

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, nor 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 located in San Antonio. One of the loan officers, Alice Whitcomb Burpee, has brought into your office documents relating a loan to Joseph Ferguson, P.A. Alice Whitcomb Burpee 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., needs operational cash and is purchasing the new dental chairs for its orthodontic practice. The loan is in the amount of \$100,000. 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 to Joseph Ferguson, P.A., provided by Alice Whitcomb Burpee.

The assets of Joseph Ferguson, P.A. orthodontic practice consist of a key-person life insurance contract on the life of Joseph Ferguson, the old dental chairs bolted to the floor that will be replaced by new dental chairs, a computer leased from Ruth Ann Smith Computer Co. used for record keeping, furniture, dental supplies and paper, a lease to the premises, a patent on a special sort of orthodontic mold, a 2002 Cadillac, a checking account with Moses Smith State Bank, and receivables from patients along with the assignments of their health insurance policies. Joseph Ferguson had moved his sole proprietorship from Louisiana in 2001 and incorporated his sole proprietorship as Joseph Ferguson, P.A. in 2002. The computer is leased from Michael Sweetman Incorporated for a three-year term with two years remaining, with rents of \$7,000 the first year and \$1500 in each of the second and third years for a computer originally costing \$8,000 and having a useful life of two years, and with a purchase option at the end of the term for \$100. Your legal assistant has found additionally a real estate filing of a mortgage on the premises and fixtures in favor of Moses Smith State Bank, a UCC-1 filed three years ago with the Secretary of State of Texas on the name of Joseph Ferguson for furniture in favor of Moses Smith State Bank, the deposit agreement for the checking account with Moses Smith State Bank saying the agreement is governed by the law of Louisiana, and a UCC-1 filed four years ago with the Secretary of State of Louisiana on the name of Joseph Ferguson for accounts in favor of Joseph Baker National Bank.

II. (37.5%--1 ½ hours)

You are bankruptcy trustee for Joseph Ferguson, P.A. (the "Bankrupt"), whose business was 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, 2003. The petition listed the assets and their value on that date as dental chairs \$100,000, lease of computer \$1,000, lease of premises \$1,000, furniture \$2,000, supplies \$10,000, patent \$1,000, Cadillac \$40,000, patient receivables \$2,000, and deposit account \$1000. There is a buyer for this business willing to pay \$200,000.

Arunah Hubbell State Bank's loan was made March 1, 2003, and the UCC-1 was filed on March 11, 2003. Arunah Hubbell State Bank is still owed 98,000 having received a payment of \$2000 on April 1, 2003.

Joseph Ferguson, P.A., was unable to pay its most recent utility bills to Samuel Davis Utility Company. These amounted to \$1,000.

Joseph Ferguson, president of Joseph Ferguson, P.A., had seen the impending bankruptcy for some time. He was more interested in vacationing than in working. So on December 1, 2002, Joseph Ferguson, P.A., granted a security interest in the amount of \$40,000 in the Cadillac to Elizabeth Foley, wife of Joseph Ferguson, to secure debts in the amount of \$40,000 but documented only by a promissory note in the amount of \$5,000.

On March 2, 2003, Joseph Ferguson, P.A., purchased new dental chairs for \$110,000 from Francis Burpee Manufacturing Company on the installment plan, paying \$10,000 down. Francis Burpee Manufacturing Company filed a UCC-1 with the Secretary of State of Texas on March 23, 2003.

Joseph Ferguson, P.A., was unable to pay its taxes for the year 2001. The IRS assessed a deficiency in the amount of \$20,000 and filed on April 20, 2002 with the Secretary of State of Texas.

III. (25 %--1 hour)

Isador Peltier, President of Isador Peltier Retail Outlet, Inc., located in Trois-Rivieres, Quebec, sent one of his firm's purchase order forms to Augustin Rivard Manufacturing Co., located in San Antonio, for 1000 speed boats FOB Trois-Rivieres. The printed purchase order specified on the reverse side that all disputes would be handled by arbitration and otherwise the law of Quebec governed. Augustin Rivard Manufacturing Co.'s most recent price listed had the price of \$5000 for each boat. Augustin Rivard, President of Augustin Rivard Manufacturing Co. had 1000 of the firm's boats loaded on several boxcars of the Jean Camus Railroad Co. along with one of his firm's invoices. The invoice specified on the reverse side that all disputes were to be tried in Bexar County, all warranties were disclaimed, and that damages were limited to the price of the items. In New York, one of the Jean Camus Railroad Co.'s boxcars were struck by a truck at a railroad crossing, damaging 400 of the boats. Isador Peltier Retail Outlet, Inc., kept and sold all the boats. Isador Peltier wrote Augustin Rivard demanding a refund of \$2500 on the price for damaged boats since he had previously paid for the boats in full. One of the sold damaged boats, due to the damage, blew up when properly used and injured the customer. The customer successfully sued Isador Peltier Retail Outlet, Inc. for \$100,000. So Isador Peltier Retail Outlet, Inc., sued Augustin Rivard Manufacturing Co. in Texas to compel arbitration seeking damages.

You are an associate at Stickem and Cheatem, P.C. Augustin Rivard has walked into your office. He wants to know the likely damages he might have to pay for this transaction. What is your advice? Be sure to provide your rationale and support.