Exam Number_____________

Commercial Law II

Final Exam

December 17, 1986

Essay and Short Answer Questions

Instructions

Please write your answers to the two essay questions in your blue book(s). (Please observe length and time requirements.) Please write your answers to the short answer questions on the spaces provided on these pages. You must hand in all these pages at the end of the exam period!

Essay #1

(5 sides limit; 50 minutes limit)

On May 17, 1982 the defendant leased to the debtor eight pieces of heavy equipment. In accordance with the terms of the lease the equipment was delivered to the debtor in Alabama where the debtor had represented that it had a contract to build roads. The defendant, in good faith reliance upon these representation, filed in Alabama in the county where the debtor's construction manager's offices were located. You may assume that Alabama has UCC sec 9-401, 2d Alternative Subsection (1)

In April, 1983 plaintiff, who had previously financed the purchase of equipment by the debtor, advanced additional funds to it. At the time of this loan there existed a security agreement, dated Jan. 3, 1982, that contained a clause covering after-acquired equipment and stated that it secured 'equipment loans.' Also at the time of the loan there existed a financing statement, dated Jan. 3, 1982, filed in Fulton County, Georgia where the debtor maintained a yard containing an inventory of road building and other construction equipment. On April 3,

In 1983 the plaintiff filed a second financing statement in the Georgia Secretary of State's Office which is the state in which the debtor's U.S. corporate headquarters are located. You may assume that Georgia has UCC sec 9-401, 2d Alternative Subsection (1).

In May, 1983 the debtor defaulted on both loans and filed a voluntary petition in Bankruptcy. You are the clerk to the Bankruptcy Judge. Defendant has proven that at the time plaintiff made the loan it had knowledge of the Alabama filing obtained from the debtor. Please evaluate the claims of both the plaintiff and defendant relative to each other and relative to the trustee.

Essay #2

(5 side limit; 50 minutes limit)

Van and Booven are two entrepreneurial types who were desirous of building a coal washing and preparation plant. To this end they approached Mountain Bank which agreed to loan $30,000 for the necessary equipment. Van personally signed a financing statement and security agreement covering all of the assets to be acquired with the loan. He also signed a financing statement describing these assets which was filed in the regular
UCC records in the county where the plant was to be assembled. Van and Booven then incorporated Washco, Inc. (they were each incorporators and signed the articles of incorporation in that capacity). Subsequent to the incorporation the bank required Washco to execute a promissory note after which it delivered the loan check payable to Washco's order.

Washco used some of the loan proceeds to make the initial rental payment on the land for the plant which it leased from Bob Blackacre. Washco then used the balance of the proceeds to acquire the equipment and install it on the leased realty. The plant operated for about one year but then closed down because of a weak coal market. This resulted in defaults on both the Mountain Bank loan and the Blackacre lease.

You are counsel for Mountain Bank. You were not involved in the loan transaction and did not know that your client initiated proceedings to foreclose on the plant. The President of Mountain flank has now called you in a panic. It seems that Blackacre has intervened in the foreclosure proceedings. He claims superior rights to the plant because he owns the realty upon which it sits. In the alternative he also claims that he is entitled to a statutory lien on the plant because he improved the land (grading, etc.) so that the plant could be constructed thereon. You have been asked to do the following:

(1) Evaluate the rights of your client in the foreclosure. (Do not limit you analysis to arguments made by Blackacre - You need to be certain that there are no other problems with your client's claim.)

(2) If you see any flaws in your client's claim or lending practices, advise it as to how it might have better protected itself.

I.

45 minutes - 3 sides limit

On March 1, Alfred visited his Bank and completed the following transactions:

1) deposited $5,000 in his checking account and received a "deposit slip" from the teller;

2) added $5,000 to his savings account, raising the balance to $6,000, and received the pass book duly credited; and

3) rented a safe deposit box in which he placed 500 Indian head pennies (worth $7,500) and received two keys and a writing describing the bank's system and procedures.

On March 5, Alfred visited Emily's Pawn Shop and, pursuant to an oral agreement, borrowed $10,000 to be repaid in 5 days. As security for the loan, Alfred "pledged" the deposit slip, the savings pass book and the two keys to Emily. On March 7, Desmond obtained a judgment against Alfred in the amount of $20,000 and, through proper procedures, obtained a judgment lien on the credits in the checking and savings accounts and on the coins in the safe deposit box. In the ensuing conflict with Emily, Desmond claims either that Emily has no enforceable security interest in the collateral or that Desmond has priority.

Is Desmond correct? If so, how might Emily's have improved its secured position with respect to the collateral described in the problem? Be precise.

II.

1 hour and 15 minutes - 4 sides limit

Alpha Corporation owns land from which sand and gravel are excavated, processed and sold for various construction projects. Alpha also operates a plant which produces tar and asphalt for highway and runway construction. In addition to buildings and fixtures, Alpha owns a variety of equipment, including five tanker trucks designed to carry tar and asphalt. The site is located in the Northwest corner of the State of Albers and is within a fifty mile radius of three adjoining states. The site is twenty miles from the city of Metcalf, Albers (population 75,000) and 200 miles from the capital of Albers, the city of Silver. A rail spur from the 8.0. Railroad runs to Alpha's plant and quarry site. On February 1, 1980, Alpha's chief executive office was moved to Metcalf, Albers from the capital of the adjoining State of Stone.

On March 1, 1981 an involuntary case in Bankruptcy was filed against Alpha. Alpha had been insolvent since December 1, 1980. Among others, the following problems have arisen with regard to liquidation of the estate.
On January 15, 1980, Decker Trucking Co. sold Alpha a new tanker truck for $30,000. Alpha paid Decker with the proceeds of a loan from Stonebrook Bank. Alpha issued Stonebrook a promissory note in the amount of $30,000 payable in full on January 15, 1981. The tanker truck was delivered by Decker to Alpha in the State of Stone. Alpha obtained all applicable state and federal licenses. Under Stone's version of UCC 9-302, Stonebrook's security interest in the truck was not required to be noted on the certificate of title. Thus, under Stone's version of UCC 9-401(1), Alternative 1, 1972 revision, Stonebrook filed a financing statement in proper form in the office of the Stone Secretary of State on January 17, 1980. The tanker truck was then driven to Alpha's site in Albers and thereafter was used to deliver tar to customers in the four state area.

On April 11, 1980, Carl, an unsecured creditor of Alpha's in the amount of $15,000, obtained a judicial lien on the tanker truck. This judgment has not been paid. On August 1, 1980, David, another unsecured creditor of Alpha's in the amount of $300, obtained a judicial lien on the tanker truck. On January 15, 1981, Alpha defaulted on the note to Stonebrook. On January 18, 1981, Alpha paid David $300 plus costs and obtained a discharge of the judgment. On February 27, 1981, Stonebrook repossessed the tanker truck and drove it to a secure area in Metcalf, Albers. On February 28, 1981, Ernie, another unsecured creditor of Alpha's in the amount of $20,000, obtained a judicial lien on the truck. Bankruptcy followed on March 1, 1981.

The bankruptcy trustee, Mr. Doherty, has asked your advice on how to dispose of the various claims to the tanker truck and whether he has any claims against anyone. Please give him succinct advice. Be precise.

III.

1 hour - 4 sides limit

On September 28, 1981, Oscar Bright, the ailing president of Contemporary Pillow, Inc. ("Pillow"), gave his wife Elizabeth a signed check from Pillow drawn on Commercial Trust Co. ("Bank"). He allegedly told her to fill in the check for whatever amount she needed. That night Elizabeth inserted her name and the amount ($10,000). Soon thereafter Oscar died. On November 11, 1981 Elizabeth deposited the duly endorsed check in her personal checking account at Bank at the same branch on which the check was drawn. The same day Melvin Bright, who had just become president of Pillow, put a stop order on the check claiming that Elizabeth, his stepmother, had obtained the check by "chicanery." (He believes that she had either induced Oscar to sign the check through fraud or had forged Oscar's signature. He also believed that Oscar's severe illness and the medication used in treating it would have made him incompetent to sign checks.) Initially the bank did nothing to withdraw the provisional credit given to Elizabeth. Three banking days after Bank had credited her account and received the stop order, the Bank debited Elizabeth's account. The Bank's checking account agreement with Elizabeth and the deposit slip signed by Elizabeth contained the following language:

"if claim is made to the bank for the recovery of any part of any collected items (including any Item cashed for depositor) after final payment thereof on the ground that such item was altered or bore a forged endorsement or was otherwise not properly payable, the Bank may withhold the amount thereof from the account until final determination of such claim." (agreement)

* * * * *

"All Items are credited subject to final collection and receipt of proceeds in cash or by unconditional credit to and acceptance by Commercial Trust Company." (deposit slip.)

The Bank has come to you for a complete legal analysis of the situation. Be precise.