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STUDENT IDENTIFIER: _____

The University of New Mexico School of Law

Bankruptcy
Professor Nathalie Martin
Course 629

FINAL EXAMINATION

This is a three-hour exam. However, you have been given an extra 30 minutes to complete the exam, for a total of three and a half hours.

INSTRUCTIONS

1. Print your student identifier at the top of this page.
2. The exam is contained on pages 1 to 14. **Make sure that your copy is not missing any pages.**
3. **PERMITTED MATERIALS:** You may consult only the casebook, any handouts I passed out in class, the Bankruptcy Code, and any notes or outlines which you prepared or which were prepared by a study group in which you participated actively.
4. The exam consists of one 50-minute essay question, which should be answered in a bluebook, and fifteen short answer questions, which must be answered in the space provided directly on this exam. Please turn in the bluebook containing your answer to the essay question, along with this copy of the exam. You must turn in both portions of the exam in order to pass this course. **Don't forget to put your student identifier on your bluebook as well.**
5. **SPACE LIMITATIONS:**
 - a. **ALL ANSWERS TO SHORT ANSWER QUESTIONS:**
Put your answer to the short answer questions directly on the lines provided in this question booklet, not in the blue book. You may be penalized if you exceed these space limitations. Assess the total space available before you start writing.
6. **LAW TO BE APPLIED:**

The United States Bankruptcy Code (1999 version), and any New Mexico Statutes distributed in class.

YOU WILL EARN EXTRA POINTS FOR CITING TO RELEVANT PORTIONS OF 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 fact situation given. 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 times total **180 MINUTES**. The suggested times reflect the relative weight that will be assigned to each question.

GOOD LUCK AND BUDGET YOUR TIME!

Essay question (50 minutes)
Please answer this question in a bluebook.

Donna Karan, who recently moved to New Mexico, had a tough year this year and is considering what to do about her poor financial condition. This past year she was sued by Calvin Klein for stealing his designs, and despite very little law in his favor, Calvin has obtained a judgment against Donna in the amount of \$1,000,000. Donna's lawyer in the case filed a notice of appeal within the filing deadline, but is not going to do much more work on the case unless and until Donna gives her a bigger retainer.

Earlier this year, a fashion fan got too close to Donna and Donna slugged him, resulting in a \$80,000 judgment which she did not appeal. She owes back taxes in the amount of \$50,000. Donna also owes \$50,000 in fashion school student loans and \$20,000 in past due alimony to her ex-husband. In addition to these amounts, she owes about \$60,000 to suppliers, credit card companies, the landlord of her place of business, and phone and utility companies. Donna lives in a home worth \$800,000, with a \$700,000 mortgage on it.

Other than the house, Donna doesn't have many assets. She just has her car (described below), two mixed breed dogs and six closets full of beautiful clothes, probably worth around \$30,000 on the second-hand market. Donna also has scraped together about \$20,000 in cash, which she thought could be a retainer for a bankruptcy lawyer, a lawyer to handle the Calvin Klein appeal, or both.

Donna is six months' behind on her mortgage payment, which runs \$6,000 per month. She's pretty much current on her car payment of \$500 per month. Her car is an eight-year old Range Rover worth \$10,000, on which she owes \$15,000. Donna thinks her income will be something like \$14,000 per month during the next several years, but her income has gone up and down so much that she says this is hard to predict.

Explain Donna's options under Chapters 7 and 13. Is she eligible for each of these types of bankruptcy? Which would be better for her? Which debts are dischargeable under each Chapter? Which assets can she keep in each situation, and if she files under Chapter 13, what must her plan provide with respect to the various creditor claims? Can she propose a confirmable Chapter 13 plan? What should she do with the \$20,000 in cash?

In a sentence or two (please do not overemphasize this part of the question), what do you think filing a petition under Chapter 11 would do for Donna, if anything?

1. (15 min.) You are the bankruptcy trustee in Billy Carter's bankruptcy. Billy was once successful in his sole proprietorship peanut farm, but has now fallen on hard times. You have \$35,000 to distribute and the following claims: \$30,000 in garden-variety general unsecured debt, \$3,000 in income taxes per year for the past five years, for a total of \$15,000, a \$20,000 judgment in favor of the debtor's ex-wife (it is unclear what this is for so figure the calculations based on both reasonable assumptions), \$3,000 in trustees fees and auctioneer's costs, \$2,000 in claims to farmers for grain products, \$2,000 in post-petition property taxes due for the unencumbered assets of the estate, \$2,000 for debtor's counsel's bankruptcy fees, and \$6,000 due to his hired hand for her work done during the month preceding the filing. Who gets what and in what order, making reference to the appropriate Code Sections?

2. (15 min.) Our client Karl Klutz is really mad. His company, Klutz's clutches, has been doing business on an unsecured basis with Albuquerque Foreign Auto for 30 years. In fact, he has been supplying parts to Albuquerque Foreign Auto (AFA) since it opened its doors 20 years ago and he and AFA's principal have become friends. Lately though AFA has been slow about paying its invoices. Sometimes Karl has had to call to get paid. Right now, AFA owes Klutz \$15,000, a very large sum for Klutz. Today Karl was making a deposit at First State Bank and he saw the principal of AFA in a conference room with three bankers and some other people. When he asked what all the people were doing behind closed doors, he learned from the teller that AFA was pledging all of its assets to First State Bank. According to the teller, they've got "some trouble going down over there, have been late paying our unsecured loans, and you know, we just can't do business like that any more. We need to protect ourselves or the regulators will get us."

Klutz was not pleased to learn that First State Bank would now have a first lien on everything at AFA, including all the parts that Klutz had supplied. Klutz is in your office and wants to know if there is anything he can do about this. What questions must be answered before you can decide what if anything can be done about this situation? How will you get this information? Based on the answers to those questions, what legal action can be taken in this situation, what exactly would be accomplished and what are the risks involved in taking the action you propose?

3. (10 minutes) Valley Bank and Trust holds a properly filed mortgage against La Posada Square, which is owned by Bill and Hillary, L.P. (BHLP), which also owns a number of other office buildings in Albuquerque. BHLP is now in Chapter 11 and at the time of the filing, owed Valley Bank and Trust \$500,000, with interest accruing at a simple interest rate of 12% per annum, secured by a properly recorded first mortgage on La Posada Square. Little Rock Savings and Loan (Little Rock) has a properly recorded second mortgage on La Posada Square. Its debt at the time of the filing was \$400,000, also with interest accruing at 12% per annum. BHLP is marginally maintaining La Posada Square, but there are many nicer and newer buildings in the same area, making it difficult for BHLP to maintain its tenant base.

Both creditors have moved for relief from the automatic stay on the basis of lack of adequate protection.

(a) If the Court finds the value of Liberty Place to be \$800,000, which Lender has a better chance of success on its motion? Explain fully.

(b) What facts are necessary to better forecast the likelihood of success for *that* particular motion?

(c) Does either lender have any other grounds for lifting the stay? What additional facts would you like to know?

4. (5 min.) Using the facts from the prior question, what can Valley Bank expect to receive in the debtor's Chapter 11 case, assuming that a plan is filed six months after the bankruptcy filing and assuming unsecured creditors are receiving \$.10 on the dollar. Calculate the amounts to the extent possible and describe any additional amounts to which Valley Bank is or is not entitled.

5. (5 min.) Under the same scenario, what can Little Rock expect to receive under the same plan? Calculate the amount to the extent possible and describe any other amounts to which it is or is not entitled.

6. (5 min.) Name several things that one should negotiate when settling a motion to use cash collateral by stipulation.

7. (15 min.) Dion Sanders was so jealous of teammate Emmitt Smith's solid gold two-carat diamond ring commemorating a recent Superbowl win, that he offered Emmitt \$20,000 for the ring. Since Deion's credit had been spotty, Emmitt took back a perfected security interest in the ring. Deion agreed to pay the \$20,000 with interest over five years. Two years into the deal, however, Deion has yet to make a single payment, making Emmitt so mad that it is interfering with his game. Deion has recently come to you about his failing financial condition. He'd like to file for bankruptcy, and in addition to his other issues, he is particularly interested in knowing whether he can keep the ring, which he recently had appraised for \$8,000. Explain his options under both Chapter 7 and Chapter 13. If this were the only issue in the case, which Chapter would work better for him?

8. (5 min.) Same facts as in number 7 above, but now assume that Emmitt's security interest was never perfected in the ring. What Chapter should Deion file under and what treatment will Emmitt get?

9. (10 min.) When Gary Johnson announced his policy on the legalization of drugs, many political supporters pulled the plug on funds to Johnson. Unfortunately, he ended up over his head in unexplained debts to unknown persons for things he'd rather not discuss. He has decided to file for Chapter 7. His assets include \$40,000 in equity in the house he owns with his wife, \$20,000 in books, computer equipment, business assets and other tools of trade, \$4,000 worth of equity in a car, two horses, two dogs, and a \$100,000 pension. Should he elect to use the New Mexico exemptions or the Federal exemptions and what will he lose under each?

10. (5 min.) A guy who operates a cash business on the corner of Central and Zuni says Johnson owes him \$10,000 for a series of corner transactions. Is this debt dischargeable in either a Chapter 7 or a Chapter 13?

11. (5 min.) What if, to avoid public concern and confusion, Johnson decided not to list this gentleman on his bankruptcy schedules? Does this change the creditor's position?

12. (5 min.) You represent Mac in his divorce action. The two of you are in your office preparing for a hearing scheduled for tomorrow morning on Mac's motion for interim alimony payments from his soon-to-be-ex-wife Maggie. Maggie's lawyer just called to say that the hearing has been called off because Maggie has just filed for bankruptcy. What advice do you have for Mac, based on the specific provisions of the Bankruptcy Code?

13. (10 min.) Explain the legal controversy involved in the role-play involving Video Excitement, Inc., including the role of key facts in the case, and explain what would have been the toughest part about ruling in the case from the judge's perspective.

14. (10 min.) Answer the following questions, based on the Supertech Computers role-play problem that we worked on in class at length.

(a) What factual and legal determinations was the court required to make when ruling on the debtor's motion? Cite the Code whenever possible.

b) If you could change one fact in the case, that would have changed the way the court ruled in that case, what one fact would you change and how would the ruling have been different?

(c) Put yourself in the role of the judge in that case. What would be the hardest thing about ruling in this case? Again, use your Code to the extent possible.

15. (10 min). David Dodd just filed for Chapter 13 and wants to propose the following plan: Class 1: 15% over three years to general unsecured creditors (which include credit card companies, a bank with a judgment against Dodd for knowingly borrowing money based on a false financial statement, and Dodd's ex-wife), and Class 2: 100% over three years to the taxing authorities and to the creditor who gave him his student loans. Advise David regarding whether his plan complies with the requirements of Chapter 13, based on the few facts you know.

THE END! HAVE A NICE HOLIDAY!