

DEBTOR / CREDITOR

Final Examination

Professor Hurn

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Instructions: This examination is for three hours. It is fully "open book," meaning you may refer to any written materials that you may have brought with you. However, you may not work with or consult any other person about your answers. Answer the multiple choice questions on the Scantron sheet provided and the short answers and essay in a Bluebook. Do not assume that familiar-looking questions are the same as those on old exams.

Unless otherwise indicated, assume all transactions occur in the USA in states with the uniform codes and statutes printed in your statutory supplement, with typical versions of other sorts of statutes. If something appears missing or mistaken, plainly state a corrective assumption and proceed with your answer

Remember to put your exam number on the answer forms and bluebooks.

Multiple Choice

(Up to 90 minutes)

1- 2. A thief stole Gertrude's valuable guitar. The thief sold it for a fair price to an unsuspecting, reputable second-hand Dealer. Dealer then sold it for a fair price and in the ordinary course of business to an unsuspecting Musician, who presently has possession.

1. In an action by Gertrude against the Dealer, Gertrude
 - a. May recover under theories of either replevin or conversion.
 - b. May recover only under conversion.
 - c. May recover only under replevin.
 - d. Cannot recover because Dealer was a BFPV.

2. In an action by Gertrude against the Musician, Gertrude
 - a. May recover under theories of either replevin or conversion.
 - b. May recover only under conversion.
 - c. May recover only under replevin.
 - d. Cannot recover because Musician was a buyer in the ordinary course of business.

3. In a state with a traditional Dead Man's Statute, testimony about which of the following transactions would be barred?
 - a. An otherwise un-witnessed oral contract between the party/witness and the deceased.

- b. An otherwise un-witnessed oral inter-vivos gift to the party/witness by the deceased.
 - c. An otherwise un-witnessed oral gift causa mortis to the party/witness by the deceased.
 - d. Testimony would be barred about all of these transactions.
4. In the sale of goods of a value of \$500 or more, unless otherwise agreed between the parties, title passes:
- a. At the moment of contract formation.
 - b. At the time of signing a written memorandum or confirmation sufficient under the statute of frauds.
 - c. At the time of identification of the goods to the contract.
 - d. At the time the seller completes his/her agreed duties with respect to delivery.
5. Debtor made a contract to sell and deliver a his snowmobile to Buyer. Buyer made a downpayment and agreed to bring the rest of the money a week later when he could have a truck to move the snowmobile. Before that could occur, a Judgment Creditor secured a writ of execution and had the Deputy Sheriff seize the snowmobile. In a contest between Buyer and Creditor:
- a. Buyer will win and the Creditor gets nothing.
 - b. Buyer will win if s/he tenders the amount not yet paid on the contract to the Creditor.
 - c. Buyer will lose because s/he hadn't taken delivery yet.
 - d. Buyer will lose because the contract of sale was voidable.
- 6 – 8. Attorney secured a divorce for Author, who didn't pay the agreed fee. Attorney sent many demand letters. Author then orally assigned 1/3 of his royalties due from a particular Publisher to Attorney to pay off the fees. Author signed and sent Publisher a letter confirming the assignment, although he later sent a letter purporting to revoke it. Attorney then sent repeated demands to Publisher, which went unanswered. Attorney sued Publisher for 1/3 of royalties accruing after the notification.
6. On these facts alone, Publisher may successfully
- a. Move to dismiss because oral assignments of rights arising from copyrighted works are unenforceable.
 - b. Move to dismiss because the assignment was a voidable preference.
 - c. Move to dismiss for failure to join a necessary party.
 - d. Move to dismiss because oral assignments are revocable.
7. Would the Attorney's demand letters to the Author be subject to the federal Fair Debt Collection Practices Act?

- a. Yes
- b. No because this is a first party claim.
- c. No because this is not a consumer debt.
- d. Both b. and c. are correct.

8. Would the Attorney's demand letters to the Publisher be subject to the federal Fair Debt Collection Practices Act?

- a. Yes
- b. No because this is a first party claim.
- c. No because this is not a consumer debt.
- d. Both b. and c. are correct.

9. Assignments of contract rights NOT governed by UCC Article 9 fall under either the American Rule or the English Rule, depending on the state. Under the American Rule, when there are successive, irrevocable assignments of the same right, the owner is

- a. The first person to whom assignment is made.
- b. The first assignee to notify the obligor under the original contract.
- c. The last assignee to take without notice of any prior conflicting rights.
- d. The last assignee for value without notice of any prior conflicting rights.

10. Same subject. When assignments ARE governed by Article 9 and there are successive, irrevocable assignments of the same right, the owner is

- a. The first person to whom assignment is made.
- b. The first assignee to notify the obligor under the original contract.
- c. The first assignee to file in the Article 9 registry.
- d. The first assignee for value without notice of prior conflicting rights to file in the Article 9 registry.

11. Uncle cashed a check for his 21 year old nephew. It was a check payable to nephew, signed by a friend, but nephew did not have a bank account. Nephew indorsed it and delivered it to Uncle. Uncle forgot it for a couple of months and then deposited it. It turns out the friend did have an account, but was in fact only 17 years old. Friend's account has been closed, the check returned dishonored. Uncle immediately demanded his money from nephew, who is stalling. Assuming he chooses to pursue his nephew for the money, Uncle:

- a. Will lose because an instrument made by a minor is void.
- b. Will lose because he deposited stale paper.
- c. Will win because of the nephew's obligation as indorser.
- d. Will win because of the nephew's transfer warranties.

12. A local contractor did grading and paving on credit, taking from each customer a downpayment upon signing its contracts, and a promissory note for the balance. It then sold these notes at regular intervals to a bank through its factoring department. Despite the ready flow of working capital which this provided, the contractor's affairs became disordered and it defaulted on a number of contracts after having sold the notes. In an action by the bank against the customers to collect on the notes

- a. The bank will win if it had no notice of the contractor's defaults when it bought the notes.
- b. The bank will win even if it did have notice of the contractor's defaults when it bought the notes.
- c. The bank will lose if the contractor's behavior was fraudulent.
- d. The bank will lose if the contractor (the primary obligor) is unable to perform or pay damages.

13. Same facts as above, except that after the contractor's troubles became widely publicized in the community, the bank discounted the notes to a larger regional bank. In an action by the regional bank against the customers to collect the notes

- a. The regional bank will win if it had no notice of the contractor's defaults when it bought the notes.
- b. The regional bank will win even if it did have notice of the contractor's defaults when it bought the notes.
- c. The regional bank will lose if the contractor's behavior was fraudulent.
- d. The regional bank will lose if the contractor (the primary obligor) is unable to perform or pay damages.

14. Bailor Number One had fungibles in storage with a warehouse/bailee. There was an unprecedented flood, reported to have damaged some of the goods. Bailor Number One filed a suit for pre-judgment replevin of the full amount of his goods. The bailee replied that there was a shortage and joined all other bailors. In this action, Bailor Number One will:

- a. Recover only the percentage of his/her original quantity of goods that is equal to the overall fraction which remains of the total original quantity on deposit from all bailors.
- b. Recover the full original quantity of goods deposited because s/he was first to file.
- c. Recover the full original quantity of goods deposited if, and only if, his/her deposit was among the earliest (first in, first out rule).
- d. Recover the full original quantity of goods deposited if, and only if, his/her deposit was among the latest (last in, first out rule).

15. A Debtor took grain in which Bank had a security interest and, completely without awareness by the Bank, put it into the warehouse of an honest warehouse in return for a

negotiable warehouse receipt. Debtor then sold the receipt to an innocent grain processor. When this is all discovered:

- a. The innocent processor is now the owner of the grain and the Bank may sue the others for conversion.
- b. The Bank may recover the grain, and the innocent processor may sue the warehouse if it doesn't deliver grain according to the terms of the receipt.
- c. The Bank may recover the grain, but the warehouse has no liability.
- d. The innocent processor is now the owner of the grain, and the Bank's remedy is only against the debtor.

16. Buyer contracted to purchase a large shipment of cashews from an overseas Seller, arranging to pay by letter of credit issued by its U.S. Bank. All the seller's documents conformed to the letter of credit, so the Bank directed its overseas corresponding Bank to pay, which it did. The shipping company received and delivered the goods in sealed containers. When Buyer opened them the nuts were infested with worms and essentially worthless. Buyer's best remedy is

- a. Against its Bank, who can sue up the warranty chain to the Seller.
- b. Against the shipping company, who can sue up the warranty chain to the Seller or any inspectors.
- c. Against the seller.
- d. Buyer has no remedy unless it is carrying appropriate insurance.

17. You are counsel to a Bank which has issued a standby letter of credit to BigCorp Industries. The terms of the credit were that BigCorp would be paid \$700,000 on presentation of a draft and a written statement signed by its CFO declaring that your customer, SmallVendor, was in default on a major contract with BigCorp. An officer of the Bank tells you that the draft and statement have been tendered, but SmallVendor vigorously disputes that it is in default. The Bank

- a. May delay honoring the draft for a reasonable time to investigate the facts.
- b. May decline to honor the draft, and will be free of liability if SmallVendor is correct.
- c. Must honor the draft within the normal deadline, leaving SmallVendor to deal with the dispute.
- d. Must honor the draft within the normal deadline by may attempt to recover the money in a suit based on a warranty, or on subrogation to the rights of its customer.

18 – 19. Patentee sold and assigned his invention to Peter on January 1, 2004. Patentee sold and assigned the same invention to Quentin on February 1, 2004. Neither assignee was aware of any inpropriety.

18. If Peter recorded in the PTO on March 1 and Quentin recorded on March 2, the patent belongs to:

- a. Peter because he was the first assignee.
- b. Peter because his recording relates back to January 1.
- c. Quentin because he was a BFP.
- d. Quentin because his recording relates back to February 1.

19. If, instead, Quentin recorded in the PTO on March 1 and Peter recorded on March 2, the patent belongs to:

- a. Peter because he was the first assignee.
- b. Peter because his recording relates back to January 1.
- c. Quentin because he was a BFP.
- d. Quentin because his recording relates back to February 1.

20. During litigation about the ownership of an antique store, one of the parties successfully moved for the appointment of a Receiver. The Receiver was present in court when the order of appointment was signed, and immediately posted bond. The store was still operating but the Receiver waited until the next day to notify the employees, post signs, and record the appointment in the Article 9 and Real Estate Registries. During that gap a very valuable desk was sold in the normal way, paid for with a cashier's check, and taken away by the Buyer in her truck. If for some reason the Receiver wants to recover the desk from the Buyer:

- a. Receiver can recover the desk, leaving buyer to sue seller on the warranty of title.
- b. Receiver can recover the desk only if Buyer's money is refunded.
- c. Receiver can recover the desk only if Buyer is notified of rejection of the contract before the Cashier's check clears.
- d. Receiver cannot recover the desk.

21. If, instead of a state court receivership, this was a Bankruptcy, and the Trustee wanted for some reason to recover the desk:

- a. Trustee can recover the desk, leaving buyer to sue seller on the warranty of title.
- b. Trustee can recover the desk only if Buyer's money is refunded.
- c. Trustee can recover the desk only if Buyer is notified of rejection of the contract before the Cashier's check clears.
- d. Trustee cannot recover the desk.

22. Which of the following procedures does NOT require notice and hearing for the alleged debtor who is their target?

- a. Attachment.
- b. Sequestration
- c. Replevin.
- d. Execution

23. Acme Corp was a small business that leased office equipment to other businesses. Sixty days ago it was in a cash crunch and secured a loan from FirstBank. There was a signed security agreement under which the existing and future lease agreements were collateral, and the amount loaned was reasonable in relation to the value of the collateral. FirstBank filed a legally sufficient financing statement in the proper place. Thirty days ago Acme's management was desperate. They sold their existing leases to the Quick Cash Factoring Company, handing over the actual files. Quick Cash was unaware of the prior security agreement. Today Acme declared bankruptcy. The senior claim to the leases sold to Quick Cash is:

- a. Quick Cash because it has the highest level of perfection among the claimants.
- b. FirstBank because it was the first to file.
- c. The Bankruptcy Estate because the transfers to FirstBank and Quick Cash were voidable preferences.
- d. The Bankruptcy Estate because the leases are not chattel paper under Article 9.

24. Your client is about to make a loan to Hardwood Lumber Products, a New Hampshire Limited Liability Company. Hardwood does business in Vermont, New Hampshire, and Maine. Its headquarters moved to Maine some years ago. The collateral for this loan is going to be a portable saw mill (i.e. equipment, not a fixture) that is and has always been kept in Vermont. You should plan to file your financing statement in:

- a. New Hampshire
- b. Maine
- c. Vermont
- d. Delaware

25. You are checking a new client's loan portfolio (they fired their previous lawyer for botching some security agreements). You discover that one loan was largely secured by a Celebrity's rights of publicity. The original documentation was right, but you are worried about the place of filing of the financing statement. Three years ago, when the deal was done, Celebrity was domiciled in New York. A year ago, he moved permanently to Florida. Your client's charrering state, headquarters, and principal place of business have always been in New Hampshire. The original financing statement was filed in New York. You should

- a. Not worry, the filing is still good.
- b. File in Florida.
- c. File in New Hampshire.
- d. File in Delaware.

26. Leasing company leased a backhoe to Construction Company. The lease terms included an initial payment, monthly rent for a period about equal to the expected useful life of the machiue, and an optiou for the lessee to purchase the machine for \$10 at the termination of the lease. The lease was in a signed writing, but was not recorded

anywhere. Construction Company defaulted on payments and went into Chapter 7 during the term of the lease. Under these facts:

- a. The backhoe belongs to the Leasing Company which can pick it up.
- b. The backhoe belongs to the Leasing Company only if Debtor in Possession fails to assume the lease and meet all the requirements of cure and adequate assurance.
- c. The Leasing Company is a secured creditor but did not have to file a financing statement because finance leases are governed by Article 2A rather than Article 9.
- d. The Leasing Company is a secure creditor whose lien is voidable for failure to file a financing statement.

27. Debtor was a small, incorporated business. It began to experience difficulties when the IRS disallowed some tax deductions and credits during an audit. The IRS assessed a substantial tax liability and demanded payment. To raise money to pay this and deal with other financial problems, Debtor, for the first time, negotiated a large, lump-sum bank loan, secured by a properly recorded mortgage on its warehouse. Unfortunately the loan proceeds were applied to purposes other than the tax claim. The IRS then properly recorded its notice of tax lien. In a subsequent dispute between the IRS and Bank over the collateral

- a. The IRS will win because its lien arose on the initial assessment.
- b. The IRS will win because among comparable liens those of the sovereign have priority.
- c. The Bank will win if, and only if, it recorded within 45 days after the initial IRS assessment.
- d. The Bank will win because it was first to perfect.

28. Under the Bankruptcy Code which of the following is not part of the estate in a Chapter 7 Bankruptcy?

- a. The right to receive future wages.
- b. A beneficial interest in an ordinary trust.
- c. A cause of action in tort.
- d. The right to receive a federal income tax refund.

29. Under § 548 of the Bankruptcy Code, which of the following can not be a voidable transfer?

- a. A non-collusive, properly conducted foreclosure sale.
- b. A purchase where the transferee gives full value.
- c. Neither of these can be voidable.
- d. Either of these could be voidable.

30. Under the Fair Credit Reporting Act:

- a. Information older than seven years cannot be reported.
- b. Information older than ten years cannot be reported.
- c. Information which is disputed cannot be reported.
- d. Information can be reported without regard to age or dispute for major employment, insurance, and mortgage transactions.

Short Answers
(up to 30 minutes)

Briefly respond to the following questions. I am not seeking detail—just recognition of the issues. A couple of sentences could do, more than five or six is definitely too much.

1. You represented wife in a divorce. The court awarded her the couple's car. Before the divorce it was fully paid off and titled in the husband's name. You have correctly sent a copy of the court order, application for new certificate, and fee to the DMV. You have the new certificate in wife's name, but you don't yet have possession of the vehicle. Is your client's ownership as secure as it could be? Why or why not?
2. You represent a Bank. The loan officer has just called you. They have a business customer who has a line of credit secured by a floating lien on present and after-acquired equipment. You know the lien was legally correct and properly perfected. Customer just called the loan officer to say the sheriff had served a bulky article attachment on the equipment. Loan officer says this is a good customer and doesn't see any business reason not to continue the relationship. Is there a legal hazard to the bank here? Why or why not?
3. Your client is a grain exporter. He has just gotten a call from a buyer in a foreign country demanding re-negotiation because the spot price has dropped below the contract price. The grain is on a boat nearing the buyer's port. Your client was too cheap to pay for a letter of credit deal. What can be reasonably anticipated if client refuses a price change, and what remedy, if any would you would have.
4. You represent a Bank. Your client has recently had to call a loan on a small graphic design firm. There wasn't much collateral, mostly computers and copyrights on various logos and web-page templates. These were properly described in a financing statement filed in the Article 9 registry. The work-out was bitter, but ultimately the debtor signed a surrender agreement. The bank sold the computers and copyrights to a new firm. The loan officer has told you this story over lunch, expressing relief that it was all finished. Is there something you should warn your client about? If so, what and why?
5. The holder of a first mortgage has properly notified your client of a foreclosure sale. Your client holds a second mortgage on the property. There are no unpaid real estate taxes or other liens. Your client is convinced that the property is worth considerably more than the outstanding balance due on the first mortgage. Assuming this is true, briefly state what your client should do and why.

Essay
(Up to 60 minutes)

The Illuminatus Book Company, Inc. (IBC) was a small publisher of limited edition, illustrated books made with extraordinary materials and fine bindings. It sold to a few collectors and specialty bookstores. When it started, it secured a working capital loan from FirstBank, secured by a security interest in all its present and after-acquired inventory, equipment, accounts, and contract rights. It bought a fine old letterpress from Second Chance Equipment, a dealer in all sorts of used industrial equipment. Second Chance retained a PMSI in the press, recording it in the ordinary way in the Article 9 registry ten days after delivering it. IBC also regularly ordered expensive papers and ink from Crane's Papers, on open account, and supplies of fine calf leather and gold leaf from Bodacious Binders (BB). BB had a written security agreement covering all materials it supplied, recorded in the ordinary way in the Article 9 registry ten days after the first delivery.

IBC did well for some time, and grew. It then entered into a contract with the Madison Mint (MM), which sold all sorts of pretentious collectibles by mail-order and subscription. The contract called for a very large (by IBC standards) printing of a collection of Aesop's Fables. IBC maxed out its credit to handle this order and needed the promised payment (\$90,000). By the time was in production IBC was behind on utilities and could barely make payroll.

Just as IBC completed the printing and binding, MM notified IBC that subscriptions were unexpectedly low, and that MM was not going to take or pay for the books. IBC panicked. They had no knowledge of this kind of market or how to find a buyer for the books. They called a scrapper, who offered them \$1,000 for the lot, which they accepted. Although this was discovered later, the scrapper immediately turned them around to close-out book wholesaler for a net gain of \$19,000.

Realizing it was doomed, IBC's management took the cash on hand (\$4,000) and the \$1,000 salvage money and split it. Half went to pay off past due rent, and the other half was donated to the Museum of Graphic Arts, a tax-exempt charity. Then they filed a Corporate Chapter 7 Bankruptcy.

Considering only these facts, identify all the potential claimants and assets and explain what claims are enforceable against what assets (or are unsecured) with what relative priorities and why.

End of Examination