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EXAMINATION NUMBER: _____

The University of New Mexico School of Law

Bankruptcy
Professors Nathalie Martin
and Frederick Hart
Course 629

Friday, December 12, 2003
9:00 a.m. – 12:30 p.m.

FINAL EXAMINATION

This is a three hour exam. However, you have been given an extra half an 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 casebook, any handouts we 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 12 short answer questions, which must be answered in the space provided directly on this exam, unless you are using a computer.
5. SPACE LIMITATIONS:
 - a. **Hand-written exams:**

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 have only one line of writing per line and may write only on the line (not in margins, etc.) You may be penalized if you exceed these space limitations. Assess the total space available before you start writing.

b. Computer Exams:

If you are taking the exam by computer, you can use two-thirds the number of typed lines provided. If you are doing this, we suggest that you type out your answers and then save 10 minutes at the end to shorten answers that are over the limit.

6. LAW TO BE APPLIED:

The United States Bankruptcy Code (2002 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 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!

1. (10 minutes) How should the trustee in Carson Daly's bankruptcy case distribute the \$50,000 he collected from the sale of Carson's non-exempt assets, when the claims are:

- property taxes from 1999 and 2000, in the total amount of \$40,000
- income taxes in the total amount of \$10,000 from 2002 and 2001
- his bankruptcy attorney in the amount of \$1,000
- student loans in the amount of \$40,000
- credit card bills and medical bills in the amount of \$20,000
- the trustee's fees and costs of sale for \$3,000
- payments for his ex-wife, at \$3,000 a month, due for the past three months, and .
- wages for his three security guards for \$15,000, for work done in the past month.

Who gets what first, and what percentage distribution will the unsecured creditors get?

2. (10 minutes) Clyde Claussen is having a bad month, following the slow death of his e-business. He has few assets and piles and piles of unsecured debts. In addition, he tells you, he had been accused of criminal battery, the trial for which is scheduled for next week. He is also way behind on his rent and the landlord has threatened eviction. He has a paternity suit pending that is scheduled to go to trial tomorrow. Moreover, the utilities

have threatened a shut off. To top it all off, his doctor is threatened to bring him to court for some past-due medical bill. He wondered what a bankruptcy might do to allay the pressure of all these concerns. What should you tell him? Will the relief last?

3. (10 minutes) Jack and Marie Black own a home in Albuquerque worth \$200,000, with a \$150,000 mortgage on it. Their other assets consists of \$20,000 in savings accounts, \$30,000 in furniture and household goods, and \$200,000 in an ERISA-qualified 401(k) plan. Life looked good until Marie invested in millions of dollars of bad real estate deals, all of which have resulted in huge judgments against the couple. If they have no regular income, but would like to file a Chapter 7, which exemption scheme should they choose?

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4. (5 minutes) What would Jack and Marie Black from the prior question, get to keep in their Chapter 7 case if they lived in Delaware rather than new Mexico? What do you recommend that they choose to keep?
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5. (30 minutes total) Fred loaned Nathalie \$10,000, interest free, and Nathalie agreed to pay the loan back at \$1,000 a month. The payments were to start in September of 2003. At the time of the loan, Fred took a security interest in Nathalie's new plasma television, which she had purchased in August with her credit card. She paid \$5600 for the television, and Ballio's now says it would pay \$3,200 for it if it were to buy it used. Nathalie has made no payments to Fred and Fred just found out that she has filed a Chapter 7 bankruptcy.

- (a) (10 minutes) What should Fred do now? What are his chances of getting his loan paid back and how will he go about doing this, if he can?
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(b) (5 minutes) What are Nathalie's options if she would like to keep the television in her Chapter 7 case? Be specific about what she would have to pay to Fred, when and under what terms?

(c) (10 minutes) What would a Chapter 13 do for Nathalie with respect to the television? Be very specific about what she would be required to pay Fred.

6. (5 minutes) Jackie owns an auto supply store in Albuquerque. On October 1, Ace supplies obtained a judgment against her company, and delivered its writ to the sheriff's office the same day. On October 10, Penzoil got a judgment. On October 15, CarStore got a judgment. Each judgment was for \$10,000. CarStore delivered its writ to the sheriff on October 16, and it was executed on October 17. Ace's writ was not executed until October 20, the day before the sheriff's sale of all of the store's supplies. The sale yielded \$15,000. Who gets the dough?

7. (45 minutes total) Red Lightning Ski Resort is an Olympic-style ski resort found right here in New Mexico. It's facility was financed through a start-up loan from Farmer's Bank in the amount of \$2.5 million, which accrues interest at 12% per annum, and which is payable in monthly payments over 30 years. The resort pledged the entire facility as collateral for this loan. The resort recently 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 Red Lightning is having trouble making a go of it. There has been little snow the past few seasons, exacerbating its financial troubles. Recently, Red Lightning 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 \$3.5 million. However, this appraisal was taken almost a year ago, before the facility starting showing signs of deferred maintenance and tight cash flow. Moreover, the snow-making system recently broke, leaving gaping holes in the landscaping, where leaking water wiped out huge swales of trees and grass.

(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.

(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

Farmers'? Assume any facts necessary to do your analysis, which are not inconsistent with what is stated here.

- (c) (10 minutes) For this question only, now assume that both lenders did appraisals and that both came in at \$3 million on the nose. As a result, the court found this to be the value of Red Lightning's facility. Assume Farmer's incurred \$50,000 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? How much will Farmer's get in total under the Chapter 11 plan and under what terms, assuming a payout period of the allowed claim of 10 years and a present value rate of 10% per annum.

(d) (10 minutes) Again, assuming a value of \$3 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 attorneys fees and also gets 12% per annum under its contract. Assume that Prudential's allowed secured claim will be paid out over 10 years, at a present value rate of 10% per annum, and also assume that unsecured creditors are getting 10%. What is the total amount that Prudential will get under the plan. Be very specific.

(e) (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.

8. (5 minutes) Jose Padilla owns a home worth \$100,000, with a \$80,000 mortgage on it. He was just found liable in a car accident and wants to know if the judgment holder can force the sale of his home. Can he? Does Jose need a bankruptcy?

9. (45 minutes total) The Romero's are in financial trouble, due to Mr. Romero's recent illness and unemployment. Both are working now and bring in a total of about \$2,000 a month, net.

(a)(10 minutes) They have a mortgage payment of \$500 a month, which is now 10 months in arrears. Explain the total payments that the Romero's will have to pay for their home during a Chapter 13 plan. Calculate the payments based upon both a three year and a five year plan, with present value interest of 10% if applicable.

(b)(10 minutes) The Romero's also have a car on which they are ten months behind. The car payments are \$350 a month. Currently, they owe \$12,000 on the car, which is worth \$5,500 according to nada.com. Explain how much the Romero's would have to pay on this car in a Chapter 13 plan. Calculate the payments based upon both a three year and a five year plan, with present value interest of 10% if applicable.

(c)(10 minutes) The Romero's also owe income taxes for the past two years in the amount of \$20,000 (\$10,000 per year) and property taxes in the amount of \$20,000 (also \$10,000 per year) for the past two years. How much are they required to pay for these amounts in their Chapter 13 plan? Calculate the payments based upon both a three year and a five year plan, with present value interest if it is necessary.

(d) (5 minutes) The Romero's net monthly take-home pay is \$2,000. In addition to all the usual expenses, their life insurance costs are \$300 a month. Do you think they can confirm a Chapter 13 plan? Why or why not?

(e)(5 minutes)The Romero's filed a Chapter 7 in which they obtained a discharge two years ago. Does this change your answer or its reasoning?

(f) (5 minutes) Mr. Romero was convicted of battery with a deadly weapon last year, and one unsecured creditor has a \$50,000 judgment resulting from this battery. Does that change your answer or your reasoning?

10. (10 minutes) Your client, Alex Linden, is a divorced father who supports and has custody of his two young children, whose mother recently died in a car accident. Alex makes \$3,000 a month working in the copy center of a large accounting firm. He is 8 months behind on his mortgage payments of \$800 a month. His monthly expenses are as follows:

mortgage	\$800
car payment/insurance	\$200
Alb. Academy(after scholarship)	\$100
food	\$500
medical costs	\$600
soccer lessons for one girl	\$100
counseling for the girls	\$100
utilities	\$200
savings	\$100

He has minimal non-exempt assets. Based on the very little that you know about his situation, can he confirm a plan? What possible impediments do you see?

11. (5 minutes) Carol Cole recently purchased a new computer, scanner, and printer on her credit card, for \$1,300. She has now come to see you and needs to file a liquidation bankruptcy immediately. Is there any risk that she will have to pay for the computer in her bankruptcy?

12. (5 minutes) After Carol saw you and filled out her bankruptcy paperwork, but before you filed her petition with the court, she charged another \$200 worth of food and medical supplies to her card. Is there any risk that she will need to pay this amount back?

[END OF EXAMINATION]