



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.**
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 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 40.25/50

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

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

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

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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

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

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.*

Question 1.4

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

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.*

Question 1.5

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

Which of the following about cramdowns, is false?

- (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)]: Correct, 1 mark

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

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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

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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]

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Question 2.1 (1 mark)

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

Setoff means that a creditor holding a claim against the debtor and simultaneously owing money to the debtor can net out the two obligations.

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Setoff is not permitted in the following circumstances:

Commented [H(16)]: The policy reason for these restrictions is because setoff improves the creditor's position as compared to comparably situated creditors who do not owe the debtor money.

- i. The creditor's claim against the estate is disallowed;*
- ii. The creditor's claim against the estate was acquired post-petition or in the 90 days prior to the petition at a time when the debtor was insolvent;*
- iii. The creditor's obligation to the debtor was incurred in the 90 days prior to the petition at a time when the debtor was insolvent for the purpose of exercising setoff rights;*
- iv. The creditor improves its position by setoff as compared to its position had setoff been exercised 90 days prior to the petition.*

Question 2.2 [2 marks]

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

You should review the followings:

- i. The Bankruptcy Rules;*
- ii. The Federal Rules of Civil Procedure;*
- iii. The local rules of the bankruptcy court & the judge's personal practices;*
- iv. Consulting with a local practitioner for advice on unwritten local practices (if you don't practice regularly in a jurisdiction).*

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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 payment in full must be made to each category of claims before the next category receives anything. In chapter 11 plan, deviation from the absolute priority rule is permitted with the consent of affected creditors, but deviation is not permitted in chapter 7 where the statutory priorities must be strictly followed.

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

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

Question 2.4 [2 marks]

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

It is a financing that the court may grant to secure post-petition financing and that is senior or equal to a pre-petition lien on estate property. The court's approval of a roll-up will depend on whether any other source of funds is available that does not contain

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such provision and whether substantial additional credit is being made available to the debtor.

If a priming lien was granted for post-petition financing, that financing will have priority in collateral over the pre-petition secured lenders.

Commented [H(29): Correct, 1/2 mark, also the interest of the secured creditor being primed must be adequately protected.

Question 2.5 [3 marks]

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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 is a transfer of the debtor's property made in a suspect period before the petition date that must be returned to the estate if it exceeds the amount the recipient would have received in a chapter 7 liquidation had the transfer not been made.

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There is no need to show any fault of either the debtor or the recipient in connection with the payment having been made, and the recipient creditor suffers no penalty other than return of the transfer.

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The elements of a preference claim are:

1. A transfer of an interest of the debtor in property.

The transfer may be of funds, property or an interest in property-that is, the granting of a lien.

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2. To or for the benefit of a creditor.

If the recipient was not a creditor of the debtor prior to the transfer, the transfer can not be a preference, but may be recoverable as a fraudulent consequence.

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3. For or on account of an antecedent debt owed by the debtor before such transfer was made.

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4. Made while the debtor was insolvent.

The debtor is presumed to have been insolvent on and during the 90 day prior to the petition date for purposes of determining preference claims. A creditor may present evidence to rebut the presumption, and the ultimate burden of proving insolvency on a balance sheet basis at the time of the transfer is on the trustee or debtor.

5. Made during the suspect period.

The suspect period for transfers to third parties is 90 days prior to the petition date, and the suspect period for insiders is one year prior to the petition date.

6. That enables the creditor to receive more than it would have in a chapter 7 liquidation.

A transfer is only an avoidable preference if it is resulted in the creditor improving its position as compared to the result of a liquidation had the transfer not occurred.

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

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Question 3.1 [3 marks]

Commented [H(37)]: Total marks 2/3

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?

1. Describe the circumstances in which a bankruptcy court may enter a final order: The referral statute creates a distinction between core and non-core matters, and permits bankruptcy judges to hear and determine only core proceedings. The bankruptcy court may hear the non-core proceedings if they are sufficiently related to a bankruptcy proceeding, but can't make a final determination; instead, it submits proposed finding of fact and conclusions of law to the district law for a final decision.

Commented [H(38)]: Bankruptcy judges do not have constitutional authority to give final judgment in core matters that overlap with Article III jurisdiction, such as resolving the debtor's counterclaims. They do have authority to resolve issues under the Bankruptcy Code such as a challenge to a petition, or other matters where the parties consent.

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At the outset of each motion or pleading, parties must state whether the matter at issue is core or non-core, so that the bankruptcy court can determine the scope of its jurisdiction and power to render a final order or judgement.

2. Who reviews appeals from bankruptcy court orders.

In general, appeals from bankruptcy court decisions are heard by the district court for the district in which they sit. The first appeal from a bankruptcy case will go to a randomly assigned judge, who will then generally hear all future appeals from those bankruptcy proceedings. However, in certain circuits, bankruptcy appeals are heard a Bankruptcy Appellate Panel (BAP), convened from the judges of the bankruptcy courts within the circuit. In those circuits, a party has the right and option also to request that the appeal be heard by the district court instead. From the district court or BAP, there is a further appeal of right to the circuit court of appeals.

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Having said the above, and in rare circumstances, an appeal from a bankruptcy court may go directly to the court of appeals, where the bankruptcy court or district court certifies either that (i) the appeal raises a question of law as to which there is no controlling decision of the circuits or the US Supreme Court, or requires resolving conflicting decisions, or (ii) immediate appeal may materially advance the progress of the case.

3. How are non-final orders reviewed:

Where the bankruptcy court has the authority to issue a final order, the district court (or BAP) and court of appeals perform the same review, with no difference by the court of appeals to the district court. This can create a lengthy appeals process, but courts of appeal are reluctant to let parties skip the district/ BAP stage, finding that they create a useful filtering mechanism for appeals not warranting pursuit to the court of appeals and help parties refine their arguments in the cases that do go through the whole process.

Question 3.2 [3 marks]

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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?

Upon the recognition of a foreign main proceeding, certain provisions automatically apply to the debtor's property within the territorial jurisdiction of the US:

1. automatic stay;
2. operation of the debtor's business in the ordinary course by the foreign representative;
3. sale, transfer or use of property outside the ordinary course;
4. avoidance of post-petition transfers and post-petition perfection of security interests.

Upon recognition of a foreign non-main proceeding, any of the above relief may be granted on a discretionary basis. In addition, following as either foreign main or foreign non-main, the following relief also may be granted on a discretionary basis:

1. authorization of discovery regarding the debtor's assets and affairs;
2. entrusting administration of the debtor's US assets to the foreign representative or other person;
3. extension of provisional relief;
4. any other relief necessary to effectuate the purposes of chapter 15 and to protect the assets of the debtor or the interests of creditors.

The above list of relief available is not exhaustive. Subject to some limitations, a court may provide additional assistance under the Bankruptcy Code or other US law consistent with the principle of comity and the values underlying the Bankruptcy Code.

Question 3.3 [4 marks]

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?

1. What duties do directors owe to a Delaware corporation in the ordinary course of business?

In general, US director liability is more limited than that elsewhere. Directors owe a fiduciary duty of loyalty to the corporation's best interest and a duty of care in educated decision-making, but are protected from liability for errors of judgement by the business judgement rule.

2. To whom are these duties owed when the corporation is potentially or actually insolvent?

Directors' duties are owed to the corporation and its shareholders, not to creditors, even in circumstances where the corporation is potentially insolvent and therefore the shareholders stand to receive nothing in bankruptcy. The Delaware Supreme

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Commented [H(52)]: Correct, 1 mark

Court has put to rest any suggestion that directors owe duties to creditors when a company is operating "in the zone of insolvency" or indeed is actually insolvent. Delaware law imposes no absolute obligation on the board of a company that is unable to pay its bills to cease operations and to liquidate. Even when the company is insolvent, the board may pursue, in good faith, strategies to maximize the value of the firm.

3. What rule protects directors from liability for errors of judgment?

- Directors may be exculpated by a corporation's certificate of incorporation from liability for breach of the duty of care.
- The **business judgement rule** doesn't apply where a transaction is approved by a board majority that is not disinterested and independent or a controlling shareholder is on both sides of the transaction (the transaction will be void).

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Question 3.4 [5 marks]

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

Creditors may commence an involuntary proceeding against an eligible debtor under either chapter 7 or chapter 11. Involuntary proceedings can't be commenced under the other chapters or against a farmer, family farmer or non-for-profit corporation. To qualify as petitioning creditor, the creditor must have a claim against the debtor that is:

1. **Non-contingent:**
That means the claim does not depend on the occurrence of a future event.
2. **Not a subject of bona fide dispute as to liability or amount:**
 - A bona fide dispute exists if there is an objectively reasonable basis for a dispute as a matter of fact or law; the debtor's subjective belief that the debt is not owed or the amount claim is incorrect is not sufficient.
 - If a portion of the amount claim is disputed, the creditor can't use the undisputed portion to reach the monetary threshold required in the next bullet, but a dispute as one claim doesn't disqualify application of other, undisputed claims held by the same creditor to meet petitioning creditor requirements.
3. **Unsecured or undersecured, separately or in the aggregate with all other petitioning creditors' claims, in the amount of at least USD 16,750.**
4. **The involuntary petition form requires the petitioning creditors to allege either that the debtor is generally not paying its debts as they became due.**

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Commented [H(60)]: Correct, 1/2 mark

Commented [H(61)]: Partially correct, 1/4 mark, or a custodian has been appointed over its assets.

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

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Question 4.1 [5 marks]

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 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?

- (i) **The DOJ investigation will continue without being affected by filing a chapter 11 petition by Speculation Inc. The stay granted under Bankruptcy Code is subject to certain statutory exceptions, and one of those is regulatory investigations. Therefore, Speculation Inc would not enjoy any stay or relief against the DOJ investigation, and the DOJ investigation will continue their investigation work.**
- (ii) **The broker can present his claim for the margin loan given to Speculation Inc. As a creditor, the broker must file a proof of claim on or before the bar date specified by the court.**
- (iii) **As fallen behind on its rent, the lessor can request the bankruptcy court to evacuate the premises. Eviction of a debtor-tenant from a non-residential property where the lease has expired is an exception from any relief or stay to be granted to the debtor upon filing the voluntary petition.**
- (iv) **The law suit for employment discrimination will continue with no effect and it represents a criminal proceeding which is excluded from any relief or stay that may be granted to the debtor under the Bankruptcy Code.**

Question 4.2 [5 marks]

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

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Commented [H(64): Correct, 1 mark, also note that the filing of the petition brings the stay into effect.

Commented [H(65): Incorrect, the margin loan is a securities contract and benefits from an exception to the automatic stay.

Commented [H(66): Partially correct, 1/2 mark, based on the facts given, there is only past-due rent so the landlord would be barred by the stay from seeking eviction

Commented [H(67): Incorrect, this is a civil proceeding between private parties so would be stayed.

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recognized by a US bankruptcy court under Chapter 15, and would such recognition be as a foreign main or non-main proceeding?

A foreign proceeding is defined by the US Bankruptcy Code as "a collective judicial or administrative proceedings 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 a reorganization or liquidation". Under this definition, proceedings as diverse as English schemes of arrangement has been granted recognition.

As Stella SA is incorporated in France, with its headquarter based in Paris, therefore, the COMI will be considered as France- Paris.

Based on the above, and as Stella selected the English schemes which follow the English Law, and as the proceedings are in a jurisdiction other than the debtor's COMI, then the proceedings can be recognized as a foreign non-main proceeding.

Question 4.3 [5 marks]

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?

As per the Bankruptcy Code, the debtor must file, together with a voluntary petition or on a date specified by the court, a number of schedules disclosing its assets, including all property, executory contracts, and unexpired lease of real and personal property, and its liabilities, including identifying its secured and 20 largest unsecured claims.

The contract is said to be executory if there are material unperformed obligations on both sides. In chapter 11, the debtor has the right to make decisions about the assumption and assignment or rejection of executory contracts until the confirmation of its plan or reorganization.

The election to assume or reject a contract must be based on the business judgement of the debtor in possession or trustee that the reorganization of the debtor will be facilitated thereby.

Commented [H(69): Correct, 1 mark, the other factors are unlikely to overcome the presumption that the COMI is in France.

Commented [H(70): Correct, 1 mark

Commented [H(71): Correct, 1 mark, also the retail store in England would be the qualifying establishment for non-main recognition

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Therefore, and based on the above, the license to manufacture XBlox is an executory contract.

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

The Bankruptcy Code abrogates contractual restrictions on assignment to enable the debtor to achieve a higher value for its assets than if such provisions were enforced. Counterparty consent is required in some cases where substantive non-bankruptcy law (such as intellectual property licensing law) provides that the counterparty can't be compelled to accept performance from a transferee.

Xblox license is related to manufacturing toys which are covered by several US patents. The manufacturing rights is related to another substantive non-bankruptcy law and then can't be assignable absent licensor consent. Due to the said reason, the Xblox license can't be part of 363 sale without ToyCo's consent.

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Commented [H(75)]: Correct, 1 mark

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

The Bankruptcy Code abrogates contractual restrictions on assignment to enable the debtor to achieve a higher value for its assets than if such provisions were enforced. Counterparty consent is required in some cases where the contract is one to make loan or other financial accommodation, or where substantive non-bankruptcy law (such as intellectual property licensing law) provides that the counterparty can't be compelled to accept performance from a transferee.

The lease contract of the factory is an executory contract, and it doesn't fall under the above contracts where the counterparty consent is required; therefore, the lease contract can be assigned without the consent, notwithstanding the landlord approval provision.

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Commented [H(77)]: Correct, 1 mark

Therefore, GameMart can transfer the factory lease as part of 363 sales without Land Corp's consent.

* End of Assessment *