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EXAMINATION NUMBER: \_\_\_\_\_

The University of New Mexico School of Law

629 Bankruptcy  
Professor Nathalie Martin

Wednesday, December 4, 2002  
9:00 a.m. – 12:30 p.m.

### FINAL EXAMINATION

**This is a three hour exam. However, you have been given an extra half hour 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 case book, 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 18 short answer questions, which must be answered in the space provided directly on this exam.
5. SPACE LIMITATIONS:
  - a. ALL ANSWERS TO SHORT ANSWER QUESTIONS: Put your answer to the short questions directly on the lines provided in this question booklet, not in the blue book. You may have only one line of writing per line and may write only on the line (not in margins, etc.) You will 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 (2001 version or later), and any New Mexico Statutes distributed in class or in your mailbox.

**YOU WILL EARN EXTRA POINTS FOR CITING TO RELEVANT PORTIONS IF 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!

1. (10 minutes) How should the trustee in Wynona Judd’s bankruptcy case distribute the \$100,000 he collected from the sale of her non-exempt assets, when the claims are: \$20,000 in property taxes for the past two years, \$10,000 in wages for her three security guards, \$15,000 for the trustee’s fees and the costs of sale of her non-exempt property, \$10,000 for her ex-husband’s past due support payments, and \$160,000 in unsecured claims. Who gets what first, and what distribution will unsecured creditors get?

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2. (5 minutes) What facts might suggest that a debtor should not have to pay back a student loan due to undue hardship?

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3. (5 minutes) What facts suggest that a debtor should or should not have to pay back a property settlement claim from a divorce decree? Does it matter whether the debtor files a Chapter 7 or a Chapter 13?

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4. (2.5 minutes) The reason that the Fair Debt Collections Practices Act has no teeth is that

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5. (15 minutes total) Ringo Starr purchased an antique record collection for \$50,000 from his friend Yoko Ono. He bought the collection on credit and she took back as security interest in the collection. He never made a payment and is now contemplating filing for bankruptcy. He absolutely wants to keep the collection. At your request, Ringo had the collection appraised and the appraisal came in at \$35,000.

- (a) (5 minutes) What are Ringo's options in a Chapter 7?

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- (10 minutes) What would a Chapter 13 do for Ringo with respect to the record collection? Be very specific about what he would be required to pay Ms. Ono. Also, advise him about any potential downsides to filing a Chapter 13, which could outweigh any benefit with respect to the record collection.

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6. (5 minutes) What facts would indicate to a court that a Chapter 13 plan was not filed in good faith? If this were found, what would be the ramifications?

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7. (60 minutes total) Las Poblanos Retirement Village is a Senior Living Facility on the West Mesa. It's building was financed through a start-up loan from Farmer's Bank in the amount of \$1.5 million, which accrues interest at 12% per annum, and which is payable in monthly payments over 30 years. Las Poblanos later expanded and took out a second loan on essentially the same terms from Prudential Life Insurance Company, in the amount of \$750,000. Unfortunately, the expansion efforts failed because of cost overruns and now Los Poblanos is having trouble charging enough of its residents to cover all these extra debt payments. Recently, it filed for Chapter 11. Both lenders have moved for relief from the automatic stay. The debtor's recent appraisal shows a value for the facility of about \$2.5 million. However, this appraisal was taken almost a year ago, before the building started showing signs of age and tight cash flow. Moreover, the irrigation system recently broke, leaving gaping holes in the landscaping. The debtor does have some accounts receivable and some inventory and equipment, worth about \$300,000, which it has not pledged for any loan.

(a) (10 minutes) Describe Farmer's Bank's chance of success on its motion for relief, on all the applicable grounds. Assume any facts necessary to do your analysis, which are not inconsistent with what is stated here.

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(b) (10 minutes) Describe Prudential's chance of success on its motion for relief, on all the applicable grounds. Are its chances better or worse than Farmer's? Assume any facts necessary to do your analysis, which are not inconsistent with what is stated here.

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(c) (10 minutes) If you were the debtor's counsel, how would you prepare for the motion? Would you try to settle it, and if so, with whom, when and how?

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(d) (10 minutes) For this question only, now assume that both lenders did appraisals and that both came in at \$2 million on the nose. As a result, the court found this to be the value of Las Poblanos' physical facility. Assume Farmer's incurred \$25,000 in attorneys' fees in the six months following the filing and that at that point, the debtor confirmed a Chapter 11 plan. How much is Farmer's allowed secured claim?



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(e) (10 minutes) Again, assuming a value of \$2 million for the building and assuming that Farmer's has the secured claim calculated above, what is the amount of Prudential's allowed secured claim. Prudential has incurred \$40,000 in post-petition attorney's fees and also gets 12% per annum under its contract. Assuming that unsecured creditors are getting 10%, what is the total amount that Prudential will get under the plan? Be very specific.

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(f) (5 minutes) Once the plan is confirmed, can these creditors expect to get the contract rate of 12% in interest on their claim during the life of the plan? Explain fully.

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(g) (5 minutes) What seems to be the biggest long-term rehabilitative benefit that Las Poblanos will get by filing for Chapter 11 here? Be specific. The answer is not "improved cash flow."

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8. (5 minutes) Describe three things to negotiate in cast collateral stipulation.

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9. (2.5 minutes) The difference between cash collateral and post-petition financing is

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10. (20 minutes) Following his job at Enron, Ken Lay ultimately got a job working as a salesperson for annuities. Unfortunately, the company he was working for was operating a huge ponzie scheme and a group of class action plaintiffs now have a \$2 million judgment against him based on fraud. He owns only one house now which is located in New Mexico, the state where he now lives. The home is worth \$850,000 and he has two mortgages on it, a first in the amount of \$500,000 and a second in the amount of \$200,000. He owns two upside down cars (i.e., the secured debt on each exceeds the car's value) and about \$100,000 worth of antiques and Indian art. His other unsecured debts are about \$100,000. He makes about \$10,000 a month in his current job as a stock broker, and his expenses are about \$7,000 a month including his house payments. Explain the benefits and detriments to him of a Chapter 7 versus a Chapter 13. Is he eligible for both? Advise him about what he's have to pay to whom in order to confirm a plan.

(lines begin on next page)

11. (5 minutes) Bonnie Raitt just called in a panic. Her ex-husband has just filed for bankruptcy (she's not sure what chapter) and she has a child support hearing scheduled against him for tomorrow. Her music is in a slump and she really needs the money. Is this action stayed, as his attorney has told her? What do you advise that she do?

12. (5 minutes) The legal issue in Video Excitement was

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and the most important factual issues were

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13. (5 minutes) The legal issue in Supertech Computers was

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and the most important factual issues were

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14. (5 minutes) In Supertech, the court rules that

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15. (10 minutes) Your client, Linda Padilla, is a divorced grandmother who supports her two grandchildren, whose mother recently dies in a car accident. Linda makes \$2,600 a month working as a secretary for a law firm. She is 8 months behind on her mortgage payments of \$600 a month. Her monthly expenses are as follows:

Mortgage	\$600
Car payment/insurance	\$200
Catholic school for the girls	\$300
Food	\$500
Medical costs	\$400
Soccer lessons for one girl	\$100
Counseling for the girls	\$100
Utilities	\$200
Savings	\$100

She has minimal non-exempt assets. Can she confirm a plan? What possible impediments do you see? Would your analysis change if, rather than being killed in a car accident, Linda takes care of her grandchildren because her daughter, their mother, is in rehabilitation for drug abuse?

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16. (5 minutes) Making it easier for creditors to collect their debts could improve the economy by

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17. (5 minutes) Making it more difficult for creditors to collect their debts helps fueled the economy by

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18. (10 Minutes) Will Smith lent money to Our Way Recording Studio, a fledgling business. Its assets consist mostly of studio recording equipment and inventory in the form of CDs, DVDs, reels and office supplies. Our Way defaulted on the loan and Will obtained a \$50,000 judgment. He sent his writ to the sheriff's office on December 1<sup>st</sup> and December 10<sup>th</sup>, the sheriff went to the studio to execute. Because they were in the middle of a record cut, he decided not to disturb them. Instead he posted the following on the door: "Do not remove any item from this studio. These assets are now under the control of the Sheriff's Office of the City of Hollywood. Signed, Deputy Sheriff." On December 15, MC Hammer sent a writ to the same office for his judgment in the amount of \$25,000. A different deputy sheriff went to execute on it the next day, by unplugging the telephone and all the other equipment, and loading all but the big stuff in his truck. He posted big signs all over the big stuff, saying that they were the property of the sheriff. He then drove off. The sheriff sale brought about \$50,000 in proceeds. Who gets what and why?

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**[END OF EXAMINATION]**

**Have a great break!**