



### **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 [DB1]: 40.5 out of 50 = 81% - well done.

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

Commented [DB2]: 8 out of 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**

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**

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**

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.

**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.

**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.

**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.

**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.

(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 [DB3]: 7 out of 10

**Question 2.1 [maximum 1 mark]**

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

[For a corporation to be eligible as a debtor for purposes of US chapter 7 or 11 proceeding, it should either have (a) a presence or its place of business in the United States, or (b) any of its assets in the United States.] **0.5 marks**

**Question 2.2 [maximum 2 marks]**

What is an executory contract?

[A contract is executory if there are material unperformed obligations on both sides.] **1 mark**

**Question 2.3 [maximum 2 marks]**

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

[The court can grant a 'priming lien,' which is a lien that is senior or equal to a pre-petition lien over the estate property, so as to allow the debtor secure post-petition financing. The debtor must demonstrate that the interest of the secured creditor being primed is adequately protected.] **2 marks**

**Question 2.4 [maximum 2 marks]**

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 is deemed to accept the plan.
- (ii) A class that will receive nothing is deemed to reject the plan.
- (iii) Only impaired classes have the right to vote on the plan.

A given class of creditors approves the plan if a simple majority of the creditors in the class, holding at least 2/3 of the value of claims in the class, vote in favour or, for equity interests, if 2/3 in amount of interest vote in favour. ] **2 marks**

**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 contrast to the automatic stay in other chapters of the Bankruptcy Code which takes effect upon filing of the petition, the automatic stay in Chapter 15 comes only into effect upon recognition of the foreign main insolvency proceedings in the US. Furthermore, Chapter 15 automatic stay is also subject to a carve out to permit the filing of a plenary US bankruptcy proceeding even after the recognition of a foreign proceeding.] 1.5 marks

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

Commented [DB4]: 12 out of 15

**Question 3.1 [maximum 3 marks]**

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 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 for errors of judgment by the business judgments rule. Under the business judgment rule, the board of directors is presumed to have acted in good faith on the basis of reasonable information. This presumption can be rebutted only by showing that a majority of the board in fact were not reasonably informed, did not honestly believe that their decision was in the corporation's best interest, or were not acting in good faith. Hence, unless the presumption is rebutted, the directors will not be liable in the absence of a showing of gross negligence. Notably, the directors' duties are owed to the corporation and its shareholders, and not to the creditors, even when in circumstances where the corporation is potentially insolvent and therefore the shareholders stand to receive nothing in bankruptcy. This has been confirmed by the Delaware Supreme Court in *North Am Catholic Educational Programming Foundation, Inc. v Gheewalla*, 930 a.2d 92,100 (Del 2007) – '(I) individual creditors of an insolvent corporation have no right to assert direct claims for breach of fiduciary duty against corporate directors.' ] You must only answer the question, but where you did your answer is good. 2.5 marks.

**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.

[A bankruptcy court can only enter a final order on core bankruptcy issues. What makes a matter a core or 'non-core' may be based on the distinction provided in the referral statute. The statute contains a non-exhaustive list of core proceedings, which include but not limited to '(A) matters concerning the administration of the estate, (B) allowance or disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims or interests....(C) counterclaims by the estate against persons filing claims against the estate....'

In general, appeals from bankruptcy court decisions are heard by the district court for the district in which they sit. In certain circuits, however, bankruptcy appeals are heard by a Bankruptcy Appellate Panel (BAP), convened from the judges of the bankruptcy courts within the circuit. In those circuits, a party has the option to request that the appeal be heard by the district court instead. From the district court or BAP, a further appeal of right to the circuit court of appeals. In rare circumstances, an appeal from a bankruptcy court may go directly to the court of appeals, where the bankruptcy court or district court certifies that (i) the appeal raises a question of law as to which there is no controlling decision of the circuit or the US Supreme Court, or requires resolving conflicting controlling decisions, or (ii) immediate appeal

may materially advance the progress of the case. In such situations, the court of appeals has discretion whether to accept a case so certified.

On the other hand, non-final or interlocutory orders or those which resolve only some issues or claims may be appealed only with leave of the appellate court. ] 2.5 marks

**Question 3.3 [maximum 4 marks]**

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

[A preference (P) is a transfer of the debtor's property, which was made during a suspect period before the petition date and 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. Unlike in fraudulent conveyance (FC) or constructive conveyance (CFC), P does not involve any fault of either the debtor or the recipient in connection with the payment made. An analysis about P's elements does not even look into any indication of fraud, either actual or constructive, unlike in FC or CFC. Another key difference is the presumption of insolvency on and during the 90 days prior the petition date for purposes of determining P claims. There is no such presumption in FC and CFC. Instead, one of the things that may be established in a recovery of FC or CFC would be the debtor's insolvency or becoming insolvent shortly. Hence, there is no such suspect period of 90 days or one year if the recipient of the P is an insider for both FC or CFC. Again, the relevant indicator is the existence of the debtor's insolvency or becoming insolvent shortly.

Consequently, intention is not generally an element in establishing P, whereas fraudulent intent is an element in FC, albeit it need not be established in CFC. In CFC, fraudulent intent is already deemed established (constructive fraud) by showing that the value received is less than the value of the assets plus any of the additional factors like the insolvency of the debtor or the fact that the transfer has benefited an insider. However, when the defence of safe harbour is raised, certain types of payments (eg, margin payment, settlement payment) cannot be avoided as P unless the transfer was made with the intent to defraud creditors.

Moreover, the recipient of the P is a creditor who stands to receive more than it would have had in a Chapter 7 liquidation, which need not be the case in FC or CFC because the recipient can be an insider to the debtor. Furthermore, the recipient of a P possesses the property because of the transfer of interest, which need not be the case in FC because the debtor may retain possession and control of the property albeit the title is transferred to another. Notably, there is no need to hide, abscond, remove the assets of the debtor as regards P, unlike in FC, such acts are deemed as indicators of fraud. Furthermore, the value of consideration for the P may be higher than the value of the assets sold (this fact is immaterial), but the property sold may still be recovered because what is important is that the creditor-recipient received more than what it could have received in a Chapter 7 liquidation. In contrast, if the value of the consideration is less than the value of the assets sold, such can establish recovery for both FC and CFC.

Because fraud is not an element in P, the creditor-recipient suffers no penalty but he needs to return the property transferred (and potentially pay for prejudgment interest from the date of the transfer). In contrast, the recipient of FC or CFC should return the property unless the property received or enforce the obligation created if it took for value (to the extent of the value provided) and in good faith unless the transfer is otherwise avoidable as a P, statutory lien, or unperfected security interest.



A recovery for P must also be able to address a wide range of defences and safe harbours that may allow creditors to keep pre-petition transfers that occurred during the suspect period. Example of defences include provision of contemporaneous new value, payments made in the ordinary course of business, provision of purchase-money security interests, among others. In contrast, because fraud is the core element in FC and CFC (ie, actual or constructive fraud), the defence would be taking the property for value and in good faith. In addition, state and fraudulent conveyance laws may be invoked by the debtor in possession or trustee.] **2 marks**

Answer was:

To be a preference, a payment must have been made to a creditor (1/2 mark) on an antecedent debt (1/2 mark), whereas any transfer of an interest of the debtor in property can be an actual or constructive fraudulent conveyance (1 mark).

The suspect period for preferences is 1 year for transfers to insiders (1/2 mark) and 90 days for transfers to others (1/2 mark). The look-back period for actual and constructive fraudulent conveyances is 2 years (1 mark)

To be a preference, the payment must be made while the debtor is insolvent (1/2 mark), whereas insolvency is not required for actual and constructive fraudulent conveyances (though may be an element considered in establishing such claims) (1 mark). Actual fraudulent conveyance is the only one of these claims that requires wrongful intent (1/2 mark).

#### 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?

[A US bankruptcy court may characterise a foreign proceeding as either a main or non-main proceeding under Chapter 15 based on the centre of main interests (COMI) test. Notably, the COMI test is a concept foreign to US law. Nonetheless, a debtor's COMI is presumed to be its place of incorporation. To rebut such presumption, several factors are relevant: 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 jurisdiction whose law will apply in most disputes. A debtor's COMI should be ascertainable by its creditors or other third parties on the basis of objective evidence. Notably, as a result of the *Bear Stearns* case, 374 BR 122 (Bankr SDNY 2007), COMI has to be assessed as of the date of the US petition, not the commencement of foreign proceedings. On the other hand, 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. ] **Good answer 5 marks**

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

Commented [DB5]: 13.5 out of 15

#### Question 4.1 [maximum 5 marks]

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?

[An automatic stay which has a broad scope takes effect upon the filing of a Chapter 11 petition. Under the Bankruptcy Code, the automatic stay prohibits the following:

- litigation of pre-petition claims;
- enforcement of pre-petition judgment against the debtor or property of the estate;
- any act to obtain possession or control of property of the estate;
- creation, perfection or enforcement of a lien against property of the estate on account of a pre-petition claim;
- any attempt to collect on pre-petition claims (including through demand letters or calls);
- set-off of any pre-petition debt against any pre-petition claim.

The stay, however, is subject to statutory exemptions:

- criminal proceedings;
- regulatory investigations;
- family law matters;
- exercise of rights under commodity, forward, or security contract;
- exercise of rights under a financial repo contract;
- exercise of rights under a swap agreement;
- eviction of a debtor-tenant from non-residential property where the lease has expired;
- termination of educational accreditation or licensing.

Based on the foregoing, the following would be the effect of a Chapter 11 petition:

- (i) The DOJ investigation should be able to continue given that it is a regulatory investigation involving alleged fraudulent misstatement of revenues. A regulatory investigation like the DOJ investigation is an exemption to the scope of the automatic stay.
- (ii) The securities class action litigation is covered by the scope of the automatic stay, given that it is litigation of pre-petition claims. Hence, the said litigation is prohibited by the Chapter 11 petition.
- (iii) Rent due for delinquent leases owed by Rental Corporation cannot be collected because any attempt to collect on pre-petition claims would be covered by the automatic stay. Similarly, any litigation to recover rent or damages because of delinquency should also be covered by the automatic stay.
- (iv) Claims arising from the default of quarterly payment of its credit facility would also be prevented as these are within the scope of the automatic stay. Similarly, these claims cannot be the basis of litigation as litigation of pre-petition claims are also prohibited.

The filing of a Chapter 11 petition would allow Rental Corporation to continue with its business operations and negotiate with the creditors including those which are party-litigants to the security class action, the lessors involved in the delinquent leases and the creditor involved in the delinquent credit facility. The aim is to be able to develop a plan of reorganisation. This plan of reorganisation is voted upon by creditors and must be confirmed by the court.] **Good answer – 5 marks**

#### **Question 4.2 [maximum 5 marks]**

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

[The lessors of the office space are protected during the period where the automatic stay subsists. First, lessors, as an interest party, may ask the court to lift the automatic stay. In such applications, the lessor needs to establish that because of lack of adequate protection of an interest in property of the estate, the value of the property may decline during the course of the proceedings and thus, result in the lessor, as an interested party, making less than a full recovery.

Second, the 2005 *Bankruptcy Abuse Prevention and Consumer Protection Act* (BAPCPA) made amendments to the *Bankruptcy Code* which now sets a deadline for assuming or rejecting unexpired leases of non-residential real property. Pursuant to the amended law, the period to assume or reject a non-residential lease may be extended only for 90 days (from the initial 120 days) and any subsequent extension may be granted only with the advance written consent of the lessor in each instance. Previously, but for the court's discretion, there was no limit upon the length of the extended period or the frequency of requests to extend, and in certain cases debtor lessees could extend the period to assume or reject until a plan was confirmed. The amendment gives landlords of commercial premises substantial leverage.

Third, lessors are also protected by the priority given to lease payments in the classes of priority of unsecured claims, which are to be paid immediately after the payment of 'actual, necessary expenses' and 'reasonable fees.' With respect to a non-residential lease of real property that was assumed and subsequently rejected, the lessors are entitled to two years of lease payments from the later of the date of rejection of the lease or turnover of the property.]

Satisfactory answer – 3.5 marks

#### 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?

[A sale under section 363 of the *Bankruptcy Code* would have the following effect:

- (i) As regards the assets constituting the Paint Corporation's business, excluding the potentially contaminated property, Home Corporation would be able to purchase these assets free and clear of creditors' interests, and Home Corporation, as a purchaser in good faith, may retain these properties notwithstanding a subsequent reversal of the court approval for the sale on appeal.

As regards the potentially contaminated property, whether or not Paint Corporation can exclude this property from the business assets to be sold to Home Corporation would depend on the court. In any case, since the sale of the entire business would be a non-ordinary course transaction, Paint Corporation, as the debtor-in-possession, must establish that it is proposing the transaction in its business judgment (in connection with which it owes a fiduciary duty to consider the creditors' interests) and that the transaction is in the best interests of the estate as

a whole. Notably, there is no rule that a sale of business should involve a sale of all assets being sold together. Courts have recognised and allowed separate sale of assets. Hence, if Paint Corporation would be able to establish that the sale of the business assets sans the potentially contaminated property would be based on its business judgment and is in the best interest of the estate as a whole, then the court would most likely approve such sale under section 363 of the Bankruptcy Code.

Upon the sale of the business assets sans the potentially contaminated property to Home Corporation, Paint Corporation's creditors would have their interests attached to the proceeds of the sale and it will receive priority in distribution of those proceeds. Furthermore, should the potentially contaminated property remain as Paint Corporation's asset, the creditors would also get a share of it (either as an asset or over its proceeds if also sold eventually) upon its distribution based on the schedule of priorities.

- (ii) As regards the distribution contracts, Paint Corporation can transfer its interests over these contracts even where they contain contractual restrictions on assignment or purport to terminate upon a bankruptcy filing (*ie*, ipso facto clauses). This is because executory contracts or contracts where there are material unperformed obligations on both sales, which is likely the case in these distribution contracts with home improvement stores, can be assumed and assigned by Paint Corporation to a third party like Home Corporation. Counterparty consent is not required. Counterparty consent is only required where the contract is one to make a loan or other financial accommodation, or where substantive non-bankruptcy law, like intellectual property licensing law, provides that the counterparty cannot be compelled to accept performance from a transferee. This is not the case as regards distribution contracts.]

Good answer 5 marks

**\* End of Assessment \***