1973

Creditor Debtor Relations: Final Examination (May 14, 1973)

William & Mary Law School

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1. This examination consists of two major parts. One part contains 30 objective questions for which one hour is allotted. The second part is a traditional essay question which is divided into two phases. Two hours are allotted to the second part. Be sure that you have all the parts of the examination.

2. All questions should be answered in the bluebooks provided or typing paper provided. Objective questions should list the number of the question and the correct answer.

3. If you find that any question is ambiguous or you believe requires an explanation of your answer, you may explain your answer and that explanation will then control. That is, if you put down the correct answer but give the wrong reason or explanation, the answer is wrong.

4. If you feel that any question is unfair or improper, you can object to the question and give a brief explanation stating your reasons which I will consider in grading the question. If your reasons reveal a lack of understanding of the subject, I will mark the question wrong. If your reasons reveal an error on my part in framing the question, I will mark the question correct. But please spend your time in trying to answer the question, no in trying to find things wrong with it.

5. THIS IS AN OPEN BOOK EXAMINATION. You are expected to bring your casebook, assignment sheets, Virginia statutory supplement and bankruptcy supplement. (Collier ed. or casebook supplement). You are free to bring any other materials which you have prepared and used for the course. You are not free to bring any library materials. But please spend your time thinking, not reading.

6. If you wish to explain an applicable point of law, you may do so by giving a proper citation to the pertinent statutory provision. This may require specifying the proper subsection, not just the main section. Then there is no need to spell out what that particular reference provides since I can consult the statutory language cited. Alternatively, you can make a correct explanation of the applicable law without making a precise statutory reference.
Part I. (One hour)

1. In Virginia, because of the separate courts of law and equity, judgments of the law court can become judicial liens upon real property, but decrees of equity cannot.
   True False

2. Dormancy of judgments no longer exist in Virginia
   True False

3. The writ of fieri facias in Virginia can be used to seize land or personalty belonging to the debtor.
   True False

4. The proper method of foreclosing a judgment lien is the issuance and levy of a writ of fieri facias.
   True False

5. In Virginia the lien of fieri facias arises upon the sheriff properly levying upon the debtor's assets.
   True False

6. On March 1st, the Internal Revenue Service makes a tax assessment against Debtor for failure to pay income tax. On March 5th, Judgment Creditor obtains a judgment against Debtor in a Virginia Circuit Court, and a writ of fieri facias is issued on March 26th. On March 30th, Internal Revenue Service notice-files its tax lien against Debtor. On April 5th, sheriff levies the fieri facias upon Debtor's non-exempt assets. As between Internal Revenue Service and Judgment Creditor who is entitled to priority in Debtor's assets.
   Internal Revenue
   Judgment Creditor

7. In Virginia, it is always necessary to reduce outstanding child support and alimony payments in arrears to judgment before the obligee can enforce a judgment lien or writ of fieri facias.
   True False

8. If the judgment debtor in Virginia can successfully hide his assets so that the sheriff armed with a writ of fieri facias cannot find them for levy within the 90 day life of the writ, the judgment creditor will lose his lien of fieri facias.
   True False

9. In order to attack an alleged fraudulent conveyance in Virginia, it is necessary that the attacking creditor first obtain a judgment against the debtor-transferor.
   True False

10. Proceedings by way of interrogatories after judgment in Virginia cannot be used to try bona fide adverse claims of ownership to property between debtor and a third party.
    True False

11. The Spindel decision does not affect the Virginia writ of garnishment for the reason that the writ is solely a post-judgment remedy in Virginia.
    True False
12. The Virginia homestead exemption must be appropriately declared prior to sale of the property or prior to filing of voluntary bankruptcy in order to be effective.

True  
False

13. A gift by an insolvent debtor is fraudulent as to his existing creditors in Virginia regardless of debtor's intent and without resort to badges of fraud to demonstrate intent.

True  
False

14. The proper way to levy upon a promissory note is to give notice to the maker since he is the one who is going to make the payment.

True  
False

15. In Virginia, attachment is limited to a pre-judgment remedy.

True  
False

16. Attachment in Virginia can reach personalty but not realty.

True  
False

17. In its early form in equity, the creditor's bill created a lien upon the debtor's property, but this lien effect has been abolished in Virginia when the creditor's bill is used to attack a fraudulent conveyance.

True  
False

18. A owes a large tract of land, worth $40,000, with his wife by tenancy by the entireties. A owes outright a smaller tract of land worth $10,000. Judgment Creditor causes a judgment lien to attach to the land owned by A outright, and brings a creditor's bill to foreclose the judgment lien for $12,000. Since A has no access to cash, he is unable to prevent the judicial sale. Two days before the sale is scheduled to take place, other creditors of A, whose claims total $1,000 file an involuntary petition in bankruptcy against A asserting the third act of bankruptcy. A contests the petition. Will the petition be granted or dismissed.

Granted  
Dismissed

19. In a voluntary bankruptcy proceeding of A, where Trustee is asserts all claims possible, Trustee seeks a safe and its contents owned by A and stored in the house of B. B refuses to give up the safe until he is paid the $500 which A borrowed from B two years ago. Can Trustee successfully assert a turnover order by summary jurisdiction?

Yes  
No

20. The case of Katchen v. Landy on p. 438 of the casebook held that an alleged preferred creditor who files a proof of claim for a transaction related to the alleged preference consents to the summary jurisdiction of the Bankruptcy Court to determine the preferential transfer.

True  
False

21. If the bankrupt has a pending personal injury claim in a Virginia state court, the bankruptcy trustee will not be able to claim that cause of action as property under sec. 70a of the Bankruptcy Act.

True  
False

22. If the bankrupt is the insured under non-exempt life insurance having cash surrender value, where his wife is beneficiary, and bankrupt fails to pay the cash surrender amount to the trustee within the allotted time and dies a few days later, Trustee will take the full proceeds of the policy and wife will get nothing.

True  
False
23. Bankruptcy Act sec. 70c will enable the trustee to successfully set aside a security interest where the secured party delayed in properly filing a financing statement until a few days prior to the filing of bankruptcy.

True  False

24. On January 2nd, A loans B $5000. On June 1st, B hears that A is in terrible financial shape and asks that A repay the loan. A says that he is unable to do so, but will grant B a security interest in A's car which is worth $4000 clear, which B accepts and promptly perfects. On September 1st, A files a voluntary bankruptcy. Can trustee successfully void B's security interest as a preferential transfer?

Yes  No

25. A lease clause which provides: "This lease may not be assigned voluntarily or involuntarily without the prior approval of the lessor" will effectively enable the lessor to prevent a trustee of the lessee in bankruptcy from assuming the lease for the balance of the lease term.

True  False

26. Whether a trustee in bankruptcy seeks to set aside a fraudulent conveyance under Bankruptcy Act sec. 70e or 67d, he must represent an actual creditor with a provable claim in order to successfully assert his strong-arm powers granted in these sections.

True  False

27. If the trustee in bankruptcy seeks to set aside a judgment lien obtained in Virginia while debtor was insolvent and three months prior to bankruptcy, the judgment creditor may force the trustee to litigate his claim in Virginia state court if he properly objects to trustee's attempt to use summary jurisdiction.

True  False

28. As a result of the 1970 amendments to the Bankruptcy Act, the creditor who fails to make an objection to discharge in the bankruptcy proceeding will be unable to assert his claim against the debtor after bankruptcy even if the debt is clearly not dischargeable by Bankruptcy Act sec. 17.

True  False

29. A contingent and unliquidated claim is not a provable claim in bankruptcy, and hence cannot be discharged.

True  False

30. Even though debtor has had a bankruptcy discharge three years ago, debtor may still have the benefit of an extension agreement under Ch. XIII of the Bankruptcy Act.

True  False
Devious J. Grasp is the credit man's anathema; the man with champagne tastes but a beer pocketbook. He is employed by Anheuser-Busch Co. as a spigot opener at its Williamsburg, Virginia plant. He is paid weekly with a one-week holdback, and from his gross paycheck of $200, $20 is deducted for federal and state income tax, $5 is deducted for social security taxes, and $10 is deducted for the plant bowling team, fishing club and ergy group. Thus the net amount of his weekly paycheck which he receives on Friday afternoon is $165.

This amount would enable Grasp and his young wife, Gruselda, to live modestly but securely. But Grasp wishes to enjoy the finer aspects of life, perhaps egged on by the constantly nagging Gruselda who keeps reminding Grasp that she passed up her former high school sweetheart who has made it big in penny stock manipulations in order to marry Grasp.

In February, 1971, Devious and Gruselda are captivated by an ad for winter in Nice, France. The entire two week trip is charged to Grasp's Bank Americard for a total of $3500. The payments are $100 per month, but, of course, Grasp has not gotten around to making any. In order to be properly outfitted for the trip, Devious and Gruselda toured Nachman's in Richmond, charging some $1000 to their charge account with the store, and, naturally, none has been paid.

When not caving about the world, Devious drives about in his 1971 Lincoln Mark IV, purchased from Person Ford of Williamsburg for $11,000 on time, of course. Person Ford chidedly insisted upon a financing arrangement which has been properly executed and filed so as to comply completely with the Virginia Uniform Commercial Code.

In October, 1971, Devious' fancy was caught by a new stereo, AM-FM color television with a home video device which Sears, Reebuck was offering for a mere $2500. Devious immediately acquired it for his home, saying, "charge it," which the Sears' salesman was only too happy to do under its revolving charge plan, the fine print of which spills out in minute detail that Sears had a security interest until the goods were fully paid for. Of course, Sears did not bother to file a financing statement on the unit.

One evening, while watching color T.V. in their modest $20,000 home acquired with $100 down in September, 1970 through the helpful people at the FHA, Gruselda expressed some anxiety about her future should Devious drop dead. This prompted Devious to sign up for $250,000 term insurance with a touring salesman from Beneficial Life. The annual premium was $250, but the first premium was not due until December 1, 1972.

On Friday morning, March 3, 1972, the huffy lawyer from Nachman's in Richmond, who had been pressing about the clothes bill from February 1971, decided to take action. This he did in the form of a petition for attachment, sworn to with all kinds of legalese about an absenting debtor (Grasp), and which was served that day upon Anheuser-Busch Co. The plant personnel manager, who secretly envied Devious, told Devious that afternoon that no sums were coming to Devious that day or thereafter, and the association of Devious with Anheuser-Busch was ended.

Enroute home, Devious was somewhat distraught, and as a result, plowed into a school bus on route 143, killing one child and maiming badly at least 10 others. The lovely Mark IV was destroyed, but fortunately Person Ford had insurance on its value well as $50,000 liability insurance.

A.) On March 4, 1972, Devious said to Gruselda that he anticipated some legal problems and should consult a lawyer. Devious went to the law firm of Gouge, Gouf and Finagle in Merchant's Square, wherein you are employed. What advice do you give Devious about his present situation, explaining in appropriate detail for a layman, what his present rights are under the facts given, what his creditors may do, and what claim, if any, he may have. (You can ignore his liability for the personal injury claims from the automobile accident at this point.)
B.) Continuing the same saga of Devious J. Grasp, assume that a more senior member of the firm, Finagle, a former D student at Marshall-Wythe, takes the case from you and leaps into action by suggesting a little defensive tactics.

Finagle suggests that he file dual petitions in bankruptcy for Devious and Gruselda in two weeks time. The interval should be utilized to place assets presently non-exempt in exempt form. Surveying the minimal assets of Devious and Gruselda, Finagle suggests that they acquire some quickly. Devious went the next day to the United Bank of Virginia and arranged for a $10,000 personal loan by announcing that he was the only heir of a rich oil baron in Texas who had a terminal illness giving him only weeks or months to live. When the bank officer inquired if Devious had any other debts, Devious insisted none, and that he only needed the funds to arrange for his father's funeral since the estate would undoubtedly be tied up for a few months. Taken in by Devious' innocent appearance, the United Virginia Bank issued its check immediately and Devious went shopping that afternoon. Devious purchased a long-shot thoroughbred, Swifty, for $5,000 whom Devious set to consuming grass on the back lawn of his home. The remaining $5,000 was invested in a set of original writings of Thomas Jefferson, handsomely bound, which Devious and Gruselda began reading in order to discourse knowledgeably upon British Board of Trade's disallowance of the Virginia Statute on Debtors Relief as the cause of the American Revolution.

On March 20, 1972, Finagle filed petitions in bankruptcy on behalf of Devious and Gruselda proclaiming clearly each of the foregoing creditors. Under non-exempt assets, there was listed "only the Sears home entertainment system, but no equity." Under exemptions, Finagle listed Sifty, the original Jefferson, the clothing acquired from Nachman's, the home and its furnishings, and indicated that they had no equity in the home in excess of $500. All claimed exemptions were under appropriate Virginia statutes. Recalling the stern admonitions of his Creditors' Rights teacher, Finagle paid the filing fees of $50 each at the time of filing. Unfortunately, Finagle did not well grasp the Credit Man's Credo and neglected to arrange for the payment of his own fee for legal services.

On March 25, 1972, Devious discovered that his collection of shotguns were still in the basement, and observing that they were not referred to in the bankruptcy schedules, sold all of them, easily worth $1000, to his neighbor Jones, for $500, neglecting, of course, to mention the recent bankruptcy to Jones. That afternoon Devious took the $500 and purchased many cans of lobster and crab meat, at least enough to last several months.

At the first meeting of creditors, the Bankruptcy Referee announced that it appeared to be a no-estate asset, and therefore he was setting June 30, 1972, as the last day for creditors to file claims or make objections, subject to reopening the estate if assets were found. The outraged creditors grumbled, but left doing nothing. One creditor, United Virginia Bank, waited until notice of the in bankruptcy was received on September 20, 1972, and then promptly went down to the James City-County Circuit Court and filed an action against Devious and Gruselda claiming all kinds of fraud and misrepresentation which would justify United Virginia Bank in feeling aggrieved and wanting the $10,000 by way of judgment. Upon being served with the Motion of Judgment, Devious promptly dropped dead on September 25, 1972. Gruselda's eyes were smiling as she laid a wreath upon the grave and walked off arm-in-arm with the high school sweetheart who made it big in the penny stock trade as she headed toward the office of Beneficial Life to pick up her $230,000 check.

Discuss the consequences of the bankruptcy as to Devious and Gruselda and their creditors as indicated above. Indicate what the trustee in bankruptcy might have done if the creditors had insisted upon the appointment of one.