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523 COMMERCIAL TRANSACTIONS I

Semester I, 1999-2000

UNM School of Law
Final ExaminationProfessor Frederick M. Hart
Saturday, December 11, 1998
or Wednesday, December 15, 1998

Three Credits

(Three Hours)**INSTRUCTIONS**

1. There are 25 true/false questions and one essay question on this examination. Fifty points are assigned to the short answer questions and fifty points to the essay.
2. ANSWER THE TRUE /FALSE QUESTIONS ON THE EXAMINATION. If you wish to explain your answer to one or more of the short answer questions, you may do so on the reverse side of the paper. Be certain to mark the question indicating that there is an explanation on the back. Keep in mind that this takes time that could otherwise be profitably used.
3. Your answer to the essay question should not exceed 1250 words. I am not concerned about a few extra words, but I will deduct credit if your answer significantly exceeds the limit.
4. This is a **MODIFIED OPEN BOOK EXAMINATION**. You may bring to the examination a copy of the Uniform Commercial Code, any materials that I have distributed in class, and any notes or outlines that you have prepared yourself or in conjunction with others in the class.

YOU MAY NOT USE ANY OTHER MATERIALS DURING THE EXAMINATION SUCH AS BOOKS FROM THE LIBRARY, BOOKS THAT YOU HAVE PURCHASED, COMMERCIAL OUTLINES OR OUTLINES PREPARED BY OTHERS.

5. You have three hours in which to complete this examination.
6. Answer the short answer questions on the examination itself and return it at the end of the examination. Make sure to put your **examination number on all pages** of the examination. Also, return the essay question.
7. **You will receive two points for every correct answer to the true/false questions. I will deduct one point for every question you answer incorrectly. If you leave a question blank, you will neither receive nor lose credit.**
9. I will not answer any questions about the examination while you are taking it. Hence, if there are typographical or substantive errors, you must work with them. Simply point them out and write your answer in the context of how you interpret the question.
10. Unless otherwise stated, all transactions occurred in New Mexico.
11. Assume that the 1972 Version of Article 9 has been adopted in all jurisdictions with the following: Alternative 2 to § 9-401; the regular (rather than the Alternative subsection 9-401(3)); the bracketed language in §§ 9-402(5) and 9-403(7) has been adopted; § 9-407 has been adopted; the date inserted in § 9-404 in January 1, 1975; that Article 6 has been repealed, along with § 9-111; that the words "transferee in bulk" have been omitted from § 9-301(2); that the jurisdiction has a certificate of title statute that requires notation of security interests in motor vehicles, other than those held as inventory, on the certificate of title; and that amendments to Article 9 proposed in 1977 have been adopted.

TRUE FALSE QUESTIONS

Remember, answer these questions by placing a circle around the correct answer. PUT YOUR EXAMINATION NUMBER ON EACH PAGE OF THE ANSWERS. If you wish to comment on a question or your answer, you may do so on the reverse side of the page, BUT BE SURE TO INDICATE ON THE FRONT OF THE PAGE NEXT TO THE QUESTION THAT YOU ARE MAKING A COMMENT.

1. Dave operates a nursery growing a variety of scrubs and trees in Sandoval county. Each spring he digs up a large number of the bushes and trees and moves them to his retail store in Bernalillo County. While they are in his store, a secured party taking a security interest in the shrub and trees should file a financing statement with the Secretary of State to perfect her security interest.

TRUE

FALSE

2. On May 1, Dave gave Sally a security interest in all of his “present and hereinafter acquired inventory” to secure a loan that he made to her in the amount of \$100,000. Sally filed a security interest that described the collateral as “inventory.” On June 1, Dave purchased additional inventory. Sally’s security interest in the inventory purchased on June 1 is perfected.

TRUE

FALSE

3. On June 1, Sally lent Dave \$100,000 taking a security interest in all of his present and hereinafter to be acquired inventory. Sally filed a financing statement in the office of the Secretary of State on June 7. On July 1, Dave purchased additional inventory using some of the money advanced to him by Sally. Sally has a perfected security interest in the new inventory as of June 7.

TRUE

FALSE

4. On May 1, Sally sold Dave a computer for use in his business. The computer was delivered on the same day. As security for the purchase price of \$2,000, which Dave was to pay in 60 days, Sally took a security interest in the computer. On May 4, Dave sold the computer to Bertha who paid him in cash and took delivery on that day. Bertha, who purchased the computer for use in her business, did not know of Sally's security interest. Dave filed a financing statement on May 5. Sally can repossess the computer if Dave defaults.

TRUE

FALSE

5. On June 1, Dave gave a security interest in his stereo to Sally to secure a loan of \$500. The entire security interest he signed read as follows: "I hereby grant a security interest in my Emerson model 1010 stereo to Sally to secure my promise to repay the \$500 I borrowed from her. I promise to repay the loan on September 1. I also promise not to lend my stereo to my friend Frank until I fully repay the loan." Dave used the stereo in his home for his own enjoyment. On August 1, Dave lent the stereo to Frank who used it in his store to entertain his customers. Sally can immediately repossess the stereo.

TRUE

FALSE

6. On February 1, Dave granted to Sally a security interest in a red computer that he used in his retail appliance business. The debt secured his promise to repay \$10,000 that he borrowed on that day from Sally. Sally filed a financing statement with the Secretary of State on February 3. On April 1, Dave traded his red computer to Bertha for a blue computer that Bertha owned. Dave defaulted as to Sally on August 1, still owing her \$5,000. At that time the red computer was worth \$3,500 and the blue computer was worth \$3,000. Dave can repossess both the red computer and the blue computer.

TRUE

FALSE

7. If in Questions 6, if Bertha traded the red computer to Barney on May 1 for a yellow computer, Sally could repossess the blue computer, the red computer and the yellow computer?

TRUE

FALSE

8. Dave lives in Bernalillo County. He has no office, conducting all of his business from his home. Dave raises hogs in Sandoval County and raises wheat in Taos County. To secure a loan of \$10,000 made to him by Sally on May 1, Dave gave her a security interest in "all of the hogs I raise in Sandoval County and all of the wheat I raise in Taos County." Sally filed a properly executed financing statement with the Secretary of State and in the County Clerk's office in Bernalillo County. Sally has a perfected security interest in the hogs.

TRUE

FALSE

9. Any document that meets all of the requirements of a security agreement may be filed as a financing statement.

TRUE

FALSE

10. Sally, who owned an appliance store, sold a 48-inch TV to Dave from her inventory on May 1. Dave purchased the TV for her own personal pleasure. In order to secure the purchase price of \$1,500, she took a security interest in the TV. She has never filed a financing statement. On June 1, Dave sold the TV to Sam's second hand store; a retail store that sells used TVs and appliances. Sam gave him a used TV and \$900 for the 48-incher. On June 10, Sam sold the TV to Betty, who purchased in the ordinary course of business. She put it in her study at home and used it to watch Nash Bridges and other detective shows. Dave has defaulted in his obligations to Sally. Sally has the right to repossess the 48-inch TV from Betty.

TRUE

FALSE

The following fact pattern applies to questions 11 and 12

On May 1, Dave gave a security interest to Big Bank. The security agreement described the collateral as "all of my present and hereinafter acquired inventory." Big Bank filed a financing statement on the same day.

11. On June 1, Dave sold a refrigerator from his inventory to Betty for \$1,200. Betty gave him a check for the purchase price. Dave deposited the check in his general checking account. Assume that the account has always had a balance in excess of \$1,200, Big Bank has a perfected security interest in \$1,200 of Dave's balance.

TRUE

FALSE

12. On June 5, Dave sold an oven from his inventory to Barney for \$1,000. Barney agreed to pay for the oven on August 1. Barney takes free of the Big Bank's security interest in the oven only if he purchased for his own personal family or household purposes.

TRUE

FALSE

13. On August 1, Dave borrowed \$10,000 from Sally giving to her a security interest in all of his equipment. The security agreement contained the following provision: "If Dave defaults and Sally repossesses the collateral, Sally shall have the right to keep the collateral in satisfaction of the debt, and if she elects to do so, no notice to Dave is required." Assuming that Sally properly perfected her security interest on August 1, that Dave defaulted on September 1, and that Sally peacefully repossessed the collateral on September 15, she may elect to keep the collateral in satisfaction of the debt without giving notice to Dave of her election.

TRUE

FALSE

14. On February 1, Dave borrowed \$25,000 from Big Bank and gave to the bank a security interest in all of his equipment. Big Bank perfected on the same day. On March 1, Dave borrowed \$10,000 from Sally and gave her a security interest in the same collateral which she perfected on March 2. On September 1, Dave was in default as to both Big Bank and Sally. Big Bank repossessed the equipment on September 5, and sold it at a commercially reasonable sale on September 20 after having given all the required notices. The equipment was sold for \$40,000, leaving a surplus of \$10,000 after Big Bank was paid everything owing it. Big Bank knows of Sally's security interest, but has never been contacted by Sally. Sally's security interest in the collateral is discharged and Big Bank has an obligation to pay the \$10,000 to Sally.

TRUE

FALSE

15. On May 1, Dave borrowed \$50,000 from Big Bank, giving to the bank a security interest in all of its present and hereinafter to be acquired inventory. Big Bank filed a financing statement on the same day. Dave used the money to purchase new inventory. On June 1, Dave borrowed \$10,000 from Sally giving her a security interest in all of his present and hereinafter to be acquired accounts. Sally perfected on the same day. On August 1, Dave sold a large machine from his inventory to Betty for \$10,000. The machine had been purchased with money advanced by Big Bank. Betty agreed to pay for the machine on December 1. As between Big Bank and Sally, Big Bank has priority in the obligation Betty owes Dave.

TRUE

FALSE

16. On March 1, Dave borrowed \$50,000 from Big Bank, giving to the bank a security interest in all of his present and hereinafter acquired inventory. Big Bank filed a financing statement on the same day with the Secretary of State. On June 1, Sally wishes to sell Dave new inventory on credit. Dave is willing to give her a security interest in the equipment he purchases from her. Sally is advised that there is no way in which she can get priority over Big Bank unless the bank is willing to subordinate its rights to her rights. That advice is correct.

TRUE

FALSE

17. On February 1, Big Bank lent Dave \$10,000. Dave gave the bank a security interest in his equipment and Big Bank filed a financing statement with the Secretary of State on the same day. The security agreement contains a provision reading: "This security interest covers all advances made on this date, any advances made previously, and any obligations of whatever kind Dave owes or may owe Big Bank. However, in no event will Big Bank have any obligation to make future advances" On March 1, Big Bank made a second loan of \$10,000 to Dave. At that time Dave signed no new security agreement and Big Bank did not file a new financing statement. On April 1, Dave borrowed \$5,000 from Sally, giving her a security interest in the same equipment. Sally filed on the same day. On May 1, Big Bank, knowing of Sally's security interest, made another advance of \$10,000. Again, there was no new security agreement and no new filing. On September 1, Dave is in default as to all of the loans. If the collateral is sold for \$25,000 at a repossession sale after Big Bank obtains possession, Big Bank will be entitled to all of the money.

TRUE

FALSE

18. On May 1, Dave stored a part of his inventory in the Whoopy Warehouse. The warehouse issued a non-negotiable warehouse receipt covering the goods. On June 1, Dave borrowed \$10,000 from Sally, giving to Sally a security interest in the goods stored in the Whoopy warehouse. Sally can perfect by filing a financing statement correctly describing the goods located in the warehouse.

TRUE

FALSE

19. On March 1, Dave purchase a computer from Sally giving her a security interest in the computer to secure his obligation to pay the price in 30 days. Dave purchased the computer for use in his business. On March 5, the sheriff levied upon the computer under a writ of execution obtained by Cindy to enforce a judgment that she obtained on February 1. On March 6, knowing of the execution, Sally filed a financing statement for the first time. As between Sally and Cindy, Cindy has priority.

TRUE

FALSE

20. Dave operates his appliance store as a sole proprietorship using the name "OK Appliances." On May 1, Dave borrowed \$5,000 from the Big Bank giving it a security interest in all of his equipment. The Big Bank filed a financing statement in the office of the Secretary of State naming the debtor as "OK Appliances." The Big Bank has a perfected security interest.

TRUE

FALSE

21. On June 1, Dave purchased a 48-inch TV from Sally for use in his home. To secure the purchase price of \$1,500, he gave Sally a security interest in the TV. At the time he lived in Bernalillo County, and Sally filed a financing statement in that county. On August 1 he retired and moved permanently to his vacation house in Taos County. He took the TV with him. Sally's has a perfected security interest in the TV after he moved.

TRUE

FALSE

The following fact pattern applies to questions 11 and 12

On July 1, Big Bank, located in Albuquerque, New Mexico, loaned Devalued Corporation \$100,000 taking a security interest in all of Devalued Corporation's harvesting equipment. Devalued is incorporated in Delaware and has its only offices in Austin, Texas. The harvesting equipment leased to farmers for use in Texas, Oklahoma, New Mexico and Colorado.

22. The harvesting equipment is classified as inventory.

TRUE

FALSE

23. In order to perfect its security interest, Big Bank must file in Texas, Oklahoma, New Mexico and Colorado.

TRUE

FALSE

24. On June 1, Dave purchased a computer from Sally, giving her a security interest in it to secure his promise to pay for it in 60 days. Dave purchased the computer for use in his business and has used it as equipment since buying it. On June 2, Sally filed a financing statement with the County Clerk in Bernalillo County where Dave has his residence and his business. On August 1, Dave was in default. Sally can repossess the computer from Dave.

TRUE

FALSE

25. A trustee in bankruptcy has the right to invalidate an unperfected security interest because the trustee is a lien creditor as of the date the petition in bankruptcy is filed.

TRUE

FALSE

ESSAY QUESTION

Answer in a blue book or on white paper if you type. Remember to limit your answer to about 1250 words and to put your examination number on your answer.

Dave operates the "OK Appliance Store" as a sole proprietorship.

On February 1, Dave borrowed \$100,000 from Big Bank, giving to the bank a security interest in all of his "present and hereinafter to be acquired inventory." Big bank filed a financing statement on the same day with the Secretary of State. Dave used \$70,000 of the money to pay debts he owed to various suppliers, advertising agencies, his employees, and past due installments on his home mortgage.

On February 5, Dave purchased a truck from Dealer, using \$20,000 of the money he received from Big Bank to pay the entire purchase price. The truck is now worth about \$15,000.

On March 1, Dave borrowed \$25,000 from Sally, giving her a security interest in all of his accounts. Sally filed a financing statement in the proper office on March 2.

On March 15, Cindy, a general contractor, entered into a contract with Dave to purchase from him 20 Whilapoop model 150 refrigerators to use in an apartment house he was building. When installed, the refrigerators would not become fixtures. Cindy agreed to pay \$25,000 for them on August 1. She did not give Dave a security interest in them.

Dave did not have these on hand, so he entered into a contract with Supplier to purchase them. In order to pay the purchase price of \$20,000, he used \$10,000 of the money advanced by Big Bank and \$5,000 of the money advanced by Sally. He financed the remaining \$5,000 by a loan from Suedeem, giving her a security interest in the refrigerators to secure his debt to her. Suedeem filed a financing statement in the proper office on March 20 and delivered the refrigerators to her on March 22. On March 25, Dave delivered 10 of the refrigerators to Cindy and still has the remaining refrigerators in his store. When Dave delivered the 10 refrigerators, Cindy told him that she wanted to cancel the rest of the order because the owner had decided to omit the refrigerators in 10 of the apartments. Dave said that was OK by him as long as Cindy agreed to pay her \$2,500 which he said was the profit he would make on those refrigerators. Cindy said she would pay him \$500, but Dave said, "That's not enough."

On April 1, Dave sold a clothes washing machine to Bertha who purchased it for use in her home. Bertha gave Dave a security interest in the machine to secure her

promise to pay for it in installments over the next year. Dave never filed a financing statement. Bertha has missed two payments and is in default.

On June 1, Cathy had the sheriff levy on the truck Dave had purchased on February 1 under a writ of execution she obtained after she received a judgment of \$10,000 based upon a negligence cause of action flowing from slipping on some ice in Dave's store that was on his floor.

On July 1, Dave closed down the repair part of his business and sold all of the equipment he used in it to Rita who agreed to pay him \$10,000 on January 15, 2000.

On December 1, it became obvious to Dave that he was not making a go of his business. He called you and said that he was assigning all of his property to you for the purpose of you sorting out who was entitled to his remaining property. He has left for Fiji to be one of the first people to see the sunrise on January 1, 2000. He does not intend to return.

In addition to the property mentioned above, Dave has the following assets:

1. \$10,000 of obligations owed to him by customers to whom he sold appliances on open credit, *i.e.* customers from whom he did not take a security interest securing their obligations to him.
2. \$10,000 of obligations owed to him by his customers from whom he did take a purchase money security interest in the goods he sold to them.
3. Inventory in his showroom and storeroom worth \$20,000.
4. Cash in the amount of \$5.00.

He has not repaid any of the people to whom he owes debts.

PLEASE DETERMINE HOW YOU WILL DISTRIBUTE DAVE'S ASSETS.
DISCUSS FULLY.