INSOL INTERNATIONAL

FOUNDATION CERTIFICATE

IN INTERNATIONAL INSOLVENCY LAW

SUMMATIVE (FORMAL) ASSESSMENT: MODULE 6B

GERMANY

This is the summative (formal) assessment ***for*** Module 6B ***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 6B. ***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.assessment6B]***. An example would be something along the following lines: 202223-336.assessment6B.*** Please also include the filename as a footer to each page of the assessment ***(this has been pre-populated for you, merely replace the words "studentnumber" with the student number allocated to you). Do not include your name or any other identifying words in your file name.*** Assessments that do not comply with this instruction will be returned to candidates unmarked.

5. ***Before you will be allowed to upload / submit your assessment via the portal on the Foundation Certificate web pages, you will be required to confirm / certify that you are the person who completed the assessment and that the work submitted is your own, original work. Please see the part of the Course Handbook that deals with plagiarism and dishonesty in the submission of assessments.*** Please note that copying and pasting from the Guidance Text into your answer is prohibited and constitutes plagiarism. You must write the answers to the questions in your own words.

6. ***The final submission date for this assessment is*** 31 July 2023***. The assessment submission portal will close at*** 23:00 (11 pm) BST (GMT +1) on 31 July 2023***. No submissions can be made after the portal has closed and no further uploading of documents will be allowed, no matter the circumstances.***

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

ANSWER ALL THE QUESTIONS

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

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 statement about the insolvency administrator is correct***?***

(a) The insolvency administrator is appointed by the creditors' committee.

(b) The creditor's committee supervises the insolvency administrator.

(c) The insolvency administrator holds a public office.

(d) The insolvency administrator can decide on an insolvency / restructuring plan.

correct is (b); the IP holds a private office

Question 1.2

Which of the following securities is entitled to separation?

(a) Suretyship.

(b) Mortgage (Grundschuld).

(c) Retention of title.

(d) Pledge.

correct is (c); a pledge gives a right to separate satisfaction

Question 1.3

Which of the following institutions does not ***have a positive impact in the insolvency estate?***

(a) Contestation of transactions made before the opening of insolvency proceedings.

(b) Discharge of residual debt.

(c) Option to assume an executory contract according to § 103 InsO.

(d) Insolvency plan.

correct is (b); transaction avoidance enhances the estate

Question 1.4

After the occurrence of inability to pay debts (illiquidity, cash-flow insolvency), how long is the time period before the directors are obliged to file for insolvency proceedings?

(a) Three weeks.

(b) One month.

(c) Six weeks.

(d) Two months.

correct

Question 1.5

How are wage claims of employees stemming from the period prior to the opening of insolvency proceedings ranked?

(a) They enjoy super-priority even ahead of secured creditors.

(b) They qualify as expenses of the proceedings (liabilities of the estate).

(c) They rank as claims of ordinary creditors.

(d) They cannot be recognised in insolvency proceedings at all.

correct

Question 1.6

What is the main idea of the StaRUG?

(a) To enable creditors to force the debtor to restructure.

(b) To make restructuring possible where the debtor is neither unable to pay its mature debts nor imminently illiquid.

(c) To prepare the debtor company for successful restructuring within insolvency proceedings.

(d) To provide the debtor with a toolbox to pick from according to the needs in the case at hand.

correct is (d); imminent inability to pay debts is a requirement for, not an obstacle to StaRUG-proceedings

Question 1.7

Which court has jurisdiction to decide on appeals against the decision to open insolvency proceedings?

(a) Amtsgericht.

(b) Landgericht.

(c) Oberlandesgericht.

(d) Bundesgerichtshof.

correct

Question 1.8

Which one of the following written instruments does not ***function as an enforcement order?***

(a) Court judgment.

(b) Written sales contract.

(c) Insolvency schedule.

(d) Submission to execution proceedings.

correct

Question 1.9

Which of the following* is not *a reason for opening insolvency proceedings?

(a) Overindebtedness.

(b) Imminent overindebtedness.

(c) Illiquidity.

(d) Imminent illiquidity.

correct is (b); as for (d), see § 18 InsO

Only the debtor may make use of imminent illiquidity as a reason to apply for insolvency as a restructuring measure and cannot be used by a creditor.

Question 1.10

Which of the following* is not *an autonomous transactions avoidance ground?

(a) Congruent coverage.

(b) Transaction at an undervalue.

(c) Payment on a shareholder loan.

(d) Payment to tax authorities.

correct

in total: 5 marks

QUESTION 2 (direct questions) [10 marks]

Question 2.1 [maximum 3 marks]

Which German norms regulate cross-border insolvency issues in relationships between Germany and the United Kingdom? You need merely name the norms.

The German insolvency law has not been imported from another jurisdiction or been based on a model law. International insolvencylaw has been primarily reformed through the European Union and the European Insolvency Regulation (2015) is the primary applicable norm in this context.
International insolvency law is regulated by §§ 335 *et seq* InsO. Those norms are binding as long as no bi- / multilateral agreements apply. The EU Regulation 2015/848 applies

between EU Member States.
It sets out conflicts of law rules for insolvency proceedings concerning debtors who have a centre of main interests in a member state of the EU and operations or assets in more than one EU member state.
This Regulation should apply to insolvency proceedings which meet the conditions set out in it, irrespective of whether the debtor is a natural person or a legal person, a trader or an individual. [1]

correct (3 marks)

Question 2.2 [maximum 4 marks]

Who is entitled to dispose of collateral after the opening of insolvency proceedings?

Collateral has to be realised eventually unless different arrangements have been made in an insolvency plan.
Not prejudged by the classification as a right to separate satisfaction is another question on whether the insolvency administrator or the secured creditor is responsible for carrying out the realisation. This is dependent on the kind of asset and the kind of security right in question, as well as on who is in direct possession, the debtor (insolvency administrator) or the secured creditor. If it is the insolvency administrator who is responsible for the realisation, the secured creditor is no longer able to enforce the security right.[2] You were expected to elaborate on §§ 165, 166, 173 InsO

1 mark

Question 2.3 [maximum 3 marks]

What are the legal consequences if the insolvency practitioner assumes an executory contract?

Even after the opening of insolvency proceedings, in principle, contracts are also wound up in insolvency proceedings, meaning, the partner to the contract also has to fulfil their obligations under the contract. Only if the debtor has already performed

Reciprocal contracts which are not yet fulfilled by either party are regulated differently. In terms § 103 InsO, after the opening of proceedings, no winding up occurs. Both parties only fulfil if the insolvency administrator chooses to do so, and in this is the case then the creditor's claim must be satisfied in full from the insolvency estate. Should the insolvency administrator rejects fulfilment of the claim, then the contracting partner can register a claim for equalisation to the insolvency schedule which will then be satisfied on a *pro rata* basis.[3]
In terms of S 38 a claim against the debtor, is only satisfied by the insolvency administrator on a *pro rata* basis.

§§ 104 *et seq* InsO contain specialised provisions intended to apply to specific types of contracts. These especially encompass alternative provisions for tenancies and leases

[1] Regulation (Eu) 2015/848, S9
[2] Guidance Text, (Module 6 B) Germany Page 9
[3] Guidance Text, (Module 6 B) Germany, Page 23

over immovable objects[4], contracts of employment[5] and for the expiration of mandates.[6]

In terms of S 108 contracts concluded by the debtor for:

- Lease and tenancy of immovables
- Debtors employment relationships

Continue to exit to the credit of the insolvent estate.

correct (3 marks)

in total: 7 marks

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

Explain the rules in German insolvency law relating to a restructuring plan (Insolvenzplan).

On 1 January 2021 the new German stabilizing and out-of-court restructuring regime came into effect, the "Stabilization and Restructuring Framework of Companies Act", known as StaRUG. This regime introduces a framework of tools which includes a new restructuring plan. This will enable debtors to restructure and cram down minority creditors outside of German insolvency proceedings. This law is a step towards bringing German restructuring tools closer to the English Scheme of Arrangement and Chapter 11 Plan of Re-organization.[7]

The restructuring plan is intended to serve as a key instrument for reducing the debtor's debts at an early stage and outside of formal insolvency proceedings. Preventive reduction of debt by restructuring plan reflects the EU-wide harmonisation of restructuring regimes introduced by the Preventive Restructuring Frameworks Directive (*(EU) 2019/1023*).[8]

The StaRUG has instruments and tools that can be used separately or jointly allowing the debtor to ask for tailor- made court assistance to support the restructuring efforts.
Some of the tools being:

- court proceedings for the voting on a restructuring plan;
- preliminary examination by a court of questions relevant for the confirmation of a restructuring plan;
- a court-ordered moratorium;
- theconfirmation of a restructuring plan by the court; and
- the appointment of a restructuring mediator.

StaRUG is not designed as a purely judicial procedure like insolvency proceedings.It provides a set of instruments which the company can use in the course of restructuring.[9]

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[4] Guidance Text, (Module 6 B) Germany, Page 23, §§ 108(1) and 109

[5] Guidance Text, (Module 6 B) Germany, Page 23, §§ 108(1) (sentence 1) (alternative 2) and 113

[6] Guidance Text, (Module 6 B) Germany, Page 23, §§ 115 *et seq*

[7] www.weil.com/~/media/weil-london-thought-leadership/restructuring/new_german_restructuring_regime_starug_introductory_guide.pdf

[8] https://uk.practicallaw.thomsonreuters.com/2-501-6976?transitionType=Default&contextData=(sc.Default)

[9] www.weil.com/~/media/weil-london-thought-leadership/restructuring/new_german_restructuring_regime_starug_introductory_guide.pdf

The objective is to preserve the company as a legal entity. The restructuring plan comprises the following parts:

1. The debtor must attach:
    a) a declaration, with reasons, explaining how the restructuring plan will eliminate imminent illiquidity that provides for a stabilisation and a positive financial result.
    b) contain a calculation that explains to the affected parties the consequences of the restructuring plan in relation to their prospects for repayment, and
    c) must be a prospect of continuing as a going concern .

2. The restructuring plans must stipulate payment of on a pro rata base to affected creditors in terms of their claim quotas, in respect to the quota provided in the each creditor group. Residual claims will be waived in the restructuring plan.
3. Attach a statement of assets and liabilities must be attached to the restructuring plan and a liquidity planning (projected cash flow);
4. A restructuring plan procedure can only be initiated outside of formal insolvency proceedings and the debtor:
    a) may notify the restructuring court its intention to initiate the restructuring proceeding.
    b) must submit a draft restructuring plan and an explanation regarding the status of negotiations with all the affected stakeholders.
    c) Provide any other relevant information.

    Upon notification, the restructuring matter will be stayed at the restructuring court.
5. A restructuring plan proceeding is not possible, if the debtor is illiquid or over-indebted because substantive tests for Imminent illiquidity are required for restructuring plan proceedings.
6. There may be possibility to increase chances that the affected parties will approve to the plan, should the debtor to discuss the draft plan with the most important affected parties and the restructuring court, albeit not compulsory. The restructuring court can review questions material for the confirmation of the plan when required.
7. The affected parties will collectively vote and approval by a 75% majority is required on the restructuring plan. (the existing, not only participating, affected parties in each group in terms of existing claims/shares/securities).
8. A restructuring plan procedure is only possible by debtor-in-possession management/self-administration. But the restructuring court can appoint a restructuring practitioner to assist debtors and their affected parties in implementing a restructuring plan, and safeguard the legitimate interests of all participants involved. In this proceeding, there is no custodian, and no creditors' committee.
9. The restructuring court can:
    a) Subject to the debtor submitting a comprehensive and coherent restructuring plan stay creditors' actions of claim enforcement and collateral realisation for up to three months,.
    b) can stay claim enforcement and collateral realisation actions for up to eight months if the restructuring plan has been approved by the creditors, but the required court approval is still pending.
10. Terminate of contracts by trading parties with the debtor is not possible in a restructuring plan procedure.

11. A restructuring plan proceeding can be concluded within a few months.

The restructuring court will approve the restructuring plan by a court resolution on the basis that the required majorities are reached and provided the plan essentially complies with the applicable law.

The restructuring court will not approve the restructuring plan where:

- The debtor is not imminently illiquid.
- There is a irreparable grave defect to the restructuring plan.
- The debtor is unable to pay the residual claims.
- Should restructuring plan provides for new financing where the restructuring is not coherent, is based on false facts, or has no real prospects of success.

Once the restructuring plan has been implemented, the debtor will continue to operate as normal.[10]

What you have said about the restructuring under the StaRUG is correct. However, you misunderstood the question. You were expected to elaborate on the rules on an "Insolvenzplan" (§§ 217 et seq. InsO), not a "Restrukturierungsplan".

5 marks

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

Since 10 June 2022, D GmbH (D) is unable to pay its mature debts. However, R, the only director of D, hopes for a turnaround and continues trading. Represented by R, D buys a car from S on 5 July 2022. S transfers the title for the car to D and agrees on the purchase price of EUR 16,000 being due on 5 August 2022. Further, R pays bank B EUR 10,000 on long overdue loan claims. On 1 September 2022, insolvency proceedings are opened for D. As a consequence, S demands EUR 16,000 from R. The insolvency administrator, I, alleges to have a claim against R in the amount of EUR 10,000.
Do S and I have claims against R? Test this based on the norms.

You were not supposed to write an essay on German insolvency law but to solve the case, based on norms. The solution is very simple: S has a claim against R under § 823(2) BGB in connection with § 15a InsO, I has a claim against R under § 15b InsO.

Within insolvency law, it is undoubtedly the case that the area of greatest commercial significance – both in terms of the monetary amounts involved, and in terms of the complexity of issues encountered – concerns the insolvency of companies.[11]

German proceedings by the new Insolvency Act (*Insolvenzordnung, InsO*) that came into effect on 1 January 1999.

Germany provides only one avenue for both liquidation and restructuring in the form of the insolvency proceedings. The opening of insolvency proceedings requires an application from either the debtor or a creditor. This is not clear in the above case.

[10] https://uk.practicallaw.thomsonreuters.com/2-501-6976?transitionType=Default&contextData
[11] https://ouclf.law.ox.ac.uk/cross-border-insolvency-under-english-and-german-law

The facts

1. 10 June 2022 – DGmBH herein after referred to as "D" – unable to pay its mature debts;
2. "R" the only Director of "D" hopes for a turnaround and continues trading;
3. Represented by "R" – D buys a car from "S" on 5 July 2022;
4. "S" transfers the tile to "D" – agrees on a purchase price of Euros 16000 due on 5 August 2022;
5. "R" pays bank "B" Euros 10000 on overdue loan claims;
6. 1 September 2022 insolvency proceedings opened for "D";
7. Thereafter "S" demands Euro 16 000 from "R"
8. The Administrator hereafter referred to as "I" have a claim against "R" – Euro 10 000.

Legal Question

Do S and I have claims against R?

A. There are numerous duties for Directors: "R" Being the Director.

1. In a crisis, Directors must continually monitor the company's financial situation and in a crisis examine all possible means to restructure the company. Once illiquidity or over-indebtedness has occurred, the management has to enter into emergency management (*Notgeschäftfsführung*) in which only few payments are still permitted.[12]

2. If such a director or representative fails to meet this obligation, wilfully or negligently, then they must pay damages and face a period of imprisonment or a fine.[13]

3. The failure to file for insolvency may be punished under the German Criminal Code, the penalty being a fine to imprisonment of up to 3 years for intent and from a fine to imprisonment of up to 1 year for negligence.[14]

4. The director being "R" of the above case, of the company "D" was obligated to request the opening of insolvency proceedings no longer than three weeks after the occurrence of inability to pay debts being 10 June 2022 (cash flow insolvency / illiquidity) or six weeks after the occurrence of balance-sheet insolvency (over indebtedness).[15] Insolvency proceedings should have been instituted three weeks after 10 June 2022.

[12] https://iclg.com/practice-areas/restructuring-and-insolvency-laws-and-regulations/germany#:~:text=Within%20the%20restructuring%20plan%2C%20a,creditors%20must%20amount%20to%2075%25.

[13] Guidance Text, (Module 6 B) Germany, page 30 , BGB, § 823(2) read with InsO, §15a.

[14] https://cms.law/en/int/expert-guides/cms-expert-guide-to-restructuring-and-insolvency-law/germany

[15] Guidance Text, (Module 6 B) Germany, page 30 , InsO, § 15a.

There are two approaches to liquidation. If a company is insolvent, then the insolvency administrator can:

I. dispose of the enterprise or sections thereof in their entirety (asset deal, restructuring by transfer – as the company can be liquidated while the enterprise survives);
II. dispose of individual assets separately.

The approach that is taken by the insolvency administrator is at his discretion but is bound to take the most profitable option. Further he is bound by the decisions of the creditors (closure or continuation of the business) which is made at the report meeting.
The insolvency administrator is entitled to challenge transactions that are not in the interest of all the creditors, which transactions may be subject to certain prerequisites and were undertaken prior to the opening of insolvency proceedings.

In this case "I" needs to prove that when making the payment the debtor being "D" willfully disadvantaged its other creditors, and the "B" being the recipient of the payment was aware of this. You were expected to elaborate on claims against R, not against B. Transactions avoidance law is not a matter in this case.

The law is a limitation of the rules on claw-back based on willful disadvantage in terms of Section 133 of the German Insolvency Code (IC).

Claiming willful disadvantage is now limited in two aspects being :-

I. Section 133 para. 2 IC provides that coverage transactions granting performance or security to a creditor will only be contestable if the contested legal act took place within four years prior to the insolvency filing.
II. applies to congruent coverage transactions, meaning transactions where the debtor pays or performs in accordance with its legal obligations eg, where the creditor received on or after the due date exactly what it was owed.

In order to contest such transactions, "I" must now generally prove that the "B" knew that "D" was already illiquid at the time of the contested payment.

This rule comes with a statutory presumption in favor of the creditor. In the event that the creditor enters into a payment agreement with the debtor or otherwise grants the debtor a payment accommodation, it is presumed that the creditor was not aware of the debtor's illiquidity when the debtor continues to make payments or to perform.

Section 133 para. 2 and 3 IC complicates "I"'s task to prove the "B"'s knowledge of the "D"'s intention to disadvantage its creditors.

This can be true in cases where the creditors do not have detailed knowledge of the financial situation of the company and when the payment arrears are not so serious that an insolvency cannot reasonably be denied.

It should be noted that payments may still be subject to claw-back if the "D" revealed that it is illiquid to "B" when paying.

If so then "I" may be able to contradict the statutory presumption in Section 133 para. 3 sentence 3 IC [16] and in that event then "I" does not have a claim against "R" and in the alternate where "B" it cannot be proven then "I" may with the instructions from Creditors can act in terms of InsO, § 15a. No, § 15a InsO is applicable in relation to creditors, not in relation to the estate/IP. The correct norm is § 15b InsO.

B. The purchase of the car -

As far as tangible objects are concerned, German law provides two types of security rights; namely the pledge[17] and transfer of title by way of security / security ownership (*Sicherungseigentum*).[18] That's beside the point. Nothing in the facts hints to a right to separation or separate satisfaction. Besides, S demands payment, not surrender of the car.

The transfer of title by way of security is a non-accessory security right.
The secured creditor in a fiduciary capacity holds title to the ownership of the asset.
The security right and the secured claim is the contractual security agreement because S transfers title and agrees on a purchase price.

In as much as no contract is provided, in terms of the applicable rules for transfer of ownership a contract is required for same to be effected.

Transfer of title by way of security means the transfer of ownership for security purposes.

Ownership for the purposes of security is not restricted, meaning full ownership as the most comprehensive right is transferred.

Transfer of title by way of security follows the legal rules provided for the transfer of ownership.

Aside from the power of disposal,[19] the following is required:-

- a contractual agreement between the previous owner and the new owner on the transfer of ownership.
- the factual transfer of possession of the object concerned from the previous owner to the new owner.

Ensuring that it is adhered to the "Principle of Publicity" (*Publizitätsprinzip*) under German property law.[20]

Due to the application of the "separation principle" (*Trennungsprinzip*) under German law, the contractual agreement on the change of ownership as a matter of property law must be firmly distinguished from the underlying security agreement as a matter of the law of obligations.

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[16] https://restructuring.bakermckenzie.com/2017/07/05/germany-claw-back-reforms-improve-the-position-of-suppliers-and-service-providers-in-german-insolvency-proceedings/

[17] Guidance text, (Module 6 B) Germany, page 6 , BGB (German Civil Code), §§ 1204 *et seq*.

[18] Guidance text, (Module 6 B) Germany, page 6 , §§ 929 and 930.

[19] Guidance text, (Module 6 B) Germany, page 6 , § 185

[20] Guidance text, (Module 6 B) Germany, page 6, § 929

Section 930 BGB stipulates that the fact that the legal transfer of ownership is subject to the transfer of possession does not necessarily require the new owner to exercise the possession as actual physical control (*unmittelbarer Besitz*) over the object concerned.

A so-called constructive possession (*Besitzkonstitut*) suffices.

Should the previous owner being "S" continued exercising possession in terms of actual physical control, then it is sufficient for the legally required transfer of possession that the new owner has the intention to possess the object concerned for himself and that the previous owner, despite having actual physical control, respects this intention and therefore exercises his actual physical control with the intention of possessing for the new owner rather than the intention of possessing for himself. Therefore, the former owner keeps direct possession "for someone else" (*unmittelbarer Fremdbesitz*) and is still able to use the object while the new owner acquires indirect possession "for himself" (*mittelbarer Eigenbesitz*). The change of intention between these two types of possession is expressed by agreement to the underlying security agreement by the parties involved.

In terms of § 47 a person is entitled to claim separation of an object from the insolvent estate under a right in *rem* or in *personam* is not an insolvency creditor. This entitlement is governed by the legal provisions applicable outside the insolvency proceedings.

When there is a simple retention of title there is different result. The retainer of the title has a right to separation of the retained goods from the insolvency estate if the insolvency administrator rejects satisfaction of the contract and the price is therefore not paid.[21]

There is a differentiation with regards to the right to separate satisfaction and the right to separation. The latter does not consist in the satisfaction of a claim in the law of obligations. Instead, an asset or object that does not belong to the insolvency estate or the debtor's estate is removed from this, which leads to the creditor's claim being satisfied in its entirety, as indicated in § 47 InsO.

Retention of title is the most profitable real security for the creditor. With respect to the right to recover, the creditor is not an insolvency creditor, § 47 InsO, it follows that the realisation of the asset is incumbent upon the creditor although the asset itself is in the possession of the debtor. This has the advantage that the proceeds of realisation are available for the full satisfaction of the claim.

However, note that all these rules only apply to security rights which are validly created undersubstantive law before the opening of insolvency proceedings (after this point in time, § 91InsO impede security rights coming into existence, otherwise if they are created by the insolvency administrator)[22], further which are not subject to transactions avoidance law. In terms of § 129 transactions made prior to the opening of insolvency proceedings and those transactions affect the creditors then in that event the "I" could contest same. In terms of §§130, 131 InsO, security rights can be challenged by the insolvency administrator if they have been created within the relevant suspect period of three months prior to the application for insolvency proceedings. As opposed to this, the mere realization of a security right is not voidable under transactions avoidance law, since it does not disadvantage the general body of creditors (they have been disadvantaged, albeit outside the suspect period and therefore not challengeable, by the

[21] Guidance text, (Module 6 B) Germany, page 10, § 47

[22] Guidance text, (Module 6 B) Germany, page 10

creation of the security right and cannot be disadvantaged again by its realization). The purchase of the car did not compromise the position of insolvency creditors because no payment was made.

Alternatively in terms of § 21(2) (sentence 1) (No 3) fraudulent behavior towards a contracting party leads to a liability towards that party. [23] The Director "R" in as much as he was aware that the company was unable to pay its mature debts, he continued trading with a hope of a turnaround, but in doing so he contracted with "S" of the company to secure a credit, this could lead to personal liability.

In conclusion and under these circumstances "I" will not have a claim against "R".
"S" is not an insolvency creditor due to the transaction on 5 July 2022 and the Insolvency proceedings opened on 1 September 2022 which happened during the suspect period (3 Months) and because the vehicle will fall outside insolvency proceedings he will then benefit the full value of the vehicle which falls outside the insolvency proceedings in term of § 47.

0 marks

in all: 17 marks

*** End of Assessment ***

[23] Guidance text, (Module 6 B) Germany, page 9