the transaction which might have assisted the company to continue to trade, for example the payment in cash. There is further statutory protection under s.241 which does not apply in this case.

If the statutory defence does not apply, the remedy will be to restore the position had the transaction not been entered into (s.238(3)). This may include an order to return the machines or to reimburse the company in respect of the undervalue element of the transaction (s.241(1)).

Question 4.3 [maximum 4 marks]

The payments to Hard and Fast Ltd.

The facts state that, within one month of the winding up order made on 23/12/22, the company £8,000 was paid to Hard and Fast Ltd in respect of the company's pre-existing indebtedness and a further £3,000 was paid in respect of further supplies up to the date of the winding up order. The petition on which the order was made was presented on 14/10/22.

By s.127 IA 1986, any disposition of a company's property made after the commencement of a winding up is, unless the court otherwise orders, void. A validation order is required to validate the payments which were made between presentation of the petition and the winding up order.

The board considered that payment of the pre-existing debt would enable it to continue trading by the continued supply of essential goods.

In considering whether the court is likely to validate the payment to Hard and Fast Ltd, the liquidator will want to consider a number of factors, including whether the supply

Commented [WPA13]: 3/4 a good answer but it would have been helpful to consider on the facts the relative likelihood of validation for the two payments which are different in nature.

did in fact preserve the company's assets by enabling the company to continue to trade and that continuing to trade was in the best interests of the company's creditors.

It is worth bearing in mind that the Court is likely to approve payments that were made in the course of business in respect of a contract which appeared to be in the best interests of the company. However, if the continued trading was to the detriment of the body of creditors and/or diminished the company's assets generally, the liquidator may wish to consider asserting the payments are void pursuant to s.127 of the Act.

*** End of Assessment ***