ST. MARY'S UNIVERSITY
SCHOOL OF LAW

Second Summer 2002
Exam No. __________

FINAL EXAMINATION
SALES/SECURED TRANSACTIONS
PROFESSOR G. FLINT

ESSAY
PLEASE READ CAREFULLY

ALL ANSWERS ARE TO BE WRITTEN ON THE BLUE BOOKS PROVIDED WITH THIS EXAM

There are three questions (time and percent indicated). The Time for completing the examination is four hours.

1. This examination is "open book". You may use your casebook, statutory supplement, and class notes. Use of calculators and cleansed laptops is permitted.

2. Be sure to answer the specific question that is asked. Information supplied relating to some unasked question will not increase your score and consumes you time needed to answer the asked questions.

3. If additional facts are necessary to resolve an issue, specify what additional facts you believe to be necessary and why they are significant. You may not make an assumption that changes or contradicts the stated facts.

4. Quality, not quantity, is desired. Think through and briefly outline your answer before you begin to write.

5. Write legibly. Be sure to formulate your answers in complete sentences and paragraphs with proper grammar. Failure to do so will result in an appropriately lower score.

6. Do not seek an interpretation of language in the question from anyone. If you sense ambiguity or typographical error, correct the shortcoming by shaping the question in a reasonable way and by recording your editorial correction in your answer.

Under the Honor Code, when you turn in this examination, you affirm that you have neither given, received, not obtained aid in connection with this examination, nor have you known of any one so doing. If you cannot make this affirmation, you shall note such fact on your examination and must immediately advise the Dean of the reason therefore.

I. (37.5 %--1 ½ hours)

You are an in-house counsel for The Arunah Hubbell State Bank. One of the loan officers has brought into your office documents relating a loan to Joseph Ferguson, P.A. Alice Whitcomb Burpee, the loan officer, wants to know what additional legal work under secured transaction law she needs to do before the closing when the loan money will be released to Joseph Ferguson, P.A. Joseph Ferguson, P.A., is purchasing the assets of Ruth Marie Smith's orthodontic practice as a going concern. The loan is in The amount of $500,000. The Arunah Hubbell State Bank is taking a security interest in all the assets of Joseph Ferguson, P.A. Alice Whitcomb Burpee also wants to know how effective The Arunah Hubbell State Bank's security interests will be. What are your recommendations and advice with respect to the loan to Joseph Ferguson, P.A.? Be sure to support your recommendations with rules of law, including Code sections and relevant case law. The following is a recitation of the information regarding the loan (the "Loan") to Joseph Ferguson, P.A., that Alice Whitcomb Burpee has provided.

The assets of Ruth Marie Smith 's orthodontic practice consist of employment contracts for assistants and associates, dental chairs bolted to the floor, a leased computer for record keeping, furniture in the waiting room, dental supplies and paper, tropical fish in the waiting room, deeds to the premises, a patent on a special sort of orthodontic mold used by Ruth Marie Smith, motor vehicles, and patient records. The dental chairs were purchased on credit while Ruth Marie Smith was practicing in Louisiana. They have a remaining outstanding loan balance of $50,000, so Joseph Ferguson, P.A., is buying the dental chairs subject to a granted security interest for which the seller filed a UCC1 in Louisiana listing debtor as Ruth Marie Smith, P.A., on October 1, 1997, and listing as collateral "all debtor's personalty". Ruth Marie Smith, P.A. was liquidated two years ago when Ruth Marie Smith moved to Texas with Ruth Marie Smith succeeding to all assets and obligations of Ruth Marie Smith, P.A. The computer lease lasts for 5 years. The useful life of the computer according to IRS rules is 5 years. The lease has no termination provision. The lease does have an option to purchase the computer at the end of the term for $10. The computer's residual value at that time is expected to be $100. The present value of the computer is $10,000. The rental rate is $3,000 per year. The furniture in waiting room was originally bought on credit with a security interest in favor of Joseph Baker Furniture Company. This credit loan is now fully paid for by Ruth Marie Smith. However, your legal assistant has discovered that a UCC1 remains on file under the name Ruth Marie Smith.

Also being purchased from Ruth Marie Smith are the unpaid receivables from insurance companies without recourse and so discounted by 5 % and the promissory notes from patients without recourse and so discounted by 20 %

Your legal assistant has also located a judgment entered against Ruth Marie Smith on December 11 of last year and a UCC1 under Ruth Marie Smith's name dated November 19 of last year on equipment filed by disgruntled former patient.

Joseph Ferguson, P.A. additionally has a checking account at The Michael Sweetman National Bank under a deposit agreement specifying New Jersey law as governing the agreement.

II. (37.5%--1 ½ hours)

You are bankruptcy trustee for Joseph Ferguson, P.A. (the "Bankrupt"), whose business was purchased as described in the first problem. You are liquidating the Bankrupt. You have received all the claims of various creditors. You are ready to determine the rights of various creditors to the Bankrupt's estate. You are now preparing your report. What priorities would you give the various creditors? Be sure to support your priorities with dollar amounts to specific creditors, code sections and relevant case law. The following is a recitation of the information regarding the Bankrupt's creditors gleaned from the claims and petition.

The bankruptcy petition was filed May 1, 2002. The petition listed the assets and their value on that date as dental chairs $40,000, real estate $200,000, furniture $2,000, supplies $10,000, fish $2,000, patent $1,000, and motor vehicles $30,000. There is a buyer for this business willing to pay $200,000.

Joseph Ferguson, P.A., was unable to pay its most recent utility bills to Samuel Davis Utility Company. These amounted to $500.

Joseph Ferguson, president of Joseph Ferguson, P.A., had seen the impending bankruptcy for some time. He was more interested in vacationing that in working. So two years before filing the bankruptcy petition, Joseph Ferguson, P.A., granted a security interest in the amount of $50,000 in the motor vehicles to Elizabeth Foley, wife of Joseph Ferguson, to secure debts in the amount of $50,000 but documented only by a promissory note in the amount of $10,000.

On March 2, 2002, Joseph Ferguson, P.A., purchased a new dental chair from Francis Burpee Manufacturing Company through a $10,000 loan from Isaac Horatio Flint National Bank. Isaac Horatio Flint National Bank made the loan and took a security interest by written agreement in equipment and after-acquired property on February 24, 2000, and filed a financing statement on February 28, 2002. To protect the chair from the impending bankruptcy, Joseph Ferguson, P.A., sold the chair to Elizabeth Ferguson, Joseph Ferguson's daughter on March 10. Elizabeth Ferguson never took possession of the dental chair since it was bolted to the floor at Joseph Ferguson, P.A.'s premises.

Joseph Ferguson, P.A., was unable to pay its taxes for the year 2000. The IRS assessed a deficiency in the amount of $20,000 and filed in 2001 with the Clerk of Bexar County, the county where the land was located.

The amount outstanding on the above loan is $400,000. The loan made by The Arunah Hubbell State Bank calls for monthly payments of $10,000. Joseph Ferguson, P.A., has been able to make payments for 4 months.

On April 25, 2002, Joseph Ferguson, P.A., took one of its vehicles in for repair at Otha Gasaway Repair Service Company. Joseph Ferguson, P.A., was unable to pay the bill to Otha Gasaway Repair Service Company, so Otha Gasaway Repair Service Company kept the vehicle for the $500 repair bill.

III. (25 %--1 hour)

Isador Peltier Publishing, Inc. needed a word processing computer program for all of its editors' home computers. So Isador Peltier Publishing, Inc., opened negotiations with Antoine Rivard Software Company, expressing this need. The signed agreement, dated May 20, 2002, states that it is subject to article 2. The program was sent on a single disk in a box wrapped in the standard cellophane to Isador Peltier Publishing, Inc., on June 3, 2002. Isador Peltier, president of Isador Peltier Publishing, Inc., opened the box, installed the program on his computer, and made copies to send to the publishers. The copies did not work on the editors' home computers. The disk program was designed to allow only one installation, and no copies. The reason for this was the license to Antoine Rivard Software Company from Jean Camus Company only allowed single sales. In the box was a warranty sheet disclaiming any express or implied warranties other than a warranty to correct any design defects. The correction of course was also mirrored in Antoine Rivard Software Company's license agreement with Jean Camus.

Isador Peltier has entered your associate's office Suem and Stickem, P.C. Isador Peltier is perturbed that he has only one computer operational, rather than all the computers of his assistants. Isador Peltier wants to know what his rights and liabilities are in this situation as well as what his next step should be. Provide your response and its support.