## ST. MARY'S UNIVERSITY SCHOOL OF LAW

Creditors' Rights
Professor Richard E. Flint

FINAL EXAMINATION Fall, 1992

## ANSWER BOOKLET

- 1. This examination consists of nine (9) pages, including this page as the first and two sections described more particularly below.
- 2. You will have three (3) hours in which to complete the examination.
- 3. St. Mary's Law School prohibits the disclosure of information that might aid a professor in identifying the author of an examination. Any attempt by a student to identify himself or herself in an examination is a violation of this policy and of the Code of Student Conduct.
- 4. A student should not remove a copy of this examination from the room during the exam time.
- 5. This is an opened book examination; however, the only book permitted in the room is a copy of the Bankruptcy Code and Rules with <u>YOUR</u> annotations.
- There are two sections of this examination. The first section contains seven terms or phrases for you to identify. You only have to identify five out of the seven. Each identification is worth ten points. The second section of the examination contains six short essay questions. short essay question is worth twenty points. Thus, there are a total of 170 possible raw score points. The organization and conciseness of your answers will be graded, so think before you write. All answers must be written in the appropriate spaces in this booklet. Do not write on the back of any pages and do not go beyond the space allotted for the answer. Material exceeding the designated space will not be considered in determining your grade unless an equivalent amount of material in the designated space is marked out. POINTS WILL ALSO BE SUBTRACTED FOR THE USE OF MORE THAN THE DESIGNATED SPACE.
- 7. ONLY THIS EXAMINATION BOOKLET NEEDS TO BE TURNED IN AT THE END OF THE EXAMINATION PERIOD. ANY BLUEBOOKS THAT YOU USED AS SCRATCH PAPER MAY BE TAKEN WITH YOUR OR THROWN AWAY.

  8. After reading the oath, place your examination number in the space below. If you are provented by the cath from
- in the space below. If you are prevented by the oath from placing your exam number in the space below, notify the student proctor of your reason when you turn in the examination

I HAVE NEITHER GIVEN NOR RECEIVED UNAUTHORIZED AID IN TAKING THIS EXAMINATION, NOR HAVE I SEEN ANYONE ELSE DO SO.

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Good luck! I hope that you have a wonderful vacation.

Creditors' Rights FINAL EXAMINATION Professor Richard E. Flint Fall, 1992 EXAMINATION NUMBER \_\_\_\_ SECTION 1 IDENTIFICATION -- 50 RAW POINTS-TEN POINTS APIECE Identify only <u>FIVE</u> [that is right, you do not have to identify all seven] of the following terms, words, or phrases. Provide enough information in your identification that an individual unfamiliar with the subject of creditors' rights/bankruptcy would have a basic understanding of the meaning, use, purpose, or significance of each term, word, or phrase. 1. best interest test: 2. state's right to opt-out: 3. the difference between giving the trustee the "rights and powers" of a bond fide purchaser for value instead of those as a lien creditor: 4. sequestration:

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5.	turnover procedure:		
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6.	relief from the automatic stay		
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7.	involuntary bankruptcy proceeding	Al-	
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## SECTION 2

SHORT ESSAY--120 RAW POINTS-TWENTY POINTS APIECE
Read the questions carefully; plan your answer; and answer the questions asked.

1. Paula Debtor is addicted to filing bankruptcy petitions. The following table summarizes the dispositions of her bankruptcy cases:

Type of case	date filed	Disposition
Ch 7	1982	discharge
Ch 13	1983	voluntary dismissal
Ch 13	1985	involuntary dismissal
Ch 7	1988	discharge
Ch 13	1989	involuntary dismissal
Ch 13	1990	involuntary dismissal
Ch 13	1991	involuntary dismissal
Ch 13	1992	pending

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In the present Cha with debts totalli debt of \$150,000. judgment [\$54,500] lover with a baseb all of her disposa will give the unse claims. Is this t	ong \$55,000; one of the time in an intentional bat 50 to ble income to cured creditors.	one secured crecured crecured debts tional tort case imes). She proposed fund the planters less than 15	ditor with a is for a e (she hit her poses to use but alas that of their
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2. Durn Yankee and his wife Southern Yankee were granted a divorce by a district court in Bexar County Texas. Pursuant to the divorce, Durn Yankee retained the homestead that the parties had resided during their marriage. The homestead property had been the separate property of Yankee prior to the marriage. Southern was granted a judgment under the divorce decree in the amount of \$50,000 plus attorneys fees for \$10,000. The judgment was part of the division of the community property between the parties.

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The court als separate prop Six months la homestead as judgment disc	erty of ter Yan exempt u	Yankee to kee files under Texa	collatera Chapter 13 as exemptic	alize t 3 claim on laws	the judgment. aing the former s. Is the
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3. Following a multimillion dollar malpractice verdict being entered against him, on June 28, 1988, Dr. J.A. Volpe and Rita Volpe filed a petition for relief under Chapter 7 of the United States Bankruptcy Code. At the time, Dr. Volpe was an employee of the Austin Diagnostic Clinic, Inc. which was the settlor of the Austin Diagnostic Clinic Profit-Sharing Plan under whose terms Dr. Volpe had a retirement account in excess of \$100,000. In their petition the Volpes claimed that the retirement account was not property of the estate, but that if it were determined to be

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property of the estate then, they 42.0021 of the Texas Property Cod retirement account was exempt pro their creditors' claims. In a li claimed that their interests in a accounts totalling \$100,000 were or were exempt under the same Tex position is simple. The retirement property of the estate and are no counsel for the trustee, how woul argument? (2) If you were counse you oppose it? (3) If you were contention, how would you rule? competing policy issues.	de their interpret of the manner the seven individuals not property cas statute. In account and the exempt. (1) In you advanced for the Dela court consider the seven account consideration and seven account consideration account account consideration account	rest in the t subject to e Volpes al retirement of the estate The trustee ad the IRAs are this otor how would idering this
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4. On January 1, 1992, Sam Spade sells to Joe Bozo a machine on an installment sales contract and marks the

machine in his warehouse "sold" to be delivered to Bozo. On

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January 10, 1992, the machine is January 20, 1992, Spade files a f the machine at the secretary of s 1992, Bozo files a Chapter 7 peti avoid the interest? What assumpt	inancing statement covering tate's office. On March 1, tion. Can the trustee

5. The Texas State Bar Association suspended Joe Ambulance Runner from the practice of law as a result of activities concerning taking his clients settlement monies and playing the dogs [gambling on the dog races]. The state bar told Runner that his license could be reinstated in one year and that heavy consideration would be given to the extent he had reimbursed his clients. Runner immediately filed Chapter 7 bankruptcy and was granted a discharge on the client trust accounts. After the year suspension, Runner asked the bar association to lift the suspension. In his petition he conceded that he had not paid back any of

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the clients and did not plan to do so. do? Why?	What should the bar

6. Shifty Lawyer of San Antonio, Texas, feeling the pressure of creditors decided to take swift action. First, he sold certain of his non-exempt antiques and guns to one of his friends for \$50,000--this was only half of the fair market value of the property. He then took the \$50,000 and paid off a major portion of the note on his exempt homestead. Lawyer does not deny that he received less than a reasonably equivalent value for the nonexempt assets, but candidly testified that he would have applied any additional monies to the homestead lien. Lawyer then filed a Chapter 7

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proceeding. Is the homestead exemption part? Will Lawyer receive a fresh start	good in whole or in ?
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HAPPY HOLIDAYS!