



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**.

ANSWER ALL THE QUESTIONS

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

Commented [H(2)]: Total marks 8/10

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

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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

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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

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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.

- (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

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.

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Question 1.5

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.

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Question 1.6

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.

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(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

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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

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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

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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]

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Question 2.1 (2 marks)

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

A voluntary petition for bankruptcy is filed by the debtor itself. It does not require an allegation of insolvency.

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An involuntary petition for bankruptcy is filed by creditors under either chapter 7 or chapter 11. If the debtor has fewer than 12 non-contingent and non-insider creditors there is only one creditor needed for the filing of an involuntary petition for bankruptcy. If the debtor has more than 12 non-contingent and non-insider creditors there are three qualifying creditors required for an involuntary petition for bankruptcy. Furthermore, an involuntary petition for bankruptcy requires the petitioning creditor to allege that the debtor is insolvent.

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Question 2.2 (2 marks)

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

An act taken in violation of the automatic stay constitutes contempt of court. Therefore, two potential consequences of a violation of the automatic stay are:

- acts taken in violation of the stay are void or voidable;
- the court may impose contempt sanctions against the stay violator, which may include payment of the debtors' attorneys' fees and requiring the violator to take affirmative acts to undo the effect of its violation. Furthermore, the court can impose coercive sanctions, such as daily fines, until the stay violation has been rectified.

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Question 2.3 (3 marks)

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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 claim is impaired when the plan alters the holder's legal, equitable, and contractual rights. A claim is also impaired when it is paid in full but delayed. If the holder of the claim is, however,

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being compensated for any damages caused by the delay the claim is not considered impaired.

A holder of an impaired claim is not entitled to vote on a proposed plan of reorganization when he qualifies as insider. Insiders are disregarded in order to determine the existence of an accepting impaired class of a plan of reorganization unless there is no impaired class. If the debtor is a corporation the term "insider" includes (see 11 USC, §101(31)(B): debtor's officers, directors, controlling persons, general partner, partnerships of which the debtor is a general partner, affiliates and insiders of affiliates.

Commented [H(22): Incorrect, insiders vote but their votes are disregarded for certain reasons. Impaired creditors who will receive nothing under the plan cannot vote and are deemed to reject the plan.

Question 2.4 (3 marks)

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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 only arise where a transfer was made on account of antecedent debt. A contemporaneous exchange of value is not a preference.

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Where the transfer was a security interest, the date of the transfer is the date of perfection of the security interest if perfection occurred more than 30 days after the transfer became effective between the parties.

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

The requirement that the debtor be presumed or proven to have been insolvent at the time of the transfer is an element of a preference claim. In that respect, the debtor is presumed to have been insolvent on and during the 90 days prior to the petition date.

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For fraudulent conveyances, it is sufficient that the debtor became insolvent shortly after the transfer was made or the obligation incurred.

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

Intent to frustrate creditors' recoveries is an element of an actual fraudulent conveyance. Under 11 USC, § 548(a)(1)(A), this element is described as follows: "made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted;"

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

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Question 3.1 (3 marks)

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

Bankruptcy courts were created based on the 1978 Bankruptcy Code, a federal law. Most other federal courts were, however, established by Article III of the US Constitution. According to the jurisprudence of the US Supreme Court, only judges who have been appointed pursuant

to and with the protections of Article III can exercise jurisdiction over matters subject to Article III. Consequently, the US Supreme Court decided that jurisdictional provisions granting jurisdiction of matters which are subject to Article III but arise in and relate to bankruptcy proceedings to bankruptcy courts are unconstitutional.

As an attempt to solve this problem, new jurisdictional provisions were enacted in 1984 granting jurisdiction over bankruptcy proceedings to district courts and permit district courts to refer such proceedings to the bankruptcy courts of their district ("referral statute"). It was distinguished between "core" and "non-core" matters in the referral statute. Bankruptcy judges were only permitted to hear and determine core matters. Regarding non-core matters, bankruptcy judges were permitted to hear them if they were sufficiently related to a bankruptcy proceeding but could not make a final determination. Final determination of non-core matters was reserved to the district court but bankruptcy judges who heard the matter could submit proposed findings of fact and conclusion of law, to which interested parties may object, to the district court.

Stern v Marshall changed the referral statute introduced in 1984 by deciding that even in core proceedings, a bankruptcy court can not issue final orders that invade Article III jurisdiction. As a consequence of this decision and subsequent decisions of the US Supreme Court, bankruptcy courts may only issue final orders in core matters with the consent of the parties according to current law. Without the consent of the parties, bankruptcy courts may determine core matters by issuing a report and recommendation for review by the district court.

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Commented [H(31)]: Correct, 1/2 mark, the bankruptcy court also may enter a final order on a challenge to a petition

Question 3.2 (3 marks)

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?

In a chapter 15 proceeding, foreign representative may not invoke avoidance powers provided by the Bankruptcy Code.

The foreign representative may obtain equivalent relief in the following two ways:

- 1) The foreign representative may commence a plenary proceeding under the Bankruptcy Code, such as chapter 7 or 11, after recognition of the foreign proceeding under chapter 15 (see 11 USC, § 1511(a)). In such a plenary proceeding the foreign representative may make use of the Bankruptcy Code's avoiding powers. Plenary proceedings commenced after recognition of the foreign proceeding are, however, restricted to the debtor's US assets and will be coordinated with the foreign proceeding.
- 2) If the applicable law of the foreign proceeding provides equivalent relief the foreign representative may obtain equivalent relief through the applicable law of the foreign proceeding.

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Commented [H(34)]: Correct, 1 mark

Commented [H(35)]: Partially correct, 1/2 mark, the foreign representative may also invoke other US law if applicable (e.g. state law avoidance of fraudulent transfers)

Question 3.3 (4 marks)

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?

The differences between interlocutory and final orders are that final orders dispose of all issues and leave nothing further to be decided, whereas interlocutory orders dispose only some issues or claims. Finality of an order for purposes of appeal may not be confused with finality in context of the question if the bankruptcy court had authority to determine the matter (which is only the case when the parties consented to the bankruptcy court's jurisdiction).

Final orders may be appealed as of right. Interlocutory orders may be appealed only with leave of the appellate court.

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

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Appeals from bankruptcy court decisions are heard, in general, by the district court for the district in which the sit. In the First, Sixth, Eighth, Ninth and Tenth Circuits, appeals are heard by a Bankruptcy Appellate Panel, convened from the judges of the bankruptcy courts within the circuit, except where a party request that the appeal be heard by the district court instead. The decision on the appeal by the district court or the Bankruptcy Appellate Panel may be further appealed to the circuit court of appeals (also with appeal of right if there was appeal of right was available against the initial order). 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, an appeal from a bankruptcy court may go directly to the court of appeals. It is, however, in the discretion of the court of appeals whether to accept a case so certified.

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Commented [H(42)]: Correct, 1 mark

Question 3.4 (5 marks)

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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 of Delaware corporations owe a fiduciary duty of loyalty to the corporation's best interest and a duty of care in educated decision making. The directors may be released from the duty of care in educated decision making by a corporation's certificate of incorporation.

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The directors are, furthermore, protected from liability by the business judgment 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 may be rebutted by showing that a majority of the board in fact was not reasonably informed, did not honestly believe that their decision was in the corporation's best interest, or was not acting in good faith. As long as this presumption stands, the director's liability is restricted to gross negligence and deliberate acts. The business judgment rule does, however, 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 have to meet the entire fairness standard failing of which the transaction will be void.

Directors of Delaware corporations owe their fiduciary duties to the corporation and its shareholders in the ordinary course of business. In North Am Catholic Educational Programming Foundation, Inc v Gheewalla, the Delaware Supreme Court has decided that directors continue to owe their fiduciary duties to the corporation and its shareholders, instead of the creditors, even where the corporation is potentially or actually insolvent.

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

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Question 4.1 [4 marks]

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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.

According to 11 USC, § 1501(b)(1), chapter 15 applies where assistance is sought in the United States by a foreign court or a foreign representative in connection with a foreign

proceeding. The requirements for recognition of a foreign proceeding are that (i) the foreign representative must establish that a foreign court or administrative proceeding with respect to the debtor is pending and that (ii) the foreign representative is empowered to act by the proceeding.

Pursuant to 11 USC, § 101(23), the term "foreign proceeding" means a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, 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. English schemes or arrangement fall under the definition of a foreign proceeding of 11 USC, § 101(23), and, therefore, may be subject of recognition under chapter 15. Therefore, an English scheme of arrangement may be granted recognition under US chapter 15 upon the filing of a petition of the representative of the English scheme of arrangement.

If the English scheme of arrangement can be granted recognition under US chapter 15 as foreign main or foreign non-main proceedings depends on where Gambling Corporation's center of main interests (COMI) is located. If Gambling Corporation's COMI is located in England the English scheme of arrangement may be recognised as foreign main proceedings. If Gambling Corporation's COMI is not located in England the English scheme of arrangement may be recognised as foreign non-main proceeding under the condition that Gambling Corporation had an establishment in England.

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Relevant factors for the determination of a debtor's COMI include:

- location of headquarters
- location of management,
- location of primary assets,
- location of a majority of the 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.

A debtor's COMI should be ascertainable by its creditors or other third parties on the basis of objective evidence.

A debtor's establishment is a place where it carried out non-transitory economic activity, prior to the commencement of chapter 15 proceedings.

The facts that Gambling Corporation is incorporated and has its principal place of business in Greece would support the argument that Gambling Corporation's COMI is in Greece and not England. On the other hand, the fact that Gambling Corporation's bonds are governed by English law and most disputes between Gambling Corporation and its bond holders (creditors) would, therefore, be governed by English law too would support the argument that Gambling Corporation's COMI is in England.

In my opinion, the undisputed principal place of business of Gambling Corporation in Greece outweighs the argument that disputes between Gambling Corporation and its bond holders are govern by English law for the determination of Gambling Corporation's COMI. Hence, Gambling Corporation's COMI is to be located in Greece.

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Nevertheless, the English scheme of arrangement may be recognised under US chapter 15 as foreign non-main proceeding given that Gambling Corporation operated a casino and betting parlors in London which qualify as establishment of Gambling Corporation.

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Question 4.2 [5 marks]

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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?

Immediately on the filing of a chapter 11 petition, a worldwide automatic stay comes into effect (see 11 USC, § 362). In general, it applies to any interference with the property of the estate anywhere in the world. Actions taken in violation of the stay constitute contempt of court and are void or voidable. Creditors who knowingly act with knowledge of the automatic stay shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages as contempt sanctions (see 11 USC, § 362(k)(1))

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The effect of the filing of a chapter 11 petition on the lawsuit of ShipCo against Oil Corporation before the Texas state court would be that ShipCo would be prohibited to continue the lawsuit against Oil Corp (as a consequence of the automatic stay).

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The filing of a chapter 11 petition would not have any effect on the investigation of the US Department of Justice about a possible breach of US sanctions. Criminal proceedings and regulatory investigations are exempt from the automatic stay of the filing of a chapter 11 petition (see 11 USC, § 362(d)). Therefore, the criminal investigation by the DOJ about a possible breach of US sanctions would not be effect of the automatic stay.

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The worldwide automatic stay coming into effect with the filing of a chapter 11 petition prohibits USA Bank from foreclosing on an Oil Corp refinery located in the Philippines. If the Philippines do not recognise the effects of the US worldwide automatic stay it may still be possible for USA Bank to foreclose in the Oil Corp refinery located in the Philippines. As a consequence, USA Bank may would face contempt sanctions from the US Bankruptcy Court. USA Bank may file a relief from stay motion if the value of the refinery may decline during the course of the proceedings and would result in USA Bank making less than a full recovery.

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Eviction of a debtor-tenant from non-residential property where the lease has expired is exempt from the effects of the automatic stay. In the case at hand, Oil Corp's lease for the Houston, Texas office has, however, not expired. Oil Corp only forgot to pay rent for the Houston, Texas office. As long as the lease has not expired, the landlord can, therefore, not evict Oil Corp due to the effects of the automatic stay triggered by the filing of a chapter 11 petition.

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Question 4.3 [6 marks]

Commented [H(61)]: Total marks 5/6

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?

Oil Corp can sell its property free and clear of creditor interests with court approval in a 363 sale as debtor in possession in chapter 11 proceedings. In a 363 sale, Oil Corp could also transfer its interests in contracts that are required to operate the plastic manufacturing business even if they would contain contractual restrictions on assignment or purport to terminate upon a bankruptcy filing. Licensees of patents and copyrights owned by the debtor are, however, protected under 11 USC, § 365(n), such that their licenses may not be terminated in connection with the sale of the intellectual property without their consent. Trademark law also stipulates that trademarks are not assignable absent the licensor's consent.

Commented [H(62)]: Correct, 1 mark, the lien would then attach to the proceeds

Commented [H(63)]: Correct, 1 mark

Commented [H(64)]: Correct, 1 mark

Hence, Oil Corp as licensee will not be able to assign the trademark license granted by Plastic Corp absent Plastic Corp's consent as stipulated by trademark law.

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Furthermore, Oil Corp can not reject and terminate the patent licenses it granted to Plastic Corp without Plastic Corp's consent (see 11 USC, § 365(n)).

Commented [H(66)]: Correct, 1 mark

Oil Corp may sell the manufacturing facility free and clear of the USA Bank lien in a 363 sale. If the manufacturing facility is auctioned to that purpose USA Bank could, however, take part in the auction and offset the purchase price against the amount of its claim secured by the manufacturing facility.

*** End of Assessment ***