



**SUMMATIVE (FORMAL) ASSESSMENT: MODULE 3B**

**THE INSOLVENCY SYSTEM OF THE UNITED KINGDOM  
(ENGLAND AND WALES)**

This is the **summative (formal) assessment** for **Module 3B** of this course and is compulsory for all candidates who selected this module as one of their compulsory modules from **Module 3**. Please read instruction 6.1 on the next page very carefully.

If you selected this module as **one of your elective modules**, please read instruction 6.2 on the next page very carefully.

The mark awarded for this assessment will determine your final mark for **Module 3B**. In order to pass this module, you need to obtain a mark of 50% or more for this assessment.

**INSTRUCTIONS FOR COMPLETION AND SUBMISSION OF ASSESSMENT**

Please read the following instructions very carefully before submitting / uploading your assessment on the Foundation Certificate web pages.

1. You must use this document for the answering of the assessment for this module. The answers to each question must be completed using this document with the answers populated under each question.
2. All assessments must be submitted electronically in MS Word format, using a standard A4 size page and a 11-point Arial font. This document has been set up with these parameters - **please do not change the document settings in any way. DO NOT** submit your assessment in PDF format as it will be returned to you unmarked.
3. No limit has been set for the length of your answers to the questions. However, please be guided by the mark allocation for each question. More often than not, one fact / statement will earn one mark (unless it is obvious from the question that this is not the case).
4. You must save this document using the following format: **[studentID.assessment3B]**. An example would be something along the following lines: 202223-336.assessment3B. **Please also include the filename as a footer to each page of the assessment** (this has been pre-populated for you, merely replace the words “studentID” with the student number allocated to you). Do not include your name or any other identifying words in your file name. **Assessments that do not comply with this instruction will be returned to candidates unmarked.**
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- 6.1 If you selected Module 3B as one of your **compulsory modules** (see the e-mail that was sent to you when your place on the course was confirmed), the final time and date for the submission of this assessment is **23:00 (11 pm) GMT on 1 March 2024**. The assessment submission portal will close at 23:00 (11 pm) GMT on 1 March 2024. No submissions can be made after the portal has closed and no further uploading of documents will be allowed, no matter the circumstances.
- 6.2 If you selected Module 3B as one of your **elective modules** (see the e-mail that was sent to you when your place on the course was confirmed), you have a **choice** as to when you may submit this assessment. You may either submit the assessment by **23:00 (11 pm) GMT on 1 March 2024** or by **23:00 (11 pm) BST (GMT +1) on 31 July 2024**. If you elect to submit by 1 March 2024, you **may not** submit the assessment again by 31 July 2024 (for example, in order to achieve a higher mark).
7. Prior to being populated with your answers, this assessment consists of **9 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

Please select the **most correct ending** to the following statement:

The Administration (Restrictions on Disposal etc to Connected Persons) Regulations 2021 restrict pre-pack sales which constitute a substantial disposal of the company's property to connected parties where the disposal occurs . . . :

- (a) within 10 weeks of the commencement of the administration.
- (b) **within eight weeks of the commencement of the administration.**
- (c) within four weeks of the commencement of the administration.
- (d) on the day the company enters administration.

#### Question 1.2

What is the **maximum length** of a Moratorium under Part 1A of the Insolvency Act 1986 to which creditors can consent without any application to the court?

- (a) 40 business days.
- (b) One year and 20 business days.
- (c) One year and 40 business days.
- (d) **One year.**

#### Question 1.3

Which of the following **is not** a requirement for a company that wishes to enter into a Restructuring Plan under Part 26A of the Companies Act 2006?

- (a) The company has encountered, or is likely to encounter, financial difficulties that are affecting, or will or may affect, its ability to carry on business as a going concern.
- (b) A compromise or arrangement is proposed between the company and its creditors, or any class of them, or its members, or any class of them.
- (c) The purpose of the compromise or arrangement is to eliminate, reduce or prevent, or mitigate the effect of, any of the said financial difficulties.

- (d) The company is, or is likely to become, unable to pay their debts, as defined under section 123 of the Insolvency Act 1986.

#### Question 1.4

In cases where the Administration (Restrictions on Disposal etc. to Connected Persons) Regulations 2021 apply and an independent report from an Evaluator is obtained, the independent report must be obtained by whom?

- (a) The administrator.
- (b) Any secured creditor with the benefit of a qualifying floating charge.
- (c) The purchaser.
- (d) The company's auditor.

#### Question 1.5

Which one of the following **is not** a debtor-in-possession procedure?

- (a) Administration.
- (b) Restructuring Plan.
- (c) Scheme of Arrangement.
- (d) Company Voluntary Arrangement.

#### Question 1.6

Section 426 of the Insolvency Act 1986 contains provisions for UK courts to provide assistance to overseas courts from certain listed jurisdictions. Which of the following is not a listed jurisdiction under section 426?

- (a) Malaysia.
- (b) Australia.
- (c) India.
- (d) Hong Kong.

#### Question 1.7

Which one of the following **is not**, in itself, a separate ground for disqualification of a director under the Company Directors Disqualification Act 1986?

- (a) Wrongful trading.
- (b) Breach of fiduciary duty.

- (c) Being found guilty of an indictable offence in Great Britain.
- (d) Being found guilty of an indictable offence overseas.

#### Question 1.8

The filing by a company's directors of a Notice of Intention to Appoint an administrator produces a short-term moratorium on actions against the company which lasts for how long?

- (a) Five business days.
- (b) Twenty business days.
- (c) **Ten days.**
- (d) Three months.

#### Question 1.9

Which of the following statements is incorrect?

- (a) **An insolvency officeholder from an EU Member State will be automatically recognised by the courts in the UK whether the officeholder was appointed before or after Brexit.**
- (b) An insolvency officeholder from an EU Member State is automatically recognised by the courts in the UK if appointed before Brexit.
- (c) An insolvency officeholder from an EU Member State appointed after Brexit may apply to a UK court for recognition under the Cross Border Insolvency Regulations.
- (d) An insolvency officeholder from an EU Member State cannot apply to a UK court for recognition under section 426 of the Insolvency Act 1986.

#### Question 1.10

Under section 216 of the Insolvency Act 1986, a director of a company which has been wound up insolvent may not, unless an exception applies, be a director of a company that is known by a prohibited name if the director has been a director of the company during which period prior to the insolvent liquidation?

- (a) Six months.
- (b) Five years.
- (c) Two years.
- (d) **Twelve months.**

#### QUESTION 2 (direct questions) [10 marks]

##### Question 2.1 [maximum 5 marks]

Who may bring an action under: (i) section 245 of the Insolvency Act 1986, (ii) section 6 of the Company Directors Disqualification Act 1986, (iii) section 246ZB of the Insolvency Act 1986, and (iv) section 127 of the Insolvency Act 1986?

- (i) Administrator or liquidator;
- (ii) Secretary of State or Official Receiver on instructions of Secretary of State (where the company in question has been, by way of court order, wound up);<sup>1</sup>
- (iii) Administrator or liquidator;
- (iv) “A company against which a winding-up petition has been presented. Any interested party to a transaction with a company against which a winding-up petition has been presented (*Re Argentum Reductions (UK) Ltd [1975] 1 WLR 186*)”.<sup>2</sup>

### Question 2.2 [maximum 5 marks]

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

- (1) Remuneration of the monitor;
- (2) Services or goods supplied during the Moratorium;
- (3) Rent in regard to a period during the Moratorium;
- (4) Salary or wages arising under a contract of employment; and
- (5) Payments in respect of redundancy.<sup>3</sup>

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

#### Question 3.1 [maximum 6 marks]

Can an administrator who wishes to continue to operate the business of the company in administration require suppliers of goods and services to continue to supply those goods and services during the administration?

Yes. The Insolvency Act 1986, section 233 (which, as per 233(3), applies to the supply of gas, electricity, water and communications services), stipulates that if a request is made by the administrator after the effective date (*i.e.* as per s 233(4)(a), the date the administration commenced), the supplier “*shall not make it a condition of the giving of the supply, or do anything which has the effect of making it a condition of the giving of the supply, that any outstanding charges in respect of a supply given to the company before the effective date are paid*” (233(2)(b)), but the supplier can make it a condition of the giving of the new supply that the administrator personally guarantees the payment of any charges in respect of the supply (s 233(2)(a)). In this regard, however, “*communication services*”, as per s 233(5)(d), “*do not include electronic communications services to the extent that they are used to broadcast or otherwise transmit programme services (within the meaning of the Communications Act 2003)*”.

Furthermore, under section 233A the supplier, barring certain exceptions (*i.e.* see s 233A(2)), cannot rely upon an “*insolvency-related term*” in a supply contract if it would

<sup>1</sup> Module 3B Guidance Text, p 62

<sup>2</sup> Practical Law, Validation orders in compulsory liquidation

<sup>3</sup> Module 3B Guidance Text, p 38

otherwise entitle the supplier to alter the terms of the supply, terminate the supply or require higher payments for continued supply.<sup>4</sup>

Section 233B(3) also states that “A provision of a contract for the supply of goods or services to the company ceases to have effect when the company becomes subject to the relevant insolvency procedure if and to the extent that, under the provision—

(a) the contract or the supply would terminate, or any other thing would take place, because

the company becomes subject to the relevant insolvency procedure, or

(b) the supplier would be entitled to terminate the contract or the supply, or to do any other

thing, because the company becomes subject to the relevant insolvency procedure.”

Lastly, section 233B(7) stipulates that:

“The supplier shall not make it a condition of any supply of goods and services after the time

when the company becomes subject to the relevant insolvency procedure, or do anything which

has the effect of making it a condition of such a supply, that any outstanding charges in respect of

a supply made to the company before that time are paid.”

### Question 3.2 [maximum 9 marks]

Explain the order of priority of payments in a liquidation and explain the nature of the rights enjoyed by each class of creditor or expense. How would this priority change if the company had been subject to a Moratorium under Part A1 of the Insolvency Act 1986 during the 12-week period prior to the commencement of the liquidation?

#### Answer Excluding Part A1

To begin with, and approaching matters initially without reference to Part A1, various expenses have priority - even above and beyond the company’s preferential creditors and any holders of floating charges and, of course, the company’s unsecured creditors.<sup>5</sup> In particular, the Insolvency Act 1986 (‘IA86’), s 115 states that:

#### **“Expenses of voluntary winding up.**

**After the payment of any liabilities to which section 174A applies [i.e. Moratorium debts etc: priority], all expenses properly incurred in the winding up, including the remuneration of the liquidator, are payable out of the company’s assets in priority to all other claims”** (my emphasis added).

In turn, the Insolvency (England and Wales) Rules 2016/1024 (‘the IRs’), Rule 6.42(2) states (in the context of Rule 6 - Creditors Voluntary Winding Up) that:

“(1) All fees, costs, charges and other expenses incurred in the course of the winding up are to be treated as expenses of the winding up.

[...]

(4) Subject as provided in rules 6.44 to 6.48, the expenses are payable in the following order of priority—

<sup>4</sup> Module 3B Guidance Text, p 20.

<sup>5</sup> Ibid, 51.

- (a) expenses which are properly chargeable or incurred by the liquidator in preserving, realising or getting in any of the assets of the...;
- (b) the cost of any security provided by the liquidator...;
- (c) the remuneration of the special manager (if any);
- (d) any amount payable to a person employed or authorised, under Chapter 2 of this Part, to assist in the preparation of a statement of affairs or of accounts;
- (e) the costs of employing a shorthand writer on the application of the liquidator;
- (f) any necessary disbursements by the liquidator in the course of the administration of the winding up...;
- (g) the remuneration or emoluments of any person who has been employed by the liquidator to perform any services for the company...;
- (h) the remuneration of the liquidator...;
- (i) the amount of any corporation tax on chargeable gains accruing on the realisation of any asset of the company ...;
- (j) the balance, after payment of any sums due under sub-paragraph (h) above, of any remuneration due to the liquidator; and
- (k) any other expenses properly chargeable by the liquidator in carrying out the liquidator's functions in the winding up.”

Similarly, the IRs, Rule 7.108 (in the context of Winding Up by the Court) have analogous provisions. Hence, broadly speaking, the costs of the liquidation, as ordered above, are those which take priority.

After the costs of the liquidation have been fully paid, the next order of priority is that of preferential creditors, which generally comprises some taxation liabilities and limited claims of employees.<sup>6</sup> Within the category of preferential debts, ordinary preferential debts take precedence over secondary preferential debts, and the *pari passu* principle / equal ranking, of course, applies *within* each category or class.<sup>7</sup> Preferential debts are listed within the IA86, Schedule 6, as summarised in the Guidance Text, at pages 53-54. I will not comprehensively list all of this material here, but suffice it to state that this category of debts includes:

- “Any sum which is owed by the debtor and is a sum to which Schedule 4 to the Pension Schemes Act 1993 applies (contributions to occupational pension schemes and state scheme premiums)” (IS86, Schedule 6, para 8);
- Remuneration owed to a person who is/was an employee in the four months’ preceding the commencing of winding up (up to a maximum figure of GBP 800);
- Accrued holiday remuneration;
- “levies on the production of coal and steel referred to in Articles 49 and 50 of the E.C.S.C. Treaty” (Schedule 6, para 15A);
- “So much of any amount which is ordered (whether before or after the relevant date) to be paid by the debtor under the Reserve Forces (Safeguard of Employment) Act 1985...” (Sch 6, para 12)

In turn, as per the IA86, s 386(1B), “A reference in this Act to the “secondary preferential debts” of a company or an individual is to the preferential debts listed in paragraph 15BA, 15BB or 15D of Schedule 6 to this Act.” Such secondary preferential debts, accordingly, include:

- “So much of any amount owed at the relevant date by the debtor to one or more eligible persons in respect of an eligible deposit as exceeds any compensation that

<sup>6</sup> Ibid, page 52, section 5.9.5.3.

<sup>7</sup> Ibid, 52-53.



- would be payable in respect of the deposit under the Financial Services Compensation Scheme to that person or those persons” (Sch 6, para 15BA);
- “An amount owed at the relevant date by the debtor to one or more eligible persons in respect of a deposit that (a) was made through a non-UK branch of a credit institution authorised by the competent authority of the United Kingdom, and (b) would have been an eligible deposit if it had been made through a UK branch of that credit institution” (Sch 6, para 15BB);
  - National insurance deductions, “Any amount owed at the relevant date by the debtor to the Commissioners in respect of value added tax, or a relevant deduction” (Schedule 6, para 15D), etc.

After the debts of preferential creditors are satisfied, the next category is holders of floating charges, with priority within that class being determined generally on the basis of the chronological sequence in which the charges were created.<sup>8</sup> That being said, the liquidator must also comply with the IA86, s 176A, i.e. “shall make a prescribed part of the company’s net property available for the satisfaction of unsecured debts and shall not distribute that part to the proprietor of a floating charge except in so far as it exceeds the amount required for the satisfaction of unsecured debts”.

After holders of floating charges, the next order of priority is that of unsecured creditors (again, on a *pari passu* basis).

In the unlikely event that all unsecured creditors’ debts are satisfied, the last order of priority is that of shareholders, according to the company’s constitution.

#### Answer Including Part A1

If the liquidation or administration had commenced within 12 weeks of the Moratorium’s end then the priority of debts in that liquidation or administration may be different to the priority which would have existed before the Moratorium.<sup>9</sup> The IA86, s 174A(1)-(3) basically stipulate that various unpaid pre-Moratorium debts have priority - even over the liquidator’s expenses and fees. In particular, s 174A(3) defines “priority pre-moratorium debts” as:

- “(a) any pre-moratorium debt that is payable in respect of—
- (i) the monitor’s remuneration or expenses,
  - (ii) goods or services supplied during the moratorium,
  - (iii) rent in respect of a period during the moratorium, or Insolvency Act 1986
  - (iv) wages or salary arising under a contract of employment, so far as relating to a period of employment before or during the moratorium,
- (b) any pre-moratorium debt that—
- (i) consists of a liability to make a redundancy payment, and
  - (ii) fell due before or during the moratorium, and
- (c) any pre-moratorium debt that—
- (i) arises under a contract or other instrument involving financial services,
  - (ii) fell due before or during the moratorium, and
  - (iii) is not relevant accelerated debt (see subsection (4)).”

Consequently, it may be the case that certain unsecured debts would fall into a form of “super priority”.<sup>10</sup> An example provided in the course material is that of a director who is due sums for months prior to the Moratorium, in the event that the Moratorium proves to

<sup>8</sup> Ibid, 54.

<sup>9</sup> Ibid, 39.

<sup>10</sup> Ibid.

be unsuccessful.<sup>11</sup> If there were such sums in the liquidation described in this question they would have “super priority” status. Hence, the important effect of the liquidation commencing within 12 weeks of the end of the Moratorium.

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

Prior to going into compulsory liquidation on 28 February 2024, under pressure from its bank, Ambitus Bank plc, and in order to prevent it from demanding repayment of the company’s loans, Blazer Laser Limited (the Company), granted a debenture in favour of Ambitus Bank plc in June 2023. The debenture contained a floating charge over the whole of the Company’s undertaking.

The winding up order followed a creditor’s winding up petition issued on 13 January 2024.

Sometime in January 2023, as the Company continued to suffer cash flow problems, the directors approved the sale of two laser cutting machines to Angela Bannister (a director) for GBP 40,000 in cash. The machines had been bought for GBP 100,000 a year before.

A month before the winding up order was made, Angela Bannister received an email from Aluminium Alimini Ltd, one of the Company’s key suppliers. The supplier demanded immediate payment of all sums owing to it and informed the Company that further supplies would only be made on a cash on delivery basis. As the continued supply of metal was seen as essential by the Company, the board authorised a payment of GBP 20,000 to cover existing liabilities and agreed to further payments, on a cash on delivery basis, for further supplies which amounted to further payment of GBP 8,000 up to the date of the winding up order.

The liquidator has asked for advice whether any action may be taken in respect of the floating charge in favour of Ambitus Bank plc and the two subsequent transactions.

**Using the facts above, answer the questions that follow.**

**Identify the relevant issues and statutory provisions and consider whether the liquidator may take any action in relation to:**

**Question 4.1 [maximum 5 marks]**

The floating charge in favour of Ambitus Bank plc;

The issue here appears to be whether the liquidator can avoid the floating charge in favour of Ambitus Bank. Under the IA s 245, floating charges can be avoided if the statutory criteria are satisfied, as per s 245(2):

*“Subject as follows, a floating charge on the company’s undertaking or property created at a relevant time is invalid except to the extent of the aggregate of—*

- (a) *the value of so much of the consideration for the creation of the charge as consists of money paid, or goods or services supplied, to the company at the same time as, or after, the creation of the charge,*

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<sup>11</sup> Ibid.

- (b) *the value of so much of that consideration as consists of the discharge or reduction, at the same time as, or after, the creation of the charge, of any debt of the company, and*
- (c) *the amount of such interest (if any) as is payable on the amount falling within paragraph (a) or (b) in pursuance of any agreement under which the money was so paid, the goods or services were so supplied or the debt was so discharged or reduced.”*

In that regard:

- The charge was created within 12 months prior to the onset of the insolvency (s 245(3)(b)), given that the person in whose favour the charge arose was not connected to the company (see s 240(5)(d): *“For the purposes of subsection (3), the onset of insolvency is—... the date of the commencement of the winding up”*);
- The next issue is whether, nonetheless, the charge was created during a *“relevant time”* in virtue of insolvency, given that s 245(4) provides that:

*“Where a company creates a floating charge at a time mentioned in subsection (3)(b) and the person in favour of whom the charge is created is not connected with the company, that time is not a relevant time for the purposes of this section unless the company—*  
*(a) is at that time unable to pay its debts within the meaning of section 123 in Chapter VI of Part IV, or*  
*(b) becomes unable to pay its debts within the meaning of that section in consequence of the transaction under which the charge is created.”*

Given the financial difficulties that the company was in at the time of the charge being created, it may be that s 245(4)(a) is satisfied.

- A further issue, however, is whether Ambitus Bank provided new consideration for the charge, such as to ensure that the charge remains valid, to the extent of s 245(2). In that regard, there is the forbearance of the bank in demanding repayment of the loans at the time of the charge being created. I am not familiar with this area, and asked myself whether the forbearance by the bank to insist on repayment is a form of new consideration. However, unless one counts the ongoing loan as continued provision of a service (which seems doubtful to me) **there** does not appear to be new consideration, for the purpose of 245(2), not least in that the bank has not, for the sake of example, appeared to have waived any of its right to interest on the sum due, or something of that nature.

The bottom line, therefore, is that the liquidator could take action under s 245.

#### Question 4.2 [maximum **6** marks]

The sale of the laser cutting machines; and

Yes - the liquidator could take action in respect of the sale, via a s 238 application, given that it appears to be significantly under value.

- Under the IA86, s 238(1), the liquidator would be an *“office-holder”* for the purpose of that provision.

- The sale to Angela Bannister took place within the period of two years prior to the commencement of the liquidation, such that it was within “*the relevant time*” (s 238(2)), as per s 240 (and Angela Bannister is also obviously “*connected with the company*” (s 240(2), having been a director, such that the presumption of insolvency would apply)).
- It is also of note that, at the time of the transaction, the company was suffering from cash flow problems, and so potentially “*unable to pay its debts for the purposes of section 238*” (s 240(2)).
- As per s 238(4)(b), an undervalue transaction is one in which “*the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the company*” and, in that respect, given that the transaction the year before was for GBP 100,000, rather than merely GBP 40,000, there is a good case for establishing that Ms Bannister’s purchase was an undervalue transaction.
- As per s 238(3), “*the court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if the company had not entered into that transaction*”.

A further relevant issue, however, would be whether Ms Bannister could establish that, despite the significant difference in value (GBP 60,000), the transaction was entered into in good faith for the purpose of the company’s business. As per s 238(5):

*“The court shall not make an order under this section in respect of a transaction at an undervalue if it is satisfied—*

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

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

The fact that the other directors approved the sale to Ms Bannister would, in the abstract at least, point to this transaction being a good faith transaction (or, at least, so Ms Bannister would presumably argue in response to an application brought by the liquidator).

A final issue, moreover, would be what happened to the laser cutting machines themselves (e.g. whether Ms Bannister sold them on to a third party *bona fide* purchaser for value), given that under s 241(2)(a):

*“An order under section 238... shall not prejudice any interest in property which was acquired from a person other than the company and was acquired in good faith and for value, or prejudice any interest deriving from such an interest...”*

It would obviously be in the liquidator’s interest to, therefore, find out what happened to the laser cutting machines before taking action.

#### Question 4.3 [maximum 4 marks]

The payments to Aluminium Alumini Ltd.

This appears to be an issue of whether there is a preferential transaction that can be avoided by the liquidator. On the facts, this seems doubtful to me, due to the motivation

of the directors in agreeing to the payment of GBP 20,000 etc: “As the continued supply of metal was seen as essential by the Company”

- As per the IA86, s 239, the liquidator would be an office-holder who could make an application.
- As per 239(4) a preference arises to a person if the person is a creditor (yes) and the company does something which has “the effect of putting that person into a position which, in the event of the company going into insolvent liquidation, will be better than the position he would have been in if that thing had not been done” (yes - the full debt of GBP 20,000 was paid, whereas other creditors have not been paid in full).
- The preference was also given at “the relevant time” given that Aluminium Alumini is not connected to the company and the preference arose six months prior to the onset of insolvency (s 240(1)(b)).
- However, and as alluded to above, there is also s 239(5) to consider: “The court shall not make an order under this section in respect of a preference given to any person unless the company which gave the preference was influenced in deciding to give it by a desire to produce in relation to that person the effect mentioned in subsection (4)(b)”. As per *Re MC Bacon*,<sup>12</sup> the intention must be to prefer the creditor in question. Here that does not appear to be the case - the metal was essential to the company’s operations, and the pressure exerted by the creditor at the time (which was understandable, from a business point of view) is irrelevant,<sup>13</sup> given that the desire to prefer was not present.
- Given that the burden is on the liquidator, this application therefore appears to be an uphill struggle.<sup>14</sup>

**\* End of Assessment \***

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<sup>12</sup> See also the content from the Guidance Material, p 69.

<sup>13</sup> Ibid, p 69

<sup>14</sup> Ibid.