COPY

ST. MARY'S UNIVERSITY
SCHOOL OF LAW

Spring 2003
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 Tile Company, Inc., located in Bexar County. 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 Dealership, Inc. Joseph Ferguson Tile Company, Inc., is a newly incorporated company set up to sell Saltillo tile and decorative tile. The loan is for the acquisition of all the assets of Davis Flint Tile Company in the amount of $1,500,000. The Arunah Hubbell State Bank is taking a security interest in all the assets of Joseph Ferguson Tile Company, Inc. 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 Dealership, 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 Joseph Ferguson Tile Company, Inc., that Alice Whitcomb Burpee has provided.

The assets being acquired by Joseph Ferguson Tile Company, Inc., consist of employment contracts for management employees, a life insurance policy on the key employee, various bank accounts at Robert Lee National Bank, office furniture and computers, stock certificates for a subsidiary corporation that imports tile from Mexico and Italy, deeds for the land on which Joseph Ferguson Tile Company, Inc., will operate, machinery for moving and cutting tile, some of which is built into the building, and an inventory of tile. A search of the relevant governmental offices indicates a UCC-1 filing on "machinery" with Ruth Marie Smith Finance Company as Secured Party and a federal tax lien, both in the name of Davis Flint Tile Company as debtor filed in Austin. Davis Flint, President of Davis Flint Tile Company, provided documents indicating that Ruth Marie Smith Finance Company is owed nothing and the federal government's tax lien is for $100,000.

II. (37.5%--1 ½ hours)

You are bankruptcy trustee for Joseph Ferguson Tile Company, Inc. (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 December 1, 2002. The petition listed the assets and their value on that date as bank accounts at Robert Lee National Bank $40,000, office furniture and computers $20,000, subsidiary stock $30,000, real estate deeds $200,000, machinery $15,000, machinery built-ins $5,000, and tile $50,000. There is a buyer for this business willing to pay $400,000.

The outstanding loan amounts are $50,000 to the federal government for Davis Flint Tile Company's tax debt and $360,000 to Arunah Hubbell State Bank. In accordance with your advice Arunah Hubbell State Bank filed a UCC-1 on February 15, 2002, after the closing described above. Ruth Marie Smith Financing Co. on March 28, 2002, took a security interest in the heavy equipment of Davis Flint Tile Company to secure $10,000. The Bankrupt has not been making payments on any of its loans, except the $40,000 monthly payment to Arunah Hubbell State Bank required on the 10th of each month.

The Bankrupt has also left a number of unpaid bills, such as $20,000 to the Samuel Davis Utility Company, a $10,000 signature loan (unsecured) from Robert Lee National Bank, a $30,000 signature loan (unsecured) from Ruth Marie Smith Financing Co. for which Arunah Hubbell State Bank signed a subordination agreement, its 2001 tax payments of $30,000, and its 2002 tax payments of $20,000. The government filed their tax lien in Bexar County on the 2001 tax payment on January 30, 2003.

III. (25 %--1 hour)

Isador Peltier was a trader of oil futures on the floor of a future's exchange in Houston. Traders normally flashed hand signs to each other across the trading floor when selling and buying the futures contracts, recording the transactions in a notebook. At the end of the trading session, the traders would tally up the trades and write-up the net transactions. Oil futures had been on the rise due to the expected protracted war in Iraq. Isador Peltier decided on the morning of March 31 to take a large position obligating him to purchase two million of barrels of oil on May 20 at $35 per barrel. After Isador Peltier entered into the 2000 contracts through hand signals and left the floor for a cup of coffee, it became clear to the other traders that the war in Iraq would not disrupt the oil markets. They immediately began to bid the price of oil downward. by the time that Isador Peltier returned, the price had fallen $2 per barrel from the price specified in his earlier transactions. Facing an immediate tremendous loss (the margin requirement to maintain his position would require Isador Peltier to deposit with the exchange $2 per barrel within a day), Isador Peltier refused to sign the net transaction agreements at day's end. The other traders threatened to sue him.

Isador Peltier has entered your associate's office Suem and Stickem, P.C. on the evening of March 31. Isador Peltier is perturbed that his peers have threatened lawsuit. 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.