

1970

Creditors Rights (May 18, 1970)

William & Mary Law School

Repository Citation

William & Mary Law School, "Creditors Rights (May 18, 1970)" (1970). *Faculty Exams: 1944-1973*. 218.
<https://scholarship.law.wm.edu/exams/218>

Copyright c 1970 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository.
<https://scholarship.law.wm.edu/exams>

CREDITORS RIGHTS

May 18, 1970

Mr. Scott

I -(35 points)

The E. Z. Credit Loan Co. of Williamsburg, loaned John Debtor, a childless widower, \$10,000 on June 1, 1969. Debtor signed a note for the \$10,000 plus interest payable on August 15, 1969. Debtor defaulted on the note and the Loan Co. recovered judgment against Debtor on September 1, 1969. On September 21, 1969 a writ of fi fa was issued by the clerk and delivered to the Sheriff of James City County where Debtor resided. On December 10, 1969 the Sheriff went to Debtors residence and levied and took possession of \$500 cash, a motor boat worth \$2500, and a color television set which he found in Debtors home. The television had been purchased by Debtor on credit on December 1, 1969 from Ace Electronics for \$750. Ace and Debtor signed a security agreement to secure payment of the purchase price, but Ace did not file a financing statement. Two days later the Sheriff, suspecting that Debtor was concealing property returned to Debtor's home while Debtor was at work. Finding the doors locked, the Sheriff broke down the front door and entered Debtor's house. While inside he noted two paintings worth \$1,000, a diamond ring worth \$750 and a promissory note ^{payable to} ~~signed by~~ Debtor and ~~payable to~~ his father-in-law who lived with Debtor. Not wanting Debtor to know about his secret excursion the Sheriff wrote the items down and left them where he had found them. On December 29, 1969 the Sheriff returned a third time to Debtor's home and levied on and took possession of an automobile belonging to Debtor worth \$1500.

On January 10, 1970, after appropriate notice, the Sheriff scheduled a public sale of all of the items in question. Debtor filed objections to the sale of any of his property, and to the transfer of the \$500 cash to the Loan Company. On the same day Debtor filed a homestead deed covering the motorboat and listing its value at \$2000. The Ace Electronics Co. objects to the sale of the television set and claims in the alternative priority payment from the proceeds.

The Sheriff has consulted you and wants to know: (a) what property, if any, can validly be sold or transferred to satisfy the judgment in favor of E. Z. Credit Loan Co., and (b) whether or not, assuming that the television set can be sold at the Sheriffs sale, the Ace Electronics Co. is entitled to priority in the proceeds. What do you advise? Discuss all issues fairly presented.

II - (15 points) (67(a); 3(a)3; 67(4)3; 60(4); 1(30))

Creditor recovered a judgment against Debtor for \$1,000 and on January 15, 1969, the Sheriff levied under a writ of fi fa issued to Creditor on Debtors 1960 Cadillac, that being the only property of Debtors which the Sheriff could find. On February 16, Provable (another creditor of Debtor) filed an involuntary bankruptcy petition against Debtor, alleging, on the basis of Creditor's levy, that the third act of bankruptcy had been committed. Pursuant to §18 of the Bankruptcy Act, a writ of subpoena was served on Debtor and, on his failure to appear, he was adjudicated a bankrupt on February 27. Subsequently, on March 1, the Sheriff conducted an execution sale at which Creditor bid on the Cadillac for \$700, which amount was credited against his judgment, and the Sheriff turned the Cadillac over to him. At the creditors meeting, on March 15, Turnover was elected trustee and he has now brought a replevin action against Creditor to recover the Cadillac. What result?

III - (20 points)

(70(c); 67(a); 60; 67(d)3)

On January 1, 1970, the United States filed a notice of tax lien against Debtor pursuant to the Federal Tax Lien Act of 1966 covering a deficiency assessment of \$3,000 earlier made.

Earlier on November 1, 1969 Debtor had entered into a written security agreement with Friendly Finance by which Friendly loaned Debtor \$2,000 to be secured by all presently owned and after-acquired inventory and accounts receivable of Debtors. Friendly did not file any financing statement.

On March 1, 1970 Debtor borrowed \$3,000 from Bank under a written security agreement covering all presently owned and after acquired property of Debtor. Bank on the same day filed a financing statement which perfected its security interest under the U. C. C.

On April 10, 1970, Debtor filed a voluntary petition in Bankruptcy. The only property of consequence which the trustee found was inventory owned by Debtor which the trustee has now liquidated for \$6,000. In the course of his efforts, the trustee has incurred expense of administration which amount to \$1,000.

The United States, Friendly and Bank all insert a prior claim on the \$6,000 in the trustee's hands. Neither Friendly nor Bank had any actual notice or knowledge of the tax lien filing. How should the \$6,000 be distributed.

IV - (20 points)

(63(c); 63(a)9; 64(5); 17)

(a) When petition in bankruptcy is filed against B he is occupying as tenant premises owned by L as landlord, and is three months in arrears in his payment of rent. The lease has ten years yet to run. The rent is \$200 a month, and the rental value at the time of the petition and for the foreseeable future is \$100 a month. B's trustee is appointed promptly, and qualifies at once. The trustee immediately rejects the lease, surrendering the premises to L six days later. How will L's dividends be figured, and will L have any right to recover against B after B has received his discharge?

(67(d)3; 1(11); 63(a)7; 60(a); 17)

(b) B, worried about the sudden decline of the stock market which has rendered him insolvent, drove his car negligently and injured X and Y. Two days later he obtained a large loan, secured by a deed of trust and equalling 60% of his assets, from Star Bank and used the proceeds of the loan, and all his cash on hand, to pay X a liberal bona fide settlement. A week later before he had made any settlement with Y, an involuntary petition in bankruptcy was filed against him. Describe the legal situation of the Bank, B, X and Y.

V - (10 points)

(60(a); 1(11); 64(c))

B borrows \$10,000 from L, and gives him a deed of trust on land worth \$14,000. One month before the petition in bankruptcy is filed against him B pays L \$10,000 plus accrued interest and secures discharge of the deed of trust, L knowing that B is insolvent. B has been buying goods from S for several years on open account without security. Four months before the petition is filed, B owes S \$5,000 on account. A month later, S knowing that B is insolvent, B pays S \$3,000. Thereafter S sells B \$4,000 worth of goods without security. What are the positions of L and S?