



SUMMATIVE (FORMAL) ASSESSMENT: MODULE 5E

JERSEY

1 = 9/10
2 = 6.5/10
3 = 14/15
4 = 11/15
40.5/50

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) **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).

(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.

*A Viscount has wide powers available to him in respect of a *Désastre* in that when the *Désastre* process is commenced, the debtor's worldwide assets are automatically declared en *Désastre* and vested in the Viscount. The Viscount then has powers to realise the debtor's assets and conduct investigations as to how the insolvency came about and whether any offences were committed. The Viscount will also file any necessary forms to dissolve the debtor if the debtor is a company. The Viscount also has the power to bring or defend any action in respect of the property that is vested in him, to compromise debts, claims and liabilities or to make compromise or other arrangements with creditors, to dispose of property, to carry on business to the extent it is necessary and beneficial to the winding up of the debtor, to borrow money, to pay creditors and to disclaim onerous property and contract leases.*

Liquidators, in respect of a winding up, have a similar range of wide powers to realise and distribute assets to creditors and to investigate possible offences and/or the assets of the company, including all the powers of the company that are required for its winding up, the power to pay creditors and to disclaim onerous property and contract leases, and the power to pursue recovery in respect of antecedent transactions.

Distinguish between the powers of a liquidator in J&E, CWU and SWU

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:

Jersey does not have a statutory or customary corporate rescue and turnaround procedure equivalent to an English administration or US Chapter 11 because practically speaking, the need for a corporate rescue is low due to the nature of the companies that are established in Jersey. Companies in Jersey are normally used for financial restructuring and other finance-related purposes as opposed to used for "trading businesses" and so the need for corporate rescue is low compared to in England or in the US.

Financial structures (opposed to restructuring) e.g. SPVs, holding companies and other group companies

1/2

Question 2.3 [maximum 2 marks]

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

A creditor has a number of ways in which he might take enforcement action, including:

- 1. To apply for a debtor's Désastre if he has a valid claim of at least JEP3,000*
- 2. A creditor's winding up application if he has a valid claim of at least JEP3,000*
- 3. Enforcement against a security interest (if the creditor is a secured creditor)*

Brief description of processes required

1/2

Question 2.4 [maximum 3 marks]

What claims potentially rank as priority claims in a Désastre?

The following claims potentially rank as priority claims in a Désastre:

- 1. Claims from depositors where the debtor is a bank*
- 2. Claims from employees regarding arrears of salary during the six months immediately preceding the desastre, and holiday pay and bonuses*
- 3. Amounts payable to the Health Insurance Fund and to the Social Security Fund*
- 4. Certain amounts due under the Income Tax (Jersey) Law 1974 and due under the Goods and Services Tax (Jersey) Law 2007*
- 5. Amounts due to a landlord for payment of rent to the extent it qualifies for preference under customary law;*
- 6. Parochial rates due to any parish in Jersey (for a period not exceeding two years).*

3/3

6.5/10

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, Degrevement and Realisation, Debt Remission Order and Remise de Biens.

There are a number of personal insolvency options available in Jersey. Each of these are discussed in turn below.

Desastre

Desastre is a procedure for personal insolvency (or of a company) and is a process that can be commenced by either a creditor or the debtor himself. It is up to the Court's

discretion to make a Desastre order and it is normal for a personal Desastre to last for four years (but the Court may shorten or increase the term). Upon the making of a Desastre order, the Viscount is vested with the property of the debtor (worldwide) and will realise the assets of the debtor for the benefit of creditors. The Viscount has wide powers to realise the assets.

Creditor owed at least £3,000 can apply

Degrevement and Realisation

Degrevement and Realisation is available where a judgment creditor seeks to enforce against a person's immovable property. When the judgment creditor uses Degrevement, the property will become "discumbered" which means that any charges and debts on the property will be removed so that a new owner can have a clear unencumbered title. In the Degrevement process, Attournes are appointed who will hold a hearing to give unsecured creditors an opportunity to take the property. Realisation is a process sitting alongside Degrevement and which applies to movable assets. When a debtor's property is renounced, the debtor's movable assets will typically be realised at an auction conducted by the Attournes.

Debt Remission Order

A Debt Remission Order is a local small debt proceeding that is available in restricted circumstances and is run by the Viscount and administered by the Citizens Advice Bureau. It is available in circumstances including where the applicant has: (a) assets worth less than JEP 5,000; (b) less than JEP 100 of disposable income on a monthly basis; (c) debts of less than JEP 20,000; and (d) acted in good faith when incurring the debts. Once the order is granted, it creates a moratorium for 12 months, after which all the debts covered by the order will be written off.

Remise de Biens

A Remise is a Court process that is available to a debtor who owns immovable property and where the debtor has difficulty in satisfying his creditors. The process involves the debtor surrendering his property to the Court, with the Court realising the property to discharge the debtor's debts. Any surplus can be returned to the debtor. The debtor does not have to be insolvent for this process to be available.

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 creditor claims process in respect of a creditors' winding up is dealt with by Article 166 of the Companies Law which provides that the same rules apply with regard to the rights of creditors as to debts, as are in force under the Bankruptcy Law. The process for proving claims is set out in Part 7 of the Bankruptcy Law.

Article 166 of the Companies Law and Part 7 of the Bankruptcy Law covers: (a) the rights of secured and unsecured creditors; (b) the debts provable; (c) the time and manner of proving debts; (d) the administration and rejection of proofs of debts; and (e) the order of payment of debts.

Upon a company being placed into creditor's winding up, the liquidator must advertise the appointment within 14 days in the local Jersey Gazette. There is however no statutory time period for notices to be published for potential claim (albeit it is generally accepted that a period of 60 days notice is sufficient).

All debts and liabilities, whether present, future, or contingent, are provable in a winding up, and in the manner prescribed by the Court.

Further, if the debt bears interests, then interest is also provable to the date of the winding up; or, if it is a secured debt, then interest is provable to the date of payment.

Creditors bear the cost of proving their debt and must prove their debt in the manner prescribed by the Court. The liquidator will adjudicate claims and request further information if required - it is for the liquidator to admit or reject (in whole or in part) creditor claims. If a claim is rejected, then the liquidator will serve a notice of rejection on the creditor. To the extent the creditor is dissatisfied, the creditor can request that the liquidator apply to the Court to review the decision.

Creditors are allowed to examine other creditors' proofs (at a time fixed by the liquidator).

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)***

As a secured creditor with fixed and floating charges over XYZs assets, Big Bank has a number of rights. If an event of default has occurred under Big Bank's facilities, Big Bank can serve written notice of the default on XYZ and, after 14 days prior written notice, take steps to appropriate or sell XYZ's assets.

Big Bank can also apply to the Court to enforce their contractual rights (on the assumption that XYZ has movable property rather than immovable property, for which Big Bank might be able to apply to the Court for a Desastre or a Degrevement).

Big Bank can also apply to the Court for a Desastre or Liquidation, in which case Big Bank as a secured creditor will rank ahead of other creditors.

There is no equivalent to a floating charge in Jersey, therefore must look at what security Big Bank holds.

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 has not signed the UNCITRAL Model Law on Cross-Border Insolvency and it not a member of the EU. This means that it is not possible to place ABC into English administration on reliance of the Recast EIR as it is not applicable.

Jersey Court may have regard to CMI in considering applications to commence insolvency proceedings. It would be necessary to demonstrate that this process would ensure a better outcome for creditors than a local process.

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)

Jersey does not have an equivalent to administration under English law but it might be possible for a director or shareholder of ABC to apply for ABC to be wound up on just and equitable grounds to allow a pre-packaged sale. A just and equitable winding up has been previously used by the Jersey Courts to effect a pre-packaged sale of assets but because it is a winding up application, ABC will not be able to be sold as a going concern under this method.

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)

It is possible to apply to the Court to assist and recognise the English administrator under article 49 of the Bankruptcy Law and on the basis of common law principles and on the grounds of comity. The Court has discretion to offer assistance and in

doing so, will have regard to the UNCITRAL Model Law. This will involve a letter of request being issued by the English Court for assistance so that the English administrator can be recognised and take steps in respect of the Jersey store.

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)

The UNCITRAL Model Law and the Recast EIR would not assist with recognition in Jersey because Jersey has not signed the UNCITRAL Model Law and is not a member of the EU. The Jersey Court may however provide assistance to the Polish administrator under article 49 of the Bankruptcy Law, on common law principles and on the grounds of comity.

3/3

11/15

*** End of Assessment ***