

**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 EXAMINATION.

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 classnotes. Use of calculators and 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 your time needed to answer the asked questions.
3. If additional facts are necessary to resolve an issue, specify what addition 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 so do will result in an appropriately lower score.
6. Do not seek an interpretation of language in the questions 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 corrections 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 therefor.

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, Inc. 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, Inc. Joseph Ferguson, Inc., is purchasing the assets of Ruth Marie Smith Accounting Services, Inc., a company that provides accounting services to doctors in San Antonio, in order to avoid potential liability that might accrue to Joseph Ferguson if he did the deal through a merger or tender offer. The loan is in the amount of \$5,000,000. Alice Whitcomb Burpee also wants to know how effective the Arunah Hubbell State Bank's security interests will be. What are your recommendations with respect to the loan to Joseph Ferguson, Inc.? 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 the Joseph Ferguson, Inc., that Alice Whitcomb Burpee has provided.

The assets of Ruth Marie Smith Accounting Services, Inc., follow. There are some assignments of patient and insurance company promises to pay various doctors, clients of Ruth Marie Smith Accounting Services, Inc., service contracts with the doctor clients, employment agreements with employees, employee benefit plans, a lease on the premises on Wurzbach, office furniture and supplies, a checking account at Joseph Baker National Bank, life insurance policies on key employees, promissory notes of some of the doctor clients arising from loans of Ruth Marie Smith Accounting Services, Inc., to its clients in need, one automobile bought on credit to collect records from the doctor clients, and a tort claim against one of the former doctor clients for slander against the services of Ruth Marie Smith Accounting Services, Inc.

II.
(37.5%--1 ½ hours)

You are bankruptcy trustee for Joseph Ferguson, Inc. (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.

You have located a buyer for the business at \$550,000. The bankruptcy filing occurred on August 10, 2001.

The above loan by The Arunah Hubbell State Bank was completed with security interest and

perfection by filing in 1997. The doctor clients are normally prompt on their payments, usually paying within 30 days. On August 10, 2001, these doctors owed \$150,000.

On December 10, 1998, the Bankrupt sold the doctor client promissory notes with a value of \$400,000 to Andrew Melvin, his brother-in-law, for \$10,000. These notes on the date of bankruptcy have a value of \$350,000.

On May 10, 2001, the Bankrupt borrowed \$5,000 from The Marion Gasaway State Bank and \$5,000 from The James Madison Rogers National Bank to purchase a new computer for record keeping from Rebecca Turner, Inc., who would fund the remaining \$5,000 due on the \$15,000 purchase price. The Marion Gasaway State Bank and the Bankrupt signed the security agreement on May 10, 2001, as did The James Madison Rogers National Bank. The Marion Gasaway State Bank filed the financing statement on equipment on June 8, 2001. The Bankrupt bought the computer and took delivery of the computer on May 20, 2001. The Seller retained title until paid and filed a financing statement on equipment on May 25, 2001. The computer on the date of bankruptcy has a value of \$9,000. The Bankrupt has made no payments on the loans. The old computer, which had a value of \$6,000, the Bankrupt sold to Draper Voshell for \$6000 on July 10, 2001.

The Bankrupt was unable to pay its federal income taxes for the year 1999, and on June 2, 2001, the Internal Revenue Service assessed a deficiency for those income taxes in the amount of \$100,000. The Internal Revenue Service filed its tax lien with the Secretary of State of Texas on June 15, 2001.

The outstanding loan on the motor vehicle is in the amount of \$10,000. On March 3, 2001, the Bankrupt purchased new stereo equipment for the vehicle with value of \$3000 and had it installed with one set of speakers in the doors and the other set under the rear seat. The seller, Rosanna Queen, retained title and filed a financing statement on equipment on March 10, 2001. On July 2, 2001, the Bankrupt paid \$1,000 on this outstanding loan as required by the loan documentation. The vehicle on the date of bankruptcy had a fair market value of \$20,000.

The Arunah Hubbell State Bank is still owed \$500,000. There are no creditors other than those described above.

III.
(25 %--1 hour)

Isador Peltier ordered 500 pairs of black pants from Antoine Rivard. Delivery terms were FOB Houston. Isador Peltier was in San Antonio. Antoine Rivard took 400 pairs of navy blue pants to Jean Camus Railroad Company and received a bill of lading from Jean Camus Railroad Company. Antoine Rivard did not bother to send the bill of lading to Isador Peltier until the following week. Antoine Rivard also sent the bill of lading along with a note that he would send the remaining 100

pairs of pants the next month. Isador Peltier received the bill of lading. When Isador Peltier called Jean Camus Railroad Company, the agent informed Isador Peltier that 100 pairs of pants had been stolen through negligence of Jean Camus Railroad Company employees. Isador Peltier nevertheless went to Jean Camus Railroad Company and examined the remaining 300 pairs of navy blue pants. Since Isador Peltier was in need of inventory to sell, Isador Peltier took 200 pairs of navy blue pants anyway, and left the remaining 100 pairs of navy blue pants with Jean Camus Railroad Company.

Isador Peltier has entered your associate's office Suem and Stickem, P.C. Isador Peltier is perturbed that he has 200 pairs of navy blue pants, rather than black ones. 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.