



SUMMATIVE (FORMAL) ASSESSMENT: MODULE 3A

THE INSOLVENCY SYSTEM OF THE UNITED STATES

This is the **summative (formal) assessment** for **Module 3A** 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 3A. 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: **[student number.assessment3A]**. An example would be something along the following lines: 202021IFU-314.assessment3A. **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.**
- 6.1 If you selected Module 3A 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 2021**. The assessment submission portal will close at 23:00 (11 pm) GMT on 1 March 2021. 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 3A 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 2021** or by **23:00 (11 pm) BST on 31 July 2021**. If you elect to submit by 1 March 2021, you **may not** submit the assessment again by 31 July 2021 (for example, in order to achieve a higher mark).
7. Prior to being populated with your answers, this assessment consists of **8 pages**.

ANSWER ALL THE QUESTIONS

Commented [A&O1]: Total marks 34.5/50

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

Commented [A&O2]: Total marks 9/10

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

Commented [A&O3]: Correct, 1 mark

FabCo, based in Utah, owes SupplyCo, based in Mexico, US\$10,000 on a past-due invoice. May SupplyCo file an involuntary petition to place FabCo into chapter 11 bankruptcy proceedings?

- (a) Yes.
- (b) Yes, if FabCo has fewer than 12 non-contingent, non-insider creditors.
- (c) Yes, if other creditors owed at least US\$5,775 join in the petition.**
- (d) No, because SupplyCo doesn't know whether FabCo is insolvent.
- (e) No, because SupplyCo is not a US company.

Question 1.2

Commented [A&O4]: Correct, 1 mark

Which of the following is a *mandatory*, rather than *discretionary*, basis to deny recognition of a foreign judgment under state law based on one of the Uniform Acts?

- (a) The foreign judgment is subject to appeal in the foreign country.
- (b) The foreign judgment is an injunction.**
- (c) The foreign judgment was issued by a court, contrary to the parties' agreement to arbitrate.
- (d) The defendant did not have sufficient notice of the foreign proceeding to put on a defense.
- (e) The foreign judgment is inconsistent with another final judgment on the same subject matter.

Question 1.3

Commented [A&O5]: Correct, 1 mark

Which of the following is likely to be a party in interest in the bankruptcy of XYZ Corp?

- (a) A shareholder in ABC Corp, to which XYZ Corp is substantially indebted.
- (b) A journalist writing about XYZ Corp's bankruptcy.
- (c) A shareholder in MNO Corp, which owns all of XYZ Corp's shares.

(d) A retired employee of XYZ Corp who receives payments from the company's pension plan.

(e) A non-profit organization that advocates for companies like XYZ Corp to be held responsible for climate change.

Question 1.4

If a debtor rejects an executory trademark license agreement under which it licenses a trademark to its counterparty, which of the following is true:

- (a) The counterparty must immediately stop using the trademark.
- (b) The counterparty can continue using the trademark for the remaining period of the license.
- (c) The counterparty has a claim for damages for breach of contract.

(d) Both (a) and (c).

(e) Both (b) and (c).

Question 1.5

In which of the following circumstances may a counterparty enforce a contractual *ipso facto* clause?

- (a) The contract would obligate the counterparty to extend a loan to the debtor.
- (b) The contract is a lease of real property.
- (c) The clause is triggered by the bankruptcy filing of a third party, not the debtor.

(d) Both (a) and (c).

(e) *Ipso facto* clauses are never enforceable against a debtor.

Question 1.6

What does a chapter 11 debtor have exclusivity to propose for the first 120 days of proceedings?

(a) Avoidance actions.

(b) A plan of reorganization.

(c) DIP financing.

(d) Lifting the automatic stay.

(e) Formation of an equity committee.

Commented [A&O6]: Incorrect, the correct response is (e)

Commented [A&O7]: Correct, 1 mark

Commented [A&O8]: Correct, 1 mark

Question 1.7

Which of the following is **not** a requirement to confirm a “cramdown” plan?

- (a) Acceptance of the plan by all classes of secured creditors.
- (b) Acceptance of the plan by at least one class of impaired, non-insider creditors.
- (c) The plan is fair and equitable to dissenting classes of creditors.
- (d) The plan does not discriminate unfairly against dissenting classes of creditors.
- (e) The dissenting creditors receive no less than they would under a liquidation scenario.

Commented [A&O9]: Correct, 1 mark

Question 1.8

When may distributions to creditors diverge from the absolute priority rule?

- (a) In a chapter 7 proceeding with consent of the affected senior creditor.
- (b) In a chapter 7 proceeding with consent of the affected junior creditor.
- (c) In a chapter 11 proceeding with consent of the affected senior creditor.
- (d) In a chapter 11 proceeding with consent of the affected junior creditor.
- (e) The absolute priority rule cannot be deviated from.

Commented [A&O10]: Correct, 1 mark

Question 1.9

Who may serve as a foreign representative to seek recognition of a foreign proceeding under chapter 15?

- (a) An officer of the debtor if it is a debtor-in-possession in the foreign proceeding.
- (b) The board of directors of the debtor if it is a debtor-in-possession in the foreign proceeding.
- (c) An insolvency professional appointed by the court overseeing the foreign proceeding.
- (d) An insolvency professional appointed by a creditor where the foreign proceeding is an involuntary receivership.

(e) All of the above.

Commented [A&O11]: Correct, 1 mark

Question 1.10

Which of the following is *not* available as relief in a chapter 15 proceeding?

- (a) Sale of US property free and clear pursuant to section 363.
- (b) Prosecution of avoidance actions pursuant to section 544 .
- (c) Entrusting the management of US assets to the foreign representative.

Commented [A&O12]: Correct, 1 mark

(d) Application of the automatic stay under section 362 to the debtor's interests in US property.

(e) Discovery about the debtor's assets.

QUESTION 2 (direct questions) [10 marks]

Commented [A&O13]: Total marks 7/10

Question 2.1 [maximum 1 mark]

Commented [A&O14]: Total marks 1/1

What two alternative qualifications render a corporation eligible to be a debtor in a US chapter 7 or 11 proceeding?

Corporation must have a place of business in the United States, or any of its property in the United States.

Commented [A&O15]: Correct, ½ mark, being incorporated in the US is sufficient

Commented [A&O16]: Correct, ½ mark

Question 2.2 [maximum 2 marks]

Commented [A&O17]: Total marks 1.5/2

What is an executory contract?

Executory is a contract between a debtor and another party in which there is unperformed material obligation on both sides. Professor Vernon Vern Countryman provided "Countryman test". So where one party has fulfilled its obligations according to contract, that contract would not be considered executory within meaning of bankruptcy law. Examples would be: real estate leases (tenant has to pay rent/landlord has to provide space), equipment leases (lessee has to pay rent/lessor has to provide equipment), construction contracts (construction work required/payment required). Definition of executory contract is not defined by statute, and further meaning of the concept is further given through case law. In *NRLB v Bildisco & Bildisco* 465 US 513 (1984) US Supreme Court decided on a matter of debtor's rejection of collective bargaining agreement (CBA) as an executory contract, although in Chapter 11 insolvency the matter of negotiations of CBA require additional procedure.

Commented [A&O18]: Correct, ½ mark, the nature of the obligations must be such that the failure to perform would constitute a material breach

Commented [A&O19]: Correct, 1 mark

Question 2.3 [maximum 2 marks]

Commented [A&O20]: Total marks 2/2

What is a "priming lien" and what requirements must be met for such a lien to be granted to secure DIP financing?

Considering that Chapter 11 proceedings are costly, usually there is need for lenders and counterparties to extend credit to the debtor which is commonly referred to debtor in possession financing.

Priming lien is a post petition lien granted by court, that is senior or equal to pre-petition lien on estate property. Purpose of this is to secure post-petition financing if it couldn't be secured any other way, e.g. obtaining unsecured debt, obtaining secured debt with a lien on unencumbered assets of the company, etc.

Commented [A&O21]: Correct, 1 mark

Commented [A&O22]: Correct, ½ mark

The debtor must demonstrate that interest of secured creditor being primed is adequately protected.

Commented [A&O23]: Correct, ½ mark

Question 2.4 [maximum 2 marks]

Commented [A&O24]: Total marks 1.5/2

In voting on a plan of reorganization, which class(es) of creditors are (i) deemed to accept the plan, (ii) deemed to reject the plan and (iii) permitted to vote on the plan? What vote is necessary for a class of creditors to accept a plan?

Class(es) on whose rights plan does not have any effect (unimpaired class) are deemed to accept the plan.

Commented [A&O25]: Correct, ½ mark

Those classes that will receive nothing are deemed to reject the plan.

Commented [A&O26]: Correct, ½ mark, an impaired class that receives something under the plan is entitled to vote

As per USC § 1152 e) On request of a party in interest, and after notice and a hearing, the court may designate any entity whose acceptance or rejection of such plan was not in good faith, or was not solicited or procured in good faith or in accordance with the provisions of this title.

For a class to accept the plan, creditors that hold at least two-thirds in amount allowed claims (or in interest if of the allowed interests) of such class and more than one-half in number of allowed claims must vote for acceptance of the plan.

Commented [A&O27]: Correct, ½ mark

At least one impaired class must vote for accepting the plan.

Question 2.5 [maximum 3 marks]

Commented [A&O28]: Total marks 1/3

How does the automatic stay available in chapter 15 proceedings differ from that available in chapter 11 proceedings?

The main difference is that the automatic stay available in chapter 15 proceedings is that in case of recognition of foreign main proceedings, automatic stay is "automatically" apply, while in case of recognition of foreign non-main proceedings, it is at court's discretion to grant the relief of the automatic stay.

Commented [A&O29]: Correct, ½ mark, by contrast the automatic stay comes into effect on the filing of a chapter 11 petition and the scope of the stay is worldwide in chapter 11 but limited to the territorial US in chapter 15

Further more, automatic stay is subject to a exception which permits the filing of a plenary US bankruptcy proceeding even after the recognition of a foreign proceeding.

Commented [A&O30]: Correct, ½ mark, the stay may also come into effect on an application for interim relief

As USC § 1520 c) states, "Subsection (a) does not affect the right of a foreign representative or an entity to file a petition commencing a case under this title or the right of any party to file claims or take other proper actions in such a case."

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

Commented [A&O31]: Total marks 12.5/15

Question 3.1 [maximum 3 marks]

Commented [A&O32]: Total marks 3/3

What fiduciary duties do directors of Delaware corporations owe and to whom are the duties owed in the ordinary course of business? To whom are duties owed when the corporation is potentially or actually insolvent?

Directors owe the fiduciary duty of loyalty to the corporation's best interest and the duty of care in educated decision making. Their duties are owed to the company and its shareholders, not to the creditors, even in the case of potential or actual insolvency. In the broad sense of the statement, excluding fraudulent behaviour of the directors, "creditors are considered capable of taking care of themselves".

Commented [A&O33]: Correct, ½ mark

Commented [A&O34]: Correct, ½ mark

Commented [A&O35]: Correct, ½ mark

Commented [A&O36]: Correct, ½ mark

Commented [A&O37]: Correct, ½ mark

Commented [A&O38]: Correct, ½ mark

In *Trenwick Am Litig Trust (publicly listed insurance holding company) v Ernst & Young, LLP* 906 A.2d 168 (Del Ch 2006), which in the course of action and after reorganization finally

became insolvent and together with its top US subsidiary filed for bankruptcy, it was stated that there is no absolute obligation for the board of directors to cease operations and liquidate company even in the case they were likely not to be able to pay companies bills, but that they can continue with the operations with goal to maximize the value for the company.

Also in *Production Resources v. NCT GROUP*, 863 A.2d 772 (Del. Ch. 2004) "Given that these legal tools exist to protect creditors, our corporate law (and that of most of our nation) expects that the directors of a solvent firm will cause the firm to undertake economic activities that maximize the value of the firm's cash flows primarily for the benefit of the residual risk-bearers, the owners of the firm's equity capital.

So long as the directors honour the legal obligations they owe to the company's creditors in good faith, as fiduciaries they may pursue the course of action that they believe is best for the firm and its stockholders."

Question 3.2 [maximum 3 marks]

Describe the circumstances in which a bankruptcy court may enter a final order, who reviews appeals from bankruptcy court orders and how non-final orders are reviewed.

As stated in U.S. Code § 157, bankruptcy court can make final order only in core proceedings.

District courts review the reports and recommendations of bankruptcy courts in a core proceedings over which they lack constitutional authority. That is unless parties consented and district court allowed bankruptcy court to enter a final order.

In general, appeals from bankruptcy courts orders are reviewed by a district court in which bankruptcy court sits. In some circuits, bankruptcy appellate panel service is formed which is composed of bankruptcy judges of the districts in the circuit who are appointed by the judicial council. In those circuits BAP review the appeals. From circuit court or BAP, there is another option for appeal to be reviewed on the circuit court.

Non final or interlocutory orders are reviewed only with leave of the appellate court.

Question 3.3 [maximum 4 marks]

Describe how claims for recovery of preferences, fraudulent conveyance and constructive fraudulent conveyance differ.

Preferences and fraudulent conveyance are in context of bankruptcy actions undertaken by management of company that in the end led either to the "change" in order of payment to the creditors/their collection of debt or percentage/amount of money distributed to the creditors, or diminishing of assets of the company. Trustee can make claim to recover the assets transferred in these transactions or avoid them.

Preference is transfer of the property of the debtor, or interest in property (giving a lien) in the suspect period (90), or when debtor was insolvent which was done to or in the interest of the debtor for or on the account of antecedent debt owed to the creditor before such transfer was made. Suspect period for the insiders is one year. It has to result in creditor improving his position and receiving more than he would receive in chapter 7 liquidation.

In case a claim for recovery is successful, amount that exceeds one creditor would receive in chapter 7 liquidation must be returned to the estate.

Commented [A&O39]: Total marks 2/3

Commented [A&O40]: Specifically, in core proceedings with consent of the parties unless it is a challenge to the petition, which does not require consent.

Commented [A&O41]: Correct, 1 mark

Commented [A&O42]: Correct, ½ mark

Commented [A&O43]: Correct, ½ mark

Commented [A&O44]: Total marks 3.5/4

Commented [A&O45]: Correct, ½ mark

Commented [A&O46]: Incorrect, the transfer must both occur during a suspect period and be while the debtor is insolvent

Commented [A&O47]: Correct, ½ mark

Commented [A&O48]: Correct, ½ mark

Commented [A&O49]: Correct, ½ mark

Numerous defences are available for the defendant, he can argue that he contemporaneously gave debtor new value, that the transfer was made in the ordinary course of payments, that the grant of the security interest in property was done in course of debtor purchase of the property or that it so happened because of change in the collateral pool. There are also situations of statutory liens created by state law that cannot be avoided, reclamation rights and safe harbours for securities and commodities contracts.

Fraudulent conveyances stated in § 548 –are transactions for which is proven that debtor made a transfer or incurred an obligation “with actual intent to hinder, delay or defraud an entity to which debtor was or became indebted”. They may be avoided even if they happened at period which is not immediately prior to bankruptcy. Period in which such transaction was undertaken extends to two years prior to petition date.

Intent for these fraudulent transfers and obligations may be proven circumstantially, by reference to the “badges of fraud” (indicators of fraud) developed in state fraudulent transfer law. They are referred to as actual fraudulent conveyances.

On the other hand, we have constructive fraudulent conveyances in which there transactions fall even without a showing of a fraudulent intent. For a claim to avoid a constructive fraudulent conveyance it is necessary to be successful it is necessary to prove that debtor received less than reasonably equivalent value in exchange for transfer or incurrence of obligation. Besides that, debtor should have become insolvent as of result of the transaction or was insolvent at the time, or was unreasonably undercapitalized for the business, or intended to incur debts beyond it’s ability to repay when they fall due, or the transfer was made to or for the benefit of the insider.

Claim won’t be successful and the defendant can retain the property/ enforce obligation if he proves that he acted in good faith and took for value what he received in exchange to the extent of what he gave to the debtor. That is unless the transfer is otherwise avoidable as preference, statutory lien or unperfected security interest.

Question 3.4 [maximum 5 marks]

How does a US bankruptcy court determine whether a foreign proceeding is a main or non-main proceeding under chapter 15?

Foreign main insolvency proceedings are those which commenced at debtors center of main interests. Debtor’s COMI is presumed to be in the place of it’s incorporation, but that presumption is rebuttable. Since concept of COMI is foreign to the US law which instead uses concepts of domicile, principal place of business and location of assets, in determining debtors COMI which should be ascertainable to creditors on the bases of objective evidence following factors are taken into consideration: location of headquarters, location of primary assets, location of management, jurisdiction whose laws apply to most disputes, location of majority of debtors creditors.

If debtor had an establishment, and carried his activities there before commencement of the chapter 15 proceedings foreign proceedings can be recognized as a foreign non-main proceedings. Establishment is a place where debtor carries non transitory economical activity which includes personnel and assets.

Commented [A&O50]: Correct, ½ mark

Commented [A&O51]: Correct, 1 mark

Commented [A&O52]: Total marks 4/5

Commented [A&O53]: Correct, 1 mark

Commented [A&O54]: Correct, ½ mark

Commented [A&O55]: COMI is evaluated as of the date of the commence of the US proceedings.

Commented [A&O56]: Correct, ½ mark

Commented [A&O57]: Correct, 1 mark

Commented [A&O58]: Correct, 1 mark

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

Commented [A&O59]: Total marks 6/15

Question 4.1 [maximum 5 marks]

Commented [A&O60]: Total marks 3/5

Rental Corporation is a publicly-traded company that leases office space from office building owners and sublets the space to small businesses. It has recently announced that it is being investigated by the US Department of Justice Fraud Division (DOJ) regarding allegedly fraudulent misstatements of revenues; shortly after the announcement, a securities class action litigation was filed against Rental Corporation in New York federal court. Due to the increase in the numbers of businesses operating remotely, Rental Corporation has suffered a decline in revenues. As a result, it has failed to pay rent on some of its office space leases and it has just defaulted on its quarterly payment on its credit facility. What would be the effect of a chapter 11 petition being filed by Rental Corporation on each of (i) the DOJ investigation, (ii) the securities class action litigation; (iii) the delinquent leases and (iv) the credit facility?

- (i) In regards to DOJ investigation, since it is a investigation regarding alleged fraudulent misstatements of revenues, this investigation will continue as though petition wasn't filed as per provisions of USC § 362b
- (ii) The securities class action litigation will be stayed upon filing of chapter 11 petition, plaintiffs can file a motion to lift the stay
- (iii) Regarding delinquent leases, they are executory contracts, and can be assumed if debtor has funds to pay up the owed rent, or rejected, or assumed and transferred. In first and last scenario, landlord must be given adequate assurances for future performance.
- (iv) Credit facility loan can be terminated by the lender if there is ipso facto clause in contract

Commented [A&O61]: Correct, 1 mark

Commented [A&O62]: Correct, 1 mark

Commented [A&O63]: Correct, 1 mark

Commented [A&O64]: Because the leases merely have unpaid rent and did not expire pre-petition, the stay bars any eviction proceedings.

Commented [A&O65]: The stay bars any proceeding to recover on the credit facility.

Question 4.2 [maximum 5 marks]

Commented [A&O66]: Total marks 0/5

Considering the facts set forth in Question 4.1, what protections does the Bankruptcy Code provide to lessors of office space to Rental Corporation?

Lease agreements are executory contracts from perspective of debtor. Debtor can reject them and that will terminate the contract giving lessors right to pre petition claim. In case debtor decides to assume/assume and assign the contract in both of which cases the lessor should be given adequate assurances for the future performance.

Commented [A&O67]: The debtor has 120 days to make the decision whether to assume or reject leases of real property, subject to a 90 day extension for cause. Any further extension requires consent of the lessor. Rental Corporation must pay rent as an administrative expense for the period prior to rejection of a lease. Administrative priority treatment for 2 years of rental payments for leases that are assumed and subsequently rejected. Lessors have a claim in the bankruptcy for unpaid pre-petition rent.

That is under provisions of USC § 365. That is in case it is not a situation that falls under section (e) of USC § 365 where in (i) applicable law excuses a party, other than the debtor, to such contract or lease from accepting performance from or rendering performance to the trustee or to an assignee of such contract or lease, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties; and (ii) such party does not consent to such assumption or assignment;

Question 4.3 [maximum 5 marks]

Commented [A&O68]: Total marks 3/5

Paint Corporation formulates house paint according to proprietary and patented recipes at its factory in the United States, which it sells to home improvement stores under a number of distribution contracts. The US Environmental Protection Agency is investigating whether Paint Corporation's operations are causing harmful chemicals to contaminate a nearby river. Paint Corporation is concerned it cannot afford the clean-up that may be required and is seeking to sell its business. Home Corporation is interested in buying the business, but does not want the potentially contaminated property (it can manufacture paint at its own factory) and is concerned about obtaining consent from all the home improvement stores to assign the

distribution contracts. How would a sale under section 363 of the Bankruptcy Code address these issues?

Fact of the case point out that Home corporation is interested in buying business without the plant itself (since it has it's own plan in which it can manufacture paint). Therefore scope of their interest is in proprietary and patented recipes for manufacture of paint, and distribution contracts with home improvement stores.

At the moment Paint Corporation is not insolvent, so it can file a petition for chapter 11 proceedings. In order for 363 sale to be approved by court, Paint corporation as future presumably debtor in possession must prove that the proposition for sale is in business judgement, and that they have taken into account interests of creditors to whom they own fiduciary duty to consider their interests.

Under section 363 of the Bankruptcy Code, debtor can sell it's assets free and clear of creditors interests, so stated proprietary and patented recipes can be subject to sale under conditions that are acceptable to them.

Issue of distribution contracts will considered as a matter of executory contracts since they are not terminated at the moment, in which case Paint Corporation can assign them to the potential/interested buyer of their recipes and formulas which in this case is Home Corporation. Consent of the home improvement stores isn't required on the side of (future debtor), and it shouldn't be a matter of concern as long as Home Corporation provides adequate assurances for future performance under stated distribution contracts.

Proceeds of the sale, in case there are no security over them could be used, besides payment to the creditors for a clean-up of stated plant and property that may be required. In regards to that, provisions of USC § 363 (e) give right to possible plaintiffs for damages to the (surrounding) property to file a motion to give adequate protection of their interests in case Paint Corporation's responsible for the pollution and damages. (or even US Environmental Protection Agency – provisions of environmental protection act(s) in US are unknown to me) *"Notwithstanding any other provision of this section, at any time, on request of an entity that has an interest in property used, sold, or leased, or proposed to be used, sold, or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest."*

*** End of Assessment ***

Commented [A&O69]: Correct, 1 mark, this may result in a higher price than if it had to take all of the property and Home Corp would have the certainty of knowing its sale cannot be overturned on appeal

Commented [A&O70]: Correct, 1 mark

Commented [A&O71]: Correct, 1 mark