Multiple Choice

45 Questions, 4 points each, total=180 points

Below are 45 multiple-choice questions, each worth 4 points each. You may earn a total of 180 points toward your final score for the exam. Be certain BOTH to bubble-in your answers on the scan sheet provided AND circle your answer on the exam itself. It may be that no answer to a particular question is perfect. Your task is to choose the best answer available.

1. D, Inc. ("D") is corporation engaged in the restaurant business. It has three restaurants at three different locations, each of which operates in a rented building. D, like many local businesses, has suffered in the recent economic downturn, and one of the three locations has serious cash flow problems. Indeed, D, Inc., is in default on three month's rent there. D has filed for Chapter 11, and its plan of reorganization calls for the retention of the two profitable locations and for the assumption by the DIP of those two leases. The troubled location is to be closed and the lease rejected. That lease has 21 years remaining on the term. On these facts, Lessor of the rejected lease will be able to file an unobjectionable proof of claim for:

   a. the total amount of the rents in default (i.e., rent for the three months) plus 15% of the total rents for the remainder of the term, not to exceed one-year’s rent.

   b. the three months rent in default, but Lessor is not entitled to rents not yet due, as this would be a ’contingent claim’ and so objectionable.

   c. 15% of the rent for the remaining 21 years, not to exceed three years. The three months rent on which D defaulted before bankruptcy will have ‘administrative expense’ priority.

   d. 15% of the rent for the remaining 21 years, not to exceed three years. The three months rent on which D defaulted before bankruptcy will be a general, non-priority unsecured claim in the bankruptcy case.

2. For purposes of §365, an ‘executory contract’ is one in which:
a. One party to the contract has fully performed, but the other has tendered no performance.

b. Neither party has fully performed its obligations, but both have at least ‘substantially’ performed, such that, should no further performance be forthcoming from either, neither would be in ‘material breach’.

c. Both parties have substantially performed, but enforcement of the contract is barred as due to the statute of limitations running, failure to comply with the statute of frauds, minority, illegality, or the like.

d. Both parties may have tendered some performance, but their failure to perform further would constitute a material breach.

3. D Industries, Inc. (“D”) manufactures and distributes a pharmaceutical designed to replace hair loss. After D had marketed this product for about five years, the FDA discovered a link between its use and the unwanted growth of hair on the tongues of its users. Consequently, the FDA banished further sales of the product. As the hair-growth product was its big seller, D could no longer remain a viable business once it had to discontinue selling it. Further, several consumers who had used the product had brought products liability suits against D for tongue hair growth. Seeing the handwriting on the wall, D filed for Chapter 11 relief, hoping to reorganize its business around other pharmaceuticals it manufactured on getting rid of the lawsuits brought by dissatisfied users of the hair growth pill. The hairy tongue symptom did not always arise promptly after use; rather, it might not occur until some years after the subject discontinued using the hair growth pill. As a result, there are likely consumers who might suffer the hairy tongue side-effect after D files for bankruptcy. As to those ‘future claimants’, under the “Piper Test”, which of the following statement is most accurate?

a. The claims of the future claimants who used the hair-growth pill pre-petition will hold claims in bankruptcy against D; however, those who used the product post-petition will not have allowable claims.

b. The claims of future claimants who used the hair-growth pill at any time before or during the bankruptcy case will be allowed provided a proof of claim is filed before the Chapter 11 case is closed.
c. The claims of future claimholders are contingent or unmatured and will be disallowed.

d. The claims of future claimholders will be allowed provided they used the hair-growth pill prior to confirmation of D’s Chapter 11 plan.

4. Using the facts from problem 3 and the Piper Test, which of the following statements is NOT correct?

a. The claims of those who used the hair-growth pill prior to confirmation of the plan will be allowed, but will be discharged in the Chapter 11 case.

b. Those who used the pill post-petition but pre-confirmation will share in the Chapter 11 distribution and their claims will not be discharged unless paid in full because of their administrative expense priority under §503(b).

c. Those who used the pill post confirmation but before the completion of payments under the Chapter 11 plan will share in the distribution because they have §507 priority status.

d. Under the Piper Test, the claims of those using the pill post petition, but pre-confirmation, will be disallowed.

5. ABC, Inc. (“ABC”) has been cited by a state agency for polluting streams with waste materials produced by ABC’s manufacturing operations in the state. The state sought and won an injunction ordering ABC to clean up the streams it polluted in violation of state environmental protection laws. ABC failed to comply with the order and the state undertook the clean up (at considerable expense) to protect its citizenry. The state thereafter sued in state court to recover the costs of the clean up resulting from ABC, Inc.’s failure to comply with the injunction. ABC, Inc. promptly filed for Chapter 11. The state filed a proof of claim in the amount of the clean up expenditures. As DIP, ABC, Inc. objected, arguing that the state’s right and remedy was in the form of equitable relief (the injunction) such that the state had no claim and could not share in the Chapter 11 distribution. Which, if any, of the following statements is accurate?

a. ABC is correct: the state has no claim and only the holders of “allowed claims” are entitled to share in the bankruptcy distribution.
However, neither will the state’s right for injunctive relief be effected by the discharge.

b. ABC is wrong: the state has a “right to payment”.

c. Since the state’s remedy under the injunction compelling ABC, Inc. to clean up after itself is equitable relief, it is unaffected by the automatic stay.

d. ABC is wrong: the state has a claim and will share in the Chapter 11 distribution. However, since the claim arose out of the clean-up order, the state may proceed to collect the costs of the clean up notwithstanding the automatic stay.

6. Which of the following does not qualify as “Inequitable Conduct” under §510?

   a. Fraud, illegality, breach of fiduciary duty
   
   b. Undercapitalization plus
   
   c. Claimant’s use of the debtor as alter ego
   
   d. The creditor refuses to extend additional credit to its debtor knowing the debtor will therefore default on its obligations to other unsecured creditors.

7. D Cleaners, Inc. (“D”) is in Chapter 11 and continuing to run its laundry business. After filing for bankruptcy, one of D’s delivery trucks ran over a pedestrian (“P”) causing her serious injury, a long, painful hospital stay, and resulting in hefty medical bills. P filed a claim in D’s Chapter 11 case for damages, including lost earnings while hospitalized, medical bills, pain and suffering, and other consequentials. What is the most likely treatment P’s claim will receive in D’s Chapter 11 Case?

   a. As the event occurred post-petition, P’s claim will be disallowed and she will not share in the bankruptcy distribution; however, her claim will survive D’s discharge and P may sue D after the bankruptcy case is over.
b. P will have an allowable general, unsecured claim and will share in the distribution; however, any deficiency remaining after the distribution under D’s Chapter 11 plan will be discharged.

c. P’s claim will be excepted from the discharge under §523

d. P will have an allowed unsecured claim in the case with administrative expense priority.

8. As noted in class, one prominent bankruptcy scholar described the filing of a Chapter 11 case as a transfer of ownership of the debtor business enterprise to its creditors. Which of the following is NOT a basis for this assertion?

a. The doctrine of equitable subordination

b. Unsecured creditors do not have to be paid in cash under a Chapter 11 plan; rather, they can be paid in securities of the new reorganized debtor corporation.

c. The “Cram Down”

d. The “Absolute Priority Rule”, which provides, among other things, that creditors claims must be satisfied in full before equity owners receive anything.