



SUMMATIVE (FORMAL) ASSESSMENT: MODULE 7A

ISRAEL

This is the **summative (formal) assessment** for **Module 7A** of this course and must be submitted by all candidates who **selected this module as one of their elective modules**.

The mark awarded for this assessment will determine your final mark for Module 7A. 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 **Microsoft Word format**, using a standard A4 size page and an 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.assessment7A]**. An example would be something along the following lines: 202122-336.assessment7A. **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. The final submission date for this assessment is **31 July 2022**. The assessment submission portal will close at **23:00 (11 pm) BST (GMT +1) on 31 July 2022**. No submissions can be made after the portal has closed and no further uploading of documents will be allowed, no matter the circumstances.
7. Prior to being populated with your answers, this assessment consists of **7 pages**.

ANSWER ALL THE QUESTIONS

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

Commented [DB1]: 9 out of 10

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

Question 1.1

When was the Insolvency and Economic Rehabilitation Act (the New Insolvency Act) enacted and when did it become effective?

- (a) It was enacted and became effective in May 1948.
- (b) It was enacted and became effective in May 2018.
- (c) It was enacted in May 2019 and became effective in May 2020.
- (d) **It was enacted in March 2018 and became effective in September 2019. Correct**

Question 1.2

A bank claims that it has a security interest in a debtor's personal property (chattel) that is also effective against third parties (such as a liquidator). What does the bank need to show to prove its claim?

- (a) An agreement with the debtor is sufficient.
- (b) An agreement with the debtor and that it holds possession of the property.
- (c) An agreement with the debtor and that it registered the security in the Security Interest Register.
- (d) **Either (b) or (c) are sufficient. Correct**

Question 1.3

Adam and Beth have a loan agreement according to which Adam owes Beth NIS 100,000 due on 31 December 2020. In February 2021 Adam still hasn't paid Beth. Beth wants to file an involuntary insolvency petition against Adam. **Which of the following is TRUE?**

- (a) Beth can file an involuntary petition to the Superintendent of Insolvency after presenting Adam with a warning under the Execution Act, and after showing that Adam has not paid within the period stated in the warning.
- (b) **Beth can file an involuntary petition to the Magistrate's Court, after presenting Adam with a payment demand, which includes a warning that if the payment is not made, she will file for involuntary insolvency proceedings. She can file for the insolvency proceeding if the debt is not paid within 45 days from the time the demand was presented. Correct**

(c) Beth cannot file for involuntary proceeding, because the initiation of involuntary proceeding requires at least 3 creditors.

(d) Both statements (a) and (b) above are true.

Question 1.4

Which of the following statements is **TRUE** about stage 1 of the administration of individual insolvency proceedings and **FALSE** with respect to stage 2 of the proceedings?

(a) **One of main purposes of this stage is to examine the economic state of the debtor.**
Correct

(b) The debtor pays monthly payments to the insolvency estate.

(c) The stage lasts approximately 2 months.

(d) The debtor is subject to limitations which are necessary to protect the creditors.

Question 1.5

Under the New Insolvency Act, what is the average period for obtaining discharge in individual bankruptcy proceedings?

(a) 1 year.

(b) 2 years.

(c) 3 years.

(d) 4 years. Correct

Question 1.6

Benny is the CEO of ACME Inc. ACME entered insolvency proceedings and Benny wishes to be appointed as the sole trustee.

(a) The court may not appoint Benny as the sole trustee.

(b) The court may appoint Benny as the sole trustee if it is convinced that ACME's current management is not responsible for ACME's insolvency.

(c) The court may appoint Benny as the sole trustee if it is convinced that it is for the benefit of the creditors.

(d) The court may appoint Benny as the sole trustee if it is convinced that the conditions of both (b) and (c) above are met.

Question 1.7

On 1 July 2021 Delta Inc's assets are worth NIS 1 million, it has debts of NIS 950,000 and it loses money at a rate of NIS 25,000 per month. Charlie, Dana and Edward are the directors of Delta Inc. They are concerned that they will be liable for not reducing the extent of insolvency. **Which of the following is TRUE?**

- (a) Since the value of the corporation's assets is higher than its liabilities, they have nothing to worry about.
- (b) Israeli law mandates that they file for corporate insolvency proceedings immediately.
- (c) Assuming Delta continues to lose money at the same rate, Israeli law mandates that they file for corporate insolvency proceedings by 1 September 2021 at the latest.

(d) If the directors receive professional assistance from experts in corporate rehabilitation, and according to the experts' advice the corporation can continue its operations without filing for insolvency, most likely the directors will not be liable for not reducing the extent of insolvency. **Correct**

Question 1.8

XYZ Inc is an Israeli corporation, with both domestic and foreign creditors. One of the foreign creditors wishes to initiate insolvency proceedings. Indicate the **correct statement** below.

- (a) Foreign creditors cannot initiate insolvency proceedings in Israel.
- (b) Foreign creditors can initiate insolvency proceedings in Israel only after they are granted a special permission from the Israeli Supreme Court.

(c) Foreign creditors can initiate insolvency proceedings in Israel similar to domestic (Israeli) creditors. **Correct**

(d) Foreign creditors can initiate insolvency proceedings in Israel only if these creditors have assets in Israel.

Question 1.9

Which of the following statements is **FALSE** regarding the protected negotiations scheme?

- (a) It is available only for listed companies.
- (b) The corporation must default on at least one debt payment to at least one creditor. **Correct**
- (c) It is conducted out of court.
- (d) The board runs the negotiations with no appointment of a trustee.

Question 1.10

Assume an Israeli court recognized a foreign bankruptcy proceeding conducted in France as a non-main proceeding. Which of the following statements **must be TRUE**?

- (a) The Israeli court will not issue a moratorium in Israel.
- (b) The foreign trustee may not execute the corporation's assets in Israel.
- (c) The Israeli court will not assist the French court or the French appointed trustees in the bankruptcy proceedings.

(d) None of the above. **Correct**

QUESTION 2 (direct questions) [10 marks]

Question 2.1 [maximum 4 marks] 4 Marks

What are the conditions for the enforcement of foreign judgments in Israel?

The following are the conditions for the recognition of a foreign judgment in Israel, which are regulated by the Foreign Judgments Enforcement Act 1958:

1. "The foreign court that delivered the foreign judgment was authorised to grant it under the laws of that country;
2. The judgment is enforceable in the country where it was granted;
3. The judgment is final and conclusive.
4. It is possible to enforce that judgment in Israel.
5. Mutuality / reciprocity (the foreign country enforces the judgments of Israeli courts)".

Likewise, below are the conditions under which an Israeli court will recognize a foreign judgment in direct recognition (following a petition for recognition of the foreign judgment) or indirectly (i.e., as an ancillary matter within the litigation of another main matter):

- Direct recognition:
 - An international agreement or treaty exists in relation to the foreign judgment;
 - The agreement or treaty states that Israel undertakes to recognize foreign judgments;
 - The commitment applies only to judgments enforceable in Israel; and
 - The terms of such agreement or treaty have been complied with.
- Indirect recognition: When the conditions for principal recognition are not met, but if the court considers it fair and equitable to so recognize the foreign judgment.

Question 2.2 [maximum 3 marks] 3 Marks

Name the three main legal consequences of a commencement order in individual bankruptcy proceedings.

The following are the three main legal consequences of a commencement order in an individual bankruptcy proceeding:

1. Moratorium: In general terms, the moratorium allows the suspension of all pending proceedings against the debtor.
2. Insolvency estate, exempt property: The debtor's assets prior to the commencement of the proceedings, becomes an insolvency estate, with which the debtor's claims prior to the commencement of the proceedings and the expenses of the proceedings will be paid the expenses of the proceedings.
3. Limitations imposed on the debtor: The opening of the insolvency proceeding imposes certain limitations on the debtor's day-to-day affairs, such as, for example, no credit operations unless approved by the Superintendence.

Question 2.3 [maximum 3 marks] 0.5 marks

What are the circumstances under which the court may avoid a pre-commencement action that removed an asset from an insolvent corporation?

According to the new Insolvency Law, the court is authorized to annul an action prior to the opening of the proceeding, when with such action an asset of the company was withdrawn. For this, the following circumstances are necessary:

1. The action took place without value or at a lower value;
2. That the action took place within two years prior to the date of filing of the petition for an order to open the proceedings. However, if the transferee is a relative of the debtor, the time limit is four years; and
3. At the time of the action the debtor was insolvent, or the transfer of the asset has caused the debtor's insolvency.

In any case, it is important to note that if the transfer of an asset of no equivalent value was made with the intention of reducing the assets available to the debtor's creditors, it can be annulled if it took place within seven years prior to the date of filing the application for the writ of mandamus, even if the debtor was not insolvent at the time of the transfer.

- The action took place within the three months prior to the date of filing the petition for a commencement order (if the creditor is a relative of the debtor, the period is one year);
- At the time of the action, the debtor was insolvent; and
- As a result of the action, the creditor will receive payment of a larger share of the owed debt than it would have been paid under the insolvency proceeding.

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

Question 3.1 [maximum 8 marks] 8 Marks

Discuss the various ways in which the Israeli insolvency Act deals with executory contracts.

The following is an indication of how the insolvency act regulates executory contracts. The trustee is authorized to assume or reject executory contracts to which the debtor company is a party, subject to the prior authorization of the court: **yes**

1. Rejection of the executory contract:
 - a. A contract onerous for the debtor company is detrimental to the reorganization proceedings and to the creditors. For this reason, the New Insolvency Act allows the trustee to file a motion with the insolvency court in order to reject an executory contract.
 - b. Deadline: This request must be made within 90 days from the date of the opening order. However, the court may extend this period. **Yes**
 - c. The court will approve the application if it considers that the rejection will enhance the reorganization of the company or maximize the return to creditors. **Yes**
 - d. If as a consequence of such rejection damages are generated to the counterparty, such damages will be considered as an unsecured claim. **Yes**
2. Assumption of the executory contract:
 - a. The trustee may also assume an executory contract and thus continue its performance within the reorganization proceedings. **Yes**
 - b. The trustee may assume an executory contract notwithstanding any prior default by the debtor company. To the extent that the contract has been

- breached prior to its assumption, the trustee must file a motion with the court requesting court approval of its assumption. **Yes**
- c. Deadline: This motion must be filed within 45 days after the trustee has received notice from the counterparty of its intention to terminate the contract due to breach of its provisions. **Yes**
 - d. The court may not authorize the assumption where there have been previous defaults unless the trustee convinces the court that it can give the counterparty adequate assurances of its intention to perform the contract. However, the trustee is not obliged to cure defaults, as such defaults constitute an unsecured claim. **Yes**

Finally, the new Insolvency Act excludes any ipso facto insolvency termination clause that may exist in an executory contract.

Question 3.2 [maximum 7 marks] 6 marks

ACME Inc is a clothes producer. Rubi Inc is ACME's textile supplier. Usually, ACME pays Rubi 45 days after the supply (that is, if Rubi supplied textiles on 1 January 2020 then ACME pays it on 15 February 2020). In September 2020 ACME enters economic difficulties. It fails to pay Rubi for the textiles it supplies and up to 15 February 2021 ACME has accrued NIS 10,000 debt to Rubi. In March 2021, ACME turns to Rubi and asks for another textile shipment. Rubi tells ACME that it demands payment upon delivery of the textiles. On 15 April 2021 Rubi delivers to ACME textiles valued at NIS 2,500 (market value). On the same day, ACME pays Rubi NIS 6,000. On 1 July 2021 ACME filed for a commencement order, which was issued on 20 July 2021. The trustee appointed to ACME argues that the NIS 6,000 should be avoided. Rubi objects. Argue for both sides of the case.

In the event that the trustee wishes to avoid the payment made by ACME to Rubi in the amount of NIS 6,000, the trustee must demonstrate that the following conditions have been met. Once these conditions have been met, the court may annul the payment:

1. The payment has taken place within three months prior to the date of filing of the application for an order to open the case. According to the facts of the case, this assumption is met since the payment was made on April 15, 2021 and the application for an order for commencement on July 20, 2021. **Yes**
2. At the time of the action, the debtor was insolvent. Insolvency is defined in the law as either balance sheet insolvency or cash insolvency (i.e., the debtor is unable to pay its debts as they fall due). Taking into account this definition, ACME could be considered to be insolvent by April 15, 2021 (the date on which it made the payment) since as of September 2020 it failed to pay its obligations to Rubi as they became due, i.e. within 45 days after supplying the products. **Yes**
3. As a result of the action, the creditor will receive payment of a larger portion of the debt that would have been paid to it in the insolvency proceedings. In this respect, it shall be up to the debtor to verify whether Rubi would have received less in the insolvency proceedings. **Yes**

For its part, Rubi will be able to demonstrate that any of the following points are met, in order to prevent such payment from being avoided:

1. On the execution date (i.e. by April 15, 2021) of the transaction, ACME received a new and adequate value for the action performed. **Yes**

To prove this point, Rubi could argue that ACME paid 60% of the debt it owed to Rubi, amounting to NIS 6,000, and generated a new account payable in favor of Rubi amounting to NIS 2,500 (corresponding to the new textiles delivered by Rubi on April 15, 2021). This new account payable resulted from the delivery of goods that were sold at market price, i.e. ACME received a new and proper value for the action taken. Based on the above, the court should not annul the payment made by ACME in the amount of NIS 10,000.

- The completion of the transaction occurred in the ordinary course of the debtor's business and the debt repaid in the action was created during the ordinary course of the debtor's business. **Yes**

For this point, Rubi should be able to prove that ACME paid NIS 2,500 for the new textile delivery made by Rubi on April 15, 2021, and credited the previous debt with only NIS 3,500. This would argue that the payment of the 2,500 debt was made in the ordinary course of the debtor's business. In turn, that the payment of the previous debt was made under assumption 1 above. **Some parts correct**

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

Zeta Inc undergoes insolvency proceedings. The following information is available:

| Creditor | Debt | Comment |
|---|------|---|
| North Bank (NB) Primero | 100 | NB has a security interest on Zeta's vehicle worth 50 |
| South Bank (SB) cuartas | 100 | SB has a floating lien on Zeta's inventory. The inventory is worth 100 (and had the same value when the lien was crystalized) |
| Employees 3.1 | 25 | |
| Private loan (unsecured) 5 - en igualdad de condiciones | 50 | |
| Suppliers (unsecured) 5 | 75 | |

Question 4.1 [maximum 9 marks] 9 marks

Assume Zeta's assets (including the inventory) in liquidation are worth 200. How much will each of the creditors receive? Mention each creditor's priority in your answer.

The New Insolvency Law establishes an order or priority for the payment of credits. Said order is:

- Security interests (fixed charges)
- Expenses incurred in the insolvency proceedings
- Priority claims, which are the following (in order of preference)
 - Employees' salaries (up to a maximum of NIS 25,630) and severance payments (up to a combined maximum of NIS 39,945);
 - withholdings at source (but not paid) of income and social security tax of employees;
 - Value added tax (VAT) claims, during the period of one year prior to the commencement of the case;
 - Alimony arrears prior to commencement (in individual insolvency proceedings);

- e. Tax receivables settled by the Tax Agency prior to the commencement of the insolvency proceedings and settled with the debtor for payment in installments (limited to a maximum period of three years).
4. Floating charges: According to the Law, 25% of the proceeds of the floating charge assets must be reserved and available for the payment of unsecured creditors' claims. The unsatisfied portion of the secured creditor's claim from the floating charge will also constitute an unsecured claim and that creditor will participate in the distribution to unsecured creditors on a pro rata basis.
 5. Unsecured claims (distribution amongst them is on a pari passu basis);
 6. Interest payments (which are not recognised as part of the proof of claim);
 7. Subordinated claims (either contractual subordination, or judicial subordination of
 8. Shareholders' loans due to under-capitalisation of the debtor corporation.

In view of the foregoing, the following is an indication of when each creditor will receive and in what order:

| Class | Creditor | Value | Comments |
|--------------------|-----------------|-------------------------------------|---|
| Security interests | North Bank (NB) | 50 | - NB has a liability for 100. - NB has a security interest in Zeta's vehicle for 50. Therefore, it will be treated as a first class receivable for 50 only. Yes The remaining value will be treated as a unsecured claim, which will be paid proportionally with the other claims of this class. Yes |
| | Employees | 25 Yes | N/A |
| Floating charges | South Bank (SB) | 75 Yes | SB has a floating lien yes on Zeta's inventory. The inventory is worth 100 (and had the same value when the lien was crystallized). 25% of the proceeds of the floating charge assets must be reserved and available for the payment of unsecured creditors' claims. For this case, 25% of 100 is 25. Yes Therefore, 75 will be a floating charges |
| Unsecured | North Bank (NB) | 50 | NB has a claim for 100, which is secured by a security interests for 50. Therefore, the remaining 50 will be treated as "unsecured" and will be paid on a pro rata basis with those of this class (for which he will receive approximately 13). 25% of the proceeds of the assets of the floating charge is left available for the payment of the unsecured creditors' claims. Therefore, SB's |
| | South Bank (SB) | Proportional with unsecured credits | |

| | | |
|--------------|--------------------------|--|
| | | obligation is paid for 75 with the floating charge, and the remaining 25 is taken as unsecured. Yes and will be paid proportionally with those of this class (for which he will receive approximately 6). |
| | Private loan (unsecured) | It has a liability of 50. However, since it is an unsecured loan, it will be paid proportionally with the rest of the class and will be paid proportionally with the rest of the class (for which he will receive approximately 13). Benefit of doubt 1 mark |
| | Suppliers (unsecured) | Suppliers have a liability of 75. However, since it is an unsecured loan, it will be paid proportionally with the rest of the class and will be paid proportionally with the rest of the class (for which he will receive approximately 18). Yes more or less |
| Total | 200 | |

Question 4.2 [maximum 6 marks] 3 Marks

Now assume Zeta undergoes corporate rescue (reorganization) proceedings rather than liquidation. Under the corporate reorganization, Zeta's assets are worth 300, and the trustee offers the following plan of reorganization:

| Creditor | Debt | Payment under the plan |
|--------------|------|------------------------|
| NB | 100 | 87.5 |
| SB | 100 | 93.75 |
| Employees | 25 | 25 |
| Private loan | 50 | 37.5 |
| Suppliers | 75 | 56.25 |

NB votes against the plan of reorganization, whereas the rest of the creditors vote in its favor. Can the court approve the plan?

Votes of creditors are taken in separate classes based on the common rights and interests of all members of that class. The legal majority required within each class of creditors to approve a proposed plan is:

- a simple majority of those attending and voting; and
- a 75% majority of all claims represented and voted at the assembly. **Yes**

Thus, taking into account that NB (secured creditor) voted against the reorganization plan. This plan could not, in principle, be approved by the court. **Yes** However, the plan could be confirmed by the court despite NB's dissent, through cross-class cramdown. To do so, the court should:

1. Satisfy itself that the terms of the plan are fair and equitable in relation to NB.
2. Request a valuation of the debtor company.
3. Examine, as the dissenting class is a class of secured creditors, whether the plan provides NB with the value of its secured claim. In this regard, I consider, according to the facts of the case, that this assumption would be met because NB would receive such secured value of 50, and a more (37.5) which is what it would be entitled to for the unsecured portion of the claim. **1 mark but answer not complete**

Answer:

- In order to approve a plan of reorganization, the classes of creditors need to approve the plan with a simple majority of all persons attending and a 75% majority of the aggregate claims represented (and voting) in the meeting. (1 mark) Here the class of secured creditors did not approve the plan in the required majority (there is no simple majority of the persons voting, and there is no 75% of the claims represented). (1 mark)
- However, Israeli law allows the court to approve a reorganization plan despite the dissent of a class of creditors under the following conditions –
 - Without approval of the plan of reorganization the corporation will spiral into liquidation, and each creditor in the dissenting class will receive less in liquidation – here NB receives 87.5 under the plan as opposed to 62.5 in liquidation. (1 mark)
 - The plan provides each secured creditor with a value equal to the value of its secured claim – here the value of NB secured claim is 50 (because this is the value of the security). NV receives the more than full value of its secured claim.(1 mark)
 - The plan does not provide any consideration to the equity holders while failing to pay the creditors of the dissenting class in full – Here the plan does not provide any value to the equity holders. (1 mark)
- The court can thus approve the plan notwithstanding NB's dissent.(1 mark)

*** End of Assessment ***

42.5 out of 50