



SUMMATIVE (FORMAL) ASSESSMENT: MODULE 7A

ISRAEL

This is the **summative (formal) assessment** for **Module 7A** 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 7A. 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: **[studentnumber.assessment7A]**. An example would be something along the following lines: 202021IFU-314.assessment7A. **Please also include the filename as a footer to each page of the assessment** (this has been pre-populated for you, merely replace the words “studentnumber” with the student number allocated to you). Do not include your name or any other identifying words in your file name. **Assessments that do not comply with this instruction will be returned to candidates unmarked.**
5. Before you will be allowed to upload / submit your assessment via the portal on the Foundation Certificate web pages, you will be required to confirm / certify that you are the person who completed the assessment and that the work submitted is your own, original work. Please see the part of the Course Handbook that deals with plagiarism and dishonesty in the submission of assessments. **Please note that copying and pasting from the Guidance Text into your answer is prohibited and constitutes plagiarism. You must write the answers to the questions in your own words.**
6. The final submission date for this assessment is **31 July 2021**. The assessment submission portal will close at **23:00 (11 pm) BST (GMT +1) on 31 July 2021**. No submissions can be made after the portal has closed and no further uploading of documents will be allowed, no matter the circumstances.
7. Prior to being populated with your answers, this assessment consists of **7 pages**.

ANSWER ALL THE QUESTIONS

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

Questions 1.1. – 1.10. are multiple-choice questions designed to assess your ability to think critically about the subject. Please read each question carefully before reading the answer options. Be aware that some questions may seem to have more than one right answer, but you are to look for the one that makes the most sense and is the most correct. When you have a clear idea of the question, find your answer and **mark your selection on the answer sheet by highlighting the relevant paragraph in yellow**. Select only **ONE** answer. Candidates who select more than one answer will receive no mark for that specific question.

Question 1.1

When was the Insolvency and Economic Rehabilitation Act (the New Insolvency Act) enacted and when did it become effective?

- (a) It was enacted and became effective in May 1948.
- (b) It was enacted and became effective in May 2018.
- (c) It was enacted in May 2019 and became effective in May 2020.
- (d) It was enacted in March 2018 and became effective in September 2019.**

Question 1.2

A bank claims that it has a security interest in a debtor's personal property (chattel) that is also effective against third parties (such as a liquidator). What does the bank need to show to prove its claim?

- (a) An agreement with the debtor is sufficient.
- (b) An agreement with the debtor and that it holds possession of the property.
- (c) An agreement with the debtor and that it registered the security in the Security Interest Register.
- (d) Either (b) or (c) are sufficient.**

Question 1.3

Adam and Beth have a loan agreement according to which Adam owes Beth NIS 100,000 due on 31 December 2020. In February 2021 Adam still hasn't paid Beth. Beth wants to file an involuntary insolvency petition against Adam. **Which of the following is TRUE?**

- (a) Beth can file an involuntary petition to the Superintendent of Insolvency after presenting Adam with a warning under the Execution Act, and after showing that Adam has not paid within the period stated in the warning.
- (b) Beth can file an involuntary petition to the Magistrate's Court, after presenting Adam with a payment demand, which includes a warning that if the payment is not made, she will file for involuntary insolvency proceedings. She can file for the insolvency proceeding if the debt is not paid within 45 days from the time the demand was presented.

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(c) Beth cannot file for involuntary proceeding, because the initiation of involuntary proceeding requires at least 3 creditors.

(d) Both statements (a) and (b) above are true.

Question 1.4

Which of the following statements is **TRUE** about stage 1 of the administration of individual insolvency proceedings and **FALSE** with respect to stage 2 of the proceedings?

(a) One of main purposes of this stage is to examine the economic state of the debtor.

(b) The debtor pays monthly payments to the insolvency estate.

(c) The stage lasts approximately 2 months.

(d) The debtor is subject to limitations which are necessary to protect the creditors.

Question 1.5

Under the New Insolvency Act, what is the average period for obtaining discharge in individual bankruptcy proceedings?

(a) 1 year.

(b) 2 years.

(c) 3 years.

(d) 4 years.

Question 1.6

Benny is the CEO of ACME Inc. ACME entered insolvency proceedings and Benny wishes to be appointed as the sole trustee.

(a) The court may not appoint Benny as the sole trustee.

(b) The court may appoint Benny as the sole trustee if it is convinced that ACME's current management is not responsible for ACME's insolvency.

(c) The court may appoint Benny as the sole trustee if it is convinced that it is for the benefit of the creditors.

(d) The court may appoint Benny as the sole trustee if it is convinced that the conditions of both (b) and (c) above are met.

Question 1.7

On 1 July 2021 Delta Inc's assets are worth NIS 1 million, it has debts of NIS 950,000 and it loses money at a rate of NIS 25,000 per month. Charlie, Dana and Edward are the directors of Delta Inc. They are concerned that they will be liable for not reducing the extent of insolvency. **Which of the following is TRUE?**

- (a) Since the value of the corporation's assets is higher than its liabilities, they have nothing to worry about.
- (b) Israeli law mandates that they file for corporate insolvency proceedings immediately.
- (c) Assuming Delta continues to lose money at the same rate, Israeli law mandates that they file for corporate insolvency proceedings by 1 September 2021 at the latest.
- (d) If the directors receive professional assistance from experts in corporate rehabilitation, and according to the experts' advice the corporation can continue its operations without filing for insolvency, most likely the directors will not be liable for not reducing the extent of insolvency.

Question 1.8

XYZ Inc is an Israeli corporation, with both domestic and foreign creditors. One of the foreign creditors wishes to initiate insolvency proceedings. Indicate the **correct statement** below.

- (a) Foreign creditors cannot initiate insolvency proceedings in Israel.
- (b) Foreign creditors can initiate insolvency proceedings in Israel only after they are granted a special permission from the Israeli Supreme Court.
- (c) Foreign creditors can initiate insolvency proceedings in Israel similar to domestic (Israeli) creditors.
- (d) Foreign creditors can initiate insolvency proceedings in Israel only if these creditors have assets in Israel.

Question 1.9

Which of the following statements is **FALSE** regarding the protected negotiations scheme?

- (a) It is available only for listed companies.
- (b) The corporation must default on at least one debt payment to at least one creditor.
- (c) It is conducted out of court.
- (d) The board runs the negotiations with no appointment of a trustee.

Question 1.10

Assume an Israeli court recognized a foreign bankruptcy proceeding conducted in France as a non-main proceeding. Which of the following statements **must be TRUE**?

- (a) The Israeli court will not issue a moratorium in Israel.
- (b) The foreign trustee may not execute the corporation's assets in Israel.
- (c) The Israeli court will not assist the French court or the French appointed trustees in the bankruptcy proceedings.
- (d) None of the above.

QUESTION 2 (direct questions) [10 marks]

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Question 2.1 [maximum 4 marks]

What are the conditions for the enforcement of foreign judgments in Israel?

The Foreign Judgments Enforcement Act 1958 requires, as a pre-requisite for the recognition of foreign judgements, that:

- The foreign court was authorised to grant the relevant foreign judgment;
- The foreign judgment is enforceable in the foreign jurisdiction;
- The foreign judgment is final and conclusive;
- The foreign judgment is enforceable in Israel; and
- That the foreign jurisdiction enforces Israeli courts' judgments.

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Question 2.2 [maximum 3 marks]

Name the three main legal consequences of a commencement order in individual bankruptcy proceedings.

- Moratorium
- Insolvency Estate, exempt property
- Limitations imposed on the debtor

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Question 2.3 [maximum 3 marks]

What are the circumstances under which the court may avoid a pre-commencement action that removed an asset from an insolvent corporation?

The court may avoid a pre-commencement action that removed an asset from an insolvent corporation if:

- The asset disposal occurred within the three months prior to the filing of the petition for a commencement order; or
- The debtor was insolvent at the time it disposed of the asset; or
- As a result of the asset disposal, a creditor was better off than it would have been under the insolvency proceeding.

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

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Question 3.1 [maximum 8 marks]

Discuss the various ways in which the Israeli insolvency Act deals with executory contracts.

Ipso facto clauses, that is, clauses which purport to terminate the contract in the event of one party's insolvency, are disallowed under the New Insolvency Act. This means that the trustee is free to assume or reject executory contracts as set out below.

A trustee may assume or reject executory contracts to which it becomes a party by virtue of the debtor's involvement prior to the commencement order.

If the trustee wishes to reject an onerous executory contract, it must within 90 days of the commencement order file a motion with the court. The court must in turn approve the motion if it considers that rejection will enhance the reorganisation of the corporate debtor or will maximise returns to creditors. Upon rejection, the debtors obligations and rights under that

contract cease, and the other party may file as an unsecured creditor in the estate for losses it suffers as a result of the rejection.

If a trustee wishes to assume an executory contract, it should file a motion with the court requesting the court's approval of its assumption. A trustee may assume a contract even if there have been breaches of the contract by the debtor prior to assumption, in which case the trustee must file its motion within 45 days of the trustee having been notified by the other party that it intends to rescind the contract due to the debtor's breaches. The trustee is not required to remedy any of the debtor's antecedent breaches of the contract – instead, the other party may file in the insolvent estate for its losses associated with these breaches. Where there have been previous breaches, the trustee must show the court that it can carry out the remainder of the debtor's obligations under the contract.

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Question 3.2 [maximum 7 marks]

ACME Inc is a clothes producer. Rubi Inc is ACME's textile supplier. Usually, ACME pays Rubi 45 days after the supply (that is, if Rubi supplied textiles on 1 January 2020 then ACME pays it on 15 February 2020). In September 2020 ACME enters economic difficulties. It fails to pay Rubi for the textiles it supplies and up to 15 February 2021 ACME has accrued NIS 10,000 debt to Rubi. In March 2021, ACME turns to Rubi and asks for another textile shipment. Rubi tells ACME that it demands payment upon delivery of the textiles. On 15 April 2021 Rubi delivers to ACME textiles valued at NIS 2,500 (market value). On the same day, ACME pays Rubi NIS 6,000. On 1 July 2021 ACME filed for a commencement order, which was issued on 20 July 2021. The trustee appointed to ACME argues that the NIS 6,000 should be avoided. Rubi objects. Argue for both sides of the case.

This question relates to preferences to creditors. ACME has made a payment of NIS 6,000 to a creditor, Rubi within 3 months of it applying for a commencement order.

The trustee will argue that the payment should be avoided on the following basis:

1. That the payment to Rubi took place on 15 April, which was less than three months prior to ACME filing for a commencement order; and
2. That at the time of the payment to Rubi, ACME was insolvent. It had encountered economic difficulties in September 2020; and
3. That as a result of the payment to Rubi, Rubi received more than it would have under ACME's insolvency.

However, Rubi will argue that the payment to it should be upheld because:

1. ACME received new and adequate value for the action that was performed; and
2. That the payment to Rubi was in the normal course of business of ACME and the debt repaid in the action was created during the course of ACME's normal business.

Rubi's defence faces some challenges because the value of the goods it delivered was only NIS 2,500, yet it received NIS 6,000 from ACME. Therefore, ACME received 'new' value for the payment but it was not 'adequate'. Moreover, the payment to Rubi was not in the ordinary course of ACME's business because the normal terms of trade between the parties are that ACME pays 45 days after delivery. Here, payment was made the same day as the delivery.

The parties should be advised that ACME's trustee is likely to recover the sum of \$3,500 from Rubi, being the difference between ACME's payment and the value of the goods delivered on 15 April 2021. Rubi may file for its losses in ACME's insolvency.

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Very good answer!

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

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Zeta Inc undergoes insolvency proceedings. The following information is available:

Creditor	Debt	Comment
North Bank (NB)	100	NB has a security interest on Zeta's vehicle worth 50
South Bank (SB)	100	SB has a floating lien on Zeta's inventory. The inventory is worth 100 (and had the same value when the lien was crystalized)
Employees	25	
Private loan (unsecured)	50	
Suppliers (unsecured)	75	

Question 4.1 [maximum 9 marks]

Assume Zeta's assets (including the inventory) in liquidation are worth 200. How much will each of the creditors receive? Mention each creditor's priority in your answer.

- North Bank will receive: 62.5
- South Bank will receive: 81.25
- Employees will receive: 25
- The private lender will receive: 12.5
- Suppliers will receive: 18.75

NB has a security interest on Zeta's vehicle worth 50. NB has priority in respect of the proceeds of the vehicle, so NB will receive 50 from that. The remainder of NB's debt (a further 50) will be unsecured, so NB will rank equally with other unsecured creditors and receive a pro-rata payment after priority creditors have been paid. The unsecured portion of NB's claim is addressed below.

Zeta's employees have a preferential claim, ranking first in that sub-category. Their claim is for 25, which is less than the maximum available for priority under the NIA. Because there is still 150 of assets remaining after NB's secured claim has been paid, employees will be paid in full.

SB has a floating lien over Zeta's inventory that is worth 100 and was worth 100 at the time the lien was crystallised. However, SB's claim is ranked fourth in the priority list, after secured creditors, insolvency proceeding costs, and preferential claims. Under the NIA, SB may only receive priority in respect of 75% of the value of its lien, that is 75. The remaining 25 is ring-fenced for the benefit of unsecured creditors. SB will be an unsecured creditor for the remainder of its claim, of 25. The unsecured portion of SB's claim is addressed below.

After the above priority claims have been paid, only 50 of Zeta's assets remain. The unpaid claims are: NB – 50, SB – 25, the private lender – 50, and suppliers – 75. Each of these are unsecured creditors. It is assumed that the private lender's claim is not subordinated contractually. Accordingly, the claims total 200, and the available assets total 50. Each creditor will therefore receive 25% of its outstanding claim as follows: NB – 12.5, SB – 6.25, private lender 12.5, and suppliers – 18.75.

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Question 4.2 [maximum 6 marks]

Now assume Zeta undergoes corporate rescue (reorganization) proceedings rather than liquidation. Under the corporate reorganization, Zeta's assets are worth 300, and the trustee offers the following plan of reorganization:

Creditor	Debt	Payment under the plan
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NB	100	87.5
SB	100	93.75
Employees	25	25
Private loan	50	37.5
Suppliers	75	56.25

NB votes against the plan of reorganization, whereas the rest of the creditors vote in its favor. Can the court approve the plan?

The court may confirm a reorganisation plan despite the dissent of one of the creditor classes, which, if it does, is referred to as a cross-class cramdown. However, before doing so the court must be satisfied that the terms of the reorganisation plan are fair and equitable in relation to the dissenting class of creditors. In making that assessment, the court should have regard to Zeta's value (i.e. 300), and consider:

1. If the court does not approve the plan, is the company likely to go into liquidation and if so, would NB receive more under the plan than under liquidation? In this case the answer to the above question is yes, NB would receive more under the plan than under liquidation. That is because the plan allows for Zeta's total asset pool to be greater than under liquidation, and NB receives more out of its unsecured claim as a result.
2. Does the plan propose payments to equity holders, without making full payment to NB? The answer here is no, there is no provision in the plan for payment to shareholders. NB cannot claim to be prejudiced under this consideration.
3. Does the plan provide NB with at least the market value of the secured portion of its claim? The answer here is yes, since the secured portion of NB's claim is only 50, whereas NB will receive 87.5 under the plan.

NB should be advised that the plan is likely to be approved by the court.

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*** End of Assessment ***