

## 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

(30 questions— up to 100 minutes suggested)

1. Oliver was old and sick. He got the flu, which led to pneumonia. His doctor told him it was pretty likely he would die. Oliver called in his relatives and told them he had taken care of most things in his will. Then he called for his jewelry case. He took out a key and handed it to Pat, saying “this opens that book case in the hall—everything in it is yours.” He then handed the passbook for his old-fashioned savings account to Bobbie and said “this is going to be yours.” Pat and Bobbie took the books and bankbook home with them that day. To everyone’s surprise, Oliver recovered and wants his books and savings account back.

- a. He can recover neither.
- b. He can recover the books (only).
- c. He can recover the account (only).
- d. He can recover both.

2. Professor Stern absentmindedly left his 1815 edition of Blackstone’s Commentaries on the Boston bus. Finder took it to Commonwealth Books and sold it to them for a considerable sum. Commonwealth Books sold it in the ordinary course to buyer. When Professor Stern was next in the shop, he bemoaned his loss to the manager, who recalled the earlier purchase and sale. On these facts, Professor Stern may

- a. Recover the book from Buyer (only).
  - b. Sue Finder and/or the Shop for conversion (only).
  - c. Recover the book from Buyer or sue any combination of Finder, Shop, and Buyer for conversion.
  - d. Professor Stern has no remedy on these facts.
3. Debtor owned an antique store. One afternoon the Sheriff served a writ of attachment covering all inventory at the store. This is effective under local law when recorded in the Article 9 registry. It was recorded that day. The next day, before calling his lawyer, Debtor contracted to sell an immense Victorian desk out of inventory to Buyer, who made a down-payment. They agreed Debtor would deliver the desk the following Saturday. In a dispute over the desk between the Buyer and the Attaching 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 didn't take delivery.
  - d. Buyer will lose because the perfected attachment preceded the contract.
4. 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.
5. Landlord was in financial trouble. His best asset was an office building leased to several tenants, in writing, for various terms of years. Landlord sold the building and assigned and delegated all the leases to Assignee, as of June 30. Assignee also signed a written assumption of the duties (utilities, upkeep, clearing walks and parking area, etc.). Landlord said he would notify the tenants. He did not. The tenants paid the July rent to the old Landlord, who cashed their checks and promptly filed Chapter 7 Bankruptcy. Assignee discovered this after the rent checks had finally cleared. Assignee's remedy is
- a. Against the tenants for the unpaid rent.
  - b. Against the bankruptcy trustee of the old Landlord under assignment law.
  - c. Both a. and b. are correct remedies.
  - d. Neither a. nor b. is correct.
6. The law governing the survival and descent of a right of publicity generally is:
- a. The law of the state of first public use.
  - b. The law of the state of the first licensing.
  - c. The law of the state of the celebrity's domicile at the time of first use.
  - d. The law of the state of the celebrity's domicile at the time of death.

7. Farmer stored soybeans in a Warehouse, taking back a negotiable warehouse receipt. Farmer duly endorsed and delivered it, for value, to a Speculator. Speculator duly endorsed and delivered it, for value, to a Food Manufacturer. Before the Manufacturer took delivery of the beans, there was a flood at the warehouse. Most of the beans were destroyed, there was no flood insurance, and the warehouse is insolvent. Manufacturer's remedy for any loss not covered by the warehouse's bond is:

- a. Suit against Speculator on its warranty.
- b. Suit against Farmer on its warranty.
- c. Suit against both Speculator and Farmer on their warranties.
- d. Manufacturer has no remedy against either Speculator or Farmer.

8. Your client delivered his rare antique car to a hotel valet parking service under circumstances which amount to a bailment. Expecting the car would not be called for until the next morning, one of the attendants took the car out for an unauthorized drive around the block. While exercising due care the attendant was struck by a speeding drunken driver. The car is a total loss. In an action against the parking service for the value of the car:

- a. Your client will win based on the presumption of conversion.
- b. Your client will win because of actual conversion.
- c. Your client will win because the unauthorized use is negligence per se.
- d. Your client will lose because there was neither negligence nor conversion.

9. You represent the successful plaintiff in a state-court products liability suit against a California manufacturing company. The judgment is unpaid. You would like to avoid hiring California counsel. You have discovered that the local wholesaler who distributed the product is still doing substantial business with the defendant, ordering products and paying thirty days after delivery by check. If you serve a garnishment/trustee writ on the wholesaler

- a. You have a right to any amount owed by wholesaler to the manufacturer.
- b. You have a right to any amount owed by wholesaler to the manufacturer for which a check has not yet been dispatched.
- c. You have a right to seize goods shipped from the manufacturer to the wholesaler.
- d. Both b. and c. are correct.

10. You represent the successful plaintiff in a state-court products liability suit against a California manufacturing company. The judgment is unpaid. You refer it for collection to California counsel. There is no reason to fear fraudulent concealment of assets. In that case, the most efficient and least expensive legal action is:

- a. Suit on the original cause of action, with quick summary judgment due to res judicata.
- b. Suit on the judgment debt, with quick summary judgment.
- c. Action under the Uniform Enforcement of Foreign Judgments Act.
- d. A long-arm writ of execution sent from the original court to the appropriate sheriff in California.

11. Under the Uniform Fraudulent Transfer Act, in the absence of any Bankruptcy filings, which preferences are voidable?

- a. All preferences
- b. All preferences during or causing insolvency.
- c. Only Insider preferences.
- d. Only Insider preferences during or causing insolvency.

12. A local contractor did grading and paving on credit, taking from each customer a downpayment and a simple installment sales contract for the balance. These contracts were subject to a properly created and perfected floating lien in favor of the local Bank. The customers are all businesses. Despite the ready flow of working capital which this provided, the contractor's affairs became disordered and it defaulted on (breached) a number of contracts. These disputed claims triggered the default clause in the security agreement. In an action by the bank against the customers to collect on the contracts

- a. The bank will win if it had no notice of the contractor's defaults when it made the security agreement.
- b. The bank will win even if it did have notice of the contractor's defaults when it made the security agreement.
- c. The bank will lose only if it acquiesced in the contractor's breaches.
- d. The bank is subject to all defenses good against the contractor.

13. Same facts as previous question EXCEPT contractor took promissory notes from its customers. On these facts

- a. The bank will win if it had no notice of the contractor's defaults when it acquired an interest in the notes.
- b. The bank will win even if it did have notice of the contractor's defaults when it acquired an interest in the notes.
- c. The bank will lose only if it acquiesced in the contractor's breaches.
- d. The bank is subject to all defenses good against the contractor.

14. Real Estate Developer had several projects going, financed through a local bank by normal fixed-rate Promissory Notes secured by Mortgages. Along with many others, the Bank became insolvent. After some trouble and confusion, Developer secured refinancing commitments. He met with an officer of the Government Liquidator, tendered a cashier's check in an amount to pay off all the loans, and received a file which apparently contained mortgage releases and the original notes for each property. They did not realize that the note for one property had gone missing. Several months later, representatives from a distressed-paper investor made a demand for payment on the missing note. They had bought the note from the Liquidator. The note has no marks indicating discharge, dishonor, or other problems, and all endorsements are in order. On these facts, Developer

- a. Has a good defense if he can prove his earlier payment.
- b. Has a good defense if he can show the mistake by clear and convincing evidence.
- c. Either a. or b. will be a good defense.
- d. Has no defense.

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 warehouser in return for a negotiable warehouse receipt. Debtor then endorsed and sold the receipt to an innocent grain processor. Before the processor/holder called for the grain, it was sold by mistake to a buyer in ordinary course of business. Of these parties, who has the best claim to the grain?

- a. Debtor.
- b. Bank.
- c. Processor/Holder.
- d. Buyer in Ordinary Course.

16. Same facts as above. Who has the second best claim to the grain?

- a. Debtor.
- b. Bank.
- c. Processor/Holder.
- d. Buyer in Ordinary Course.

17. Which of the following procedures does not require notice and opportunity to be heard by the debtor whose property is being pursued?

- a. Attachment.
- b. Execution.
- c. Lis Pendens.
- d. Neither Execution nor Lis Pendens requires notice and opportunity to be heard.

18. When assignments are governed by Article 9 and there are successive, irrevocable assignments for value 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 to file in the Article 9 registry without notice of prior conflicting rights.

19. Creditor #1 had a valid security agreement and took an accurate financing statement in proper form to the filing office. Creditor #1 paid the correct fee and the officer took the financing statement. Receipts and stamped copies prove this. However, due to a series of emergencies and power failures that day, the officers never indexed Creditor #1's financing statement. Several months later Creditor #2 entered a valid security agreement on the same collateral and filed a proper financing statement which was in fact properly indexed. In a dispute between the two Creditors, which will have priority?

- a. Creditor #1 because its has satisfied the requirements for an effective filing.
- b. Creditor #1 because Creditor #2 was negligent in trusting the debtor.
- c. Creditor #2 because the attempted first filing was ineffective.
- d. Creditor #2 because Creditor#1 was negligent, having had sufficient time to confirm its filing and failing to do so.

20. Your client sold a major home entertainment system to Debtor, on credit, securing a signed security agreement. Debtor became unemployed, and defaulted. When asked for a surrender of the collateral, Debtor reluctantly said he had sold it to a neighbor. You are asked to file a replevin suit against the neighbor to recover the collateral.

- a. You may do so because PMSI's of consumer goods are automatically perfected.
- b. You may do so ONLY if you can prove the sale was a fraudulent transfer.
- c. Both the perfected PMSI and the fraudulent transfer theories can succeed.
- d. Neither the PMSI nor the fraudulent transfer theories can reach this property.

21. You represented one spouse in a recently completed divorce. The court awarded your client the couple's new Lincoln Navigator. It is presently titled in the other spouse's name, clear of any liens. Which of the following will protect your client's rights against a possible wrongful sale of the automobile to an innocent party?

- a. Record the court order in the Article 9 registry and take possession of the car.
- b. Send the court order to the Moter Vehicle Registry and get a new Certificate of Title in Client's name.
- c. Take possession of the car.
- d. Both b. and c. are necessary.

22. Assume the same facts as in the previous question except that the property awarded was a Copyright. Which of the following will protect your client's rights against a possible wrongful assignment of the Copyright to an innocent party?

- a. Record the court order in the Article 9 registry of the relevant state.
- b. Record the court order in the Copyright office.
- c. Record the court order wherever Federal Tax liens are filed in the relevant state.
- d. Both b. and c. are necessary.

23. A Federal Tax lien is normally filed in a Registry of Deeds. Such a lien, when properly filed, affects the title to the Taxpayer's:

- a. Only taxpayer's Real Property.
- b. All taxpayer's Real Property and Personal Property.
- c. All taxpayer's Real Property and Personal Property except Copyrights.
- d. All taxpayer's Real Property and Personal Property except those types for which there is a separate federal title registry (for example, Copyrights, Patents, Ships, Aircraft).

24. Which of the following facts will defeat the claims of a person otherwise qualified as the holder in due course of a negotiable instrument under UCC Article 3?

- a. The original obligor was a minor.
- b. A necessary endorser was a minor.
- c. BOTH facts will defeat a holder in due course.
- d. NEITHER fact will defeat a holder in due course.

25. In the absence of a special statute or government regulation, a common carrier's liability for loss of goods may:

- a. Be unconditionally limited by the parties in the contract of carriage.
- b. Be limited by the parties in the contract of carriage if, and only if, the shipper is given the option of purchasing higher liability limits at the time of contracting.
- c. Be limited by the parties in the contract of carriage only to the extent of excluding liability for consequential damages.
- d. Not be limited in any way.

(26 - 29) A local business has gone bankrupt. During its operations it generated a substantial stream of chattel paper from its customers (of the type which included promissory notes). A local bank held a security interest in the chattel paper, perfected by filing in the Article 9 registry. The customers have been paying, but the business failed for other reasons. In a desperate move just prior to collapsing, the business wrongfully sold the same chattel paper to a factoring company endorsing the notes and transferring possession of the actual files. To further complicate matters, one of the general partners of the factoring company picked this time to turn crook and endorsed the notes over to a holder in due course, absconding with the proceeds just before the original business went bankrupt.

26. Of the following people, who has the best claim to ownership of the notes?

- a. The bank.
- b. The factoring company.
- c. The holder in due course.
- d. The Trustee in Bankruptcy.

27. Who has the second best claim?

- a. The bank.
- b. The factoring company.
- c. The holder in due course.
- d. The Trustee in Bankruptcy.

28. Who has the third best claim?
- The bank.
  - The factoring company.
  - The holder in due course.
  - The Trustee in Bankruptcy.
29. On just these facts alone, the party with rights to the chattel paper has the following rights:
- Immediate, full payment of the balances of the customers' notes.
  - Immediate possession of the customers' chattels.
  - BOTH a. and b.
  - NEITHER a. nor b.
30. You represent a successful tort plaintiff with a judgment for \$1 million. There is no insurance and the defendant's only available asset is a primary residence. The local homestead exemption is \$100,000, with no stacking. The property taxes are paid up. There are only two liens on the property: a \$250,000 first mortgage, and an attachment for a \$200,000 claim in a pending lawsuit. You think the property is likely to bring \$500,000 at a sheriff's sale. If this is so
- You should proceed to get a writ of execution and sell the house.
  - You should do so only if you believe the attaching creditor's suit will fail or produce significantly less than \$150,000.
  - You may not do so because the prior attachment prevents execution until the underlying suit is terminated.
  - You may not do so because the homestead exemption prevents sale by a judicial creditor.

**Essay**  
**(up to 80 minutes suggested)**

Gulf Press, Inc. (GPI) is a small, old publishing company. It filed Chapter 7 Bankruptcy yesterday.

All its offices and production facilities are housed in one leased building. The lease has years to go and the rent is less than current and foreseeable market rates for the area. In fact, GPI has turned down several offers to buy out the lease. However, the rent is now one month in arrears and the Landlord has commenced eviction proceedings (which are now stayed).

Regular financing was provided by Big Bank, which had a security agreement providing for a floating lien on all GPI's accounts, equipment, inventory, and general intangibles. This lien was secured by an Article 9 filing in the appropriate state office. Most of GPI's suppliers sold on unsecured credit, but Acme Paper Co. has a floating purchase money security agreement to cover paper it supplied, perfected by an ordinary Article 9 filing after the first delivery of paper.

The only other lien is a properly perfected PMSI in favor of Ultra-Press, the seller of GPI's high speed printing machine.

Both the Bank and Ultra-Press are substantially over-secured.

GPI ultimately failed because tried to break into the big time. It paid too much for the rights to a celebrity tell-all book, printed far too many copies, and marketed it badly.

The celebrity had a good lawyer. Ten months ago GPI made a substantial advance payment to secure the publishing rights, and promised to pay substantial royalties on any books ultimately sold at retail. The kicker was that there was a guaranteed minimum royalty payment for each of five years, without regard to units sold. In return, celebrity agreed to a certain number of promotional appearances. This minimum royalty was backed by an irrevocable standby letter of credit issued by Big Bank promising to pay Celebrity the amount due each year if GPI did not.

GPI has a very large sum of accounts receivable due from bookstores. However, each contract provides that the bookstore may return at its expense any unsold inventory at any time for a full refund or an offset against the bookstore's account. This has never been a problem before, but the stores are stuck with crates of the bad celebrity book. There are two classes of bookstores: some with current accounts (they owe GPI nothing), all of which want to ship the books back and get a refund; and some who are indebted to GPI for other inventory and want to ship the books back and offset the value against their debt.

Except for one book, GPI has never licensed its copyrights. In that one case, with the Bank's permission and waiver of the lien on that copyright, GPI licensed an extremely valuable scientific work to a specialty publisher (Specialty). This license had a percentage royalty, renewable for the life of the copyright at the licensee's option. This work is a major source of Specialty's revenue. It is such a success that Specialty's competitors would be willing to pay a premium to secure the rights.

Considering only the assets and claims mentioned, the parties mentioned, and the Trustee in Bankruptcy (representing all unsecured creditors), what assets are available to satisfy what claims in what priority?

**END OF EXAM**