

INSTRUCTIONS

1. This is a three (3) hour exam consisting of three parts of varying length and weight.
2. Part I is consists of a series of short answer essay questions based on the same basic fact pattern. It is worth a total of 40 possible points with each short answer question worth 3 possible points, except the last which is worth only 1 possible point.
3. Parts 2 and 3 are essay questions. Part 2 is worth 40 possible points; Part 3 is worth 20 possible points.
4. Your bluebook should clearly indicate how each portion of your answers relate to the various parts of the exam. For example, your answer to the first short answer question in Section A of Question I should be clearly identified as such. Eg., Any ambiguities will be resolved against you.
5. You should allocate your time according to the suggestions made in connection with each part of the exam. These suggestions are designed to have you allocate your time in proportion to the relative value of the part of the exam.
6. You may have with you and use the assigned course materials and any materials prepared originally by you or a study group, consisting of Capital students enrolled in any Spring 1997 semester section of this course of which you are a member. This expressly excludes handwritten or other copies of materials previously published or prepared by someone other than you and not prepared by a study group of which you are a member.
7. Write your exam number on the front of each bluebook you use.
8. Explain your answers as fully as possible within the time and space constraints imposed by the exam. Where appropriate cite to relevant sections of the Bankruptcy Code, the Ohio Exemption Statute, the Uniform Fraudulent Transfer Act, or other applicable statutory provisions. Note, however, that no credit will be awarded for a mere citation -you must explain how the cited provision affects your analysis of the problem.
9. If you discover an ambiguity, or believe that there is a typographical error affecting your analysis of the problem, include, as part of your answer, the nature of the ambiguity or error and explain how its resolution would affect your analysis of the question posed.
10. I will not, under any circumstances, answer questions about the exam once it has begun.
11. When time has expired stop writing immediately! No exceptions! Deposit your bluebooks in

the box at the front of the room designated for that purpose. You may keep your copy of the questions.

12. Included with this exam is a copy of the current version of Ohio's Exemption Statute. Assume that all of the debtors in this exam are located in Ohio, unless expressly instructed otherwise.

13. Do not turn the page until instructed to begin.

14. Good Luck!

Part 1 - 40 Total Points - 1 1/4 Hours
Points for each part indicated in parentheses

Please label your answer to each Section and question clearly

Darla and Dave Diamond have been married for 2 rocky years. Their marriage followed closely on the heels of Dave's divorce from his former wife, Marlene. They are contemplating engaging your firm to file a chapter 7 bankruptcy petition on their behalf. Review the following information regarding their financial situation and draft answers to each of the questions posed. The number in parentheses indicates the number of points available for the association item. Section A - Dave & Darla's property & secured debts. What is the likely disposition of each of the following items of Dave & Darla's property if they file a chapter 7 case?

1. (3) Dave's 1985 Mazda RX7 worth approximately \$1200
- 2.(3)Darla's 1994 Volkswagen Paseo worth \$8000 and subject to a perfected security interest securing Darla's debt to Motorists Credit Co in the amount of \$9,500; the monthly payments, including interest and principal are \$300.
3. (3) A refrigerator worth \$320 & a freezer worth \$250;
4. (3) Darla's engagement ring is worth \$800
5. (3)\$2000 worth of Ohio college tuition credits, purchased by Dave for the benefit of his and Marlene's children; he bought these tuition credits on the advice of a bankruptcy attorney he spoke with last month, money previously held in an IRA.

Section B - Dave & Darla's unsecured debts. What is the likely treatment of each of the following unsecured debts owed by Dave & Darla.

1. (3)Dave's monthly \$500 child support payments to Marlene in support of Dave and Marlene's two children: Mike (9) & Marsha (7) ; Dave is currently four months (\$2000 behind in these payments;
2. (3)Dave's uninsured liability to Stan Stevens in connection with an auto accident involving Dave & Stan. The default judgment Stan obtained against Dave included damages of \$ 10,000 for

medical bills and pain & suffering suffered by Stan together with \$3000 property damage to Stan's car;

3.(3)A \$1000 criminal fine imposed on Dave for violation of Ohio's drunk driving statute in connection with the auto accident involving Stan & Dave;

4. (3)Dave's \$3000 obligation to First State Bank; this amount was, borrowed to pay Marlene's tuition at the Franklin Beauty & Truck Driving Academy; Dave agreed to incur and pay this debt as part of his and Marlene's divorce settlement.

5.(3)\$2200 to Diamond Bank for amounts charged against Dave & Darla's Diamond Bank Visa account during the past month and a half. This amount was charged by Darla at the checkout counter at the supermarket where Darla customarily charged more than the amount of her groceries in order to obtain cash change which she used to pay other expenses. The \$800 cash she proposes to pay you for representing her in a bankruptcy proceeding was withdrawn from her credit account in this manner.

6. (3)\$300 owed to the IRS as taxes and early withdrawal penalties for the funds withdrawn from Dave's IRA, used to purchase tuition credits mentioned above.

Section C - Other Facts Relating to Dave & Darla's Bankruptcy. Explain how the following facts, if true, would affect Dave & Darla's chapter 7 bankruptcy case.

1. (3)Dave & Darla's combined income is \$1800 per month. Their living expenses, excluding payments to any creditors are \$1100 including money for rent on their apartment, food, and utilities.

2.(3)Dave is currently the named beneficiary of his Uncle Bob's will and stands to inherit \$20,000 upon Bob's death. Dave is concerned, however, that his uncle will disapprove of Dave's filing a bankruptcy petition, and may disinherit him in favor of Dave's cousin Sam, Dave & Sam are Bob's only heirs.

3. (1) You represented Dave in the drunk driving case. He still owes you \$2,000.

Part 2 - 40 POINTS - 1 1/4 Hours
Confine your answer to 4 pages in a bluebook

XYZ Corp. conducts a video rental business and is considering filing a chapter 11 petition. It has the following debts:

\$300,000 to City Bank secured by a senior purchase money mortgage on the land and building on which XYZ's two video rental locations are situated. The combined value of these properties is only \$250,000.

\$50,000 to various trade creditors.

\$100,000 to Joe Schmidt. Joe is a college friend of Sam Mayhew, the owner of all of the stock of XYZ Corp.

\$28,000 to the IRS for income withholding, social security, and medicare taxes in connection with XYZ's employees for the past 3 years.

XYZ has proposed the following plan or reorganization:

- Payment of \$250,000 to City Bank over the next 15 years in regular monthly installment payments of \$1000 per month for the next 250 months (20 years & 10 months);
- A total of \$ 100,000, over the next 10 years, at the rate of \$ 10,000 per year, to the class of general unsecured creditors defined to include the trade creditors and Joe Schmidt;
- \$28,000 to the IRS, in its own class, over a the next seven year period in equal annual of \$4,000
- Retention by Sam Mayhew of 100% of the outstanding stock of the corporation in exchange for a \$ 1,000 capital contribution from Sam.

In addition to the real estate, XYZ's assets consist of \$130,000 worth of videos, equipment, and accounts receivable.

Joe Schmidt and \$33,000 worth of claims among the trade creditors are likely to vote in favor of the plan. The remaining \$17,000 of trade creditors, likely to vote against the plan, consist of 10 creditors owed approximately \$700 each and one creditor owed \$10,000.

XYZ Corp.'s projections indicate that it is likely to earn \$25,000 per year above its operating expenses. This amount will be available to make payments to creditors under the plan.

Draft a memo 1) explaining the likely objections to the plan and whether they are likely to be successful; and 2) identifying possible alternative strategies that could possibly result in confirmation of a plan to rehabilitate the business.

Part 3 - 20 POINTS – 2 Hours
Confine your answer to 2 pages in a Bluebook

Bob Boneyard is an excavation subcontractor. He mostly digs basements and trenches for foundation footers for several home renovation contractors in his area. Because of a downturn in the local economy, and a reduction in home renovation projects, Bob has had less work than usual for the past 18 months and is considering filing a chapter 13 petition. Among his more valuable assets is the backhoe he uses for nearly all of his work. Although expensive, a backhoe is really nothing more than a large, motorized, self-propelled shovel, capable of digging 25 gallons of dirt at a time.

The backhoe Bob uses is a Caterpillar Brand small size backhoe suitable for use in the residential yards in which Bob customarily works.

After examining the agreement between Bob and City Caterpillar, from whom Bob acquired the backhoe, you have concluded that it is unclear whether the agreement, although characterized as a lease, is really a security agreement. The agreement provides that Bob cannot assign his contract without City Caterpillar's permission and that the "lease" will be immediately terminated if Bob fails to make any of the required lease payments. Bob has missed the last two payments, and last week received a letter from City Caterpillar purporting to exercise the right of termination and demanding that Bob return the backhoe.

Another lawyer in your firm has been assigned to determine whether the agreement is a lease or a security agreement. Your job is to figure out why it matters.

Draft a short memo explaining the effect of the determination of whether the agreement is an equipment lease or a secured sale upon the treatment of City Caterpillar's rights in Bob's chapter 13 case?

Section 2329.66

(A) Every person who is domiciled in this state may hold property exempt from execution, garnishment, attachment, or sale to satisfy a judgment or order, as follows:

(1)(a) In the case of a judgment or order regarding money owed for health care services rendered or health care supplies provided to the person or a dependent of the person, one parcel or item of real or personal property that the person or a dependent of the person uses as a residence. Division (A)(1)(a) of this section does not preclude, affect, or invalidate the creation under this chapter of a judgment lien upon the exempted property but only delays the enforcement of the lien until the property is sold or otherwise transferred by the owner or in accordance with other applicable laws to a person or entity other than the surviving spouse or surviving minor children of the judgment debtor. Every person who is domiciled in this state may hold exempt from a judgment lien created pursuant to division (A)(1)(a) of this section the person's interest, not to exceed five thousand dollars, in the exempted property.

(b) In the case of all other judgments and orders, the person's interest, not to exceed five thousand dollars, in one parcel or item of real or personal property that the person or a dependent of the person uses as a residence.

(2) The person's interest, not to exceed one thousand dollars, in one motor vehicle;

(3) The person's interest, not to exceed two hundred dollars in any particular item, in wearing apparel, beds, and bedding, and the person's interest, not to exceed three hundred dollars in each item, in one cooking unit and one refrigerator or other food preservation unit; (4)(a) The person's interest, not to exceed four hundred dollars, in cash on hand, money due and payable, money to become due within ninety days, tax refunds, and money on deposit with a bank, savings and loan association, credit union, public utility, landlord, or other person. Division (A)(4)(a) of this section applies only in bankruptcy proceedings. This exemption may include the portion of personal earnings that is not exempt under division (A)(13) of this section. (b) Subject to division (A)(4)(d) of this section, the person's interest, not to exceed two hundred dollars in any particular item, in household furnishings, household goods, appliances, books, animal crops, musical instruments, firearms, and hunting and fishing equipment, that are held primarily for the personal, family, or household use of the person. (c) Subject to division (A)(4)(d) of this section, the person's interest in one or more items of jewelry, not to exceed four hundred dollars in one item of jewelry and not to exceed two hundred dollars in every other item of jewelry. (d) Divisions (A)(4)(b) and (c) of this section do not include items of personal property listed in division (A)(3) of this section. If the person does not claim an exemption under division (A)(1) of this section, the total exemption claimed under division (A)(4)(b) of this section shall be added to the total exemption claimed under division (A)(4)(c) of this section, and the total shall not exceed two

thousand dollars. If the person claims an exemption under division (A)(1) of this section, the total exemption claimed under division (A)(4)(b) of this section shall be added to the total exemption claimed under division (A)(4)(c) of this section, and the total shall not exceed one thousand five hundred dollars.

(5) The person's interest, not to exceed an aggregate of seven hundred fifty dollars, in all implements, professional books, or tools of the person's profession, trade, or business, including agriculture;

(6)(a) The person's interest in a beneficiary fund set apart, appropriated, or paid by a benevolent association or society, as exempted by section 2329.63 of the Revised Code;

(b) The person's interest in contracts of life or endowment insurance or annuities, as exempted by section 3911.10 of the Revised Code;

(c) The person's interest in a policy of group insurance or the proceeds of a policy of group insurance, as exempted by section 3917.05 of the Revised Code;

(d) The person's interest in money, benefits, charity, relief, or aid to be paid, provided, or rendered by a fraternal benefit, society, as exempted by section 3921.18 of the Revised Code;

(e) The person's interest in the portion of benefits under policies of sickness and accident insurance and in lump-sum payments for dismemberment and other losses insured under those policies, as exempted by section 3923.19 of the Revised Code.

(7) The person's professionally prescribed or medically necessary health aids;

(8) The person's interest in a burial lot, including, but not limited to, exemptions under section 517.09 or section 1721.07 of the Revised Code;

(9) The person's interest in the following:

(a) Moneys paid or payable for living maintenance or rights, as exempted by section 3304.19 of the Revised Code;

(b) Workers' compensation, as exempted by section 4123.67 of the Revised Code;

(c) Unemployment compensation benefits, as exempted by section 4141.32 of the Revised Code;

(d) Aid to dependent children payments, as exempted by section 5107.12 of the Revised Code;

(e) Disability assistance payments, as exempted by section 5115.07 of the Revised Code.

(10)(a) Except in cases in which the person was convicted of or pleaded guilty to a violation of section 2921.41 of the Revised Code and in which an order for the withholding of restitution from payments was issued under division (C)(2)(b) of that section, and only to the extent provided in the order, and except as provided in sections 2929.181, 3105.171, 3105.63, 3111.23, and 3113.21 of the Revised Code, the person's right to a pension, benefit, annuity, retirement allowance, or accumulated contributions, the person's right to a participant account in any deferred compensation program offered by the Ohio public employees deferred compensation board, a government unit, or a municipal corporation, or the person's other accrued or accruing rights, as exempted by section 145.56, 145.75, 146.13, 742.47, 3307.71, 3309.66, or 5505.22 of the Revised Code, and the person's right to benefits from the firemen and policemen's death

benefit fund;

(b) Except as provided in sections 3111.23 and 3113.21 of the Revised Code, the person's right to receive a payment under any pension, annuity, or similar plan or contract, not including a payment from a stock bonus or profit-sharing plan or a payment included in division (A)(6)(b) or

(10)(a) Of this section, on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the person and any of the person's dependents, except if all the following apply:

(i) The plan or contract was established by or under the auspices of an insider that employed the person at the time the person's rights under the plan or contract arose.

(ii) The payment is on account of age or length of service.

(iii) The plan or contract is not qualified under the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1, as amended.

(c) Except for any portion of the assets that were deposited for the purpose of evading the payment of any debt and except as provided in sections 3111.23 and 3113.21 of the Revised Code, the person's right in the assets held in, or to receive any payment under, any individual retirement account, individual retirement annuity, or Keogh or "H.R. 10" plan that provides benefits by reason of illness, disability, death, or age, to the extent reasonably necessary for the support of the person and any of the person's dependents.

(11) The person's right to receive spousal support, child support, an allowance, or other maintenance to the extent reasonably necessary for the support of the person and any of the person's dependents;

(12) The person's right to receive, or moneys received during the preceding twelve calendar months from, any of the following:

(a) An award of reparations under sections 2743.51 to 2743.72 of the Revised Code, to the extent exempted by division (D) of section 2743.66 of the Revised Code;

(b) A payment on account of the wrongful death of an individual of whom the person was a dependent on the date of the individual's death to the extent reasonably necessary for the support of the person and any of the person's dependents;

(c) Except in cases in which the person who receives the payment is an inmate, as defined in section 2969.21 of the Revised Code, and in which the payment resulted from a civil action or appeal against a government entity or employee, as defined in section 2969.21 of the Revised Code, a payment, not to exceed five thousand dollars, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the person or an individual for whom the person is a dependent;

(d) A payment in compensation for loss of future earnings of the person or an individual of whom the person is or was a dependent to the extent reasonably necessary for the support of the debtor and any of the debtor's dependents.

(13) Except as provided in sections 3111.23 and 3113.21 of the Revised Code, personal earnings of the person owed to the person for services rendered within thirty days before the issuing of an attachment or other process, the rendition of a judgment, or the making of an order, under which the attempt may be made to subject those earnings to the payment of a debt, damage, fine, or arnercerment, in an amount equal to the greater of the following amounts:

(a) If paid weekly, thirty times the current federal minimum hourly wage; if paid biweekly, sixty times the current federal minimum hourly wage; if paid semimonthly, sixty-five times the current federal minimum hourly wage; or if paid monthly, one hundred thirty times the current federal minimum hourly wage that is in effect at the time the earnings are payable, as prescribed by the "Fair Labor Standards Act of 1938, 52 Stat. 1060, 29 U.S.C. 206(a)(1), as amended;

(b) (b) Seventy-five per cent of the disposable earnings owed to the person.

(14) The person's right in specific partnership property, as exempted by division (B)(3) of section 1775.24 of the Revised Code;

(15) A seal and official register of a notary public, as exempted by section 147.04 of the Revised Code;

(16) The person's interest in a tuition credit or a payment under section 3334.09 of the Revised Code pursuant to a tuition credit contract, as exempted by section 3334.15 of the Revised Code;

(17) Any other property that is specifically exempted from execution, attachment, garnishment, or sale by federal statutes other than the "Bankruptcy Reform Act of 1978," 92 Stat. 2549, 11 U.S.C.A. 101, as amended;

(18) The person's interest, not to exceed four hundred dollars, in any property, except that division (A)(18) of this section applies only in bankruptcy proceedings.

(B) As used in this section:

(1) "Disposable earnings" means net earnings after the garnishee has made deductions required by law, excluding the deductions ordered pursuant to section 3111.23 or 3113.21 of the Revised Code.

(2) "Insider" means:

(a) If the person who claims an exemption is an individual, a relative of the individual, a relative of a general partner of the individual, a partnership in which the individual is a general partner, a general partner of the individual, or a corporation of which the individual is a director, officer, or in control;

(b) If the person who claims an exemption is a corporation, a director or officer of the corporation; a person in control of the corporation; a partnership in which the corporation is a general partner; a general partner of the corporation; or a relative of a general partner, director, officer, or person in control of the corporation;

(c) If the person who claims an exemption is a partnership, a general partner in the partnership; a general partner of the partnership; a person in control of the partnership; a partnership in which the partnership is a general partner; or a relative in, a general partner of, or a person in control of the partnership;

(d) An entity or person to which or whom any of the following applies:

(i) The entity directly or indirectly owns, controls, or holds with power to vote, twenty per cent or more of the outstanding voting securities of the person who claims an

exemption, unless the entity holds the securities in a fiduciary or agency capacity without sole discretionary power to vote the securities or holds the securities solely to secure to debt and the entity has not in fact exercised the power to vote.

(ii) The entity is a corporation, twenty per cent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the person who claims an exemption or by an entity to which division (B)(2)(d)(i) of this section applies.

(iii) A person whose business is operated under a lease or operating agreement by the person who claims an exemption, or a person substantially all of whose business is operated under an operating agreement with the person who claim an exemption.

(iv) The entity operates the business or all or substantially all of the property of the person who claims an exemption under a lease or operating agreement.

(e) An insider, as otherwise defined in this section, of a person or entity to which division (B)(2)(d)(i), (ii), (iii), or (iv) of this section applies, as if the person or entity were a person who claims an exemption;

(f) A managing agent of the person who claims an exemption.

(3) "Participant account" has the same meaning as in section 145.71 of the Revised Code.

(4) "Government unit" has the same meaning as in section 145.74 of the Revised Code.

(C) For purposes of this section, "interest" shall be determined as follows:

(1) In bankruptcy proceedings, as of the date a petition is filed with the bankruptcy court commencing a case under Title 11 of the United States Code;

(2) In all cases other than bankruptcy proceedings, as of the date of an appraisal, if necessary under section 2329.68 of the Revised Code, or the issuance of a writ of execution. An interest, as determined under division (C)(1) or (2) of this section, shall not include the amount of any lien otherwise valid pursuant to section 2329.661 of the Revised Code.

(1996 H 455, eff. 10-17-96; 1996 S 269, eff. 7-1-96)