



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: 202223-336.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 "student number" 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.**
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- 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 2023. The assessment submission portal will close at 23:00 (11 pm) GMT on 1 March 2023. 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 2023 or by 23:00 (11 pm) BST (GMT +1) on 31 July 2023. If you elect to submit by 1 March 2023, you may not**

submit the assessment again by 31 July 2023 (for example, in order to achieve a higher mark).

7. Prior to being populated with your answers, this assessment consists of 9 pages.

ANSWER ALL THE QUESTIONS

Commented [H(1)]: Total marks 35/50

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

Which of the following entities does not satisfy the minimum presence requirement to be a debtor under any chapter of the Bankruptcy Code?

- (a) A foreign domiciled company that pays a US attorney a retainer.
- (b) A company with several US bank accounts, but no physical presence in the United States.
- (c) A company with US patents, but no physical presence in the United States.
- (d) All of the above satisfy the minimum requirement for presence in the United States.
- (e) None of the above satisfy the minimum requirement for presence in the United States.

Question 1.2

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

ABC Corp is an industrial manufacturing company that is filing for bankruptcy. Which of the following could not be considered a party in interest?

- (a) A neighboring landowner to ABC Corp's manufacturing plant.
- (b) An environmental advocacy group that opposes ABC Corp's operations.
- (c) The landlord of ABC Corp's corporate office.

- (d) *People who live several miles downstream from ABC Corp's manufacturing plant and have been exposed to the plant's toxic waste.*
- (e) *The US Internal Revenue Service.*

Question 1.3

Which of the following contracts to which ABC Corp is a party is executory and may be assigned without counterparty consent?

- (a) *A lease on a manufacturing plant that contains a provision that requires landlord approval of any assignment.*
- (b) *An employment contract between ABC Corp and a former employee, requiring the company to provide health insurance through the end of the current year.*
- (c) *A 10-year software licensing agreement with XYZ Corp that is three years into performance.*
- (d) *A lease on office space that ended the prior year, but for which ABC Corp still owes past rent.*
- (e) **None of the above are executory and may be assigned without counterparty consent.**

Commented [H(5)]: Incorrect, the correct response is (a)

Question 1.4

Which of the following conditions must be true about a reorganization plan for a court to confirm it under Chapter 11 proceedings?

- (a) *Have a possibility of success, even if it relies on speculative or improbable events to be capable of execution.*
- (b) *The plan is not likely to be followed by liquidation.*
- (c) *All impaired classes must accept the plan.*
- (d) *All of the above.*
- (e) **None of the above.**

Commented [H(6)]: Incorrect, the correct response is (b)

Question 1.5

Which of the following about cramdowns, is false?

Commented [H(7)]: Incorrect, the correct response is (e)

- (a) **The plan of reorganization must be fair and equitable to all impaired classes.**
- (b) *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.*
- (c) *Class definition is often a battleground when a debtor tries to cramdown classes.*
- (d) *Dissenting creditors are permitted to challenge the classification of a creditor supporting the cramdown.*
- (e) *If one insider creditor approves of the plan of reorganization, all other impaired classes may be crammed down.*

Question 1.6

Commented [H(8)]: Correct, 1 mark

Which of the following about 363 sales is false?

- (a) *A good faith purchaser at a 363 sale may retain the property notwithstanding a subsequent reversal of court approval for the sale on appeal.*
- (b) *The debtor in possession must establish that the transaction is in the best interests of the estate as a whole.*
- (c) **In chapter 15 proceedings, a foreign court's approval alone suffices for a 363 sale.**
- (d) *Debtors must carry out a robust marketing process for the sale.*
- (e) *A creditor's lien on assets sold in a 363 sale attaches to the proceeds of the sale.*

Question 1.7

Commented [H(9)]: Incorrect, the correct response is (d)

Which of the following is true of both an actual fraudulent conveyance and a constructive fraudulent conveyance?

- (a) *The debtor must have had an actual intent to hinder, delay, or defraud any entity to which the debtor was or became indebted.*
- (b) *Both require at least circumstantial evidence of the fraudulent intent.*
- (c) *The debtor must have been insolvent at the time of transaction.*
- (d) *In addition to provisions in the Bankruptcy Code, the debtor or the trustee may invoke applicable state or foreign fraudulent conveyance laws.*

(e) **All of the above are true.**

Question 1.8

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

When does an automatic stay come into effect?

- (a) **Immediately on the filing of any plenary petition.**
- (b) On the filing of a voluntary petition but not on the filing of an involuntary petition.
- (c) Once the court reviews the petition and grants the stay.
- (d) Once the petitioner announces their intention to file for bankruptcy publicly.
- (e) Once a plan of reorganization is confirmed.

Question 1.9

Commented [H(11)]: Correct, 1 mark

Which of the following regarding substantive consolidation is true?

- (a) It respects the boundaries of corporate separateness.
- (b) It is the treatment of two or more creditors as a single creditor to simplify the claims process.
- (c) **If a creditor can show it extended credit on the basis of corporate separateness, it has a valid objection to substantive consolidation.**
- (d) Substantive consolidation is commonly used to resolve bankruptcies of corporate groups.
- (e) Authority for substantive consolidation comes from the Bankruptcy Code.

Question 1.10

Commented [H(12)]: Correct, 1 mark

Which of the following are relevant factors in determining a debtor's center of main interests (COMI) in the recognition stage of a Chapter 15 bankruptcy case?

- (a) The location of the headquarters.
- (b) The location of primary assets.
- (c) The location of the majority of the affected creditors in the request for relief.

(d) *The jurisdiction whose law will apply to most disputes.*

(e) **All of the above.**

QUESTION 2 (direct questions) [10 marks]

Commented [H(13)]: Total marks 9/10

Question 2.1 (1 mark)

Commented [H(14)]: Total marks 1/1

What is setoff and why is it not permitted in many circumstances?

Setoff refers to the debtor counter-balancing its mutual debt with a creditor. This practice is not permitted in many circumstances because it can improve the creditor's position compared to other unsecured creditors. In other words, the creditor would be put in a better position in the event of the debtor's formal insolvency.

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Commented [H(16)]: Correct, 1/2 mark

Question 2.2 [2 marks]

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What rules should you review when preparing a filing for a bankruptcy court?

When preparing a filing for bankruptcy court the following rules should be reviewed:

- **Federal Rules of Bankruptcy Procedure** (a.k.a. Bankruptcy Rules)
- **Federal Rules of Civil Procedure**
- **Local rules of the particular bankruptcy court**
- **The particular judge's personal practices** - these are periodically updated and available on the bankruptcy court
- **Any unwritten local practices**

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Commented [H(19)]: Correct, 1/2 mark

Commented [H(20)]: Correct, 1/2 mark

Commented [H(21)]: Correct, 1/2 mark

Question 2.3 [2 marks]

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What does the absolute priority rule require and when can it be deviated from?

The absolute priority rule requires that each category of claims must be paid in full before the next category of claims is paid. Deviation from this rule is permitted in a Chapter 11 plan if the affected creditors consent. In a Chapter 7 proceeding however, the statutory rules of priority must be strictly adhered to and no deviation is permitted.

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Commented [H(24)]: Correct, 1/2 mark

Commented [H(25)]: Correct, 1/2 mark

Question 2.4 [2 marks]

What is a “priming lien” and what requirements must be met for such a lien to be granted to secure DIP financing?

A priming lien is a type of debtor in possession (“DIP”) financing which allows a bankrupt company in Chapter 11 bankruptcy proceedings to obtain financing in order to continue business operation and re-organisation. If the debtor can demonstrate that they cannot get financing on any other basis, the court could approve the debtor borrowing money on a secured basis. The lender would be granted a priming lien which gives them priority over pre-petition secured creditors and super-priority claims.

Existing secured lenders will need to approve of DIP since the priming lien will take priority over all the debtor’s existing debts. Moreover, the debtor will need to demonstrate that the interest of creditor being primed is adequately protected.

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Commented [H(27)]: Correct, 1/2 mark

Commented [H(28)]: Correct, 1 mark

Commented [H(29)]: Correct, 1/2 mark

Question 2.5 [3 marks]

What is a preference? What are the elements of a preference claim that need to be proved? Is a showing of fault, by either the debtor or creditor, required?

A preference arises when a debtor does something or allows something to be done that puts its creditor, guarantor or surety in a better position than they would be in if that debtor went into formal bankruptcy.

The following sets out, in essence, the section 547 Bankruptcy Code elements of a preference:

- 1. The debtor pays an “antecedent” debt, i.e. a previously incurred debt.*
- 2. The payment is made to the creditor when the debtor was insolvent.*
- 3. Payment was to a non-insider (e.g. director, officer, affiliate), during the suspect period (90 days prior to filing petition)*
- 4. Such payment put the creditor in a better position than they would be in if the debtor should enter formal bankruptcy.*

There is no need to show any fault by either the debtor or creditor. The penalty suffered by the creditor however is the return of the funds to the bankrupt estate.

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Commented [H(31)]: Partially correct, 1/2 mark, also must be better than the outcome specifically in a chapter 7

Commented [H(32)]: Correct, 1/2 mark

Commented [H(33)]: Correct, 1/2 mark, specifically on behalf of an antecedent debt

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

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

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Question 3.1 [3 marks]

Describe the circumstances in which a bankruptcy court may enter a final order, who reviews appeals from bankruptcy court orders and how are non-final orders reviewed?

The US bankruptcy courts have limited jurisdiction to enter final orders. These courts are subject to federal district courts' authority and their authority is established by a separate federal state law which distinguishes between core and non-core proceedings. The bankruptcy court's authority relates primarily to Chapter 11 issues.

The bankruptcy court has authority to hear and determine core proceedings but they may or may not have authority to determine a particular non-core proceeding. Core and non-core proceedings are not defined under the law however it provides a non-exclusive list of 16 types of core proceedings which includes:

- 1. Matters relating to the administration of the bankrupt estate*
- 2. Counterclaims by debtor*
- 3. avoidable preferences related proceedings*
- 4. fraudulent conveyances related proceedings*

Generally, core issues are those which relate directly to the bankruptcy whilst non-core issues do not concern the bankruptcy itself but affects the outcome of the bankruptcy.

The bankruptcy court can hear and determine/make final order on core proceedings.

In respect of non-core proceedings, the bankruptcy court cannot make a final order but can hear the proceedings if it is sufficiently linked to the bankruptcy.

The court can hear and submit, to the federal district court, proposed findings of fact and conclusions of law. The district court can also refer non-core proceedings to the bankruptcy court where the parties consent. Additionally, in non-core proceedings the district court can authorise the bankruptcy court, upon consent of the parties to conduct a jury trial.

Bankruptcy court orders are appealed to the district courts by either the litigants or adversely affected persons affected by the ruling who have standing. In certain circuits the appeals are heard by a Bankruptcy Appellate Panel ("BAP").

As regards to the standard of review, if the order relates to a core proceeding the district court or BAP will review the conclusions of law and review findings of fact for abuse of discretion by the bankruptcy court. In the case of a non-

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Commented [H(37): Partially correct, 1/2 mark, the bankruptcy court does not have authority for core matters (such as resolution of claims) that fall within in Article III unless the parties consent.

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

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core proceeding the district court or BAP will review the conclusions of law and all findings of fact to which the party has objected.

Question 3.2 [3 marks]

What provisions of the Bankruptcy Code automatically apply to the debtor's property within the territorial jurisdiction of the United States upon recognition of a foreign main proceeding? What relief may be granted on a discretionary basis for either foreign main or non-main proceedings?

Chapter 15 of the Bankruptcy Code implemented the UNCITRAL Model Law on cross-border insolvency. Chapter 15 allows the foreign representative access to the US courts and the ability to seek recognition as either foreign main or foreign non-main proceeding. Following recognition, the foreign representative may seek additional relief from the bankruptcy court or other federal courts and can also bring a full bankruptcy case.

Filing of a chapter 15 petition does not invoke an automatic stay against creditor actions. The stay arises upon the successful recognition of a foreign main application and would only apply to the debtor's assets located within the United States. By limiting the assets to those located in the United States Chapter 15 promotes cooperation with foreign main proceedings and prevents interference with foreign main proceedings.

Following recognition as a foreign non-main the following may be granted on a discretionary basis:

- Automatic stay;
- Use, transfer or sale of property outside the ordinary course;
- business operation by the foreign representative in the ordinary course
- avoidance in respect of post-petition transfers and post-petition perfection of security interests.
- Provisional relief extension
- Discovery authorisation relating to the debtor's assets and affairs;
- Any other relief necessary to effectual the purpos of [Chapter 15] and/or to protect the debtor's assets and the creditors' interests.

Any discretionary relief sought must be appropriate under United States law for the assets in question. Furthermore, the court may impose conditions on the relief granted and may discontinue discretionary relief upon application by a party in interest.

Question 3.3 [4 marks]

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Commented [H(42)]: Correct, 1/2 mark

Commented [H(43)]: Correct, 1/2 mark

Commented [H(44)]: This is applicable automatically on recognition of a foreign main

Commented [H(45)]: This applicable automatically on recognition of a foreign main proceeding

Commented [H(46)]: This is applicable automatically on recognition of a foreign main proceeding

Commented [H(47)]: Correct, 1/2 mark

Commented [H(48)]: Correct, 1/2 mark

Commented [H(49)]: Correct, 1/2 mark

Commented [H(50)]: Total marks 3/4

What duties do directors owe to a Delaware corporation in the ordinary course of business? To whom are these duties owed when the corporation is potentially or actually insolvent? What rule protects directors from liability for errors of judgment?

In the ordinary course of business, when the company is solvent, the duties of a director in a Delaware corporation are owed to the shareholders as a whole. This means the director will run the business for the benefit of the shareholders. Such duties include fiduciary duties and duty of care in educated decision making.

Commented [H(51)]: Correct, 1 mark, there is also a duty of loyalty

When the corporation is potentially or actually insolvent the duties of the director and to whom they are owed do not change. The directors must continue to discharge their duties by exercising their best business judgement in the best interest of the corporation and for the benefit of the shareholders.

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The business judgement rule protects directors, whether the company is solvent or not; insulating them from liabilities for business decision made on an informed basis, in good faith, in honest belief that the decision was in the best interest of the corporation. Accordingly, a director will only be liable if they act in self-interest, bad faith or without care and that breach of duty of care causes loss of value to the corporation.

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Question 3.4 [5 marks]

Commented [H(54)]: Total marks 4.5/5

List and describe the requirements that a creditor's claim must fulfill in order to qualify as a petitioning creditor in an involuntary proceeding.

A creditor can petition the court under section 303 of the US Bankruptcy code to put the debtor corporation into involuntary bankruptcy. The creditor would indicate whether they are seeking to place the corporation under chapter 7 or 11 and must state that the corporation is generally failing to pay its debts as they fall due. At least 3 creditors must hold claims against the corporation for an aggregate total of USD16,750 (this amount is periodically increased for inflation), which are not contingent as to liability or amount. The claim cannot be the subject of a bona fide dispute as to amount or liability.

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Commented [H(56)]: Correct, 1/2 mark

Key element to note in order to qualify as a petitioning creditor in an involuntary proceeding are as follows:

- 1. The claim must not be contingent - i.e. it must be a claim that is not dependent on the occurrence of a future event. For example, a guarantor obligation is dependent on the default of the party who is responsible for making payment. If the default never occurs then there can be no claim under the guarantee.*

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Commented [H(58)]: Correct, 1/2 mark

2. **The claim/s must be unsecured** and amount to at least USD16,750 if only one creditor petitioning. If there are 12 or more creditors, at least 3 creditors with claims amounting to at least USD16,750. Thus, a corporation owing less than this amount cannot be forced into involuntary bankruptcy. The USD16,750 threshold is increased periodically due to inflation.

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

3. **The claim must not be the subject of a bona fide dispute.** If there is a dispute concerning the amount, the corporation may be able to resist the petition. If the corporation is successful the creditor may have to pay the corporations associated costs.

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Commented [H(61)]: Specifically, there exists a bona fide dispute if there is an objective basis in fact or law to dispute liability or amount

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

Commented [H(62)]: Total marks 8/15

Question 4.1 [5 marks]

Commented [H(63)]: Total marks 4/5

Speculation Inc is engaged in day-trading stocks from leased office space with two employees. It funds its trading through a margin loan from its broker, where the shares it purchases are held as collateral. For a while, Speculation Inc was very successful in trading, and the US Department of Justice (DOJ) has announced an investigation into whether its success was due to illegally trading on insider information. More recently, Speculation Inc has had serious trading losses, causing its broker to declare a default on the margin loan. It also has fallen behind on its rent, and been sued by a former employee alleging she was fired due to due to gender bias.

What would be the effect of a Chapter 11 petition being filed by Speculation Inc on each of the (i) DOJ investigation, (ii) margin loan default; (iii) delinquent lease and (iv) employment discrimination lawsuit?

A Chapter 11 proceeding would provide Speculation Inc with a number of benefits including the automatic stay on proceedings;- such stay would come into effect immediately upon filing of the Chapter 11 petition. They stay will provide Speculation Inc with relief from its unsustainable debts, it will allow them to unravel some of their burdensome contracts as well as provide them with some breathing room to reorganise its financial affairs and hopefully emerge with a balance sheet which is more aligned with its current operational realities.

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

However the automatic stay is not without limits and is subject to certain statutory exceptions including criminal proceedings, regulatory investigations, exercise of rights under commodity, forward or security contracts.

As the DOJ's investigation on insider trading is a criminal proceeding the Chapter 11 would not have an effect on this proceeding and the investigation would still be allowed to proceed.

Commented [H(65)]: Correct, 1 mark

Any rights arising under the arrangement with the broker such as exercise of rights under commodity, forward or security contracts will not be stayed.

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

The stay will operate against the discrimination lawsuit.

Commented [H(67)]: Correct, 1 mark, also the landlord is stayed from commencing proceedings to obtain rent or eviction

Question 4.2 [5 marks]

Commented [H(68)]: Total marks 1/5

Stella SA (Stella) is an international cosmetics company incorporated in France, with its headquarters in Paris. Stella's products are made in Italy and shipped to its retail stores in Europe (including England), Asia, and North America. Stella's funding comes from a bank loan and Eurobonds, both of which are governed by English law. Stella's retail sales have suffered due to pandemic-related closures and it is considering options to restructure its debt. One option is to use an English scheme of arrangement with respect to the Eurobonds. Could the English scheme of arrangement be recognized by a US bankruptcy court under Chapter 15, and would such recognition be as a foreign main or non-main proceeding?

Chapter 15 would allow Stella to seek recognition as either foreign main or foreign non-main proceeding in the US. For the purposes of Chapter 15 a "foreign proceeding" is a "judicial or administrative proceeding in a foreign country ... under a law relating to insolvency or adjustment of debt in which proceeding the [debtor's assets and affairs] are subject to control or supervision by a foreign court for the purpose of reorganization or liquidation."--11 U.S.C. § 101(23). It is therefore submitted that the scheme of arrangement has satisfied the requirement of this section which would enable Stella to seek recognition as either foreign main or foreign non-main proceedings in the US.

The US bankruptcy court will have to decide if the scheme of arrangement is either a:

foreign main proceeding, meaning a proceeding which is taking place in the state where the debtor has its center of main interests (COMI). The COMI can be assessed by reference to where the debtor has its registered office, its primary place of business or where it is legally domiciled.

or

foreign non-main proceeding, meaning a proceeding which is taking place in a state where the debtor conducts regular business activities but not where its COMI is.

Commented [H(69)]: An establishment is also required, which would be satisfied by the retail store in England

The distinction is important because the automatic stay would be much easier to achieve if the proceeding is recognized as a foreign main proceeding.

COMI is not defined in the law however there is a rebuttable presumption that the corporate debtor COMI is its registered office, a place where the main administration is conducted as ascertainable by third parties. Matters which the court may take into consideration to determine the COMI and which may rebut the COMI presumption include location of the debtor's banking arrangements, where the debtor carries out their trade, and tax regime to which the debtor is subjected.

It is noted that Stella has banking arrangements and retail activities in England which could mean that the court would determine that its COMI is England (as opposed to France or Paris where it was incorporated and has headquarters respectively). It is submitted therefore that the scheme of arrangements could be recognized as foreign main proceedings based on England being its COMI.

Commented [H(70)]: Correct, 1 mark

Commented [H(71)]: Incorrect, the other contacts are unlikely to rebut the presumption that COMI is in France. Because COMI is in France, recognition as foreign main is not appropriate.

Question 4.3 [5 marks]

Commented [H(72)]: Total marks 3/5

ToyCo is an American toy company that has created a popular line of folding robot toys called Xblox. The toys are covered by several US patents. Currently, GameMart Inc (GameMart) has a 10-year exclusive license to manufacture Xblox and pays ToyCo monthly royalties. GameMart operates a factory in California that it leases from Land Corp on a longer term lease with seven years to go; the lease prohibits assignment without Land Corp's consent. The Xblox toys are selling well, but GameMart's other toy lines are doing poorly, so it is considering a Chapter 11 bankruptcy. Answer the following questions:

(i) Is the license to manufacture Xblox an executory contract?

An executory contract is one where unperformed obligations by the parties remain outstanding. The license between Toyco and GameMart is executory. It is an exclusive 10-year contract which requires future and ongoing performance by both GameMart and ToyCo.

Commented [H(73)]: Correct, 1 mark

Executory contracts receive special treatment under section 365 Bankruptcy Code; the debtor has a choice to assume, assign or reject them.

(ii) Can GameMart transfer the Xblox license as part of 363 sale without ToyCo's consent? Why or why not?

Section 363 would authorise GameMart to transfer the license as part of a 363 sale without ToyCo's consent.

Commented [H(74)]: Incorrect, the consent of ToyCo would be required because substantive non-bankruptcy law permits the owner of the patent to refuse performance by an assignee

(iii) **Can GameMart transfer the factory lease as part of 363 sale without Land Corp's consent? Why or why not?**

Section 363 would allow GameMart to transfer the lease as part of the 363 sale. Typical anti-assignment provisions are not enforceable in a bankruptcy.

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Commented [H(76)]: Correct, 1 mark

* End of Assessment *