INSTRUCTIONS

1. This examination consists of three (3) questions on four (4) pages. Question 2 has two subparts. Question 3 has three subparts. Please make sure that you have all four pages. You have three hours to spend on the examination. Each question is weighted equally. Hence you should spend 60 minutes on each question.

2. Be sure to put your examination number on each book.

3. Do not write on both sides on the page. You must write legibly. Do not use pencils that are not sharp or pens that are nearly out of ink.

4. This examination is open book. You may refer to any written material you wish.

5. In answering each question, use judgement and common sense. Emphasize the issues that are most important. Do not spend too much time on easy or trivial issues at the expense of harder ones. If you do not know relevant facts or relevant legal doctrine, indicate what you do not know and why you need to know it. You must connect your knowledge of bankruptcy with the facts before you. Avoid lengthy and abstract summaries of general legal doctrine.

6. In each question, assume you are writing a memorandum for another lawyer in your firm. You are not in the position of an advocate. You must carefully assess both the weaknesses and strengths of your client’s position.
I. (One hour)

Our client is Sam Spade. Last year he executed an agreed judgment with BancOne for $50,000 as a result of his inability to repay a promissory note. BancOne abstracted the judgement in Bexar county and in Nueces county. Sam is a musician who lives in a modest condominium in San Antonio which he purchased for $150,000 two years ago and which is subject to a lien of $145,000. He plays in two or three gigs a week and earned $50,000 last year. He is in financial difficulty because of a rather costly divorce that he went through several years ago. In that divorce he executed a document entitled "Property Settlement Agreement" under which terms he retained all the community property in return for paying his ex-wife $1,000 per month for the rest of her life. He has also executed contracts with two members of his band, guaranteeing them $2,000 per month each regardless of the income of the band. He has not paid his ex-wife or the band members for the last three months, and a prejudgment writ of garnishment was served yesterday on the bank where he maintains his only accounts. The bank called him to notify him that before the garnishment was served they had exercised their right to set-off his account because he owed them $5,000 on a note that was not yet due or in default. The note secured on band equipment worth $1,000. His mortgage company on his house has accelerated his note due it as result of his failure to make payments. If this was not enough trouble, he bought a new car last month, and his check for the down payment bounced and he received a call from them this morning that they wanted him to bring it back or they would begin hot check proceedings against him. He tells us that he never signed the security documents for the car, only an unsecured note. Finally, he notes that he filed a Chapter 13 several years ago and received a discharge after completing his plan; however, one of those creditors got real mad and Spade had to hit him with a bat to get him off his property. As a result there is pending a multimillion dollar lawsuit against him for malicious injury. He believes that he could fund a Chapter 13 plan from future gigs. Prepare a memorandum discussing the possibilities of his filing a Chapter 13 or 7 and the likelihood for complete success of both. Please identify what additional information that needs to be compiled before a final answer can be given.
II. (one hour)

a. In a Chapter 7 bankruptcy case, Debtor elected his nonbankruptcy exemptions under § 522 (b)(2). The trustee seeks a court order requiring Debtor, if and when he should sell any exempt property following discharge, to notify the trustee prior to the sale. The basis for this is the trustee’s assertion that, in most instances, nonbankruptcy exemption statutes exempt only specific property, and not proceeds. The trustee wants the chance to pursue those proceeds on behalf of the pre-bankruptcy claimants, if and when exempt property is sold. (a) If you were counsel for the trustee, how would you advance this argument? (b) If you were counsel for Debtor, how would you oppose it? (c) If you were a court considering this contention, how would you rule and why?

b. Debtor is a founder and Executive Vice President of Eggplant Computers, a successful computer company now four years old. Eggplant’s stock is held by approximately 15 different people, all original investors or officers. In 1983, Debtor was granted a stock option with the following terms and conditions. The option covered 100,000 shares of Eggplant common stock. It was exercisable for a period of 45 days commencing with Debtor’s fourth anniversary as an officer of Eggplant, an event that occurred on May 1, 1985. The exercise price was ten cents a share. The option is non-assignable, and specifies that any stock issued pursuant to it will have (in common with the rest of Eggplant’s stock) restrictions on transfer unless and until a public offering is made of Eggplant common stock.

Debtor filed a petition in bankruptcy under Chapter 7 on April 29, 1985. The trustee believes that the common stock is worth more than $20 a share and thinks he can sell it for that amount to Arthur Krock, a wealthy venture capitalist who has been looking for a way into Eggplant Computers. Discuss the bankruptcy law issues raised by these facts. (Assume there are no securities law issues.
II. (one hour)

A. Last year, the state bar association suspended David Drunker from law practice for an indefinite period. Drunker was an alcoholic and a compulsive gambler and was hopelessly in debt. He had tried to keep his head above water by doing legal services for retirees and charging them outrageous prices (such as $10,000 to write a simple will or process a Medicare claim). At the time of his suspension, he was told he could ask to have his license reinstated after a year and that heavy consideration would be given to the extent to which he had reimbursed or planned to reimburse the various widows he had overcharged. Drunker filed a Chapter 7 bankruptcy petition last November and has been granted a discharge. The bankruptcy court found that whatever claims the widows had against him fell outside the ambit of § 523(a) and hence were subject to discharge.

Drunker has asked the bar association to lift the suspension. In his petition he conceded that he had not paid back any of the widows and did not plan to do so. He argues, however, that the bankruptcy discharge makes this factor one that the bar may not consider it in deliberations. Please advise the state bar as to the merits of Drunker's argument.

B. Bank made $50,000 loan to Debtor two years ago. It took an interest in all of Debtor's personal property, securing the initial loan and any subsequent ones it made. Debtor was to make monthly installment payments of $2,000. Two months and a half months ago, Bank discovered that it had not filed its financing statement correctly. Bank immediately made a proper filing and renegotiated the original deal. It loaned an additional $5,000 to Debtor, also on a secured basis. Monthly installment payments were increased to $3,000. In a change from past practice, Debtor agreed to make its payments in the form of a cashier's check that was to be hand delivered to Bank on the first of every month. Three such payments were made before Debtor filed its bankruptcy petition. Can Bank keep any or all of the installment payments Debtor has made? To what extent will its security interest in Debtor's assets be enforceable in bankruptcy?

C. Debtor runs a garden supply store. It has about 25 different suppliers. As of the moment, Debtor owes a total of about $25,000 to 22 of the suppliers. Most of the $25,000 has been owing for more than 30 days. The suppliers request payments within 30 days and charge interest for late payments. Over the past several years, Debtor has usually fallen behind during the winter months when business was slow, but most suppliers were content to let the interest accumulate and wait until spring. Some suppliers would write and ask Debtor why payment was late, but even these were satisfied when Debtor explained that it was waiting for business to pick up in the spring. Debtor owes more this year than in past
I will discuss some of Sport’s liabilities and assets, determining what would occur in filing Ch. 7 or Ch. 13.

First, Sport meets the requirement 2 filed Ch. 7, because he

not one of the § 109(12) exceptions. He also appear to meet the Ch. 13

requirements because he is an individual with a secured,

noncontingent liquidated debt of $100,000 and

less than $350,000 and

secured non contingent

liquidated. In this calculation, the multimillion dollar

claim is not included because it is both contingent and non-

liquidated.

Apartant

The apartant in Begum is clouds title to his condo. In

Ch. 7, the obligation would be discharged, although in reality
It may be more difficult from trust to get the abstract removed short of a big antitle lawsuit. In ch 13, the abstract would probably be considered an unsecured claim and must be paid in full. If paid, the bank would have to pay 10% to Bank One from it. If it would have received in ch 7. Since there is a prior lien from the mortgage on the property and the property is exempt in ch 7, Bank One would receive nothing in ch 7. Of the abstract "Property Settlement"

Although a 10% payment settlement, the agreement needs little like allowing. This requires a state law determination. If it is a property settlement, the debt is discharged in ch 7 and in a general unsecured claim in ch 13. If it is almost, however, under §523 (a)(5) it is a non-dischargeable debt.
The contract of bad members are property of the estate but not assignable. Under § 541, Sec. 3 may choose to accept or reject them.

Under § 365(c), because they are of the nature of personal services. This section applies to both chapters. Sec. 3 may

incur new contracts later to keep the bond together to keep his regular income, the bad members will be general unsecured creditor for any damage arising from the breach and would get whatever general unsecured creditor

get in Ch. 7 and no less than that in Ch. 13. It is not clear from the fact who filed a writ of
garnishment. The creditor who filed it may be required to turn it over to the estate under § 547.
It may be a preference but the facts are not certain on this. The bank must turn over the amount they set-off.

The bank wrongfully exercised set-off because the obligation to them as guarantor was not in default.

Default in the obligation triggers the right of set-off. The note they set-off is a $5,000 debt on property worth $1,000. Assuming there are no valuation issues that change this value, the bank is over $1,000.

It has a secured claim for $1,000 and the remainder is a general unsecured claim. However, because they have a security interest in the farm equipment, the lien stays even if the debt is discharged. Thus, Sprinkle must make payments to keep this from being foreclosed on.
In Ch. 13, the debtor keeps the property and the
bank would have an allowed secured claim for the
present value of the value if it secures interest in
the property. The plan must pay at least 30% each.

The defect in the mortgage presents a problem
for Ch. 7. Although as a homestead, it would be exempt
present under the state exemptions, if he cannot get
current in the payments, the bank can foreclose once
once the Ch. 7 is over. Ch. 13 would allow him
to fit the amount needed to cure into his 3 year
in 5 years. Court approved plan and keep the property.

The selling the car can clear a
not check action against him and Spade is at
all possible should pay the amount of the check. If probably
he can, he can keep the car and the seller who was
to default to get a security interest in a general
unsecured credit in Ch 7 or Ch 13. Thus, the debt will
be discharged and the seller will receive very little.

the prior Chapter 13 does not prevent him filing here
since he completed the plan. The fact that

goods is found liable will be one of many 523 debts that
be creditors can prevent a discharge for in Ch 7. How-

ever, in Ch 13, there is a super discharge that would
allow that debt to be discharged.

The other information we need is how soon the suit
will be tried because if it becomes a non-contingent,
A liquidated claim, Sparkle won't be eligible for Ch. 13. We must also find out if he owns any property in Reeves County because it would not be exempt under Ch. 7. We need to know who garnished his account for how much and why.

Recommendation: The pros for Ch. 7 are that it is less costly and it makes more debt disappear. He would also have the right of redemption, although that is not very applicable here without more facts about his personal property.

His problems with his mortgage and the malicious foreclosures point toward filing Ch. 13 to
Regrets is that Ch. 13 plans are rarely completed. He also must convince the court he has regular income, but that shouldn't be too hard since he made $50,000 last year. Perhaps the possibility of a huge nondischargeable tort judgment would provide the necessary dedication to his Ch. 13 payments.
I a. As trustee for attorney & would argue assuming debtor is a Texas resident, using the Texas exemptions that there is statute provision preventing this. The exemptions, at least those regarding personal property do not extend to proceeds. If as trustee, he represents unsecured creditors who are one of the groups the Bankruptcy Code was created to protect, why statute law doesn’t exempt proceeds, why shouldn’t a trustee be able to do his job by pursuing them?

§ 41.002 (b) that the proceeds of a sale of a homestead are not subject to garnishment for the six months preceding the sale. This indicates that within the 6
months, the protection is gone. Additionally, there's no such provision for sale of exempt personal property. Some cash is non-exempt, if debtor chooses to turn exempt property into non-exempt property, the creditors should have an avenue for satisfying their claims.

As attorney for debtor, I would argue that the trustee has no post-bankruptcy powers at all to pursue these proceeds. His job is to protect the unsecured claims during bankruptcy, not post-discharge.

Once the debtor has received a discharge, § 524(2) (1) prevent any action to collect discharged debt.
This present action against the debtor for his property is based on the trustee's argument that under the law, the debtor would be locked into a situation where he must retain all exempt property or face threatened loss, which was protected against in the Code. Such a theory would prevent debtors from receiving the "fresh start" Congress sought to provide for in enacting the Code. Under trustees' argument, there would not be a point in time when the debtor knew he was free from obligations supposedly discharged in his Ch. 7. He could not sell exempt property to raise cash for any possible profit-making venture without possibly losing the proceeds to the trustee.
As the judge, I rule in favor of Debtor.

The spirit of the law of exemption is that debtors are allowed certain property to allow them to get on with their lives, make their fresh start, and further keep out of financial trouble. The cloud of debt would not lift if the accepted trustee argument and granted the court order. The trustee's job is limited to gathering and preserving the property of the estate and liquidating and dividing the proceeds pro rata. Trustee's job does not include monitoring the post-bankruptcy transactions by the debtor and attempt to squeeze a drop of
II-5. The stock option appears to be a §365
executory contract and is thus §541 property of the
estate. Since the option is open during the pendency
of the chapter 7, it may be assumed by the
trustee. It is not considered a personal service.

K. Although the company may not want an outsider
to purchase the stock, its non-assignability clause
is not valid under §365. The trustee may attempt
to get court approval to assume the contract, by
explaining that if there are sufficient assets in
the estate to pay the $80,000 for the 100,000 shares,
the can sell the shares for 200 times that
amount and thus increase the size of the estate tremendously.

The debtor will want to come up with a way to purchase these shares himself. He will say that any property he acquires after the filing of bankruptcy is not property of the estate unless it fits the § 541(c)(5) interest and this does not. The property acquired is the option, not the actual purchase. Because the option did not become property until his 4th anniversary, which was after the petition was filed, the option is not part of the § 541 pile. If he had died in time between filing and 4th anniversary, the
option would never have been available. Thus, this property is his, not the estate. The debtor would probably beg, borrow and steal, not to mention sell all exempt property short of his favorite dog, to raise the money to purchase this stock. Under his argument, if he can do so, he suddenly has a very nice bankroll that can't be touched by any pre-bankruptcy creditors.
III.A. To win in their attempt to get Drinker to straighten up and fly right, the state bar must show that its action in denying reinstatement of Drinker's license to practice law is not a discriminatory practice under § 525 of the Bankruptcy Code.

The initial question which brings § 525(a) into play is whether the state bar is a governmental unit.

The bar could argue that it is just an organization of professionals, but this wouldn't fly since the state Supreme Court oversee the licensing of attorneys and the Committee noted following this section specifically state that a State bar assn. is one such entity...
Legislation.

There is a stronger argument in that the statute

prohibits refusal to grant or renew licence "safely"

because the person in question has been a debtor

under the Code. The policy for this is to prevent

outside threats from causing debtors not to

file bankruptcy in situations where bankruptcy

may be appropriate. The concern was to avoid

the horrible stigma, and even guilt among the

term bankrupt & refer to such individuals.

To get around this section, the statute has meant

provide rational, valid reasons other than

bankruptcy to deny the lifting of suspension.
From such reasons can validity be argued to protect the already tenuous public relations processes for lawyers. If the general public thinks a lawyer can cheat client and then discharge their debts in bankruptcy without any repercussions, it will not be good for the profession. Further, attorneys in this state must establish they are of good moral character to be allowed a license in the first place.

It seems that requiring an attorney to make amends for previous wrong is a natural requirement in going along with the normal licensing process, whether it is for an original license or a reinstatement.

The bar association may also not want him to benefit.
from his wrongdoing. Further, if he is able to pull off such a scheme, other attorneys may be tempted to slide into such morally disgusting behavior. It would be an example to others if it is established that he can not get away with it.

For these reasons, I think the bar should be able to require repayment without being prevented by § 525. The real reasons are not his bankruptcy, but his moral character.
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 III
Within 10 days. The fee transfer being for security interest occurring 2 1/2 months before filing (it is not explicitly clear from the facts if the 2 1/2 months 'ago' is within 90 days before filing) is for an antecedent debt. The debt arose 2 years ago. Thus this can be avoided by the trustee, leaving the bank unsecured creditor. Under 544(a) the trustee can strong arm creditors imperfectly perfected in essence charge at time of filing and beat them in priority. The creditor in unsecured credit. Preference does not fit any of the exceptions because

although it was maybe 'meant' to be contemporaneous, under the rules of timing of transfers, the transfer occurred 2 1/2 years after the debt arose.
Being a secured creditor would place the creditor in a better position than an unsecured creditor in Ch. 7.

The three 3,000 payments are also preference, made to an unsecured creditor in 90 days before bankruptcy. There might be a timing problem here. Of 3 payments, have been made, it may be over 90 days since the bank perfected and the whole argument above falls through. Assuming the third payment, or or at least 2 were made in the 90 days, underlying but an exception very may be I prefer not. The only one argueable the (2) ordinary course of business exception. To win this and keep the payment,
Bank must show how the burden of proof to show that paying debt were in the ordinary course of business, both between the actual parties and ordinarily in the business between banks and debtors and the bank and its other debtors.

This is probably a tough one to try to prove since it is for not casually required that debtors or not make payments by cashier's check. Thus, the bank probably cannot keep the installment payment — all 3 of within 90 days, or at least 2. I have already discussed above the enforceability of Bank's security interest under preference rules and torts, etc.
that this is a non-possessory non-purchase
money lien that can be avoided to the extent it
impairs his exemptions. The property is personal property
but it is not clear if it is household furniture.

We others
will on (522(f)(2)(D)(B)(E)). If so, the trustee
can attempt to invalidate the lien. This may not be
available in Texas since one court has ruled that
such liens don't impair exemptions where the state
exemption statute counts only the equity in the
exemption. A similar case construing a Florida
exemption statute is at the U.S. Supreme Court and
this may open up this possibility in Texas if the
court rules thus. As the document include
often required property clauses, such a provision is involved in bankruptcy under §521.

III C.

An involuntary petition may be filed for a debtor when certain numbers of creditors and amount of money requirements are met. The filing here appears to satisfy §303 as follows: (5)(1) by 3 creditors, called "entitling," unless the debtor has less than 12 creditors.

Here, the creditor has over 12, so 3 must file and the aggregate amount of their claim must be $50,000.

There may be an argument that since 2 of these creditors "entitled" the remaining too, it is really one creditor and then a wrongful filing. However, due-
Law fleet in support of the contention that separate
Corporations are separate creditors even if closely
related. Unless the whole board of directors and
officers and stockholders are the same person, this
is probably three creditors. In computing the amount,
U.F. Co is owed $2,500 and U.G.T. Co is owed $2,500
and thus the $5,000 requirement is met. U.S. Co
is also owed money although of the $10,000 it
claims, the debtor will dispute $8,000. The
amount, however, is still sufficient assuming
the 3 are found to be separate entities.

Having established the filing is valid, the
court will have a hearing (if the debtor contests)
The debtor has some assets and his

The amount of time during which the action has

The amount of debt less proceeds from any assets

The foreign creditors, generally not paying his debts as they come due. The

730(3) (ii) whether the debtor is
determined whether to commence an action.
Late payments were a reason behind it. But consistently paid and creditors were not
upcoming at the month. He has no real large
debts and none that are very past due. The
debts of 2 of the 3 that first are not even
late yet and third, not country the
amount in dispute is only 2-3,000 and is
not long overdue. His general financial
situation, while not where we'd all like to be,
is certainly not as bad as Donald Trump's. He's
simply a check to check kind of operator that
can probably get current on his obligations
with some time to catch up during the up
season of a seasonal business. It is quite possible that the facts in this case would lead the court to dismiss the petition, which would allow debtor cost and reasonable attorney fees (is there such a thing?). If they were found in bad faith, he could also get proportionately caused cost and punitive damages, although there is really no evidence of bad faith here.

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