

STUDENT IDENTIFIER: _____
(Exam #)

The University of New Mexico School of Law

Bankruptcy
Professor Nathalie Martin
Course 629
Spring 2005

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 15. **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 21 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. ALL ANSWERS TO SHORT ANSWER QUESTIONS: Unless you are using a computer, please put your answer to the short answer questions directly on the lines provided in this question booklet, not in the blue book. THE SPACE OFTEN CONTINUES TO THE NEXT PAGE!!.
6. **LAW TO BE APPLIED:**

The United States Bankruptcy Code (Make sure you use the 2004 or 2005 version!) and any applicable state law provisions, as well as any common law contracts concepts that we discussed in class.

YOU WILL EARN 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 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 times total **180 MINUTES**. The suggested times reflect the relative weight that will be assigned to each question.

GOOD LUCK AND BUDGET YOUR TIME!

6. (10 min.) Kylie Klein, operating as Klein Construction, has just filed a Chapter 7 bankruptcy. You represent Terry Tryst, her Chapter 7 trustee. After selling her construction equipment and a few other non-exempt assets, you have \$200,000 to distribute to creditors, on behalf of Kylie. Here are Kylie's creditors:

- Six employees, each owed \$4200 a month for each of the past two months
- Her ex, for a \$70,000 judgment
- Student loans in the amount of \$20,000
- Income taxes for 2002 and 2003, \$10,000 for each year
- Valley Bank, a secured creditor on the equipment you sold, owed \$100,000
- Trustee's fees and costs of sale of \$10,000
- Various other general unsecured claims in the amount of \$67,000

You know Terry must satisfy Valley first, but now tell him what to do with the rest of the money.

7. (5 min.) What should you do, in explicit practical terms, to make sure that Valley Bank is indeed entitled to the first \$100,000 out of this sale? If something is amiss, what is your next move on behalf of Linda?

8. (5 min.) The City of Albuquerque recently sued Doris Dogowner for violation of the city's leash laws. Will this suit be stayed in Doris' upcoming bankruptcy?

9. (10 min.) AAA Construction Company filed for Chapter 11 bankruptcy on June 8, 2000. Bank One was owed \$130,000 on that date, secured by industrial equipment worth \$150,000. Under Bank one's contract, interest accrues at a rate of 12% simple interest per annum, and Bank One is entitled to recover their collection costs and attorneys fees. Bank One has expended \$5,000 in AAA's bankruptcy case, bringing two unsuccessful motions for relief, moving for the appointment of a trustee and otherwise watching the activity in the case. What is the amount of Bank One's allowed secured claim as of today's date?

10. (5 min.) Assume that today, confirmation of a Chapter 11 has been approved. What is bank One entitled to receive under the plan? How long do you feel an appropriate payout would be?

11. (10 min.) Another creditor in the same case is Frontier Bank. Frontier has a \$110,000 debt, secured by a \$70,000 piece of real estate in Alvarado Gardens. Interest on this loan also accrues at 12% simple interest per annum, and the contract provides that Frontier is entitled to reasonable attorneys' fees. Frontier's attorneys have spend \$2,400 monitoring the case and attending hearings in the case. Calculate Frontier's allowed secured claim.

12. The Apple Ski Valley owns a small bed and breakfast hotel on the side of the Apple Valley Mountain. It is a bit run down and has not been in operation for the past two seasons. There are two mortgages on the bed and breakfast building. The Ski Resort filed for Chapter 11 about 9 months ago, and the first mortgage holder on the bed and breakfast property, Jemez Bank, has just filed a motion for relief from stay. It was told that the debtor planned to remodel the bed and breakfast, but nothing has been done. Jemez Bank is tired of carry this bad loan on its books, and Apple Valley has paid Jemez Bank nothing post-petition. Jemez Bank would like to sell the building. Jemez Bank is owed approximately \$50,000. Upon receipt of this motion, the second mortgage holder, New Mexico Rancher's Bank has made its own motion for relief. It is owed about \$20,000, and also has received no payments post-petition. A recent real estate appraisal suggests that the building's value is just \$65,000.

- a. (5 min.) In the dueling motions for relief from stay, who has the better chance of winning its motion, and on what basis?

- b. (5 min.) Does the other lender (the one without the best chance of success on its motion) have any likelihood of success on its motion? On what basis?

c. (5 min.) For either of these lenders, what facts might help prove a lack of adequate protection?

13. (5 min.) Using the same facts from question 12 above, assume that as a result of the motions for relief, the debtor files a plan of reorganization, which has been scheduled for a hearing on the same day and at the same time as the hearings on the motions for relief. Which of these motions should the court hear first, the motion to approve confirmation of the plan or the motions for relief from stay?

14. (5 min.) Why would a person decide to file for bankruptcy before October 20, 2005? Be specific about the advantage of filing before the effective date of the new law.

15. (5 min.) Some say the new law cracks down on abusive and fraudulent bankruptcy filings. Give some examples of how it might indeed do this.

16. (5 min.) Some say that the new law is harder on the middle class than it is on the wealthy. Give some examples of provisions of the law that might indeed cause this result.

17. (5 min.) What one fact most strongly suggests a substantial abuse under the current version of Section 707(b)?

18. (10 min.) Augie's makes pictorial maps. Unfortunately it has learned that there is little calling for pictorial maps in New Mexico and has just filed a case under Chapter 11. Valley Bank and Trust has a security interest in all of its inventory and office supplies. At the time of the bankruptcy filing, Augie's had \$10,000 in its cash register and \$10,000 in its First State Bank account, both of which it would like to use to meet payroll tomorrow. Is there any reason why this cannot be done? Need Augie's do anything in order to use these funds and if so, what? What will be the standard for allowing the use of this money? Do you recommend that Augie's call Valley and/or First State or just file a motion? If you decide to call first, what should you do to prepare for the call?

19. (10 min.) Aunt Angie owns a big screen T.V. that she bought on credit from Ballios last April for \$10,000. She still owes almost the whole \$10,000 on it. However, she noticed that similar T.V.s can be bought used for just \$4,000 according to the Thrifty