



SUMMATIVE (FORMAL) ASSESSMENT: MODULE 5E

JERSEY

1 = 9/10
2 = 7.5/10
3 = 14/15
4 = 11/15
41.5/50

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).

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

(d) Options (i) and (iii). - CORRECT (D)

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) Dégrèvement 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).

(c) Options (ii) and (iv). - INCORRECT (B)

(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.

The Viscount has extensive powers including to bring, institute or defend actions relating to the debtor's property which vests in him, and to compromise debts, claims and liabilities relating to the debtor's estate. The Viscount can also make arrangements with creditors and carry on the debtor's business.

Dispose of property; borrow money; carry on business for beneficial wind down; pay creditors; disclaim assets; pursue recovery action

The liquidator enjoys the same powers as directors of the debtor company once they are appointed (per Article 149 Companies Law). The liquidator's powers depend on the type of winding up. In a creditor's winding up, the liquidator enjoys wide ranging powers including to disclaim onerous property (Article 171 Companies Law) and to pursue the setting aside of certain antecedent transactions (Articles 176 to 179 Companies Law). In a just and equitable winding up, the liquidator's powers will be defined in the Court order for their appointment.

Liquidator in SWU has powers only as required to realise assets, discharge liabilities and distribute assets

1.5/3

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:

A large proportion of companies registered in Jersey are special purpose vehicles used for finance-related purposes. They are not traditional trading companies and therefore there is little demand or requirement for processes that provide for the rescue and continued trading of an insolvent company. The amount of managed solvent liquidation is high so the legislation caters towards that reality.

2/2

Question 2.3 [maximum 2 marks]

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

*A creditor may enforce their debt by way of the *Désastre* process or a creditor's winding up. In addition a secured creditor may wish to enforce its debt outside of an insolvency process.*

Brief description of processes required

1/2

Question 2.4 [maximum 3 marks]

What claims potentially rank as priority claims in a *Désastre*?

In a Désastre, payment will be made to priority creditors in the following order:

- 1. Where the debtor is a bank, to depositors;*
- 2. Unpaid employees who are owed salary for the 6 months preceding the declaration plus holiday pay and bonuses; sums payable to the Health Insurance Fund under the Health Insurance (Jersey) Law 1967 and to the Social Security Fund under the Social Security (Jersey) Law 1974; sums due under the Income Tax (Jersey) Law 1961 and due under the Goods and Services Tax (Jersey) Law 2007; amounts due to a landlord for payment of rent; and parochial rates due to any parish in Jersey for a period not exceeding two years (such claims ranking *pari passu*); and*
- 3. in payment of all other debts proved in the désastre.*

(per Article 32 Désastre Law).

3/3

7.5/10

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*, *Dégrevement* and *Realisation*, *Debt Remission Order* and *Remise de Biens*.

There are various options available in Jersey in respect of personal insolvency of an individual. An individual can apply for a declaration that they are 'en Désastre', or the individual's creditors may do so. In order for the individual to be eligible for the process, they must have been ordinarily resident in Jersey at any time within the period of 12 months immediately preceding the date of the application or have carried on business in Jersey at any time within the period of three years preceding the date of the application, or have immovable property in Jersey at the time of the application. If an order is made by the Jersey Court, the usual time period for an individual to be 'en Désastre' is four years, and it is possible to make an application to shorten or lengthen the term. Once the declaration is made, the debtor's property is vested in the Viscount who obtains extensive powers to deal with the debtor's assets for the benefit of the winding up of their estate.

Creditor owed £3,000 can apply

Dégrévement and Realisation are prescribed by the Loi (1904) (Amendement No 2) sur la Propriété Foncière and are available where an individual owns immovable property in Jersey. A creditor can enforce their debt through the process of Dégrévement. The creditor can make an application and if granted, the debtor's property will become "discumbered", whereby any charges and debts attached to the property are removed and a new owner acquires a clear unencumbered title to the property. Réalisation applies to movable assets. Where a debtor's property is adjudged to be renounced, the moveable assets of the debtor are realised, typically at auction. In either process, the debtor may not be discharged from all of their debts if their property is not of sufficient value to settle all debts.

A Debt Remission Order is a process that has been introduced by the Debtor Remission (Individuals) (Jersey) Law 2016. A DRO is available where the applicant has assets worth less than JEP 5,000; less than JEP 100 of disposable income on a monthly basis; debts of less than JEP 20,000; and has acted in good faith whilst incurring their debts. A DRO creates a moratorium on creditor claims for 12 months, after which time the debts covered by the DRO will be written off.

Remise de Biens is a procedure available under the Loi (1839) sur les Remises de Biens (the Remise Law). Where a debtor owns immovable property, the debtor can apply to surrender his property to the Jersey Court which will protect him from creditors and the Jersey Court will take responsibility to realise the property and settle the debts. Any surplus realised from the sale of the property is then paid to the debtor.

6/7

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.

The process for creditors' claims in a creditors' winding up is prescribed by Article 166 of the Companies Law. That Article provides that the same rules with regard to the respective rights of secured and unsecured creditors, to debts provable, to the time and manner of proving debts, to the admission and rejection of proofs of debts, to the order of payment of debts and to setting off debts apply in a creditors' winding up as are in force for the time being with respect to persons against whom a declaration has been made under the Désastre Law (with the substitution of references to the liquidator for references to the Viscount.)

There is no statutory time period prescribed by the legislation to publish notices for potential claims by creditors in a winding-up. 60 days' notice is considered adequate for a creditors' winding-up. There is no statutory provision for publishing a notice for potential claims outside of Jersey, although the liquidator may consider it prudent to do so depending on the circumstances of the winding up.

Part 7 of the Bankruptcy Law sets out the process for proving creditors' claims. Article 29(1) provides that "all certain debts and liabilities, present or future, certain or contingent, to which the debtor is subject at the time of the declaration, or to which he becomes subject before payment of the final dividend by reason of any obligation incurred before the time of the declaration shall be debts provable in the "désastre"". Article 29(2) further states that "where a debt bears interest, interest to the date of the declaration is provable as part of the debt, except in the case of a debt secured by a hypothec, security interest, or pledge, when interest is provable to the date of payment of the claim and payable out of the proceeds of sale of the secured property to the extent that it is required and able to meet it and is secured thereby."

A creditor must prove their debt at the time and in the manner as may be prescribed by the Jersey Court and must bear the cost of proving their debt (Article 30 Bankruptcy Law).

The liquidator will examine the proofs of debts. The liquidator has the power to admit or reject proofs either wholly or in part, and is required to examine every proof and the grounds of the debt and admit it or reject it in whole or in part, or require further evidence in support of it. The liquidator may reject in whole or in part that part of a proof appertaining to interest on the debt if he considers such interest to be extortionate. If the liquidator rejects a proof, in whole or in part, he shall serve notice of rejection in the prescribed manner and if a creditor is dissatisfied with the decision of the liquidator he shall (within 21 days of the date of the liquidator's notice) notify the liquidator that he wishes an application to be made to the court for the reversal or

variation of the decision, and the liquidator shall apply to the court for a date to be fixed for the hearing of such applications. (Article 31 Bankruptcy Law).

8/8

14/15

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. 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 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)***

If Bank Bank has security over XYZ's property in Jersey, it may be in the form of a hypothec. This could be by way of a conventional hypothec if XYZ entered into an agreement with Big Bank granting it security over its Jersey property. Big Bank could also apply for a judicial hypothec from the Jersey Court whereby its debt can be registered and it becomes a mortgage over XYZ's immovable property in Jersey.

There is no equivalent to a floating charge in Jersey. If Big Bank has security over Jersey immovable property (for example 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. Secured creditors will have priority over all other creditors in Désastre and Liquidation scenarios, and the fact that a debtors becomes subject to an insolvency proceeding does not affect the enforcement powers of the secured party

1/3

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)

It isn’t possible to place ABC into English Administration pursuant to the Recast EIR as Jersey is not a member of the EU so the Recast EIR does not apply. However, the Jersey Court will provide assistance to overseas insolvency officeholders in appropriate circumstances, under article 49 of the Bankruptcy Law and on the basis of the common law principles and on the grounds of comity. The English administrator may apply for recognition and for orders to assist in the English administration which is achieved by the English Court sending a Letter of Request. As the UK is a relevant country the Jersey Court will provide the English Court with assistance.

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)

Yes, a just and equitable winding up of ABC could be applied for which can achieve a quasi-pre-packaged sale of assets. It may not be possible to sell the company as a going concern if its assets need to be realised to make payment of Big Bank’s debt. In addition, on commencement of the liquidation the liquidator’s ability to continue trading is limited to winding up its affairs.

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 store was a branch of XYZ it would be a Jersey based asset of an English company, and those administering the English insolvency proceeding would need to apply for assistance from the Jersey Court to deal with the asset. The English insolvency practitioner could apply for recognition under article 49 of the Bankruptcy Law. Article 49 provides that upon receipt of a request from a Court of a relevant country for assistance, the Jersey Court can exercise, in relation to the matters to which the request relates, any jurisdiction which it or the requesting court could exercise in relation to these matters if they otherwise fell within its jurisdiction.

3/3

(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)

Neither the UNCITRAL Model Law nor Recast EIR will assist with recognition of the Polish administrator in Jersey since Jersey is not a signatory to the Model Law and not a member of the EU. However, the Jersey Court will provide assistance to overseas insolvency officeholders by applying Article 49 Bankruptcy Law, following common law principles and applying its inherent jurisdiction to provide assistance under the principle of comity.

3/3

11/15

*** End of Assessment ***