



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. Incorrect**
- (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.**

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. **Correct**

(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?

1. Foreign court that delivered the judgement was authorised to grant it under its domestic laws. **Yes**
2. Judgement is enforceable in the country of issuance. **Yes**
3. Judgment is conclusive and final. **Yes**
4. It is possible to enforce the judgement in Israel.
5. The principles of mutuality/reciprocity are in place between Israel and the country of issuance of the judgment. **Yes**

Question 2.2 [maximum 3 marks] 3 Marks

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

1. Moratorium on all legal proceedings against debtor. **Yes**
2. Debtor's pre-commencement property becomes insolvency estate. **Yes**
3. Certain limitations are imposed on debtor's day-to-day life (for example, obtaining passport or leaving the country). **Yes**

Question 2.3 [maximum 3 marks] 3 marks

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

1. Action took place 3 months prior to the date of filing the petition of commencement order (if creditor debtor's relative – 1 year). **Yes**
2. At the time of the action the debtor was insolvent. **Yes**
3. As the result of the action, the creditor will receive the payment of a larger share of the owed debt than it would have been paid under the insolvency proceeding. **Yes**

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

Question 3.1 [maximum 8 marks] 4 marks

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

1. S. 66 of the New Insolvency Act defines the executory contract as a pre-commencement contract to which the debtor corporation is a party and which has not yet been performed.
2. The New Insolvency Act gives the right to the trustee to file a motion with the court **when?** with an aim to reject the executory contract (s. 67). **Yes** At the same time, the trustee might also assume the executory contract and continue its performance. **Yes** The trustee does not need to remedy any pre-assumption breaches in order to assume the contract (ss. 68(a) and 71). **Yes**
3. Any *ipso facto* termination clauses are not allowed in an executory contract (s. 68(b)).

4. The infrastructure and essential services are to be continued to be provided to the corporate debtor under reorganisation. The terms for payment to the provider is to be determined by the insolvency court (s. 77(c)).

Not enough detail. The full answer is:

- Subject to the approval of the court, a trustee in a corporate reorganisation is authorised to assume or reject executory contracts to which the debtor corporation is a party (1 mark).
- Rejection -
 - The new Insolvency Act allows the trustee to file a motion with the insolvency court for the purposes of rejecting an executory contract.
 - The trustee is required to file such a motion with the court within 90 days from the date of the commencement order. (1 mark)
 - The court will approve the trustee's rejection of an executory contract if it finds that the rejection will enhance the corporate reorganisation or will maximise the return to creditors (1 mark).
 - Upon rejection of an executory contract, all obligations and rights under the contract cease to exist. Any damages that the counter-party suffers as a result of the rejection of the contract constitute an unsecured claim against the insolvent estate. (1 mark)
- Assumption -
 - The new Insolvency Act allows a trustee also to assume an executory contract and thus continue its performance within the reorganisation proceeding.
 - The trustee may assume an executory contract despite any previous breaches by the corporate debtor (1 mark).
 - To the extent that the contract has been breached prior to its assumption, the trustee should file a motion with the court requesting judicial approval of its assumption. This motion must be filed within 45 days of the trustee having received a notice from the counter-party of its intention to rescind the contract due to a breach of its provisions. (1 mark)
 - The trustee is not required to remedy any pre-assumption breaches of the contract as a condition for assumption. Any such breaches constitute a pre-commencement unsecured claim against the insolvent estate (1 mark).
 - The court may not authorise the assumption of an executory contract where there have been previous breaches unless the trustee convinces the court that it is able to provide the counter-party with adequate assurances of its intended performance of the contract (1 mark).

Question 3.2 [maximum 7 marks] 7 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.

1. Applicable law [for the purposes of this exercise – money is regarded as an asset of ACME and the repayment of the debt is the relevant action described in the “Applicable law” section]:
 - a. under the New Insolvency Act, the court can authorise to avoid the pre-commencement repayment of the debt to the creditor if:
 - i. the repayment took place within 3 months prior to the filing of the commencement order petition; **Yes**
 - ii. at the time of the repayment the debtor was already insolvent; **Yes**
 - iii. as a result of the repayment the creditor received a bigger payment than it would have received as a result of the insolvency proceeding.
 - b. The court will not authorise to avoid such a repayment if: **Yes**
 - i. On the date when the action took place the debtor received new&adequate consideration for its action performed; or **Yes**
 - ii. The performance of such an action was in the normal course of business of the debtor. The debt should have also been created in the normal course of business. **Yes**
2. **Defence of Rubi’s position.** Rubi might argue that when it received NIS 6,000, ACME received the new consideration in the form of the new textiles. The new textiles were valued at NIS 2,500. The rest – NIS 3,500. Even though this payment was made within 3 months prior to the filing of the commencement order petition and at the time of this payment ACME already was experiencing economic difficulties, NIS 3,500 is not a bigger payment than it would have received as a result of the insolvency proceeding (we do not have enough details to support this last statement, but it is possible, especially since NIS 3,500 is approx. 1/2 of the sum still due to Rubi) **Yes**
3. **Defence of trustee’s position.** Trustee might argue that the payment was made within the 3 months prior to the filing of the commencement order petition, at the time of the repayment the debtor was already insolvent, and as a result of the payment Rubi received a bigger payment than it would have received as a result of the insolvency proceeding (however, as with Rubi’s defence, we do not have enough information to support this). Rubi should wait until the results of the insolvency proceeding and receive its share as ACME’s creditor. **Yes**

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)	100	NB has a security interest on Zeta’s vehicle worth 50
South Bank (SB)	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	25	
Private loan (unsecured)	50	
Suppliers (unsecured)	75	

Question 4.1 [maximum 9 marks] 5 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.

1. NB will receive 50 **Yes** + 7.125 (order - after liquidation costs&first-priority tax charges as holder of security interest and the rest will be assessed as for the unsecured creditor)
2. Employees will receive 25 **Yes** (order – after liquidation costs, first-priority tax charges, first charge holders)
3. SB will receive 100 **No** (order – after liquidation costs, first-priority tax charges, first charge holders, statutory preference creditors)
4. Private loan (unsecured) creditors will receive 7.125 (order – after liquidation costs, first-priority tax charges, first charge holders, statutory preference creditors, floating charge holders)
5. Suppliers (unsecured creditors) will receive 10.75 (order – after liquidation costs, first-priority tax charges, first charge holders, statutory preference creditors, floating charge holders)

When you went wrong with the floating lien, the rest of your answers were wrong. I have awarded marks for process. The full answer is:

- The fixed secured creditor (NB) receives the value of its security interest first – 50 (1 mark). The remaining 50 of the loan (1 mark)
- Next are the Employees (which are priority creditors) – They receive 25 (1 marks).
- Next is the floating lien (1 mark). According to Israeli law, however, 25% of the proceeds of the floating charge must be made available to the unsecured creditors. Thus, if the inventory is worth 100, SB can only receive 75 (1 mark). The remaining debt (25) is considered unsecured debt (1 mark).
- Thus, at this point Zeta has 200 unsecured debt -
 - Suppliers – 75
 - Private loan 50
 - Remaining debt to NB – 50
 - Remaining debt to SB – 25
- At this point Zeta has 50 worth of assets (we started with 200, and distributed 150 to NB (50), the employees (25) and SB (75)).
- Thus, each creditor receives an additional quarter of its non-secured debt (3 marks)
 - NB an additional – 12.5 (and 62.5 in total)
 - SB an additional – 6.25 (and 81.25 in total)
 - Suppliers – 18.75
 - Private debt – 12.5

Question 4.2 [maximum 6 marks] 1 Mark

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?

The court cannot approve plan regarding the secured class of creditors. All the creditors will be divided into 2 classes: secured and unsecured. NB is the only secured creditor (because SB's floating charge has not yet crystalized, and the others are fully unsecured creditors). Thus, NB's vote is the majority vote in its class, so the court cannot approve the plan.

No, this is not correct. I have awarded 1 mark for effort. The correct answer is:

- 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 ***

36 out of 50