



SUMMATIVE (FORMAL) ASSESSMENT: MODULE 5E

JERSEY

1 = 9/10
2 = 7/10
3 = 15/15
4 = 11/15
42/50

This is the summative (formal) assessment for Module 5E ***of this course and must be submitted by all candidates who*** selected this module as one of their elective modules.

The mark awarded for this assessment will determine your final mark for Module 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: 202223-336.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 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 10 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 can hear an appeal in respect of a Jersey legal matter?

- (i) Royal Court.**
- (ii) Court of Appeal.**
- (iii) Petty Debts Court.**
- (iv) Privy Council.**

Choose the correct answer:

- (a) Option (ii).**
- (b) Options (ii) and (iv). - CORRECT (B)**
- (c) Option (i).**
- (d) All of the above are correct.**

Question 1.2

Debtors that can become subject to Désastre in Jersey under the Bankruptcy (Désastre) (Jersey) Law 1990, include the following:

- (a) A dissolved company that was registered in Jersey under the Companies (Jersey) Law 1991.**
- (b) An individual who was ordinarily resident in Jersey until 18 months ago, but has had no connection to Jersey since that time.**

(c) An incorporated Limited Partnership.

(d) An individual who has never been ordinarily resident in Jersey or carried on business in Jersey, but owns movable property in Jersey.

Choose the correct answer:

(a) All of the above.

(b) Options (i), (iii) and (iv). - INCORRECT (D)

(c) Option (ii) and (iv).

(d) Options (i) and (iii).

Question 1.3

Which parties can make an application for Désastre under the Bankruptcy (Désastre) (Jersey) Law 1990?

(i) The Viscount.

(ii) The Jersey Financial Services Commission.

(iii) A creditor with a claim of GBP 2,000.

(iv) The debtor.

Choose the correct answer:

(a) Options (ii), (iii) and (iv).

(b) All of the above.

(c) Options (ii) and (iv). - CORRECT (C)

(d) Option (i).

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.**

Choose the correct answer:

- (a) **Options (i), (ii), (iii), (iv), (vi), (vii) and (viii).** - CORRECT (A)
- (b) Options (i), (ii), (iii) and (iv).
- (c) Options (i), (ii), (iii), (vii) and (viii).
- (d) All of the above.

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 through court.**
- (iii) **Creditors' winding-up not through court.**
- (iv) **Just and equitable winding-up.**

Choose the correct answer:

- (a) Option (i).
- (b) Options (i) and (ii).
- (c) **Options (i), (iii) and (iv).** - CORRECT (C)
- (d) All of the above.

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. - CORRECT (C)**
- (d) Jersey is not part of Britain, or the UK or the EU.**

Question 1.7

Jersey is an attractive destination for international finance, due in part to its:

- (i) Tax neutrality.**
- (ii) Political independence.**
- (iii) Economic stability.**
- (iv) Legal and regulatory infrastructure.**

Choose the correct answer:

- (a) All of the above. - CORRECT (A)**
- (b) Options (i), (iii) and (iv).**
- (c) Options (i), (ii) and (iii).**
- (d) Options (i), (ii) and (iii).**

Question 1.8

Which type of mortgage can be created by agreement between two or more parties as to the granting and taking of security expressed in the form of a contract passed before the Jersey court?

- (a) A conventional hypothec. - CORRECT (A)**
- (b) A judicial hypothec.**

(c) A pledge.

(d) A legal hypothec.

Question 1.9

Which statutory processes require a liquidator to be on the approved register of liquidators?

(i) Summary winding-up.

(ii) Creditors' winding-up through court.

(iii) Just and equitable winding-up.

(iv) Creditors' winding-up not through court.

Choose the correct answer:

(a) Options (i), (ii) and (iii).

(b) Options (ii) and (iii). - CORRECT (B)

(c) Options (ii) and (iv).

(d) All of the above.

Question 1.10

Which other responsibilities are overseen by the office of the Viscount, besides insolvency functions?

(a) Coroner. - CORRECT (A)

(b) Data Protection.

(c) Farming and fishing.

(d) Prison services.

9/10

QUESTION 2 (direct questions) [10 marks in total]

Question 2.1 [maximum 3 marks]

Describe the powers that are available to a Viscount in respect of a *Désastre* and to a liquidator in respect of a winding-up.

*In 2022 changes to Jersey's insolvency law resulted, in addition to the *Désastre* process, a creditor-led process with insolvency practitioners being appointed rather than the Viscount.*

*The powers of the Viscount in a *Désastre* process and a liquidator in respect of a winding up include those set out below and are used with the overriding duty to act in the best interests of the creditors:*

- *The power to realise the assets of the debtor;*
- *The power to bring or defend actions in respect of the debtors property;*
- *The power to adjudicate, admit and reject any claims;*
- *The power to compromise with any creditor;*
- *The power to disclaim onerous leases; and*
- *The power to pursue recoveries resulting from antecedent transactions.*

Distinguish between SWU, CWU and J&E

1/3

Question 2.2 [maximum 2 marks]

Describe briefly 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:

Jersey is an offshore jurisdiction with a relatively small population. In comparison to the UK it has a much higher number of companies per head of population, approximately 1 company for every 3 people.

Jersey is well known for attracting financial services-based companies such as funds and forming part of a wider group structure. Having a Jersey entity can often have significant financial benefits given the 'tax neutrality' status of Jersey. These companies often have a fixed life or are solvently wound up.

The number of traditional trading companies is much lower than you would expect in jurisdictions such as the UK or US. It is generally the trading type businesses that benefit from restructuring and turnaround services - which explains why the Jersey insolvency provisions do not directly cater for this type of process.

2/2

Question 2.3 [maximum 2 marks]

Describe the ways in which a creditor might take enforcement action in Jersey.

Creditors of a company may take enforcement action by making an application to place a company en Désastre or alternatively to make an application to the court for a creditors' winding-up.

In both processes the creditor must have a claim of at least JEP3,000 and the application must be made to the Jersey Court -it is at the court's discretion whether to grant the order.

The Viscount will run the Désastre process, and an insolvency practitioner will be appointed liquidator in a creditors' winding-up.

If the debtor is a person rather than a company - the Désastre process remains available to the creditor in addition to the Degrevement and Realisation processes (dependent on the assets available).

Reference options available for secured creditors

1/2

Question 2.4 [maximum 3 marks]

What claims potentially rank as priority claims in a Désastre?

Secured creditors rank in priority to all other creditors in a Désastre.

Ranking below the secured creditors are the priority creditors which consist of the following:

- *The depositors [in a bank insolvency]*
- *Employees for arrears of wages for the preceding 6 months*
- *Holiday and bonus pay [subject to certain limits]*
- *Payments to the Health Insurance Fund*
- *Income tax*
- *Goods and services tax*
- *Outstanding rent*
- *Parochial rates outstanding within the preceding 2 years.*

3/3

7/10

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

Question 3.1 [maximum 7 marks]

Write a short essay to describe the personal insolvency options available in Jersey, being *Désastre*, *Degrevement* and *Realisation*, *Debt Remission Order* and *Remise de Biens*.

Given the population of Jersey and its focus on employments within the financial services sector, there are relatively few personal insolvencies, and the focus tends to be on corporate insolvencies/wind downs.

*Jersey does have four personal insolvency options available; being *Désastre*, *Degrevement* and *Realisation*, *Debt Remission Order*, and *Remise de Biens*.*

*The *Désastre* is available to both corporates and individuals. For an individual to be in *Désastre* one of the following must be applicable:*

- *Ordinarily resident in Jersey at any time within the preceding 12 months of the application; or*
- *Have carried on business in Jersey within the preceding 3 years of the application; or*
- *Have immovable property in Jersey at the time of the application.*

The application can be made by a creditor owed at least JEP 3,000 or by the debtor themselves.

*The judge in the Jersey Court will decide whether or not to place the debtor into *Désastre*. On making of the *Désastre* order the worldwide property of the debtor will vest in the Viscount.*

The viscount has many powers which it can use to realise the property of the debtor and act in the best interests of the creditors. These powers include, but are not limited to, the power to bring or defend actions, the power to disclaim onerous leases, the power to realise assets, the power to compromise claims, the power to adjudicate claims and the power to distribute to creditors.

*The *Désastre* process for an individual would typically last 4 years but can be shortened or lengthened.*

*The *Degrevement* and *Realisation* processes are old processes derived from the *Loi (1904) (Amendment number 2) sur la Propriete Fonciere*.*

*The *Degrevement* process relates to immovable property. If a judgment creditor seeks to enforce, it can use this process which sees all charges removed from the property and the property can be sold unencumbered.*

The sale process is run by the Attournes, and the process is like a reverse priority offering system. The property will be offered in the first instance to the unsecured creditors, if they elect to take the property, they must pay off each charge holder in full.

If the unsecured creditors do not take the opportunity the property is offered first to the lowest ranking secured creditor and rising until a creditor elects to purchase. Any secured creditor must pay off prior ranking creditors in full. The key question is understanding where the value of the property breaks.

If the value of the property is in excess of the secure debt, the creditor electing to purchase the property benefits from the excess value, not the debtor.

The Realisation process is in relation to movable assets. In this process Attournes run an auction process to realise the assets.

If in either the Degrevement or Realisation process creditors have not been fully repaid, the claim is not discharged, although secured creditors will have lost the benefit of any security.

A Debt Remission Order can only be used in restricted circumstances, as set out below, and there are currently no debt remission orders in place in Jersey.

To successful obtain a debt remission order from the Citizens Advice Bureau an applicant must have:

- *Debts of less than JEP20,000*
- *Disposable monthly income of less than JEP 100*
- *Assets of less than JEP 5,000*
- *Incurred the debt acting in good faith.*

The debt remission order is in place for a period of 12 months, where the debtor is afforded a moratorium. After the 12-month period the debts are written off.

A Remise de Biens process is another old Jersey process deriving from Loi (1839) sur les Remises de Biens.

The debtor in this process needs to be in financial difficulties but not necessarily insolvent.

The debtor must also hold some immovable property which it then gives up to the Jersey Court. The value of this immovable property must be in excess of the debts secured against it.

The court then realises the property and pays the creditors. To the extent the value realised is in excess of the value of the debtor's liabilities, the excess value is returned to the debtor. This is a significant benefit in comparison to the Degrevement process.

7/7

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:

- (i) The relevant Jersey law that applies.**
- (ii) Which areas are covered under the relevant Jersey law.**
- (iii) Advertising for claims and notice periods.**
- (iv) Which debts are provable.**
- (v) Interest on debts.**
- (vi) Proving of debts and the cost of proving.**
- (vii) Examination of proofs of debts.**
- (viii) Adjudication and the process of admitting or rejecting claims.**

Under Article 166 of the Companies Law the provisions set out in Part 7 of the Bankruptcy Law, as applicable in Désastre proceedings apply to the creditors claims process in respect of a creditors' winding up.

Part 7 of the Bankruptcy Law is divided into three sections which cover the following:

- What debts are provable;*
- Which creditors can prove; and*
- The treatment of the proofs of debts.*

There is no statute that determines how much notice is required when advertising for claims in Jersey. It is generally acceptable to allow for 21 days in a summary winding up and 60 days in a creditors' winding up.

The notice for claims in Jersey has to be advertised in Jersey but there is no requirement for it to be published outside of the jurisdiction. However, best practice dictates that a liquidator would look to the make up and location of the debtor's creditor base and look to advertise outside of the jurisdiction if appropriate.

Under paragraph 29(1) Part 7 of the Bankruptcy Law 'all debts and liabilities, present or future, or contingent, to which the debtor is subject at the time of the declaration, or to which the debtor becomes subject before the payment of the final dividend by

reason of any obligation incurred before the time of the declaration, shall be provable...' in the creditors' winding-up.

With the exception of secured debts, which have fixed rates of interest calculated up to the date of the claim which is payable out of realisation from the secured asset, interest is payable on unsecured debts up to the date of winding-up and forms part of the provable claim.

The creditor must prove its claim in the manner set out by the court or the liquidator. The cost of proving the claim is borne by the creditor themselves and not by the estate.

All creditors have the ability and right to inspect the proofs of debt submitted in the winding up. The liquidator must fix a time and facilities the inspection of the proofs.

The liquidator when adjudicating claims can do the following:

- *Admit the claim in full; or*
- *Partially admit the claims and partially reject the claim; or*
- *Reject the claim in full.*

As part of the adjudication process the liquidator can request further evidence from the creditor prior to making a final determination.

If the liquidator rejects the claim either in part or in full they must provide notice of rejection to the creditor, who will then have a fixed period of time to appeal the decision to the court.

8/8

15/15

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 as well as 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. XYZs secured lender, Big Bank PLC, has become increasingly concerned at the situation. Big Bank has the benefit of fixed and floating charges over XYZs 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.

(a) 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 this regard. (3 marks)

Big Bank Plc has fixed and floating charges over the assets of XYZ Limited. XYZ Limited has a store in Jersey. It is assumed that assets in Jersey consist of stock and any value in a lease. The narrative does not confirm whether any of the stores are owned by the XYZ Limited but does refer to rental payments; however, for the analysis below I have assumed the Jersey store is owned by XYZ and not a leasehold property.

It is assumed that Big Bank plc has a valid conventional hypothec over the Jersey store which has been passed before the Jersey Court and registered in Jersey. Big Bank plc should obtain legal advice to ensure the validity of its security and also to check for any prior ranking security registered against the property.

Subject to having valid security, Big Bank plc can enforce once an event of default has taken place and notice has been served of the borrower. Big Bank plc can enforce outside of an insolvency process and is able to appropriate or sell the property, on notice to the borrower.

Secured creditors rank in priority to all other creditors in both a Désastre and Jersey liquidation.

If English insolvency commenced and an application is made for recognition in Jersey, it is likely that the English proceedings would be recognised in Jersey and the English officeholder capable of dealing with the Jersey property. Big Bank Plc's rights as secured creditor would still be respected.

There is no equivalent to a floating charge in Jersey.

2/3

The directors of XYZ identify a party that is interested in acquiring the business of XYZ. Following a brief period of negotiation conducted with the oversight of a proposed administrator, and with approval of Big Bank, the directors of XYZ began the process to place XYZ into administration in England, in order to allow a "pre-packaged" sale of the business to occur.

(b) The Jersey store is owned by a separate Jersey company, ABC Limited, but ABC's centre of main interest is considered to be in England. Is it possible to place ABC into 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)? (3 marks)

Jersey is not a member of the European Union and therefore Regulation (EU) 2015/848 of the European Parliament and the Council of 20 May 2015 on Insolvency Proceedings (Recast) does not apply.

The EC Regulation can influence the Jersey Courts decision.

In this case ABC Limited has its centre of main interest ('COMI') in England therefore ABC Limited will fulfil the definition of a 'company' under Schedule B1 of the Insolvency Act 1986 and the English Courts will have jurisdiction to place ABC Limited into an English Administration process.

If the COMI was in doubt, an application could be made to the Jersey Courts to issue a letter of request to the English Courts under section 426 of the Insolvency Act requesting that ABC Limited be placed into an English Administration process.

Would need to demonstrate that English administration would achieve the best possible outcome for the debtor and creditors than local processes.

2/3

- (c) If it is not possible to place ABC into English administration, then are there alternative Jersey insolvency processes that will allow a pre-packaged sale to occur? Are there any potential problems with achieving a sale as a going concern? (3 marks)***

Assuming an English administration was not available the directors could make an application to the Jersey Courts for a Jersey insolvency process.

The insolvency system in Jersey has not been developed with a focus on rescue and turnaround and therefore there is no equivalent to an English administration in Jersey.

Both the Désastre and the creditors' winding-up proceedings are designed to wind-up a company with the powers associated with achieving this result conferred upon the Viscount or the liquidator. To the extent that the business is to be traded the officeholder must expressly seek that power from the Jersey Court.

A just and equitable winding-up process has been used in Jersey to allow a quasi-prepacked sale of assets.

In this situation the Jersey Court sets out the powers of the liquidator in its order and can therefore include the power to enact a prepackages sale of assets. The jersey Court has shown that it is flexible but will need to be satisfied that the proposed sale is in the best interests of the creditors - specifically that those creditors in Jersey are being treated fairly.

The Liquidators ability to continue to trade the company is restricted to winding up its affairs, which may limit the ability to sell as a going concern. However the power can be specifically granted by the court.

2/3

(d) 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? (3 marks)

If the Jersey store were simply a branch rather than a separate company, an English administration appointment could be made over XYZ Limited without the need for any appointment over a foreign company with an English COMI.

The English administrator would need to apply to the Jersey Court for recognition to allow it to deal with the Jersey branch and the assets held in Jersey.

Under Article 49 of the Bankruptcy Law, the Jersey Court will offer assistance to relevant jurisdictions (which includes England) with reference to the Model Laws and private international law.

It would be expected that the Jersey Court would recognise the English administration - the Jersey Court would need to be satisfied that the assistance would not be inconsistent with Jersey Law or public policy.

The English administration should impact the worldwide assets including those located in the Jersey store - recognition in Jersey under A49 may be required.

2/3

(e) 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 that is the same as that in England)? Would the UNCITRAL Model Law on Cross-Border Insolvency 1997 (the Model Law) or the Recast EIR assist with recognition in Jersey? (3 marks)

Jersey is not a member of the European Union and therefore the Recast EIR are not applicable.

Jersey has not signed up to the UNCITRAL Model Law on cross-border insolvency, so this is not applicable either.

The Jersey Courts do have a history of flexibility and offering assistance to foreign officeholders.

Poland is not a 'relevant' jurisdiction under Article 49 of the Bankruptcy Law, therefore the assistance provided would be provided on the basis of precedent and the principle of comity.

A Polish administrator could seek recognition from the Jersey Court by means of a letter of request from the Polish Court.

If the Jersey judge is satisfied that there is sufficient connection with Jersey they will generally grant the request.

3/3

11/15

*** End of Assessment ***