

TOTAL = 27/50
54%



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]: 0. Correct answer is C.

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.

Commented [FV3]: 1, correct

(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.

Commented [FV4]: 1, correct

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.

Commented [FV5]: 1, correct

(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.

(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]: 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?

Commented [FV10]: 1, correct

- (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.

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 when a creditor holds a claim against the debtor and simultaneously owes money to the debtor what allows the netting of the obligations. Setoff is not permitted in many circumstances under the US bankruptcy Code because it may improve the position of certain creditors in detriment to unsecured creditors who are not owed money by debtor as it decreases its obligation towards the estate by full amount owed by debtor rather than the lesser amount debtor would pay to the unsecured creditor.

Commented [FV11]: 1, correct

The following circumstances do not allow setoff to occur: (i) creditor's claim against the estate is disallowed; (ii) creditor's claim against the estate was acquired post-petition or in the 90-days prior to the petition at the time debtor was insolvent; (iii) creditor's obligations to debtor was incurred in the 90-days that previous to the petition at the time debtor was insolvent, for purposes of exercising setoff rights; and (iv) creditor improves its position by setoff when compared to its position has setoff been exercised 90 days prior to the petition.

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 aimed at securing post-petition financing. The execution of a priming lien shall be granted by court in case financing cannot be obtained on the terms that follow: (i)

debtor in possession can incur unsecured debt or obtain unsecured credit in ordinary course of business without court approval, with debt being granted administrative priority expense; (ii) debtor in possession can incur in unsecured debt or obtain unsecured credit outside the ordinary course of business with court approval after notice and hearing, with debt having administrative expense priority; (iii) if not able to secure financing under the conditions provided for in items 'i' and 'ii' above, and if such impossibility is factually proven by debtor, court can authorize a) unsecured debt having priority over all other administrative expenses, b) secured debt with a lien on unencumbered estate property, c) secured debt with a junior lien on encumbered estate property.

Commented [FV12]: 1, The answer is lacking an explanation of adequate protection or the importance of the lack of alternative financing.

Question 2.3 [2 marks]

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

In case one violates automatic stay provided for in the US Bankruptcy Code, even if taken without notice of the filing petition, the violation is considered contempt of court and is void or voidable, according to the understanding of the circuit in which the bankruptcy proceeding was commenced. In this case, violator could be held liable for the payment of a daily fine until the effects of the violation are undone.

Commented [FV13]: 2, correct

Also, in case interested parties who seek the lift of the automatic stay fail to obtain relief, such failure may cause the imposition of contempt sanctions against the violator (regarded contrary understanding if the US Supreme Court) as the payment of debtor's attorney's fees and be subject to the requirement of undoing the effect of the violation in respect.

It is also worth to highlight that the automatic stay (and hence, the consequences of violation) does not apply to (i) criminal proceedings; (ii) regulatory proceedings; (iii) family law matters such as custody, child support and divorce (except distribution of marital property); (iv) exercise of right under commodity, forward, or security contract; (v) exercise of rights under a financial repo contract; (vi) exercise of rights under a swap agreement; (vii) eviction of a debtor-tenant from non-residential property where the lease has expired; (viii) termination of educational accreditation or licensing.

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 a voting scenario, creditors with unimpaired claims, including the ones that had acceleration of debt reversed, are deemed to approve the plan. On the other hand, the class that will receive nothing according to plan provisions is deemed to reject the

plan. Creditors who will have their claims impaired by the plan are, then, permitted to vote the plan.

The plan is deemed approved by a certain class of creditors if the simple majority of creditors, holding at least 2/3 of the of the claims in the class, votes in favor of such plan or, for equity-interest, if 2/3 in amount of interest votes in favor of such plan. If the plan is accepted in all voting classes, court shall proceed with the confirmation (or not) of the plan.

Commented [FV14]: 2, correct

To be confirmed plan needs to be feasible and not rely on speculative or improbable events to be capable of execution, not be likely to be followed by liquidation or the need for further financial reorganization, comply with the requirements of the US bankruptcy Code for formulation of a plan and be accepted by one impaired class, disregarding the votes of insiders, unless there is no impaired class.

Plan may also be approved through cram down all of the abovementioned criteria for plan formulation must be complied with and at least one class of impaired creditors must have accepted the plan. The must also not discriminate unfairly and must be fair and equitable to non-consenting impaired classes.

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) For transfers made on account of antecedent debt the applicable cause if action is preference

. Preference can be understood as a transfer of the debtor property made in suspect period, before the petition date, which must be returned to the estate if it exceeds the amount the recipient would have received in Chapter 7 liquidation had the transfer not been made.

b) The cause of action that requires debtor to be insolvent by the time of transfer is constructive fraudulent conveyance. For constructive fraudulent conveyance to be proven it relies on showing that debtor received less than reasonable equivalent value in exchange for a transfer or incurrence of obligation along with being insolvent or one of the following: (i) was unreasonably

undercapitalized for the business or transactions it was engaged in or planned to engage in; (ii) intended to or believe it would incur debts beyond its ability to pay on maturity; or (iii) the transfer was made to or for the benefit of an insider, or the debtor incurred an obligation under an employment contract with an insider outside the ordinary course of business.

Commented [FV15]: 2. B is incorrect. A preference requires the debtor to be or be presumed to be insolvent.

- c) *The cause of action that requires debtor to be proven to have intended to frustrate creditor's recoveries is actual fraudulent conveyance, as the (i) transfer or obligation to an insider, (ii) debtor retained possession or control of the property transferred after the transfer; (iii) the transfer or obligation was disclosed or concealed; (iv) before the transfer was made or obligation was incurred, debtor had been sued or threatened with suit; (v) transfer was of substantially all the debtor's assets; (vi) debtor absconded; (vii) debtor removed or concealed assets; (viii) the value of the consideration received by the debtor was not reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred.*

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

Commented [la16]: 6/15 marks

Question 3.1 [3 marks]

Commented [la17]: 1/3 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.

An order by the bankruptcy court is only deemed final under US Constitution if it has authority to enter it, but such order would not be final for the purposes of appeal if it does not resolve the entire issue in dispute.

Commented [la18]: The Bankruptcy Court can enter a final order in a core matter that is exclusive to the Bankruptcy Code (such as a challenge to a petition) or where the parties consent.

The appeals arising from a final order under the US Constitution is reviewed, roughly, by district courts where they are located, but in certain circuits, such appeals can be heard by a Bankruptcy Appellate Panel (BAP), convened from bankruptcy court judges of the respective bankruptcy court circuit. A decision rendered by BAP is still subject to further appeals to the circuit court of appeals that can, exceptionally, receive appeals directly from bankruptcy courts if the bankruptcy court or district court certifies that (i) the appeal raises a question of law as to which there is no controlling decision of the circuit or the US Supreme Court, or requires resolving conflict controlling decisions, or (ii) immediate appeal may materially advance the progress of the case.

Commented [la19]: Correct, 1/2 mark

Commented [la20]: Correct, 1/2 mark

Final decisions rendered by bankruptcy courts can be reviewed by the district BAP in regard to the conclusions of law de novo and findings of fact for abuse of discretion.

Commented [la21]: Non-final decisions are treated as a report and recommendation / proposed findings of fact and conclusions of law.

Question 3.2 [3 marks]

Commented [la22]: 0/3 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?

While **under US Bankruptcy Code** a creditor can file for bankruptcy of the debtor, regarded a few requirements provided by the Code, a recognition proceeding can only be filed by a foreign representative of the debtor.

Also, automatic stay provided for in the US Bankruptcy Code arising from the petition is not applicable to recognition proceedings, which shall first be recognized by US courts and only applies to foreign main insolvency proceedings. Moreover, the effects of the stay are limited to the US territory while in a US bankruptcy proceeding, the decision is deemed to have universal effects. However, the foreign representative can request court to grant an interim relief with the same effects as the 'automatic stay' or any other measure deemed necessary to secure parties interests until a final decision on the merits of the recognition is rendered. The foreign representative can also request the recognition of a foreign non-main insolvency proceeding along with the necessary measures and assistance to secure the interests involved.

Question 3.3 [4 marks]

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

US Bankruptcy Code provides for the need of debtor to file, along with the voluntary petition (or a date specified by court), schedules disclosing information about all of its assets, including property, executory contracts, unexpired leases of real and personal property and liabilities, including identifying its unsecured and secured 20 largest unsecured claims.

Therefore, when preparing for a filing for a bankruptcy court, one should review whether the disclosure of such information **would violate contractual and confidential obligations** applicable under foreign data privacy law and confirm with the Trustee what measures can be taken to avoid contract or obligation breach, as such disclosure shall provide for social security number, names and other sensitive information that will be publicly available.

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?

Directors of Delaware corporations owe the duty of **loyalty** to the corporation's best interest and duty of **care** in educated decision-making. Directors are protected from liability for errors of judgement by business judgement rule, according to which the board is presumed to have acted in good faith on the basis of reasonable information

Commented [la23]: A foreign representative cannot invoke the Bankruptcy Code's avoidance provisions, but can bring claims under applicable US or foreign law or commence a plenary proceeding under chapter 7 or 11.

Commented [la24]: 0/4 marks

Commented [la25]: This is a good idea, but the applicable rules to review in any bankruptcy filing are the Bankruptcy Rules, the Federal Rules of Civil Procedure, the Local Rules of the bankruptcy court and the judge's personal practices.

Commented [la26]: 5/5 marks

Commented [la27]: Correct, 1 mark

Commented [la28]: Correct, 1 mark

and that can be rebutted only if shown to have acted with gross negligence, if the act is approved by the majority of a board that is not disinterested and independent or a controlling shareholder is on both sides of the transaction.

Directors' duties are owed to the corporation and the respective shareholders. Directors hold no fiduciary duties to creditors, not even in a potential or effective insolvency scenario where directors receive no proceeds in the bankruptcy proceeding.

Commented [la29]: Correct, 1 mark

Commented [la30]: Correct, 1 mark

Commented [la31]: Correct, 1 mark

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

Commented [la32]: 5/15 marks

Question 4.1 [5 marks]

Commented [la33]: 0/5 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?

In case iWork Ltd files for a bankruptcy proceeding under the US bankruptcy Code, lessor may request the lift of the automatic stay under the grounds of lack of adequate protection of an interest in property of the estate, as the value of the property may decline during the course of the proceeding.

Also, US Bankruptcy Code provides that the lease of office space is assignable without consent, but landlord approval permission is deemed necessary to do so.

iWork can also file a claim in a potential bankruptcy proceeding filed by iWork.

Commented [la34]: Incorrect, the Bankruptcy Code overrides contractual limitations on assignment. In the bankruptcy proceeding, the landlord is entitled to be paid rent as an administrative claim for the period from the petition date until the lease is assumed or rejected. The debtor has 120 days to choose whether to assume or reject, which may be extended a maximum of 90 days for cause or longer with landlord consent. If the lease is assumed and then rejected, the landlord has an administrative claim for 2 years of rent. The landlord also has a claim for unpaid pre-petition rent.

Question 4.2 [5 marks]

Commented [la35]: 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.

A debtor's COMI is presumed to be its place of incorporation. Therefore, prima facie, in the case described above an insolvency proceeding could only be recognized as a main proceeding if filed in France, an insolvency proceeding commenced before UK, however, could still be recognized as foreign a non-main insolvency proceeding.

Commented [la36]: Correct, 1 mark

Regardless of the presumption that the COMI is at debtor's place of incorporation can be rebutted, and other factor as the (i) location headquarters, (ii) locations of management; (iii) locations of primary assets; (iv) location of majority of debtor's creditors or a majority of creditors that will be affected by the relief request; (vi) jurisdiction applicable to most disputes; and (vii) that is ascertainable by most creditors.

Commented [la37]: Correct, 1 mark

Considering that Skin Luxe is only seeking restructuring of the English-law governed bonds and that the jurisdiction applicable to most disputes would be UK, one could argue that the English Scheme would be the main insolvency proceeding and should be recognized as such.

Commented [la38]: Incorrect, under these circumstances, the presumption in favor of France as the COMI is unlikely to be rebutted. Therefore the English proceeding cannot be a main proceeding. It can be recognized as a non-main proceeding because the London boutique is the necessary establishment in the jurisdiction of the foreign proceeding.

Question 4.3 [5 marks]

Commented [la39]: 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 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?

The filing for a bankruptcy proceeding under Chapter 11 of the US Bankruptcy Code, causes the 'automatic stay', which has an extremely broad range and that applies to any interference with the property of the estate anywhere in the world. US bankruptcy Code expressly prohibits the (i) litigation regarding pre-petition claims; (ii) enforcement of pre-petition claims; (iii) any act to obtain possession or control of property of the estate; (iv) creation, perfection or enforcement of a lien against property of the estate on account of a pre-petition claim; (v) any attempt to collect on pre-petition claims (including through demand letters or calls); (vi) setoff of any pre-petition debt against any pre-petition claim.

Commented [la40]: Correct, 1 mark

However, the automatic stay (and hence, the consequences of violation) does not apply to (i) criminal proceedings; (ii) regulatory proceedings; (iii) family law matters such as custody, child support and divorce (except distribution of marital property); (iv) exercise of right under commodity, forward, or security contract; (v) exercise of rights under a financial repo contract; (vi) exercise of rights under a swap agreement; (vii) eviction of a debtor-tenant from non-residential property where the lease has expired; (viii) termination of educational accreditation or licensing.

Since the DOJ investigation is a criminal proceeding, it falls into one of the exceptions to the automatic stay and would not be suspended by the filing of a bankruptcy proceeding by Speculation Inc.

Commented [la41]: Correct, 1 mark

Regarding the claims and rights arising from the default margin loan, the acts of collection, enforcement or any other acts that may interfere in debtor's property will be suspended.

Commented [la42]: Incorrect, the margin loan is a securities contract that is exempt from the automatic stay so the broker can liquidate the collateral.

The claims and rights arising from the delinquent lease that may interfere with debtor's property could be suspended if lease is not expired. Otherwise, debtor could be evicted from property. Furthermore, lessor could request the lift of the automatic stay under the grounds of lack of adequate protection of an interest in property of the estate, as the value of the property may decline during the course of the proceeding.

Commented [la43]: Correct, 1 mark

At last, in regard to the employment discrimination lawsuit, since it has no impacts (prima facie) over debtor's assets there would be no restrictions to its continuation.

Commented [la44]: Incorrect, this is a claim for damages that would come out of the estate so the case is stayed by the automatic stay.

* End of Assessment *