ST. MARY'S UNIVERSITY SCHOOL OF LAW

Creditors' Rights FINAL EXAMINATION
Professor Richard E. Flint Fall, 1992

ANSWER BOOKLET

1. This examination consists of nine (9) pages, including this page as the first and two sections described more particularly below.
2. You will have three (3) hours in which to complete the examination.
3. St. Mary's Law School prohibits the disclosure of information that might aid a professor in identifying the author of an examination. Any attempt by a student to identify himself or herself in an examination is a violation of this policy and of the Code of Student Conduct.
4. A student should not remove a copy of this examination from the room during the exam time.
5. This is an opened book examination; however, the only book permitted in the room is a copy of the Bankruptcy Code and Rules with YOUR annotations.
6. There are two sections of this examination. The first section contains seven terms or phrases for you to identify. You only have to identify five out of the seven. Each identification is worth ten points. The second section of the examination contains six short essay questions. Each short essay question is worth twenty points. Thus, there are a total of 170 possible raw score points. The organization and conciseness of your answers will be graded, so think before you write. All answers must be written in the appropriate spaces in this booklet. Do not write on the back of any pages and do not go beyond the space allotted for the answer. Material exceeding the designated space will not be considered in determining your grade unless an equivalent amount of material in the designated space is marked out. POINTS WILL ALSO BE SUBTRACTED FOR THE USE OF MORE THAN THE DESIGNATED SPACE.
7. ONLY THIS EXAMINATION BOOKLET NEEDS TO BE TURNED IN AT THE END OF THE EXAMINATION PERIOD. ANY BLUEBOOKS THAT YOU USED AS SCRATCH PAPER MAY BE TAKEN WITH YOUR OR THROWN AWAY.
8. After reading the oath, place your examination number in the space below. If you are prevented by the oath from placing your exam number in the space below, notify the student proctor of your reason when you turn in the examination

I HAVE NEITHER GIVEN NOR RECEIVED UNAUTHORIZED AID IN TAKING THIS EXAMINATION, NOR HAVE I SEEN ANYONE ELSE DO SO.

EXAMINATION NUMBER

Good luck! I hope that you have a wonderful vacation.
IDENTIFICATION--50 RAW POINTS--TEN POINTS APiece

Identify only FIVE [that is right, you do not have to identify all seven] of the following terms, words, or phrases. Provide enough information in your identification that an individual unfamiliar with the subject of creditors' rights/bankruptcy would have a basic understanding of the meaning, use, purpose, or significance of each term, word, or phrase.

1. best interest test:

2. state's right to opt-out:

3. the difference between giving the trustee the "rights and powers" of a bond fide purchaser for value instead of those as a lien creditor:

4. sequestration:
Creditors' Rights
Professor Richard E. Flint

FINAL EXAMINATION
Fall, 1992

EXAMINATION NUMBER _________

5. turnover procedure:

6. relief from the automatic stay

7. involuntary bankruptcy proceeding

SECTION 2
SHORT ESSAY--120 RAW POINTS—TWENTY POINTS APiece

Read the questions carefully; plan your answer; and answer the questions asked.

1. Paula Debtor is addicted to filing bankruptcy petitions. The following table summarizes the dispositions of her bankruptcy cases:

<table>
<thead>
<tr>
<th>Type of case</th>
<th>date filed</th>
<th>Disposition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ch 7</td>
<td>1982</td>
<td>discharge</td>
</tr>
<tr>
<td>Ch 13</td>
<td>1983</td>
<td>voluntary dismissal</td>
</tr>
<tr>
<td>Ch 13</td>
<td>1985</td>
<td>involuntary dismissal</td>
</tr>
<tr>
<td>Ch 7</td>
<td>1988</td>
<td>discharge</td>
</tr>
<tr>
<td>Ch 13</td>
<td>1989</td>
<td>involuntary dismissal</td>
</tr>
<tr>
<td>Ch 13</td>
<td>1990</td>
<td>involuntary dismissal</td>
</tr>
<tr>
<td>Ch 13</td>
<td>1991</td>
<td>involuntary dismissal</td>
</tr>
<tr>
<td>Ch 13</td>
<td>1992</td>
<td>pending</td>
</tr>
</tbody>
</table>
In the present Chapter 13 she has 40 unsecured creditors with debts totalling $55,000; one secured creditor with a debt of $150,000. One of the unsecured debts is for a judgment [$54,500] in an intentional tort case (she hit her lover with a baseball bat 50 times). She proposes to use all of her disposable income to fund the plan; but alas that will give the unsecured creditors less than 1% of their claims. Is this type of plan confirmable? Discuss.

2. Durn Yankee and his wife Southern Yankee were granted a divorce by a district court in Bexar County Texas. Pursuant to the divorce, Durn Yankee retained the homestead that the parties had resided during their marriage. The homestead property had been the separate property of Yankee prior to the marriage. Southern was granted a judgment under the divorce decree in the amount of $50,000 plus attorneys fees for $10,000. The judgment was part of the division of the community property between the parties.
The court also awarded Southern an equitable lien on the separate property of Yankee to collateralize the judgment. Six months later Yankee files Chapter 13 claiming the former homestead as exempt under Texas exemption laws. Is the judgment dischargeable? Is the lien avoidable?

3. Following a multimillion dollar malpractice verdict being entered against him, on June 28, 1988, Dr. J.A. Volpe and Rita Volpe filed a petition for relief under Chapter 7 of the United States Bankruptcy Code. At the time, Dr. Volpe was an employee of the Austin Diagnostic Clinic, Inc. which was the settlor of the Austin Diagnostic Clinic Profit-Sharing Plan under whose terms Dr. Volpe had a retirement account in excess of $100,000. In their petition the Volpes claimed that the retirement account was not property of the estate, but that if it were determined to be
property of the estate then, they claimed that under section 42.0021 of the Texas Property Code their interest in the retirement account was exempt property and not subject to their creditors' claims. In a like manner the Volpes claimed that their interests in seven individual retirement accounts totalling $100,000 were not property of the estate or were exempt under the same Texas statute. The trustee position is simple. The retirement account and the IRAs are property of the estate and are not exempt. (1) If you were counsel for the trustee, how would you advance this argument? (2) If you were counsel for the Debtor how would you oppose it? (3) If you were a court considering this contention, how would you rule? Remember to discuss the competing policy issues.

4. On January 1, 1992, Sam Spade sells to Joe Bozo a machine on an installment sales contract and marks the machine in his warehouse "sold" to be delivered to Bozo. On
January 10, 1992, the machine is delivered to Bozo. On January 20, 1992, Spade files a financing statement covering the machine at the secretary of state’s office. On March 1, 1992, Bozo files a Chapter 7 petition. Can the trustee avoid the interest? What assumptions must you make?

5. The Texas State Bar Association suspended Joe Ambulance Runner from the practice of law as a result of activities concerning taking his clients settlement monies and playing the dogs [gambling on the dog races]. The state bar told Runner that his license could be reinstated in one year and that heavy consideration would be given to the extent he had reimbursed his clients. Runner immediately filed Chapter 7 bankruptcy and was granted a discharge on the client trust accounts. After the year suspension, Runner asked the bar association to lift the suspension. In his petition he conceded that he had not paid back any of
the clients and did not plan to do so. What should the bar do? Why?

6. Shifty Lawyer of San Antonio, Texas, feeling the pressure of creditors decided to take swift action. First, he sold certain of his non-exempt antiques and guns to one of his friends for $50,000—this was only half of the fair market value of the property. He then took the $50,000 and paid off a major portion of the note on his exempt homestead. Lawyer does not deny that he received less than a reasonably equivalent value for the nonexempt assets, but candidly testified that he would have applied any additional monies to the homestead lien. Lawyer then filed a Chapter 7
EXAMINATION NUMBER ________

proceeding. Is the homestead exemption good in whole or in part? Will Lawyer receive a fresh start?

HAPPY HOLIDAYS!