



**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**

Commented [H(1)]: Total marks 34.5/50

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

Commented [H(2)]: Total marks 6/10

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

**Question 1.1**

Commented [H(3)]: Correct, 1 mark

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**

Commented [H(4)]: Correct, 1 mark

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**

Commented [H(5)]: Correct, 1 mark

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**

Commented [H(6): 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(7): Correct, 1 mark

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**

Commented [H(8): Correct, 1 mark

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(9)]:** Incorrect, the correct response is (a)

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(10)]:** 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(11)]:** 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.

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

**QUESTION 2 (direct questions) [10 marks]**

**Commented [H(13):** Total marks 6/10

**Question 2.1 (2 marks)**

**Commented [H(14):** Total marks 2/2

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

[Voluntary bankruptcy petition 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.

**Commented [H(15):** Correct, 1 mark

[Involuntary bankruptcy is commenced by a creditor against an eligible debtor under chapter 7 or 11 on the contrary, involuntary proceedings cannot be commenced under.."

**Commented [H(16):** Correct, 1 mark

Voluntary petition requires no allegation of insolvency while involuntary petition form requires the petitioning creditors to allege either that the debtor is generally not paying its debts as they fall due.

Voluntary petition is under the control of debtor or management of the business while involuntary petition is filed by creditors.  
]

**Question 2.2 (2 marks)**

**Commented [H(17):** Total marks 2/2

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 and void or voidable.]

**Commented [H(18):** Correct, 1 mark

Also, failure to obtain relief from a stay results in the imposition of contempt sanction against the stay violator.]

**Commented [H(19):** Correct, 1 mark

**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?

[Only impaired classes have the right to vote on the plan. When all impaired classes have duly accepted the plan, the courts can confirm the plan. The ]

**Commented [H(20):** Total marks 0/3

**Commented [H(21):** A claim is impaired if any of the holder's legal, equitable or contractual rights is altered. A holder of an impaired claim is not entitled to vote if it would receive nothing under the plan. It 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 claim: for account on antecedent debt owed by the debtor before such transfer is made]

**Commented [H(22):** Total marks 2/3

**Commented [H(23):** 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(24):** Incorrect, the correct response 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(25):** Correct, 1 mark

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

**Question 3.1 (3 marks)**

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

[The U.S. Supreme Court in 2011 in the case *Stern v. Marshall*, 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(26):** Total marks 11.5/15

**Commented [H(27):** Total marks 0.5/3

This 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.

Here the 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. 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 in the bankruptcy court or consider withdrawal of the reference over the claim to the district court. The jury verdict was the first final judgment and was conclusive of the issues.

**Commented [H(28):** Partially correct, 1/2 mark, while that was the factual situation in the case, it establishes a broader principle that bankruptcy courts cannot invade Article III jurisdiction

**Commented [H(29):** The core / non-core distinction was the pre-*Stern v Marshall* way of analyzing jurisdiction. Now it is understood that a bankruptcy court has jurisdiction to enter final judgment on a challenge to a petition or on other matters with consent of the parties

**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?

*["A foreign representative can only invoke the Bankruptcy Code avoidance powers in a plenary proceeding such as chapter 7 or 11, foreign representative can obtain equivalent relief". Automatic stay, operation of the debtor's business in the ordinary course by the foreign representatives, sales, transfer or use of property outside the ordinary course]*

Commented [H(30)]: Total marks 2/3

Commented [H(31)]: Correct, 1 mark

Commented [H(32)]: Correct, 1 mark, or it can bring claims under other applicable US or foreign law

**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?

*[Under the US non-bankruptcy procedure, interlocutory orders and final orders are orders which resolve only some issues or claims while Final orders are those that dispose of all issues, leaving nothing further to be decided on respectively. Interlocutory orders may be appealed only with leave of the appellate court certified by the respective court, on the hand, Final orders may be appealed as of right,<sup>1</sup>*

*Direct appeals from bankruptcy court orders can be heard by the District Court in which the Court presides over. In case of circuit, the bankruptcy appeals are heard by the Bankruptcy Appellate Panel (BAP) which are convened from the judges of the courts with in the circuit. A party has the liberty to request the district court to heard. There are extreme cases where a Court of Appeal will directly receive a appeal from the bankruptcy Court.<sup>2</sup>*

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Commented [H(34)]: Correct, 1/2 mark

Commented [H(35)]: Correct, 1/2 mark

Commented [H(36)]: Correct, 1/2 mark

Commented [H(37)]: Correct, 1/2 mark

Commented [H(38)]: Correct, 1 mark

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

**Question 3.4 (5 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 and utmost good faith and duty of care in the best interest of their corporation and the shareholders. Directors owe fiduciary decision duty of loyalty to the corporation to act in the best interest and duty of care in educated decision-making but are protected from liability for errors of judgement by the business judgement rule.*

*The business judgement rule stipulates that the board directors are presumed to have acted in good faith and in a reasonable manner with information available. Also, "...business judgement rule does not apply where a transaction approved by a board majority that is not disinterest and independent or a controlling shareholder is both sides of the transaction. In*

Commented [H(40)]: Total marks 5/5

Commented [H(41)]: Correct, 1 mark

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

<sup>1</sup> Foundation Certificate in International Insolvency Law, "Insolvency System of United States)", INSOL pp 19

<sup>2</sup> Ibid para



such circumstances, the transaction will be void unless the entire fairness standard is satisfied<sup>3</sup>.

Directors do not owe any duties to creditors but rather to the corporation and shareholders. The Delaware Supreme Court has put to rest any suggestions that directors owe duties to creditors when a company is close to insolvency or undergoing insolvency. Thus there is no equivalent under US law of the concept of “wrongful trading” or “deepening insolvency” as in the case *Trenwick Am Ligig Trust vrs Ernst & Young, LLP*, which states that “*Delaware law imposes no absolute obligation on the board of a company that is unable to pay its bills to cease operation and to liquidate. Even when the company is insolvent, the board may pursue, in good faith, strategies to maximize the value of the firm*”<sup>4</sup>.]

Commented [H(43)]: Correct, 1 mark

Commented [H(44)]: Correct, 1 mark

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

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

Commented [H(46)]: Total marks 11/15

##### Question 4.1 [4 marks]

Commented [H(47)]: Total marks 3/4

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.

[Upon recognition of either foreign main or non-main proceeding, the foreign representative is granted the right to intervene in any US state or federal court proceedings in which the debtor is a party. 11 USC 1524

Foreign main proceedings are those that are commenced in the debtor’s center of main interest (COMI). In the US, COMI is to the principal place of the business and location of the assets in determining the jurisdiction and venue.

Commented [H(48)]: Correct, 1 mark

First of all, a foreign proceeding can be defined under 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”.

Upon recognition of either foreign main or non-main proceedings, the foreign representative is granted the right to intervene in any US state or federal court proceedings in which the debtor is a party<sup>5</sup>.

In view of this, the English scheme of arrangement would be granted recognition under US chapter 15 as a foreign non-main proceeding.

From the above case, Gambling Corporation has its domicile or principal place in Europe, Greece, term as foreign non-main but operates in Las Vegas providing some level of service or gaming in Las Vegas in USA, and has assets in that state. English scheme of arrangement

Commented [H(49)]: Correct, 1 mark

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

Commented [H(51)]: Incorrect, the relevant location of the establishment is in the location where the foreign proceedings are pending, so the relevant establishment is the casino in London

<sup>3</sup> Foundation Certificate in International Insolvency Law, “*Insolvency System of United States*” (Directors liability – business judgement), INSOL pp 58

<sup>4</sup> *Trenwick Am Ligig Trust vrs Ernst & Young, LLP*, 906 A. 2d 168 (Del Ch 2006)

<sup>5</sup> Chapter 11 USC 1524.

can be granted recognition granted recognition under US chapter 15 as foreign non-main proceeding through their qualified representative.  
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#### 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?

Commented [H(52)]: Total marks 5/5

[First of all, under Chapter 11 bankruptcy proceedings commenced, which the applicant enjoys the protection of the worldwide automatic stay of creditor enforcement proceedings from the moment a petition commencing proceedings is filed which can also be filed electronically. This gives the debtor breathing spaces to continue with its operation and take steps to propose a plan for reorganisation its debts.<sup>6</sup>

Commented [H(53)]: Correct, 1 mark

In addition, chapter 11 proceedings typically conclude after the plan of reorganisation is approved by the classes of creditors and their specified terms which are executed. However, it can be dismissed by the courts is the courts establish that it will be in the best interest of creditor.

Eligibility under Chapter 11 proceedings is where 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 domicile or any of its assets is 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.<sup>7</sup>

In the situation presented, ShipCo, has initiated an action and 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. Ones Oil Corporation has filed for a Chapter 11 petition there automatic stay of all enforcements of damages against Oil Corporation by ShipCo. This is intended to allow Oil Corporation breathing spaces to formulate plans, negotiate with creditors and realise the value of its assets in an orderly way.

Commented [H(54)]: Correct, 1 mark

Also, the US Department of Justice is investigating whether Oil Corporation illegally purchased oil from countries subject to US sanctions. The filing of the Chapter 11 petition does not put an automatic stay on the investigations by the US Department of Justice against Oil Corp due to the statutory nature of the issue. These regulatory investigations are given exceptions.

Commented [H(55)]: Correct, 1 mark

From the issue, Oil Corporation has missed a payment on its secured loan from USA Bank, and USA Bank is threatening to foreclose on an Oil Corporation refinery located in the

<sup>6</sup> Foundation Certificate in International Insolvency Law, "Insolvency System of United States", INSOL pp 8

<sup>7</sup> Ibid , pg 10

Philippines. There will be an automatic stay of enforcement of any attempt to obtain possession or control of property by the USA Bank.

Commented [H(56)]: Correct, 1 mark

Finally, since Oil Corporation 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 would not be able to evict Oil Corporation. The company is given the opportunity to restructure.  
]

Commented [H(57)]: Correct, 1 mark

#### Question 4.3 [6 marks]

Commented [H(58)]: Total marks 3/6

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?

[Section 363 of the US Bankruptcy Code allows a company to sell its assets outside the ordinary course of its business during US bankruptcy proceedings. The ability to sell substantially all the debtors assets free and clear of any security interests or liens, although the process includes certain protections for security or lien holders.

Assume and assign the trademark license;

Franchise agreement is not assignable because the trademark licenses are not assignable absent licensor consent.

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

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. This gives the counter party an unsecured pre-petition claim in damages.

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

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.

Commented [H(61)]: Incorrect, under section 365(n), following rejection the licensee can elect to still practice the patent, so consent of the licensee would be required for the purchaser to have exclusivity

(i) assume and assign the trademark license;

(ii) 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.

(iii) sell the manufacturing facility free and clear of the USA Bank lien: for the sale subject to section 363(k) of this title, of any property that is subject to the liens securing such claim, free and clear of such liens. The facility can be sold without the consent of creditor but rather with courts approval.

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

Yes, Oil Corp can achieve each of these goals without the consent of Plastic Corp and USA Bank. From the above where the “transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval”<sup>8]</sup>

**\* End of Assessment \***

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<sup>8</sup> Ibid, s 24