

TOTAL = 35.5/50
71%



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.

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 [FV1]: 0, correct answer is C

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

Commented [FV2]: 0, correct answer is D

(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.

Commented [FV3]: 0, correct answer is D

(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.

Commented [FV4]: 1, correct

(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?

(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.

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

Commented [FV5]: 1, correct

(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.

Commented [FV6]: 1, correct

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

(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]: 1, correct

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]: 0, correct answer is C

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?

When a creditor has a claim against a debtor and simultaneously owes the debtor money, the creditor is permitted to set off the obligations against each other, such that the total quantum of the claim is deducted from the amount owed to the debtor. The practical impact of this is that the total claim available to the creditor is decreased and the total debt payable to the debtor is decreased proportionately. In some instances, depending on the quantum of the claim and debt owed to the debtor, it can significantly improve the position of the creditor such that it ultimately means no money is owed to the debtor. This then decreases the potential assets available to the debtor to distribute to other creditors. The creditor's claim is then receiving a priority distribution and payment, over other creditors, including secured creditors. As such, a creditor is only permitted to exercise its rights to setoff in certain circumstances.

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?

Due to the high costs a debtor in a chapter 11 bankruptcy faces, the Bankruptcy Code provides a mechanism which is intended to incentivize lenders to extend financing to debtors in order to pay the costs associated with the bankruptcy. If a debtor is unable to obtain funding due to the financial position of the entity and lack of unencumbered assets, the court has power to grant a priming lien. The Court has the power to grant a priming lien which is given a priority interest in the debtor's assets over pre-petition

Commented [FV12]: 2, correct

secured creditors. Before the court will grant a priming lien however, the debtor must show that the interests of the secured creditor whose interests is being overtaken are adequately protected.

Question 2.3 [2 marks]

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

An automatic moratorium, or stay is imposed worldwide following the commencement of proceedings under chapter 7 or chapter 11 of the Bankruptcy Code. If a creditor or third party takes steps in violation of the stay, it is considered contempt of court and the action taken is considered void or voidable. If a creditor takes steps in violation of the stay, the court may impose contempt sanctions, such as a fine or requirement to pay the debtor's solicitor fees. The court is primarily concerned with creditors who take steps, inconsistent with the stay which negatively impact the debtor and change the *status quo*. For example, if a creditor took steps to take possession or control of property of the debtor's estate which would otherwise form part of the assets of the debtor as part of the bankruptcy and be available for the purposes of formulating a restructure or distributing to creditors.

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?

Only impaired creditors are entitled to vote on a reorganization plan. A creditor class is impaired if the proposed reorganization plan alters the creditor's legal, equitable and contractual rights.

An unimpaired class (being creditor's whose legal, equitable and contractual rights are unaltered) is deemed to accept the plan and a creditor class that will receive nothing are deemed to reject the plan.

If the reorganization plan is accepted by the requisite classes of creditors and confirmed by the court, a debtor can be forced to accept the plan, despite not agreeing to the proposed terms. The power of the decision making lies with the impaired class, being those with something to lose.

Commented [FV14]: 2, correct

A given class of creditors approves the reorganisation plan if a majority of the creditors in the class, holding at least two-thirds of the value of claims in the class vote in favour. Or, for equity interests, the plan is approved if two-thirds in amount of interests vote in favour. It is possible for a reorganisation plan to be approved with only one impaired class of creditor approving the plan via a cramdown.

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) *An element of a preference claim is that the payment to a creditor was for or on account of an antecedent debt owed by the debtor before the transfer was made. The preference claim will arise if a debtor pays a creditor for a pre-existing debt. To establish the claim the courts will closely examine and assess the date on which the debt arose and when the transfer of an interest in the debtor's property occurred.*

(b) *To establish a constructive fraudulent conveyance, it must be established that the debtor was insolvent at the time of the transaction or became insolvent as a result of the transfer, meaning that by the time of the transfer the debtor was insolvent.*

(c) *An actual fraudulent conveyance is proven by establishing that a debtor intended to hinder, delay, or defraud an entity which the debtor was or became indebted to. To establish an actual fraudulent conveyance, it must be established that the debtor incurred an obligation or transferred an asset to an insider for the purpose of concealing the asset.*

Commented [FV15]: 2, correct answer to b is also preference

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

Commented [la16]: 12.5/15

Question 3.1 [3 marks]

Commented [la17]: 1.5/3 marks

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.

The bankruptcy court is established by federal legislation, as opposed to the constitution. As such, those decisions that involve statutory and contractual rights that would otherwise be within the scope of Article III court's jurisdiction are considered unconstitutional. As a result, district courts are permitted to refer bankruptcy proceedings to the bankruptcy courts of their district. Bankruptcy judges are authorised to hear "core" proceedings. A bankruptcy court can only hear "non-core" proceedings if they are sufficiently related to a bankruptcy proceeding but cannot

Commented [la18]: Specifically, the bankruptcy court can only rule on core proceedings specific to the Bankruptcy Code (e.g., a challenge to a petition)

make a final determination, and instead in those cases they submit a proposed finding of fact and law to the district court to be made, which the parties are entitled to object to. Alternatively, final orders can be made with the consent of the parties.

Commented [la19]: This is also the standard applicable in a ruling on a core matter for which the bankruptcy court did not have authority to enter a final order.

In bankruptcy proceedings, final orders may be appealed, and interlocutory orders may be appealed with leave of the appellate court. However, the US Supreme Court has held that a bankruptcy order resolving a discrete dispute is a final order for appeals purposes as opposed to an interlocutory order.

Commented [la20]: Correct, 1/2 mark

Appeals from the Bankruptcy Court are heard by the District Court in which they sit. Bankruptcy appeals are heard by a Bankruptcy Appellate Court, constituted by judges from the bankruptcy courts within the circuit, however a party can request the appeal be heard by the District Court instead.

Commented [la21]: Correct, 1/2 mark

Commented [la22]: Essentially correct, 1/2 mark, technically it's called a Bankruptcy Appellate Panel

Parties can appeal a decision of the Bankruptcy Appellate Court or District Court to the Circuit Court of Appeal. In very limited circumstances an appeal from a Bankruptcy Court may go directly to the Court of Appeal, if the bankruptcy or district court certifies the decision as one that (a) raises a question of law where there is no controlling decision of the circuit or the US Supreme Court, or requires resolving conflicting controlling decisions, or (b) an immediate appeal may materially progress the case. The Court of Appeals have discretion whether to accept a case certified.

Question 3.2 [3 marks]

Commented [la23]: 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?

Chapter 15 proceedings are commenced by a foreign representative filing a petition. They are anticipated to be ancillary proceedings aided to support foreign insolvency proceedings where the relevant entity has assets or interests in United States. The US in Chapter 15 proceedings do not exercise jurisdiction or authority over the entire estate but rather assists the foreign proceedings. Chapter 15 proceedings are not plenary proceedings and cannot be commenced by a creditor filing an involuntary petition.

Under Chapter 15 there is two distinct types of proceedings that may be commenced, being foreign main proceedings or foreign non-main proceedings. Foreign main proceedings are those that are commenced in the debtor's center of main interests (COMI). Proceedings in a jurisdiction other than the debtor's COMI can be recognized as foreign non-main proceedings, only if the debtor had an establishment in that jurisdiction, being a place where it carried out non-transitory economic activity, prior to the commencement of the chapter 15 proceedings.

Certain provisions of the Bankruptcy Code automatically apply to the debtor's property upon recognition of a foreign main proceeding, such as:

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

The above provisions of the Bankruptcy Code do not apply to foreign non-main proceedings and the foreign representative must apply to the court and request it exercise its discretion to grant the above relief, as required.

In addition, foreign representatives of main and non-main proceedings, may apply to the court for the following relief under the Bankruptcy Code, which will be granted at the discretion of the court:

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 another person;
3. extension of provisional relief; or
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.

Further, a foreign representative cannot invoke the Bankruptcy Code avoidance powers for claims arising out of preferences or fraudulent conveyances. These are plenary proceedings that can only be commenced in proceedings filed under Chapter 7 and 11. If a proceeding was commenced by a debtor or creditor prior to the involvement of the foreign representative, the foreign representative may elect to commence a plenary proceeding under the Bankruptcy Code after obtaining recognition as a foreign representative under Chapter 15 for the purposes of activating the avoidance powers. If the plenary proceedings are commenced, the scope of the proceedings and potential recovery is limited to the debtor's US assets and will be coordinated with the foreign proceeding.

Question 3.3 [4 marks]

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

When preparing an application to be filed in a bankruptcy court, the Federal Rules of Bankruptcy Procedural, the Federal Rules of Civil Procedure, the local rules of the bankruptcy court and the latest version of the judge's personal practice should be reviewed to ensure the petition is compliant with the requisite rules.

Question 3.4 [5 marks]

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?

Commented [la24]: Correct, 1 mark

Commented [la25]: Correct, 1 mark. Alternatively, the foreign representative can bring equivalent claims under applicable US or foreign law.

Commented [la26]: 4/4 marks

Commented [la27]: Correct, 1 mark

Commented [la28]: Correct, 1 mark

Commented [la29]: Correct, 1 mark

Commented [la30]: Correct, 1 mark

Commented [la31]: 5/5 marks

Directors owe a fiduciary duty of **loyalty** to act in the corporation's best interest and a duty of **care** in educated decision making. Directors are protected from liability for errors of judgment by the business judgment rule. Under the business judgment rule, a director is assumed to have acted in good faith based on reasonable information. The presumption is rebuttable. Director duties for Delaware incorporated corporations are owed to the **corporation and its shareholders**, not to creditors. **When the corporation is insolvent, or potentially insolvent the directors' duties are with the shareholders and do not shift to creditors.**

Commented [la32]: Correct, 1 mark

Commented [la33]: Correct, 1 mark

Commented [la34]: Correct, 1 mark

Commented [la35]: Correct, 1 mark

Commented [la36]: Correct, 1 mark

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

Commented [la37]: 8/15 marks

Question 4.1 [5 marks]

Commented [la38]: 2/5 marks

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?

If a formal bankruptcy was commenced, the **rental payments would be a critical component of any reorganization if the entity intended to continue operations and would be considered a priority unsecured claim and paid as an administrative expense. However, any money owing as at the time of any bankruptcy process, would be payable in the ordinary course with other unsecured creditors and receive a lower priority.**

Commented [la39]: Correct, 1 mark

Commented [la40]: Correct, 1 mark

Further, unless the lease is expired, the contract would not be considered **executory as iWork has failed to comply with its obligations under the lease, whereas the lessor has continued to provide the premises for rent. The impact of this is that the obligations under the contract cannot be rejected by iWork as part of the bankruptcy process and will be assumed such that the debtor has an obligation to fulfil its obligations under the lease.**

Commented [la41]: The lease is an executory contract. The landlord is given extra protections by a shorter deadline to assume or reject - 120 days with a maximum extension of 90 days for cause and further only with landlord consent. Also, if the lease is assumed and then rejected, the debtor must pay two years' rent as an administrative priority claim.

Question 4.2 [5 marks]

Commented [la42]: 2/5 marks

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.

The foreign representative of Skin Luxe who is appointed under English Law to conduct the scheme of arrangement could file a petition under chapter 15. In order for the recognition under chapter 15 of the Bankruptcy Code, the foreign representative must establish that the scheme of arrangement is being conducted by a foreign court or administrative proceeding. As Skin Luxe has an established presence in the United States via its boutique in Las Vegas, it would be able to obtain recognition via chapter 15 as a foreign non-main proceeding. It can establish it carries out non-transitory economic activity, however as the businesses center of main interest is France, it would not be recognized as a foreign main proceeding. This means, that the usual benefits under the Bankruptcy Code that apply to a foreign main proceeding will need to be applied for to the court, such as a stay.

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 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?

Following the filing of a petition under Chapter 11, an automatic stay comes into effect immediately. The stay applies worldwide and as a general rule prevents any enforcement action being taken by any creditor or any claim being filed third against the debtor. The intention behind the stay is to allow the debtor breathing space to formulate a restructuring plan with a view of re-commencing operations, negotiate with creditors and realise any assets.

As such, any action that may be taken by any financial institution arising out of the default on the margin loan cannot be taken following the filing of the petition. Any recovery action will be stayed and resolved as part of the chapter 11 petition. The position is the same for the employment discrimination lawsuit. The proceedings will be stayed pending the finalisation of the chapter 11 petition. It is likely as part of the chapter 11 petition a resolution will be reached with the former employee such that they have a claim as an unsecured creditor in the bankruptcy.

The position with the landlord for the delinquent lease is also similar. The stay will apply and no enforcement steps can be taken by the landlord to recover unpaid rent

Commented [la43]: Incorrect, foreign non-main recognition requires an establishment in the country where the foreign proceeding is pending, so here the relevant establishment is the boutique in London.

Commented [la44]: Correct, 1 mark. This is consistent with the presumption that the center of main interests is in the jurisdiction of incorporation.

Commented [la45]: Correct, 1 mark

Commented [la46]: 4/5 marks

Commented [la47]: Correct, 1 mark

Commented [la48]: Incorrect, the margin loan is a securities contract that is exempt from the automatic stay so the broker can sell the collateral even after the petition is filed.

Commented [la49]: Correct, 1 mark

to date, however, the landlord can seek to take steps to evict the debtor from the property if the lease is expired. However, if the intention is to restructure the debtor with a view of re-commencing operations, or operations are intended to continue, it may be that an agreement is reached concerning the payment of rent going forward to allow the debtor to remain in the premises.

Commented [la50]: Correct, 1 mark

As the DOJ is only conducting investigations, the investigation can continue and subject to any further steps taken arising out of that investigation, the stay will not apply to any proceedings commenced by the DOJ. Any criminal proceedings or proceedings commenced on behalf of a regulator are exempt from the stay.

Commented [la51]: Correct, 1 mark

*** End of Assessment ***