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Exam No. \_\_\_\_\_

**Secured Transactions #523  
Fall Semester 2005**

**UNM School of Law  
Final Examination  
Three Credits**

**Professor Paley  
Friday, December 9, 2005  
9:00 a.m.--150 mins.**

**Examination Format  
Essay Answers**

1. **Laptop** computer users: Start the Securexam program entering your examination number, course name, professor's name, & date of examination. Click "proceed" to enter the program. Type START in the next window that is displayed but do NOT press the enter key until the proctor says to begin the exam. **IMPORTANT: Make sure you answer in no more than the number of lines indicated for each question on the exam.**

2. **Hand-written exams—DO NOT USE BLUEBOOKS. Write your answers directly on the lines provided on the exam itself.**

**On the top of the exam, clearly write your exam number. Do not put your names on the exam.**

A five-minute warning will be given prior to the conclusion of the examination. When time is called, stop immediately. If you are handwriting, lay down your pen & close bluebook immediately. If using a laptop, save & exit the program.

Go to the exam check-in table at the conclusion of the exam & fill out an examination receipt.

**Professor's Instructions Follow**

EXAM # \_\_\_\_\_

The University of New Mexico School of Law

Secured Transactions  
Professor Stewart Paley  
Course 523  
Fall 2005

### FINAL EXAMINATION

**This is a two & one-half hour exam.**

#### GENERAL INSTRUCTIONS

1. Print your student identifier at the top of this page.
2. The exam is contained on pages 1 to 18. **Make sure that your copy is not missing any pages.**
3. **PERMITTED MATERIALS:** You may consult the course materials, any handouts passed out in class, Article 9, other parts of the UCC as appropriate, the Bankruptcy Code, and any notes or outlines which you prepared or which you participated in preparing. You may also use a calculator.
4. The exam consists of 16 short answer questions, as well as a few extra-credit questions. **Read each question carefully.**
5. **SPACE LIMITATIONS:**

UNLESS YOU ARE USING A COMPUTER, ALL ANSWERS SHOULD BE WRITTEN DIRECTLY ON THE LINES PROVIDED IN THIS EXAM, NOT IN A BLUE BOOK.

IF YOU ARE USING A COMPUTER, ALL ANSWERS SHOULD BE TYPED IN THE NUMBER OF LINES INDICATED FOR EACH QUESTION.

Remember, you do not need to use all of the available space.

6. **LAW TO BE APPLIED:**

Article 9, other parts of the UCC, The United States Bankruptcy Code and any applicable state law provisions, as well as any common law contracts concepts that we discussed in class.

**YOU WILL EARN A FEW POINTS FOR CITING TO RELEVANT PORTIONS OF THE UCC OR THE BANKRUPTCY CODE (OR OTHER APPLICABLE LAW) WHENEVER POSSIBLE.**

7. **Write legibly and give all answers concisely.** Discuss all relevant issues in each fact situation. Even if you believe that one issue is dispositive, discuss all other relevant issues anyway.
8. Questions on this exam will inevitably have fewer facts than would be optimal in predicting legal rights. When more information is required, explicitly state your assumptions and indicate why such assumptions are necessary but do not assume any fact inconsistent with those stated in the given fact situation. If the question asks you to suggest additional facts to improve the quality of your prediction, please be comprehensive and imaginative.
9. The suggested time for each question is noted. The suggested time for the exam questions is **130 MINUTES**. The suggested time for each question reflects the relative weight that will be assigned to that question. You have been given **an extra 20 minutes** to peruse the exam and budget your time (for a total of 150 minutes).

**CAUTION! The questions (and lines for answering the questions) sometimes continue on the following page.**

**GOOD LUCK AND BUDGET YOUR TIME.**

1. (5 minutes) Jeff lives next door to Lisa. Jeff loaned Lisa \$1,000 and received a security interest in Lisa's very cool volleyball set, but did nothing else. Lisa hasn't paid as agreed, and Jeff wants to jump the fence and take the set. Describe Jeff's rights and obligations. **[4 lines]**

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2. (5 minutes) In one or two sentences, describe the two most significant benefits to debtors under New Mexico Exemption law. **[3 lines]**

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3. (10 minutes) Fred has substantial assets, but recently got into some trouble. It seems that he has a tractor worth about \$100,000, with a perfected first priority security interest against it of \$80,000. The secured party has repossessed the tractor, and after completing reasonable advertising, is holding a secured party sale. As often happens, the expected proceeds from the sale will be about \$70,000 (after costs).

A. If Fred knows of a place where he can buy a replacement tractor for \$60,000, what should he do and why? **[4 lines]**

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B. If Fred can only buy a replacement tractor for \$75,000, what should he do and why? **[4 lines]**

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4. (15 minutes) Dawn's Disco filed a Chapter 7 case 3 months ago. The company's assets have been liquidated and you've been asked to characterize and calculate the following claims, their order of priority, and the amount of proceeds each will receive. Unless otherwise noted, all claims arose 6 months prior to the bankruptcy filing and no payments have been made.

Rapster is owed \$100,000 from the sale of a "Newwave" sound system it sold to Dawn's. The \$100,000 principal debt is still outstanding. Under the sale contract, interest accrues at 10% per annum;

Big Bank loaned Dawn's \$200,000 in principal, also at 10% interest per annum. The \$200,000 is still outstanding. Big Bank received a security interest in Dawn's existing and future equipment and, on the same day, filed a Financing Statement;

Three months ago, Ralph's sold and delivered an "Oldwave" sound system to Dawn's for \$50,000. The \$50,000 is still outstanding. Ralph's financed the sale, taking back a security interest in the sound system and filed a Financing Statement two weeks later. While not specified in the documents, Ralph's typically charges 6% interest on delinquent debts (which this debt has been since two months prior to the bankruptcy filing).

Dawn's other general creditors are owed a total of \$120,000.

After costs, Dawn's assets generated the following proceeds:

Newwave sound system = \$50,000

Oldwave sound system = \$100,000 (The old stuff appreciates!)

All of the debtor's other equipment = \$105,000

All of the debtor's inventory, accounts, and good-will = \$115,000

**[10 lines]**

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**[Continued]**

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5. (5 minutes) Bobby-Sue and Billy-Joe own their home jointly and are jointly obligated for the following debts: a \$100,000 first mortgage against their home; a \$110,000 second mortgage against their home; and a \$50,000 debt owed to a third creditor who just received judgment and recorded the judgment in the Recorder of Deeds Office for the county in which the home is located. The couple claim New Mexico exemptions.

Assume that the second mortgage holder takes the home to foreclosure sale and, after all costs, there are \$200,000 of proceeds. How will the proceeds be distributed and what rights will the creditors have? **[6 lines]**

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6. (5 minutes) This morning, an old high school friend, Danny the debtor, rushed into your office and pleaded for help. It seems that Danny got a 20,000 loan to purchase a new computer system. Danny gave the lender a security interest in the computer system. Danny fell behind in his monthly payments, the lender repossessed the computer, and after giving proper notice and advertising, just this morning sold the computer at private sale for \$10,000. While Danny's glad he doesn't have to deal with the lender anymore, he now wants his computer back because it brings him "good luck." Danny has now come up cash for the full debt owed to the lender (which debt was \$15,000 before the sale) and wants your help. Advise Danny on his rights and obligations. **[4 lines]**

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7. (10 minutes) Bank One wants to get a perfected security interest in all monies owed to the debtor from its customers and in all of the debtor's various bank accounts. The debtor is a car dealership, that sells cars on a secured and unsecured basis. Explain what your client should do to best protect itself and draft the granting provision for the security agreement, and the collateral description for the Financing Statement.

**[10 lines]**

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8. (10 minutes) Debtor, Darla's Landscaping Business, owns a number of large riding lawnmowers. Recently, Darla's needed some cash so obtained a \$4,000 loan from Larry's Lenders and, in return, granted Larry's a perfected security interest in one of the mowers, a 2005 model XJMs.Kitty. Three months later, Darla's again needed cash so sold the XJMs.Kitty mower to Zeke (for his personal use) at an "informal yard sale" for \$3000. Darla's deposited the \$3000 in its bank account, which already had a balance of \$9,500. Darla's then received a payment of \$2,000, for another job, and deposited that money in the same account. Darla's then wrote business expense checks from that account for \$1,000 (account payables), \$4,000 (rent), and \$2,000 (wages). Darla's then received another job payment of \$4,500, which was deposited in the same account. No other deposits or withdrawals have been made. Larry's hasn't been paid in months, hears about all of this, and goes ballistic! What rights does Larry's have?  
**[6 lines]**

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9. (5 minutes) Recently, you heard about a secured party sale by a first priority secured creditor owed \$90,000 who, although they forgot to give a second priority secured party notice of the sale or the proceeds therefrom (the second being owed \$100,000), otherwise completed a commercially reasonable sale. After costs, the sale of the collateral (a bulldozer) brought \$200,000 and proceeds were distributed. The second priority secured party now wants to exercise all available rights. Advise the second priority secured party. **[6 lines]**

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10. (5 minutes) Danny has an earth moving business which owes its lender \$90,000, secured by a first priority security interest against the company's bulldozer (which is also worth \$90,000). Although the company is still operating, it has just filed a Chapter 11 bankruptcy case. Interest owed to the secured party is paid current and the company proposes to continue doing so. However, the entire debt, by its original terms, came due last week just before the bankruptcy filing. The company needs to use the bulldozer, but you've heard the judge is likely to grant the creditor's motion for relief. What are two facts you probably don't know about that would justify this result and under what law would this result be justified? **[3 lines]**

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11. (5 minutes) Fred Hart and Ted O. are out having lunch. Fred needs \$200 and doesn't have time to hit the bank. Ted happens to have the cash on him, so he loans it to Fred. Fred promises to pay it back next week. While talking, Ted also mentions that he's doing a big CLE in a few days, and admires Fred's sharp looking watch. Fred hands it to Ted and says, "Go ahead and hold onto it. You'll look great and I know you'll keep it safe." Ted says thanks and proudly wears the watch. One week later, Fred fails to pay as agreed, but says, "I'll definitely pay you next week. In the meantime, I need my watch back." Ted replies, "Sorry Fred, but you taught me well; the watch is "goods" and I'm perfected. The watch stays with me until I've been paid." Fred huffs and blurts out: "That's just SO wrong dude!"

Who's right and why? **[4 lines]**

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12. (15 minutes) On December 1<sup>st</sup>, Big Bank made a \$100,000 loan to the debtor to be secured by the debtor's equipment. Big Bank's security agreement and Financing Statement (which was filed on December 20<sup>th</sup>) read: "Debtor hereby grants secured party a security interest in all of the Debtor's equipment."

Previously, on November 5<sup>th</sup>, debtor signed a security agreement in favor of Little Bank and authorized the filing of a Financing Statement, both of which read: "Debtor hereby grants secured party a security interest in all of the Debtor's property and assets of every kind and nature whatsoever, including all of Debtor's presently owned and hereafter acquired property and assets and all replacements, substitutions, and accessions thereto and thereof." Little Bank filed the Financing Statement on November 5<sup>th</sup>. On December 30<sup>th</sup>, Little Bank made a \$200,000 loan to the debtor.

On December 25<sup>th</sup>, BankEast made a \$150,000 loan to the debtor also to be secured by the debtor's equipment. BankEast's security agreement and Financing Statement (which was filed the same day) read: "Debtor hereby grants secured party a security interest in all of the Debtor's present and future equipment." The BankEast security agreement has no future advance provisions.

On January 5<sup>th</sup>, debtor's equipment vendor delivered a bulldozer to the debtor. The equipment vendor provided \$200,000 of financing for the bulldozer, and the debtor signed a security agreement. The vendor's security agreement and Financing statement (which was filed on January 20<sup>th</sup>) read: "Debtor hereby grants secured party a security interest in a 2005 CAT 1000HP bulldozer, serial #1000MsKitty." The vendor's description of the bulldozer has the correct make, model & serial number.

On February 1<sup>st</sup>, BankEast made an additional \$100,000 loan to the debtor. The debtor signed a new security agreement for the loan, with the same granting provision as before, but BankEast did not ask for or file a new Financing Statement.

Six months later, the debtor went out of business and creditors began to fight. Assume the debtor was current on all of its interest payments to creditors. Also assume that except for the bulldozer, all of the debtor's other equipment was purchased before November 1<sup>st</sup>. All of the debtor's equipment is worth \$575,000 (with the majority of that value being the CAT bulldozer worth \$400,000).

In what order of priority, and for what amounts, will the creditors be paid and why?  
**[10 lines]**

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**[Next Page]**

13. (10 minutes) Long, long, ago, in a faraway land (but still governed by the UCC), three creditors made three loans to a debtor secured by one piece of the debtor's business equipment. Without the creditors' approval, the debtor recently sold the equipment to Jenny for \$10,000. The debtor, as often happens in fairy tales of this kind, has disappeared with the cash. It's now today's date, and the creditors disagree about legal rights and priority issues, and Jenny maintains that she's not involved in this dispute ("I didn't know about these guys, so it's not my problem, man"). The creditors and Jenny have sought your sage advice to sort out this mess. Please advise.

Creditor One made a loan, got a signed security agreement, and filed a Financing Statement on January 1, 1996. On March 1, 2001, Creditor One filed a new Financing Statement.

Creditor Two made a loan, got a signed security agreement, and filed a Financing Statement on March 1, 2000.

Creditor Three made a loan, got a signed security agreement, and filed a Financing Statement on February 1, 1999. On November 1, 2003, Creditor Three filed a Continuation Statement.

All Financing Statements and security agreements were complete, filed, and accurately described the equipment. **[6 lines]**

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14. (10 minutes) You represent a client that made loans to two different debtors. Each loan was secured by all of the debtor's inventory, accounts, and equipment. You prepared a Financing Statement for each loan with all required information and did so correctly. Your paralegal then brought them to the filing office with the required filing fees. Unfortunately, the filing officer was having a "bad hair day." As to the first Financing Statement, The filing officer accepted it for filing and filed it, but indexed it under the wrong (and very different) debtor name. As to the second Financing Statement, the filing officer just apparently hit his breaking point and tossed it back to your paralegal saying simply: "I'm just not accepting this!"

It's now six months later and you've just learned about these events. For each Financing Statement, assume two different scenarios and advise why the Financing Statement is or isn't effective. **[8 lines]**

Scenario I: A subsequent secured party lent against the same collateral after conducting a UCC-1 search and finding no filings;

Scenario II: A subsequent lien creditor challenges the priority of your security interest after they also conducted a UCC-1 search and found no filings.

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15. (10 minutes) Debtor borrows \$100,000 from Big Bank. Big Bank’s security agreement allows but does not require future advances, and grants a security interest in all of debtor’s present and future equipment. Big Bank perfects by filing a Financing Statement on January 1<sup>st</sup>.

On July 1<sup>st</sup>, Debtor purchases a new printing press from Seller. Seller finances \$150,000, being a portion of the purchase price for the machine, and receives a security interest in the printing press. The printing press is delivered to the Debtor on July 10<sup>th</sup>, and Seller files its Financing Statement against the press on July 30<sup>th</sup>.

On June 30<sup>th</sup>, one of the Debtor’s general creditors obtains a judgment for \$75,000 against the Debtor. On July 20<sup>th</sup>, the creditor has a writ of execution issued and causes the sheriff to levy against all of the Debtor’s equipment.

Big Bank knows about the levy, but still makes two additional loans to the Debtor to be secured by the Debtor’s equipment. One loan made on August 25<sup>th</sup> is for \$25,000, and the other loan made on September 30<sup>th</sup> is for \$30,000.

If the Debtor’s only assets were the printing press and other assorted equipment, and the Debtor was liquidated today, explain how the proceeds would be distributed?

**[10 lines]**

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16. (5 minutes) Your client, Francis Factor, wishes to purchase all of the accounts of Dave's Shoe Store. Francis consults you. You check the filing records and find that a Financing Statement has been filed by Big Bank claiming a security interest in all of Dave's inventory. What will you advise Francis? **[3 lines]**

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**[Next Page]**

**Extra Time? Extra-credit**--Classify, in Article 9 language, each of the following items of collateral:

A. Wrapping paper used for free gift wrapping at Borders Bookstore:

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B. The three-story slide into the pool at the Tamaya Resort:

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C. A lottery ticket you just bought at 7-Eleven:

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D. The customer lists of Microsoft:

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E. Unpasteurized milk in the hands of a dairy farmer:

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F. Those big, fluffy, luxurious towels at the Tamaya Resort & Gift Shop:

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G. A bulldozer in the hands of \_\_\_\_\_:  
[How many can you justify?].

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**The End—Have a Great Break!**