



**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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Well done!

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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 court that delivered the foreign judgment had to have been authorised to grant the order under the laws of that country.

The judgment must be enforceable in the country where it was granted.

The judgment must be final and conclusive.

It must be possible to enforce the judgment in Israel.

The foreign country must enforce the judgments of Israeli courts.

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**Question 2.2 [maximum 3 marks]**

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

All pending proceedings against the debtor will be stayed (moratorium).

The debtor's pre-commencement property will become an insolvent estate, from which the creditors' pre-commencement claims will be paid, but some property will be excluded.

Certain limitations are imposed on the debtor's day-to-day affairs.

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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 action was performed without value or at an undervalue.

The action took place within two years before the date when the petition for a commencement order was filed.

At the time of the action, the debtor was insolvent or the transfer resulted in the debtor becoming insolvent.

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Action took place 3 months prior to filing date  
At the time of action – debtor insolvent  
As a result a creditor will receive a larger share of the debt owed.

**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.

The trustee may either assume or reject executive contracts to which the company is a party. To do this, the trustee must file a motion with the insolvency court within 90 days from the date of the commencement order, which may be extended. If the trustee wants to reject the executory contract, the court must approve the rejection if it will enhance the reorganisation or will maximise the return to creditors. Upon rejection, all obligations and rights under the contract will cease. If the counter-party suffers any damage due to the rejection, he will have a secured claim against the estate.

If the trustee decides to assume the executory contract, but if the contract had been breached prior to its assumption, the trustee should file a motion with the court to request judicial approval of the assumption, which must be filed within 45 days after receiving a notice from the counter-party of its intention to rescind the contract due to breach. The trustee does not

have to remedy the breach in order to get the assumption approved, but any such breaches constitute a pre-commencement unsecured claim against the estate. The court may only authorise the assumption of an executory contract that has been breached previously if the trustee can convince the court that he can provide the counter-party with adequate assurances of his intention to perform 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.

Argument in favour of avoidance:

Rubi was owed NIS 10,000 and received a payment of NIS 6,000 shortly before the commencement order. It could therefore be construed as preference to a creditor that can be avoided if the requirements are met.

Firstly, the payment was made within three months before the date of filing the petition for a commencement order. Secondly, since ACME has been in economic difficulties for a while and has been unable to pay Rubi, it is likely that ACME was insolvent when the payment was made.

Thirdly, due to the payment of NIS 6,000, Rubi will receive a larger share of the debt owed to it that would have been the case had Rubi been paid under the insolvency proceeding.

Argument against avoidance:

Despite the above requirements possibly being met for avoiding the preference granted to Rubi, an argument could be made that the payment should not be voided.

Firstly, on the date of payment, ACME received new and adequate value for the payment, since ACME received delivery of textiles. Because the textiles were valued at NIS 2,500, at the very least only NIS 3,500 could be voided – not the full NIS 6,000.

Secondly, the payment to Rubi was in ACME's normal course of business and the debt repaid was also created in the debtor's normal course of business. After all, the debt was incurred to acquire the textiles necessary to operate the normal business of ACME. Without incurring this debt, ACME would not be able to acquire textiles and earn an income.

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**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	
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**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.

NB has a security interest (fixed charged) in the vehicle and thus will receive that 50. The remaining 50 will be an unsecured claim.

Priority claims will be settled next. Here this applies to the employees, who will receive 25. (I assume this is below the maximum).

Next will be the floating charge (floating lien) of SB. Although the inventory is worth 100 and the claim is worth 100, SB will not receive the full 100. Instead, there will be carve-out of 25% which means that 25 will go towards the unsecured creditors. Therefore, SB will receive 75, while the remaining 25 will be an unsecured claim.

Therefore, at this point, we have 200 (total assets) minus the 50 paid to NB, minus the 25 paid to the employees and minus the 75 paid to SB, which is equal to 50 that is available to the unsecured creditors.

The unsecured claims are:

- 50 for NB
- 25 for SB
- 50 for the private loan
- 75 for the suppliers
- Thus, the total is 200.

The 50 must therefore be divided up between them in proportion to their claim:

- NB will get 12.5
- SB will get 6.25
- The private loan will get 12.5
- The suppliers will get 18.75

Thus, in total:

- NB will get 50 plus 12.5 = 62.5
- SB will get 75 plus 6.25 = 81.25
- Employees will get 25
- The private loan will get 12.5
- The suppliers will get 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
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?

In this case, NB is the only secured creditor and therefore will vote alone in that class. If one class of creditors votes against the proposed plan, the plan can still be confirmed in terms of a cross-class cramdown, which means that NB will have to abide by the decision reached by the other classes.

Before the court can confirm the reorganisation plan under these circumstances (against NB's dissent), the court must be satisfied that the terms of the plan are fair and equitable towards NB. The court should request a valuation of the company (Zeta) and exam certain elements.

Will Zeta spiral into liquidation without the approval of the plan? And will the NB receive more than it would receive in liquidation? As indicated in the answer to the question above, NB will receive 62.5, which is less than what it will receive under the reorganisation plan (87.5). Although NB will get a smaller percentage of its claim than the other creditors, NB will still get more than what it would have received in liquidation.

The court must also ensure that NB, being a secured creditor, will receive a value that is equal to or greater than the market value of its secured claim, that is, the value of the collateral in this case. The collateral is valued at 50, so it is clear that NB will indeed receive more than the value of the collateral under the reorganisation plan.

Finally, the court must also ensure that the plan does not provide for the payment of equity holders, which in this case seems to be in order, since the plan does not include any equity holders.

Therefore, considering the above, it is concluded that there is a strong chance that the court will indeed authorise the cross-class cramdown and hence approve the reorganisation plan.

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**\* End of Assessment \***