



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.**
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- 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 31/50

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

Commented [A&O2]: Total marks 6/10

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]: Incorrect, the correct response is (b)

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]: Incorrect, the correct response is (d)

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).

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

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.

Commented [A&O7]: Correct, 1 mark

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&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]: Incorrect, the correct response is (a)

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 9.25/10

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?

[The minimum requirement to be a debtor under any chapter of the Bankruptcy Code is the presence of the debtor or its place of business or any of its assets in the United States. The requirement may be met by minimal or intangible assets, such as a retainer paid to a US attorney or a claim under a US law.]

Commented [A&O15]: Correct, ½ mark

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?

[In the most common formulation, a contract is said to be executory if there are material underperformed obligations on both sides. For example, if the debtor is party to a construction contract with a builder and, as of the petition date, construction and payment are only partially complete, the contract is executory, whereas if construction is complete, but the debtor has not made its final payment, the contract would not be executory.]

Commented [A&O18]: Correct, ½ mark, also the obligations must be such that failure to perform would be 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?

[If financing cannot be obtained on any other terms, the court may grant a priming lien that is senior or equal to a pre-petition lien on estate property to secure post-petition financing. The debtor also must demonstrate that the interest of the secured creditor being primed is adequately protected.]

Commented [A&O21]: Correct, ½ mark

Commented [A&O22]: Correct, 1 mark

Commented [A&O23]: Correct, ½ mark

Question 2.4 [maximum 2 marks]

Commented [A&O24]: Total marks 1.75/2

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?

(i) An unimpaired class (including one whose acceleration of debt has been reversed) is deemed to accept the plan.

Commented [A&O25]: Correct, ½ mark

(ii) A class of creditors that will receive nothing is deemed to reject the plan.

Commented [A&O26]: Correct, ½ mark

(iii) Impaired classes of creditors are permitted to vote on the plan.

Commented [A&O27]: Partially correct, ¼ mark, they must be both impaired and receiving something under the plan

A given class of creditors approves the plan if a simple majority of the creditors in the class, holding at least two-thirds of the value of claims in the class, vote in favour or, for equity interest, if two thirds in amount of interest vote in favour.

Commented [A&O28]: Correct, ½ mark

Question 2.5 [maximum 3 marks]

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

[In Chapter 15 proceedings, the stay arises only upon the petition for recognition of a foreign main proceeding being granted and is limited to the property of the debtor within the territorial jurisdiction of the United States. The Bankruptcy Court may grant a stay or other assistance on an interim basis pending recognition or following recognition of a non-main proceedings.]

However, in Chapter 11 proceedings, a voluntary petition is immediately effective to open the proceedings and impose the statutory automatic stay. Involuntary petitions are also immediately effective to invoke the automatic stay and, unless timely challenged by the debtor, the court will enter an order confirming the petition. [The scope of the automatic stay is extremely broad, it applies to any interference with the property of the estate anywhere in the world.]

Commented [A&O29]: Total marks 3/3

Commented [A&O30]: Correct, ½ mark

Commented [A&O31]: Correct, ½ mark

Commented [A&O32]: Correct, ½ mark

Commented [A&O33]: Correct, ½ mark

Commented [A&O34]: Correct, ½ mark

Commented [A&O35]: Correct, ½ mark

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

Commented [A&O36]: Total marks 11.25/15

Question 3.1 [maximum 3 marks]

Commented [A&O37]: 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?

[In general, US Director liability is more limited than that elsewhere. Directors owe a fiduciary duty of loyalty to the corporation's best interest and a duty of care in educated decision making, but are protected from liability of errors of judgement by the business judgement rule.]

Commented [A&O38]: Correct, ½ mark

Commented [A&O39]: Correct, ½ mark

Director's duties are owed to the corporation and its shareholders, not to creditors, even in circumstances where the corporation is potentially insolvent and therefore the shareholders stand to receive nothing in bankruptcy. The Delaware Supreme Court in North Am Catholic Educational Programming Foundation Inc Vs Gheewala, 930 A.2d92,103(Del 2007), has put to rest any suggestion that directors owe duties to creditors when a company is operating in the zone of insolvency or indeed is actually insolvent.]

Commented [A&O40]: Correct, ½ mark

Commented [A&O41]: Correct, ½ mark

Commented [A&O42]: Correct, ½ mark

Commented [A&O43]: Correct, ½ mark

Question 3.2 [maximum 3 marks]

Commented [A&O44]: Total marks 1.75/3

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.

[The distinction between interlocutory and final orders can be as elusive one where a court resolves not simply claims between two parties, but an issue of broad applicability such as the post petition interest rate applicable to the debtor's obligation. Recognizing the unique nature of bankruptcy proceedings as an aggregation of individual controversies, the US Supreme Court has held that a bankruptcy order resolving a discrete dispute is a final order for appeals purposes.]

[If the ruling is in a core proceeding over which the bankruptcy court has authority (whether by law or by consent of the parties) to enter a final order, the district court or BAP reviews conclusions of law de novo and reviews finding of fact for abuse of discretion, recognizing that

Commented [A&O45]: Correct, ½ mark, and specifically the bankruptcy court has authority to enter a final order on a challenge to a petition or a core matter with consent of the parties

Commented [A&O46]: Correct, ½ mark

Commented [A&O47]: Correct, ½ mark

the bankruptcy court has greater opportunity to weigh the evidence. If the ruling is in a non core proceedings or the bankruptcy court otherwise did not have authority to enter a final order, the district court or BAP reviews de novo all findings of fact and conclusions of law to which a party has objected. The order of district court or BAP is reviewed by a circuit court of appeal de novo as to conclusions of law and for abuse of discretion for findings of fact.]

Commented [A&O48]: Partially correct, ½ mark, a matter would go to a district court and not a BAP on a non-final order so the district court can enter a final order.

Question 3.3 [maximum 4 marks]

Commented [A&O49]: Total marks 1.5/4

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

[A preference is a transfer of the debtor's property made in a suspect period before the petition date that must be returned to the estate if it exceeds the amount the recipient would have received in a chapter 7 liquidation had the transfer not been made. Importantly, there is no need to show any fault of either the debtor or the recipient in connection with the payment having been made, and the recipient creditor suffers no penalty other than return of the transfer (and, potentially, prejudgement interest from the date of the transfer). The avoidance of preference is intended to equalise treatment of similarly situated creditors and disincentivize a race to collect from a distressed debtor. The recipient of a preference that is avoided has an unsecured claim for the value returned to the estate.

Commented [A&O50]: Was looking for you to state that this period is 90 days for third parties and 1 year for insiders and also that the debtor must have been insolvent at the time of the transfer. Also, the transfer must have been to a creditor on account of an antecedent debt. By contrast, any transfer may be a fraudulent conveyance and insolvency is not an essential element.

While preference avoidance is aimed largely at transactions immediately prior to bankruptcy (except in the case of insiders), other transactions within a two year period prior to the petition date may also be avoided if they constitute fraudulent conveyances. Despite the nomenclature, transactions may be avoided as constructive fraudulent conveyances without showing of fraudulent intent. An actual fraudulent conveyance is proven by showing that the debtor made a transfer or incurred an obligation "with actual intent to hinder, delay or defraud any entity to which the debtor was or become....indebted. A constructive fraudulent conveyance is proven by showing that the debtor received less than reasonably equivalent value in exchange for a transfer or incurrence of obligation.

Commented [A&O51]: Correct, 1 mark

Commented [A&O52]: Correct, ½ mark

The recipient of an actual or constructive fraudulent transfer may nonetheless retain the property received or enforce the obligation created if it took for value (to the extent of value provided) and in good faith unless the transfer is otherwise avoidable as a preference, statutory lien or unperfected security interest.]

Question 3.4 [maximum 5 marks]

Commented [A&O53]: Total marks 5/5

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

[Foreign main proceedings are those that are commenced in the debtor's centre of main interest (COMI). COMI is a concept foreign to US law, which typically uses the concepts of domicile, principal place of business, and location of assets in determining the jurisdiction and value. A debtor's COMI is presumed to be its place of incorporation, but this is rebuttable.]

Commented [A&O54]: Correct, 1 mark

Commented [A&O55]: Correct, ½ mark

[Relevant factors in the COMI analysis include:

- Location of headquarters;
- Location of management;
- Location of primary assets;
- Location of a majority of debtor's creditors or a majority of the creditors that will be affected by the relief requested by the foreign representative; and
- Jurisdictions whose law will apply to most disputes.]

Commented [A&O56]: Correct, 1 mark

A debtor's COMI should be ascertainable by its creditors or other third parties on the basis of objective evidence. Proceedings in a jurisdiction other than the debtor's COMI can be recognised as foreign non-main proceedings only if the debtor had an establishment in the jurisdiction-a place where it carried out non transitory economic activity- prior to the commencement of Chapter 15 proceedings.

Commented [A&O57]: Correct, ½ mark

Commented [A&O58]: Correct, 1 mark

In the Bear Stearns case, for example, the US bankruptcy court held that the Cayman Islands could not be the COMI for a Cayman incorporated hedge fund because the fund was an exempt company, licensed on the basis that it would not have operations in the Cayman Islands. The court also found that the Cayman liquidation could not be recognised as a non main proceeding because the debtor had no establishment there prior to its insolvency. As a result of the Bear Sterns case, and the conclusion of most US courts that COMI is to be assessed as of the date of the US petition, not the commencement of foreign proceedings, a process has been developed of shifting COMI through the conduct of the foreign proceedings themselves.]

Commented [A&O59]: Correct, 1 mark

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

Commented [A&O60]: Total marks 4.5/15

Question 4.1 [maximum 5 marks]

Commented [A&O61]: Total marks 4/5

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?

[The worldwide automatic stay comes into effect immediately on the filing of any plenary petition. The scope of the automatic stay is extremely broad-it applies to any interference with the property of the estate anywhere in the world.

Commented [A&O62]: Correct, 1 mark

- (i) [The DOJ investigation regarding allegedly fraudulent misstatement of revenue is criminal in nature. The automatic stay is subject to certain statutory exceptions and criminal proceedings is one of them. Therefore, filing of chapter 11 petition won't stay the DOJ investigation.]
- (ii) [Securities class action litigation comes within the purview of exercise of rights under commodity, forward or security contract which is also a statutory exception. Thus, the securities class investigation would not be stayed by filing chapter 11 petition.]
- (iii) [In case of delinquent leases if the lease has expired the eviction would come within the exception otherwise the other proceedings would be stayed.]
- (iv) [Any action in respect of credit facility would be automatically stayed once the Chapter 11 petition is filed by Rental Corporation.]

Commented [A&O63]: Correct, 1 mark

Commented [A&O64]: Incorrect, this is a lawsuit by shareholders, not to conclude a securities contract, and so would be stayed as pre-petition litigation.

Commented [A&O65]: Correct, 1 mark

Commented [A&O66]: Correct, 1 mark

Question 4.2 [maximum 5 marks]

Commented [A&O67]: 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?

[Upon filing of a plenary bankruptcy proceeding, an estate is created consisting of all of the debtor's property interests as of the petition date, subject to certain exclusions for individual debtors. The automatic stay protects property of the estate from creditor enforcement actions with respect to pre petition claims. It is essential to understand that prime facie the leased property is not owned by the debtor and accordingly should not be part of the estate. In exceptional circumstances, the stay may be extended to cover third parties or their property under the court's equitable powers. As the automatic stay is an injunction against creditor action, the non bankruptcy test for the grant of injunctive relief must be satisfied by showing the prospect of irreparable harm to the estate. A showing that estate has an interest in the property of a third party is sufficient for the automatic stay to apply by its own terms without satisfying the injunction standard. However, in such a case also, the Bankruptcy Code provides that the lessor may file for lifting of stay.]

The automatic stay post filing the Chapter 11 petition may be lifted (through a lift stay or relief from stay motion) to permit otherwise prohibited creditor actions in certain circumstances. Like in case of lack of adequate protection of an interest in property of the estate such as that of lessor, where the value of the property may decline during the course of proceedings and result in the interested party making less than a full recovery. It also becomes important for the reason that the debtor has no equity in the property and it is not necessary for reorganisation.

Further, the court may terminate the automatic stay as of a given future date, annul the stay retrospectively (validating acts that otherwise would have been void or voidable as stay violations), modify the stay to permit specific act (for example, to file a lawsuit against the debtor to avoid lapsing of statute of limitations) or condition the continuance of the stay on the debtor's compliance with a condition to protect the affected party's interest in the property, in each case for cause shown.]

Question 4.3 [maximum 5 marks]

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?

[As per the facts given, the Home Corporation, is ready to buy the business of Paint Corporation along-with distribution contracts sans the property cause the property is potentially contaminated and Home Corporation can manufacture paint at its own factory. Meaning thereby, the property needs to be hived off and sold before transfer to Home Corporation.]

In such a situation, resort can be made to section 363. For non-ordinary course transactions, most commonly 363 sales of property, a debtor in possession must establish that it is proposing the transaction in its business judgement (in connection with which it owes a fiduciary duty to consider the interest of creditors) and that the transaction is in the best interest

Commented [A&O68]: The debtor's interest in the leases, however, is part of the estate and it has 120 days to decide whether to assume or reject leases of commercial real estate, subject to a 90 day extension for good cause but no further extension without lessor consent. 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.

Commented [A&O69]: Total marks 0.5/5

Commented [A&O70]: Partially correct, ½ mark, the Home Corporation transaction could happen first pursuant to section 363, and would likely generate a higher purchase price than available pre-bankruptcy. This sale can be free and clear of all creditor interests and could not be reversed on appeal. The distribution contracts are executory and can be assigned without counterparty consent.

of the estate as a whole. The UCC will usually be closely involved in scrutinising proposed transactions and is authorized to retain financial advisors at the estate's expense to assist it.

While no particular procedure for 363 sales is specified by the Bankruptcy Code, the practice in large cases for significant sales is to conduct an auction with a stalking horse bidder. The debtor (sometimes with the assistance of a financial advisor or investment banker) will market the property and invite interested parties to conduct due diligence, ultimately leading to negotiation of proposed transaction documents with a single party. Upon court approval of these documents, this party's bid becomes the stalking horse for the auction, which another bid must exceed in price or terms to be selected as highest and best offer. Because the stalking horse bidder invests substantial time and expense in this process, it is typically paid a break fee if another bid is selected at the auction. If no other qualified bids are received, the auction will be called and the stalking horse bid accepted.

Therefore, by following the aforementioned procedure u/s 363, the property may be sold separately and rest of the business may be transferred to Home Corporation.]

*** End of Assessment ***