



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: **[studentID.assessment3A]**. An example would be something along the following lines: 202122-514.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 "studentID" 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 2022**. The assessment submission portal will close at 23:00 (11 pm) GMT on 1 March 2022. 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 2022** or by **23:00 (11 pm) BST (GMT +1) on 31 July 2022**. If you elect to submit by 1 March 2022, you **may not** submit the assessment again by 31 July 2022 (for example, in order to achieve a higher mark).
7. Prior to being populated with your answers, this assessment consists of **8 pages**.

Commented [DB1]: This is the second assessment you have uploaded this round and where you have ignored the instructions. Please be warned that if this continues I will return your assessments to you unmarked.

ANSWER ALL THE QUESTIONS

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

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

Question 1.1

ABC Corp is filing for bankruptcy under chapter 11. Which of the following **is not** a party in interest in that proceeding?

- (a) A neighboring land owner who has leased equipment to ABC Corp.
- (b) ABC's government regulator.
- (c) A bank that has loaned money to ABC.
- (d) A local advocacy group.**
- (e) All of the above.

Question 1.2

Which of the following statements regarding executory contracts is **false**?

- (a) Executory contracts are clearly defined by the bankruptcy code.**
- (b) Chapter 11 debtors have greater flexibility than chapter 7 debtors on when they may assume, assign or reject an executory contract.
- (c) In the most common formulation, executory contracts are defined as those where both sides to a contract have material unperformed obligations.
- (d) A court will generally defer to a debtor's business judgment regarding whether to assume or reject an executory contract.
- (e) Under the hypothetical test, a debtor cannot assume an executory contract if the debtor could not also assign the contract.

Question 1.3

In which of the following scenarios does a bankruptcy court have constitutional authority to issue a final order? Assume in each that the counterparty to the dispute has not consented to the bankruptcy court's exercise of jurisdiction.

- (a) A counterclaim against the estate that introduces a question under state law.**
- (b) Since the list of core proceedings is non-exhaustive, a bankruptcy court may issue a final determination on any matter that comes before it.

Commented [H(2): Total marks 32.5/50, but note extensive copying from the course text and other sources in response to Questions 3 and 4

Course Leader: Spoke to this candidate and confirmed that mark would be capped at 50% as punishment for having copied and pasted from the text and not acknowledging sources. Gave a warning that a second breach would result in termination of course.

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Commented [H(4): Correct, 1 mark

Commented [H(5): Correct, 1 mark

Commented [H(6): Correct, 1 mark

- (c) A creditor's claim against an affiliate of the debtor that has guaranteed the debtor's obligation to the creditor
- (d) A debtor's motion to dismiss an involuntary bankruptcy petition.
- (e) None of the above.

Question 1.4

Commented [H(7): Correct, 1 mark

Which of the following statements about "pre-packs" is **false**?

- (a) A pre-pack cannot be used if the debtor wishes to reject executory contracts.
- (b) Creditors must have sufficient information about the debtor and the plan to make an informed voting decision.
- (c) A pre-pack debtor may spend as little as a single day in bankruptcy.
- (d) The proposed plan of reorganization is submitted to the bankruptcy court together with the voluntary petition.
- (e) Creditors' commitment to vote in favor of the plan may be memorialized in a restructuring support agreement.

Question 1.5

Commented [H(8): Incorrect, the votes of insiders cannot be the sole approving votes. The correct response is (c).

Which of the following statements regarding cramdowns is **true**?

- (a) If one insider creditor approves of the plan of reorganization, all other impaired classes may be crammed down.
- (b) Because cramdowns do not require the consent of all classes, the plan of reorganization may not be fair and equitable to all impaired classes.
- (c) Differential treatment of different classes is permitted if there is a reasonable, good faith basis for doing so and such treatment is required for the plan of reorganization to be successful.
- (d) Class definition is rarely a battleground when a debtor tries to cramdown classes.
- (e) Dissenting creditors are not permitted to challenge the classification of a creditor supporting the cramdown.

Question 1.6

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Which of the following statements about the plan exclusivity period is **true**?

- (a) The exclusivity period is 1 year.
- (b) The exclusivity period cannot be extended.
- (c) The exclusivity period cannot be shortened.

(d) During the exclusivity period, only a creditor may propose a plan of reorganization.

(e) During the exclusivity period, only the debtor may propose a plan of reorganization.

Question 1.7

Commented [H(10)]: Correct, 1 mark

Which of the following statements about chapter 15 is **false**?

(a) The automatic stay applies upon the filing of a petition for recognition.

(b) A debtor cannot be subject to an involuntary chapter 15 proceeding.

(c) A chapter 15 petition must be filed by a foreign representative.

(d) The automatic stay applies only to property within the territorial jurisdiction of the United States.

(e) Recognition may be granted to a foreign proceeding as either foreign main or foreign non-main.

Question 1.8

Commented [H(11)]: Incorrect, the correct response is (c)

Which of the following statements about 363 sales is **false**?

(a) A 363 sale permits a debtor to sell an asset free and clear of encumbrances.

(b) A creditor's lien on assets sold in a 363 sale attaches to the proceeds of the sale.

(c) A 363 sale must be conducted as an auction with a stalking horse bidder.

(d) Purchasers may pay a higher price for assets sold in a 363 sale than in an out-of-court transaction.

(e) Sophisticated parties will insist on a 363 sale if there is any question regarding whether the sale is "in the ordinary course of business".

Question 1.9

Commented [H(12)]: Incorrect, the correct response is (e)

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 has a claim for damages for breach of contract.

(b) The counterparty must immediately stop using the trademark.

(c) The counterparty can continue using the trademark for the remaining period of the license.

(d) Both (a) and (b).

(e) Both (a) and (c).

Question 1.10

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

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

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QUESTION 2 (direct questions) [10 marks]

Commented [H(14)]: Total marks 7/10

Question 2.1 (2 marks)

Commented [H(15)]: Total marks 2/2

What is the difference between a voluntary petition for bankruptcy and an involuntary petition for bankruptcy?

Voluntary bankruptcy is where the debtor applies to make themselves bankrupt. A creditor's petition arises when someone who is owed money by the debtor petitions for the debtor's bankruptcy.

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Commented [H(17)]: Correct, 1 mark

Unlike the voluntary petition which requires no allegation of insolvency, in an involuntary petition for bankruptcy the involuntary petition requires the petitioning creditors to allege either that the debtor is generally not paying its debts as they become due, unless they are the subjects of a bona fide dispute as to liability or amount or that, "within 120 days before the filing of this petition, a custodian, other than a trustee, receiver, or an agent appointed or authorized to take charge of less than substantially all of the property of the debtor for the purpose of enforcing a lien against such property, was appointed or took possession."

Question 2.2 (2 marks)

Commented [H(18)]: Total marks 2/2

What are two potential consequences of a violation of the automatic stay?

An act taken in violation of the stay constitutes contempt of court and is void or voidable (depending on the circuit in which the bankruptcy is pending due to a circuit split on the issue). Creditors that wilfully violate the automatic stay may be liable to debtors for actual damages, including costs, attorneys' fees, and, in appropriate circumstances, punitive damages. Similar to stay violations, discharge injunction violations — punishable by sanctions in the nature of civil contempt — may result in monetary sanctions. These sanctions may include compensatory damages, attorneys' fees, and punitive damages. The US Supreme Court recently held that the stay only prohibits affirmative acts that change the status quo of the estate's property. Where the court is concerned the violator may not act promptly, it can impose coercive contempt sanctions, such as a daily fine to be paid to the court until the stay violation has been rectified.

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Commented [H(20)]: Correct, 1 mark

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Question 2.3 (3 marks)

In what circumstances is a claim considered "impaired"? When is a holder of an impaired claim not entitled to vote on a proposed plan of reorganization and what happens instead?

A class is impaired unless, as to every claim or interest in the class, the plan leaves the holder's "legal, equitable, and contractual rights unaltered", except that a class may be deemed unimpaired where the plan reverses contractual acceleration by curing any monetary default and compensating the holder for any damages. Delayed payment in full (after the effective date of the plan) is considered impairment. In order to leave unaltered, the legal, equitable and contractual rights of the holders in a class, the plan must not provide for any change in treatment of the claims or interests of those holders. For example, if the relevant agreement provides that certain claims are to be paid in cash on a certain date, the plan must provide that the claims will be paid, in accordance with the agreement, in cash on that date. The plan may not change any contractual provision or encumber any right that such a holder may have against the debtor. An unimpaired class is conclusively presumed to have accepted the plan pursuant to Section 1126(f). The plan proponent, therefore, does not have to solicit votes from an unimpaired class.

Commented [H(22)]: Total marks 1/3

Commented [H(23)]: Correct, 1 mark. Also, an impaired class that will receive nothing under the plan is not entitled to vote and is deemed to reject the plan.

Question 2.4 (3 marks)

Answer the following questions about preferences, actual fraudulent conveyances and constructive fraudulent conveyances:

(1) Which cause of action applies only to transfers made on account of antecedent debt?

preferences

Commented [H(24)]: Total marks 2/3

Commented [H(25)]: Correct, 1 mark

(2) Which cause of action requires that the debtor be presumed or proven to have been insolvent at the time of the transfer?

constructive fraudulent conveyances

Commented [H(26)]: Incorrect, it is possible for a constructive fraudulent conveyance to occur when the debtor is not insolvent (e.g., insider transaction at undervalue). The correct answer is preference.

(3) Which cause of action requires that the debtor be proven to have intended to frustrate creditors' recoveries?

actual fraudulent conveyances

Commented [H(27)]: Correct, 1 mark

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

Commented [H(28)]: Total marks 11.5/15

Question 3.1 (3 marks)

Commented [H(29)]: Total marks .5/3

How did *Stern v Marshall* change the law of bankruptcy court jurisdiction and authority to enter a final order?

In 2011, the U.S. Supreme Court weighed in with its noteworthy decision in *Stern v. Marshall*, in which it held that bankruptcy courts lack the constitutional authority to enter a final judgment on a state law counterclaim that is not related to the bankruptcy proceeding.

Commented [H(30)]: Partially correct, 1/2 mark. While the case concerned a counterclaim under state law, the holding was broader - that a bankruptcy court cannot issue final orders on most matters, even if they are core proceedings. Bankruptcy courts can issue final orders on challenges to the petition or with the consent of the parties.

The case directly impacts the jurisdictional authority of bankruptcy court judges over certain types of counterclaims that may be asserted by debtors to third party claims filed in bankruptcy cases. To the extent that a debtor's counterclaim is unrelated to the proof of claim filed by the creditor in the bankruptcy and arises under state law, a bankruptcy court can no longer make final judgments on such claim. Instead, the counterclaim will be treated as a "non-core" claim where the bankruptcy judge will issue proposed findings of fact and conclusions of law, subject to de novo appellate review. Going forward, debtors will need to consider whether to proceed with counterclaims in the bankruptcy court or consider withdrawal of the reference over the claim to the district court.

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Question 3.2 (3 marks)

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What provisions of the Bankruptcy Code may not be invoked by a foreign representative in a chapter 15 proceeding? What are two ways that the foreign representative can obtain equivalent relief?

The use of avoidance powers provided by the Bankruptcy Code.

Commented [H(33): Correct, 1 mark

A foreign representative can only invoke the Bankruptcy Code avoidance powers in a plenary proceeding such as chapter 7 or 11. In some circumstances, such a proceeding was commenced by a debtor or its creditors prior to involvement of the foreign representative; in other, rarer circumstances, the foreign representative may choose to commence a plenary proceeding under the Bankruptcy Code after recognition of the foreign proceeding under chapter 15. A foreign representative may wish to commence plenary proceedings to obtain access to the Bankruptcy Code's avoiding powers where relief under other applicable law is unsatisfactory, such as where the statute of limitations has expired or applicable law does not allow claims for constructive fraudulent conveyance.

Commented [H(34): Correct, 1 mark, they may also make claims based on analogous foreign and non-bankruptcy US law.

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Question 3.3 (4 marks)

Commented [H(36): Total marks 4/4

Describe the differences between interlocutory and final orders and how an appeal may be taken from each. Which courts hear direct appeals from bankruptcy court orders?

Final orders are those that dispose of all issues, leaving nothing further to be decided, in contrast interlocutory orders resolve only some issues or claims. Final orders may be appealed as of right, whereas interlocutory orders may be appealed only with leave of the appellate court.

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Commented [H(38): Correct, 1/2 mark

Commented [H(39): Correct, 1/2 mark

Commented [H(40): Correct, 1/2 mark

A bankruptcy judge's rulings can be appealed to the district court or, in certain circuits, to a bankruptcy appellate panel. In general, appeals from bankruptcy court decisions are heard by the district court for the district in which they sit. 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 either 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.

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Commented [H(42): Correct, 1 mark

Question 3.4 (5 marks)

Commented [H(43): Total marks 5/5

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?

Under Delaware law, directors owe fiduciary duties to a corporation's **shareholders**. A director's fiduciary duties include both a **duty of care** and a **duty of loyalty**. The duty of care requires, among other things, that directors keep themselves reasonably informed when making decisions on behalf of the corporation. The duty of loyalty requires a director to act in good faith and in a manner, it reasonably believes to be in the best interests of the corporation and its stockholders, and to avoid engaging in acts of self-dealing.

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Commented [H(45)]: Correct, 1 mark

Commented [H(46)]: Correct, 1 mark

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 for errors of judgment by the business judgment rule.

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The business judgment rule helps to guard a corporation's board of directors against frivolous legal allegations about the way it conducts business. A legal staple in common law countries, the rule states that boards are presumed to act in "good faith"—that is, within the fiduciary standards of loyalty, prudence, and care directors owe to stakeholders. Absent evidence that the board has blatantly violated some rule of conduct, the courts will not review or question its decisions. The business judgment rule does not apply where a transaction is approved by a board majority that is not disinterested and independent or a controlling shareholder is on both sides of the transaction. In such circumstances, the transaction will be void unless the entire fairness standard is satisfied.

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<https://www.investopedia.com/terms/b/businessjudgmentrule.asp>

Directors' 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 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. Thus, there is no equivalent under US law of the concept of "wrongful trading" or "deepening insolvency".

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Commented [H(50)]: Correct, 1 mark

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

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Question 4.1 [4 marks]

Commented [H(53)]: Total marks 2/4

Gambling Corporation is incorporated and has a principal place of business in Greece and it operates casinos and betting parlors in many international cities, including Athens, Las Vegas, London and Macau. Gambling Corp's bonds (governed by English law) are due to mature in one (1) year, but it is unable to repay or refinance them. Gambling Corp is considering using an English scheme of arrangement to restructure the bonds.

Discuss whether the English scheme of arrangement could be granted recognition under US chapter 15 as a foreign main or foreign non-main proceeding.

A foreign proceeding is defined by the Bankruptcy Code as "a collective judicial or administrative proceeding in a foreign country under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation"

A case under chapter 15 is commenced only by the filing of a petition by the foreign representative of the debtor. The requirements of recognition are minimal: the foreign

representative must establish that a foreign court or administrative proceeding with respect to the debtor is pending and that the foreign representative is empowered to act by the proceeding.

Under this definition, proceedings as diverse as English schemes of arrangement, Brazilian recuperação judicial and Australian creditor-appointed receivers have been granted recognition.

A foreign proceeding may be characterized as Foreign Main proceeding or Foreign Non-Main proceedings. Foreign main proceedings are those that are commenced in the debtor's center of main interests (COMI). COMI is a concept foreign to US law, which as discussed above typically uses the concepts of domicile, principal place of business, and location of assets in determining jurisdiction and venue.¹⁹⁷ A debtor's COMI is presumed to be its place of incorporation, but this is rebuttable. Relevant factors in the COMI analysis include: location of headquarters, location of management, location of primary assets or 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 to most disputes. Proceedings in a jurisdiction other than the debtor's COMI can be recognized 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.

From the above discussion the English scheme of arrangement would be granted recognition under US chapter 15 as a foreign non-main proceeding.

Question 4.2 [5 marks]

Oil Corporation is incorporated in Delaware and has its principal place of business in Texas. Oil Corp is facing a number of challenges to its business. First, ShipCo, one of its key customers, has filed a breach of contract lawsuit in Texas state court alleging that Oil Corp sold it contaminated oil that caused USD 1 billion in damage to ShipCo's container ships. Second, the US Department of Justice is investigating whether Oil Corp illegally purchased oil from countries subject to US sanctions. Third, Oil Corp. has missed a payment on its secured loan from USA Bank, and USA Bank is threatening to foreclose on an Oil Corp refinery located in the Philippines. Fourth, because of all these distractions, Oil Corp has forgotten to pay rent on its Houston, Texas office space and its landlord is threatening to evict it. What would be the effect of Oil Corp filing a chapter 11 petition on each of these four situations?

A bankruptcy proceedings commenced chapter 11 enjoys the protection of the worldwide automatic stay of creditor enforcement proceedings from the moment a petition commencing proceedings is filed.

The minimum requirement to be a debtor under chapter 11 of the Bankruptcy Code is the presence of the debtor or its place of business or any of its assets in the United States. This 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. Under chapter 11 stockbrokers and commodity brokers do not qualify as debtors.

From the facts, ShipCo, one of its key customers, has filed a breach of contract lawsuit in Texas state court alleging that Oil Corp sold it contaminated oil that caused USD 1 billion in damage to ShipCo's container ships. Since Oil Corporation has filed for a Chapter 11 petition there is an automatic stay of the enforcement of damages against Oil Corporation by ShipCo.

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Commented [H(55)]: This is copied from the course text.

Commented [H(56)]: Correct, 1 mark, but I was looking for you to discuss that the company's COMI was in Greece and that it has an establishment in England because its London casino.

Commented [H(57)]: Total marks 5/5

Commented [H(58)]: Correct, 1 mark

Commented [H(59)]: Correct, 1 mark

Second, the US Department of Justice is investigating whether Oil Corp illegally purchased oil from countries subject to US sanctions. The filing of Chapter 11 petition does not put an automatic stay on the investigations by the US Department of Justice against Oil Corp since it borders on a criminal matter.

Commented [H(60)]: Correct, 1 mark

Third, Oil Corp. has missed a payment on its secured loan from USA Bank, and USA Bank is threatening to foreclose on an Oil Corp refinery located in the Philippines. There is an automatic stay on the creditor enforcement by the USA Bank, to wit the Oil Corp refinery will not be closed.

Commented [H(61)]: Correct, 1 mark

Fourth, because of all these distractions, Oil Corp has forgotten to pay rent on its Houston, Texas office space and its landlord is threatening to evict it. The automatic stay of creditor enforcement affects the Landlord therefore the Landlord cannot evict Oil Corp.

Commented [H(62)]: Correct, 1 mark. The position would be different if the lease had expired pre-bankruptcy.

Question 4.3 [6 marks]

Commented [H(63)]: Total marks 1/6

Oil Corp has filed for bankruptcy and is planning to sell its plastic manufacturing business through a 363 sale. The plastic manufacturing business operates under the trademark "Interconnect", which is licensed from Plastic Corp. Oil Corp has invented several patented processes for plastic manufacturing, which it licenses to Plastic Corp. The main manufacturing facility for the plastic business is in Dallas, and Oil Corp has granted a lien on the facility to USA Bank to secure its USD 500 million loan.

Oil Corp thinks it will get the highest return for the plastics manufacturing business if it can (i) assume and assign the trademark license; (ii) reject the patent licenses so the purchaser has the exclusive right to use the patents; and (iii) sell the manufacturing facility free and clear of the USA Bank lien. Can Oil Corp achieve each of these goals without the consent of Plastic Corp and USA Bank? Why or why not?

A 363 sale is a procedure under Section 363(b) of the US Bankruptcy Code that allows a company to sell its assets outside the ordinary course of its business during US bankruptcy proceedings such as Chapter 11. Section 363 sales require the approval of the US bankruptcy court, and are typically conducted by public auction under its supervision. A main advantage of a section 363 sale is the ability to sell assets free and clear of any security interests or liens, although the process includes certain protections for security or lien holders.

In US bankruptcy law, "executory contract" assumes a special meaning, a contract in which continuing obligations exist on both sides of the contract at the time of the bankruptcy petition. It still requires both debtor and counterparty to make further performance. A trustee or debtor in possession may assume any prepetition executory contract or unexpired lease of the debtor, preserving obligations of both the debtor and the counterparts by the bankruptcy process. The ability to assume, reject or assume and assign executory contracts is another debtor-friendly feature of Bankruptcy Code.

Assume and assign the trademark license; transfer the debtor's rights under the contract to a third party. Such transferee must give the counterparty adequate assurances of future performance

Commented [H(64)]: Incorrect, because trademark law permits a licensor to refuse to accept an assignee, the Plastic Corp's consent is required to transfer the trademark license

reject the patent licenses so the purchaser has the exclusive right to use the patents; The effect of rejection is that the debtor is deemed to have breached the contract immediately before the petition date, giving the counterparty an unsecured pre-petition claim in damages. The contract is not treated as void, and therefore a counterparty ordinarily can retain whatever it received under the contract pre-petition.

Commented [H(65)]: Incorrect, the Bankruptcy Code has special provisions to protect patent licensees and permit them to retain their licenses. The licenses could not be terminated without Plastic Corp's consent.

Sell the manufacturing facility free and clear of the USA Bank lien: The chapter 11 debtor in possession has the ability to reject burdensome contracts, sell assets free and clear of liens and pursue claims for recovery of preferential or fraudulent transfers to increase the value of the estate for creditors.

From the above the answer is yes because the transaction is in the best interest of the whole estate

*** End of Assessment ***

Commented [H(66)]: Correct, 1 mark; the secured creditor's claim would attach to the proceeds of the sale