

TOTAL = 44.5/50
89%



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 2024. The assessment submission portal will close at 23:00 (11 pm) GMT on 1 March 2024. 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 2024 or by 23:00 (11 pm) BST (GMT +1) on 31 July 2024. If you elect to submit by 1 March 2024, you may not**

submit the assessment again by 31 July 2024 (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

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

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

Car Corp, incorporated and headquartered in Michigan, owes Parts Inc, incorporated and headquartered in Mexico, USD 10,000 on a past-due invoice for components used to build Car Corp vehicles. May Parts Inc file an involuntary petition to place Car Corp into chapter 11 bankruptcy proceedings?

- (a) Yes, regardless of the circumstances.
- (b) Yes, if Car Corp has fewer than 12 non-contingent, non-insider creditors.
- (c) Yes, if other creditors owed at least USD 5,775 join in the petition.**
- (d) No, because Parts Inc does not know whether Car Corp is insolvent.
- (e) No, because Parts Inc is not a US company.

Commented [FV1]: 1, correct

Question 1.2

Answer this question with reference to the set of facts set out in question 1.1 above: Which of the following is likely to be a party in interest in the bankruptcy of Car Corp?

- (a) A shareholder in Parts Inc, to which Car Corp is indebted.
- (b) A journalist writing about Car Corp's bankruptcy.**
- (c) A shareholder in Investment Corp, Car Corp's parent company.

Commented [FV2]: 1, correct

(d) A retired employee of Car Corp who receives payments from the company's pension plan.

(e) A non-profit organization that advocates for companies like Car Corp to be held responsible for climate change

Question 1.3

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) Options (a) to (c) above satisfy the minimum requirement for presence in the United States.

(e) None of the above (options (a) to (d)) satisfy the minimum requirement for presence in the United States.

Question 1.4

Who may serve as a foreign representative to seek recognition of a foreign proceeding under chapter 15?

(a) An officer of the debtor if it is a debtor-in-possession in the foreign proceeding.

(b) The board of directors of the debtor if it is a debtor-in-possession in the foreign proceeding.

(c) An insolvency professional appointed by the court overseeing the foreign proceeding.

(d) An insolvency professional appointed by a creditor where the foreign proceeding is an involuntary receivership.

(e) All of the above.

Question 1.5

Which of the following regarding executory contracts is false?

Commented [FV3]: 1, correct

Commented [FV4]: 1, correct

(a) A court will generally defer to a debtor's business judgment regarding whether to assume or reject an executory contract.

(b) Executory contracts are clearly defined by the Bankruptcy Code.

Commented [FV5]: 1, correct

(c) In the most common formulation, executory contracts are defined as those where both sides to a contract have material unperformed obligations.

(d) Chapter 11 debtors have greater flexibility than chapter 7 debtors on when they may assume, assign or reject an executory contract.

(e) Under the hypothetical test, a debtor cannot assume an executory contract if the debtor could not also assign the contract.

Question 1.6

Which of the following is not a requirement to confirm a "cramdown" plan?

(a) That the plan is fair and equitable to dissenting classes of creditors.

(b) Acceptance of the plan by at least one class of impaired, non-insider creditors.

Commented [FV6]: 1, correct

(c) Acceptance of the plan by all classes of secured creditors.

(d) That the plan does not discriminate unfairly against dissenting classes of creditors.

(e) That the dissenting creditors receive no less than they would under a liquidation scenario.

Question 1.7

Which of the following statements about "pre-packs" is false?

(a) A pre-pack cannot be used if the debtor wishes to reject executory contracts.

(b) Creditors must have sufficient information about the debtor and the plan to make an informed voting decision.

Commented [FV7]: 1, correct

(c) A pre-pack debtor may spend as little as a single day in bankruptcy.

(d) The proposed plan of reorganization is submitted to the bankruptcy court together with the voluntary petition.

(e) Creditors' commitment to vote in favor of the plan may be memorialized in a restructuring support agreement.

Question 1.8

If a debtor rejects an executory trademark license agreement under which the debtor licenses its trademark to a manufacturer, which of the following is true:

- (a) The manufacturer has a claim for damages for breach of contract.*
- (b) The manufacturer must immediately stop using the trademark.*
- (c) The manufacturer can continue using the trademark for the remaining period of the license.*
- (d) Both options (a) and (b).***
- (e) Both options (a) and (c).*

Commented [FV8]: 0, correct answer is E

Question 1.9

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.*

Commented [FV9]: 1, correct

Question 1.10

Which of the following regarding substantive consolidation is true?

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

Commented [FV10]: 1, correct

QUESTION 2 (direct questions) [10 marks]

Question 2.1 (1 mark)

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

Setoff is a way of reducing or canceling out debts by using the amounts that two parties owe each other. For example, if A owes B \$100 and B owes A \$80, A can set off \$80 against B's debt and only pay B \$20.

However, setoff is not allowed in many situations when one of the parties is in bankruptcy. This is because setoff can harm other creditors who have claims against the bankrupt party. For example, if A owes B \$100 and B owes A \$80, but A also owes C \$50, C would get less money if A and B set off their debts than if B paid A \$80. Therefore, the Bankruptcy Code limits the use of setoff in bankruptcy by imposing certain conditions and exceptions. For example, a creditor cannot set off a claim against the debtor that it acquired after the debtor filed for bankruptcy or shortly before, or that it owes the debtor for a debt it incurred after the debtor filed for bankruptcy or shortly before. A creditor also cannot set off a claim against the debtor if doing so would improve its position compared to what it would have been 90 days before the debtor filed for bankruptcy. Some types of contracts, such as financial contracts, are exempt from these restrictions because they involve complex and volatile markets that require quick and final settlement.

Commented [FV11]: 1, correct

Question 2.2 [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 lien that is senior or equal to a pre-petition lien on estate property. A priming lien can be granted by the bankruptcy court to secure post-petition financing for the debtor if the debtor cannot obtain sufficient credit on any other terms. However, before granting a priming lien, the court must ensure that the interest of the secured creditor whose lien is being primed is adequately protected, meaning that the creditor will not suffer any loss or diminution in value of its collateral as a result of the priming lien. Adequate protection can be provided in various ways, such as by periodic cash payments, replacement liens, or additional collateral.

Commented [FV12]: 2, correct

Question 2.3 [2 marks]

What are two potential consequences of a violation of the automatic stay?

Two potential consequences of a violation of the automatic stay are:

- 1. The violator may be held in contempt of court and be subject to sanctions, such as payment of the debtor's attorneys' fees and costs, or a daily fine until the violation is rectified.*
- 2. The act taken in violation of the stay may be void or voidable, depending on the circuit in which the bankruptcy is pending, and the violator may have to undo the effect of the act or return any property or proceeds obtained from the act.*

Commented [FV13]: 2, correct

Question 2.4 [2 marks]

In voting on a plan of reorganization, which class(es) of creditors are (i) deemed to accept the plan, (ii) deemed to reject the plan and (iii) permitted to vote on the plan? What vote is necessary for a class of creditors to accept a plan?

In voting on a plan of reorganization, the following classes of creditors are:

- 1. Deemed to accept the plan: any class that is unimpaired by the plan. A class is unimpaired if the plan leaves the rights of the class members unaltered, except for reversing contractual acceleration by curing defaults and compensating for damages.*
- 2. Deemed to reject the plan: any class that receives nothing under the plan, meaning that the plan provides no distribution or retention of any property or interest for the class members.*
- 3. Permitted to vote on the plan: any class that is impaired by the plan, meaning that the plan alters the rights of the class members in any way other than reversing contractual acceleration.*

For a class of creditors to accept a plan, the plan must receive the affirmative vote of at least two-thirds in amount and more than one-half in number of the allowed claims in the class that actually vote on the plan. If a class does not vote on the plan, it is not counted for or against acceptance.

Commented [FV14]: 2, correct

Question 2.5 [3 marks]

Answer the following questions about preferences, actual fraudulent conveyances and constructive fraudulent conveyances:

- (a) **Which cause of action applies only to transfers made on account of antecedent debt?**
- (b) **Which cause of action requires that the debtor be presumed or proven to have been insolvent at the time of the transfer?**
- (c) **Which cause of action requires that the debtor be proven to have intended to frustrate creditors' recoveries?**

(a) Preferences apply only to transfers made on account of antecedent debt. The debtor must have owed the creditor a pre-existing debt before making the transfer, and the transfer must have improved the creditor's position compared to what it would have received in a liquidation.

(b) Both preferences and constructive fraudulent conveyances require that the debtor be presumed or proven to have been insolvent at the time of the transfer. For preferences, the debtor is presumed to have been insolvent on and during the 90 days before the petition date, unless the creditor rebuts the presumption. For constructive fraudulent conveyances, the debtor must have received less than reasonably equivalent value in exchange for the transfer or obligation and either have been insolvent at the time or become insolvent as a result of the transaction.

Commented [FV15]: 2.5. Full credit was not given because constructive fraudulent transfer claims do not always require insolvency.

(c) Actual fraudulent conveyances require that the debtor be proven to have intended to hinder, delay or defraud any entity to which the debtor was or became indebted. This means that the debtor must have acted with actual intent to frustrate creditors' recoveries.

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

Commented [la16]: 15/15 marks

Question 3.1 [3 marks]

Commented [la17]: 3/3

Describe the circumstances in which a bankruptcy court may enter a final order consistent with the US Constitution, who reviews appeals from bankruptcy court orders and how orders that are not constitutionally final are reviewed.

A bankruptcy court may enter a final order consistent with the US Constitution in two situations:

(1) when the matter at issue is a core proceeding that does not implicate the rights of non-consenting parties to have their claims adjudicated by an Article III court, or

(2) when the parties consent to the bankruptcy court's authority to enter a final order in a core or non-core proceeding.

Core proceedings are those that arise under or in a case under the Bankruptcy Code, such as claims allowance, preferences, fraudulent transfers, etc. Non-core proceedings are those that are related to a case under the Bankruptcy Code, but do not arise under or in it, such as tort claims.

Appeals from bankruptcy court orders are generally heard by the district court for the district in which the bankruptcy court sits, or by a Bankruptcy Appellate Panel in certain circuits where one has been established. From the district court or BAP, there is a further appeal of right to the circuit court of appeals, unless the order is interlocutory, in which case leave to appeal is required.

Orders that are not constitutionally final, either because the matter is non-core and the parties did not consent, or because the matter is core but implicates Article III rights, are reviewed by the district court or BAP de novo, as if they were proposed findings of fact and conclusions of law. The district court or BAP may accept, reject, or modify the bankruptcy court's order, or remand the matter for further proceedings.

Question 3.2 [3 marks]

What provisions of the Bankruptcy Code may not be invoked by a foreign representative in a chapter 15 proceeding? What are two ways that the foreign representative can obtain equivalent relief?

The foreign representative may not invoke the avoidance powers of the Bankruptcy Code which allow a trustee or debtor in possession to recover certain transfers or property that are deemed to be fraudulent, preferential, or otherwise detrimental to the estate or creditors. These powers are reserved for plenary proceedings under chapters 7 or 11, where the Bankruptcy Code governs the administration and distribution of the debtor's estate.

Two ways that the foreign representative can obtain equivalent relief are:

(a) Seeking to avoid pre-petition transfers or property under other applicable US or foreign law, such as state fraudulent transfer or conversion statutes, common law claims, or the law of the foreign proceeding. Some US courts have approved the use of non-bankruptcy law to pursue avoidance actions in chapter 15 proceedings.

Commented [la18]: Correct, 1/2 mark, specifically this is where the core proceeding arises solely under the Bankruptcy Code, like a challenge to a petition

Commented [la19]: Correct, 1/2 mark

Commented [la20]: Correct, 1/2 mark

Commented [la21]: Correct, 1/2 mark

Commented [la22]: Incorrect, if the order is interlocutory, leave is required at the district court / BAP stage

Commented [la23]: Correct, 1 mark

Commented [la24]: 3/3

Commented [la25]: Correct, 1 mark

Commented [la26]: Correct, 1 mark

(b) Commencing a plenary proceeding under chapter 7 or 11 after recognition of the foreign proceeding under chapter 15. This option may allow the foreign representative to access the Bankruptcy Code's avoidance powers, as well as other benefits of a plenary proceeding, such as the automatic stay, the discharge, and the ability to propose a plan of reorganization or liquidation. However, this option may also entail additional complexities, such as the need to obtain the consent of the debtor or the filing of an involuntary petition by creditors.

Commented [la27]: Correct, 1 mark

Question 3.3 [4 marks]

Commented [la28]: 4/4

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

They should review the following rules:

(a) The US Bankruptcy Code.

(b) The Federal Rules of Bankruptcy Procedure (the Bankruptcy Rules), which regulate the procedural aspects of bankruptcy.

Commented [la29]: Correct, 1 mark

(c) The Federal Rules of Civil Procedure, which apply to bankruptcy cases to the extent they are not inconsistent with the Bankruptcy Code or the Bankruptcy Rules.

Commented [la30]: Correct, 1 mark

(d) The local rules of the bankruptcy court in which the case is filed, which supplement the Bankruptcy Rules and may modify deadlines, formats, or requirements for filing and responding to pleadings.

Commented [la31]: Correct, 1 mark

(e) The personal practices of the bankruptcy judge assigned to the case, that may further specify the expectations and preferences of the judge on matters such as communication, scheduling, etc.

Commented [la32]: Correct, 1 mark

Question 3.4 [5 marks]

Commented [la33]: 5/5

What fiduciary duties do directors of Delaware corporations owe and to whom are the duties owed in the ordinary course of business? To whom are duties owed when the corporation is potentially or actually insolvent?

In the ordinary course of business, directors of Delaware corporations owe fiduciary duties of loyalty and care to the corporation and its shareholders. The duty of loyalty requires directors to act in good faith, avoid conflicts of interest, and refrain from self-dealing or usurping corporate opportunities. The duty of care requires directors to act with reasonable diligence, prudence, and skill in making informed and rational decisions for the corporation.

Commented [la34]: Correct, 1 mark

Commented [la35]: Correct, 1 mark

Commented [la36]: Correct, 1 mark

Commented [la37]: Correct, 1 mark

When the corporation is potentially or actually insolvent, directors do not owe fiduciary duties to creditors, but they still owe fiduciary duties to the corporation and its shareholders. The Delaware Supreme Court has rejected the notion that directors owe duties to creditors when the corporation is operating "in the zone of insolvency" or is actually insolvent. However, directors must still act in good faith and in the corporation's best interest, which may require them to consider the interests of creditors and other stakeholders in making decisions that affect the corporation's value and viability. Directors may also be liable to creditors for fraudulent transfers, preferences, or other violations of the bankruptcy law if the corporation files for bankruptcy.

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

Commented [la39]: 11/15 marks

Question 4.1 [5 marks]

Commented [la40]: 2/5

iWork Ltd leases office space from office building owners and sublets the space to small businesses. Due to the increases in the numbers of businesses operating remotely, iWork Ltd has suffered a decline in revenues. As a result, it has failed to pay rent on some of its office space leases. What protections does the Bankruptcy Code provide to lessors of office space to iWork Ltd?

The Bankruptcy Code provides some protections to lessors of office space to iWork Ltd in the event that iWork Ltd files for bankruptcy under chapter 11 or chapter 7. These protections include:

- (a) The automatic stay, which prevents creditors from taking actions to collect pre-petition debts or enforce liens against the debtor's property, does not apply to the lessor's right to evict iWork Ltd from non-residential property if the lease expired or terminated before the bankruptcy filing.
- (b) The lessor has an administrative expense priority claim for rent that accrues after the bankruptcy filing for any period that iWork Ltd continues to occupy the leased premises, unless the court orders otherwise.
- (c) The lessor has the right to request the court to set a deadline for iWork Ltd to decide whether to assume or reject the lease. If iWork Ltd assumes the lease, it must cure any defaults and provide adequate assurance of future performance. If iWork Ltd rejects the lease, the lessor has a general unsecured claim for damages.
- (d) The lessor may have a right to offset any pre-petition debts owed by iWork Ltd against any pre-petition debts owed to iWork Ltd, subject to certain limitations and exceptions. However, the lessor must obtain relief from the automatic stay before exercising this right.

Commented [la41]: Correct, 1 mark. The landlord also has a general unsecured claim for unpaid pre-petition rent. If the lease is assumed and then rejected, the lessor has an administrative claim for 2 years' rent

Commented [la42]: Correct, 1 mark, and the default deadline is 120 days with a maximum 90 day extension for cause

Question 4.2 [5 marks]

Commented [la43]: 4/5

Skin Luxe is incorporated and has a principal place of business in France where it develops and manufactures high end skincare products. Skin Luxe sells its skin care products through its own boutiques in many international cities, including Paris, Las Vegas, London and Hong Kong. Skin Luxe's English law-governed bonds are due to mature in one year, but it is unable to repay or refinance them. Skin Luxe is considering using an English scheme of arrangement to restructure the bonds.

Discuss whether the English scheme of arrangement could be granted recognition under US chapter 15 as a foreign main or foreign non-main proceeding.

US chapter 15 is based on the UNCITRAL Model Law on Cross-Border Insolvency and provides a mechanism for cooperation and assistance between US courts and foreign courts or representatives in cross-border insolvency cases. A foreign proceeding is defined as a collective judicial or administrative proceeding in a foreign country under a law relating to insolvency or adjustment of debt in which the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation.

A foreign proceeding can be recognized as a foreign main proceeding or a foreign non-main proceeding. A foreign main proceeding is a proceeding that is commenced in the debtor's center of main interests (COMI). A foreign non-main proceeding is a proceeding that is commenced in a jurisdiction where the debtor has an establishment, which is a place where it carries out non-transitory economic activity.

The determination of the debtor's COMI and establishment is a factual inquiry that depends on the specific circumstances of each case. The US Bankruptcy Code provides a rebuttable presumption that the debtor's COMI is its place of incorporation, but this can be overcome by evidence of other factors, such as the location of the debtor's headquarters, management, primary assets, creditors, or applicable law.

In the case of Skin Luxe, the English scheme of arrangement could be recognized as a foreign main proceeding if the US court finds that Skin Luxe's COMI is in England. This could be the case if Skin Luxe has significant operations, assets, management, or creditors in England, or if its bondholders have consented to the jurisdiction of the English court. Alternatively, the English scheme of arrangement could be recognized as a foreign non-main proceeding if the US court finds that Skin Luxe has an establishment in England, which could be the case if Skin Luxe has a business office or a boutique in England where it conducts non-transitory economic activity. However, the recognition of the English scheme of arrangement could be challenged or denied on various grounds, such as the lack of jurisdiction or due process of the English court, the fraud or public policy exception, the conflict with another final judgment, etc.

Question 4.3 [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

Commented [la44]: Correct, 1 mark

Commented [la45]: Correct, 1 mark

Commented [la46]: Correct, 1 mark

Commented [la47]: Under these circumstances, the presumption that COMI is in France is unlikely to be rebutted

Commented [la48]: Correct, 1 mark

Commented [la49]: 5/5

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 has been sued in civil suit 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 (i) the DOJ investigation, (ii) margin loan default; (iii) the delinquent lease and (iv) the employment discrimination lawsuit?

(i) The DOJ investigation would not be affected by the chapter 11 petition, as it is a criminal matter that falls outside the scope of the automatic stay. However, the DOJ may have to coordinate with the bankruptcy court and the debtor in possession if it seeks to seize or forfeit any assets of Speculation Inc that are part of the bankruptcy estate.

Commented [la50]: Correct, 1 mark, this is what brings the automatic stay into effect

Commented [la51]: Correct, 1 mark

(ii) The margin loan default would be subject to the automatic stay, which would prevent the broker from foreclosing on the collateral or accelerating the debt. The broker would have to file a proof of claim as a secured creditor in the chapter 11 case, and would be entitled to adequate protection of its interest in the collateral. The broker would also have the right to participate in the plan of reorganization process, and to object to any proposed treatment of its claim that is not in its best interest.

Commented [la52]: Incorrect, the margin loan is a securities contract that is exempt from the automatic stay so the broker can sell the collateral to pay down the loan.

(iii) The delinquent lease would also be subject to the automatic stay, which would prevent the landlord from evicting Speculation Inc, terminating the lease, or suing for past due rent or damages. The landlord would have to file a proof of claim as an unsecured creditor in the chapter 11 case, and would have a priority claim for any rent that accrued in the 20 days before the petition date. The landlord would also have the right to participate in the plan of reorganization process, and to object to any proposed treatment of its claim that is not in its best interest. Speculation Inc, as the DIP, would have to decide whether to assume or reject the lease within 120 days of the petition date, unless the court grants an extension for cause. If Speculation Inc assumes the lease, it would have to cure any defaults and provide adequate assurance of future performance. If Speculation Inc rejects the lease, it would be deemed to have breached the lease immediately before the petition date, and the landlord would have a general unsecured claim for any damages resulting from the rejection.

Commented [la53]: Correct, 1 mark

(iv) The employment discrimination lawsuit would also be subject to the automatic stay, which would prevent the former employee from continuing the litigation, obtaining a judgment, or enforcing any lien or garnishment against Speculation Inc. The former employee would have to file a proof of claim as an unsecured creditor in the chapter 11 case, and would have a priority claim for any wages or benefits that were earned within 180 days before the petition date, subject to a statutory cap. The

Commented [la54]: Correct, 1 mark

former employee would also have the right to participate in the plan of reorganization process, and to object to any proposed treatment of its claim that is prejudicial to its interest.

*** End of Assessment ***