COMMERCIAL LAW I Section A PROFESSOR KOBIL FALL, 1990

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CAPITAL UNIVERSITY LAW SCHOOL

FINAL EXAMINATION

TIME: 3 1/2 HOURS

GENERAL INSTRUCTIONS:

- 1. Be sure that your examination number appears in the upper right-hand corner of every page of this examination and on the bluebook which you use.
- 2. If you use a felt-tip or fountain pan to write the examination, please write only on one side of each sheet of paper in the bluebook.
- 3. This is an open-book exam, of sorts. You may have with you and use during the exam the following materials:
 - A. Your copy of West's Selected Commercial Statutes;
 - B. The Statutes and Regulations handed out in class;
 - C. Your personally-prepared outline of the course, which may not contain any sections photo-copied from any other text, treatise, casebook, commercial outline.

You may not have or use any other materials during the examination and the failure to comply with the spirit and letter of this provision, as interpreted by me, will result in your receiving a grade of F for this course.

- 4. Do not take the bluebooks, the examination copy, your statute book or outline out of the room in which you are writing until the examination is over.
- 5. When you are finished with the examination, please place your examination copy and your bluebooks on the instructor's table at the front of the room announced at the beginning of the examination. Sign the sheet provided indicating you have turned in your examination.
- 6. Do not assume facts not given, and do not change the facts. However, if you are convinced that a question cannot be answered completely without making certain assumptions on which you are relying.

7. In questions pertaining to Ohio, assume that existing Ohio law, to the extent that it was discussed in class, applies.

In jurisdictions other than Ohio, assume that the 1972 official version of the U.C.C. has been adopted in all of the relevant jurisdictions with the following exception: the most recent (1987) revision of section 1-201 (37) is in effect in all relevant jurisdictions. Further assume that the second alternative versions of U.C.C. section 9-401 (1) and section 9-401 (3), and Alternative A of section 2-318 have been adopted, in those jurisdictions. You should assume that the provisions of the Federal Bankruptcy Code and the Magnuson-Moss Warranty - Federal Trade Commission Improvement Act included in your copy of West's Selected Commercial Statutes are in effect. Unless specifically instructed otherwise, do not assume that other state or federal statutory provision have been adopted.

SPECIFIC INSTRUCTIONS:

This examination consists of Two Parts, each of which will account for 50% of your grade. Part One consists of eighteen true-false/short answer questions, while Part Two consists of one, standard, garden-variety law school essay question. The instructions for each Part are set forth below.

Instructions for Part One: True-false/Short Answer (90) Points,

- A. For each of the short fact patterns set out in Part One, please, in the space provided after each question;
 - 1)Indicate whether the statement at the end of each question is true or false.
- 2)Provide a short (preferably, a sentence) explanation supporting your conclusion as to truth or falsity;
- 3)Specify the provision of the Uniform Commercial Code, relevant statute, or regulation that best supports your answer, identifying subsections to the extent necessary. In other words, if a particular subsection of the Code is dispositive, reference to the general section in which it is found is incorrect.
- B. A typical answer should follow the format illustrated below:

 FALSE. A is entitled to priority over B because A was the first to file or perfect. 9-312 (5) (a).
- C. Although in most instances it will be unnecessary, you may refer to Official Comments or other code sections in your short explanation SO LONG AS YOU MAKE ABSOLUTELY CLEAR, BY CIRCLING, UNDERLINING, OR OTHERWISE, WHICH ONE CODE SECTION YOU ARE RELYING ON TO SUPPORT YOUR ANSWER.

If I an unable to determine which statutory provision you are relying on, your answer will be marked incorrect.

- D. Each correct answer will be worth 5 points. No partial credit will be given for incomplete or partially correct answers.
- A. Discuss each issue fairly raised by a fact pattern, even if your conclusion on one issue within the fact pattern seems to make discussion of another issue unnecessary.
- B. in answering all of the questions, please discuss each issue raised by the question separately. Complete in full your discussion of one issue before discussing another issue.
- C. ADHERE TO THE PAGE LIMITATION ESTABLISHED AT THE BEGINNING OF THE ESSAY QUESTION. A "page", as I define that term, is one side of a sheet of paper, leaving customary margins at the left and top of each page. Be sure you number the pages of your bluebook before beginning to answer each question to assure that you do not exceed the limitation. I WILL READ NO FURTHER THAN THE STATED PAGE LIMIT.
- D. Leave a reasonable margin at the top and on the lefthand side of each page for me to use in grading.
 - E. Once the ordeal of exams is behind you, have a great holiday break!

PART ONE

Short Answer (90) Points

- 1.Dr. Doomuch, a veterinarian, applied for a \$5,000 loan from the Grasping Finance Company (GFC) in order to purchase a new liposuction device known as a "Poodle Pincher". To secure the loan, Doomuch signed a properly prepared security agreement and financing statement, using the accounts of his patients as collateral. Unfortunately, Doomuch was hit recently with a big malpractice verdict which caused him to default on the loan. GFC has attempted to collect on the accounts from Doomuch's patients but most have been reluctant to pay typically asserting that Doomuch is incompetent or has failed to render the services promised. GFC decided to sell the accounts to the Friendly Factoring Agency for \$3,000, which is a commercially reasonable price under the circumstances. Upon GFC's sale of the accounts to Friendly, Doomuch no longer is liable to GFC for the outstanding loan balance of \$2,000, assuming the security agreement executed by Doomuch does not otherwise address the issue of the deficiency.
- 2. Sally, a travel writer by trade, agreed to sell her neighbor, Burt, her Winnabagel mobile home for \$10,000. Burt thought that this was a real steal since the Winnabagel only had 23,000 miles on it, so he paid Sally her asking price in cash on June 1. However, since Sally had to empty the camper of her lint collection, typewriter, library of National Enquirers, stuffed gannet, and other belongings, Burt told her that he would come over to pick up the camper when it was ready, but in no event later than June 4. Unfortunately, on June 2, several hours after Sally had told Burt that the camper was all ready to go, it went: Hurricane Myron demolished the camper. Sally bears the

risk of the loss and will have to return Burt's payment.

- 3. On January 20, Dopey Designs, Inc. ("D"), borrowed \$100,000 from Snow White Finances ("S"). In addition to executing a promissory note in favor of S, D also signed a properly prepared security agreement granting S an interest in all of D's "inventory now owned or hereafter acquired" which secured "all obligations now or hereafter owed. S perfected by filing a properly prepared financing statement in the appropriate office. On April 15, in order that D could pay its tax bill, S loaned D an additional \$30,000. Only two weeks before, on April 1, D's inventory had been worth \$80,000. However, in the space of a mere 90 days, on July 1, the inventory had grown in value to \$95,000. If D files a bankruptcy petition on July 1, the trustee in bankruptcy will be successful in avoiding \$15,000 of the secured claim as an preferential transfer owing to the increase in the value of the inventory.
- 4. Sigfried ("S") enters into a written contract to sell 10 wedding rings to Brunhilde ("B") for \$600. Prior to delivery, a precipitous increase in the divorce rate causes the market for rings to be inundated. As a consequence, prices fall and B asks S if he will reduce the price to \$100. S orally agrees but then sues B for the original price after making delivery. If B defends by interposing as a defense S's agreement to modify the contract, S will prevail because he signed no writing evidencing his acquiescence to B's request.
- 5. Gandalf Electronics sells a personal computer to Bilbo Baggins on credit, retaining a security interest pursuant to a properly prepared agreement to secure the purchase price. Gandalf does not file a financing statement. Bilbo uses the computer in his hobbit hole to prepare an account of his recent vacation (called There, and Back Again) and to maintain his diary. However, as his eleventy-first birthday approaches, he decides that he will relocate his residence to Rivendell, and that it does not make sense to lug his computer all over Middle Earth. Bilbo sells the machine for a tidy sum to his trusting nephew Frodo, who has no knowledge of Gandalf's security interest. Frodo intends to use the computer in his hobbit hole for correspondence with his cousins and friends. Unfortunately, once Bilbo gets to Rivendell, he ceases making payments to Gandalf. In an action by Gandalf to recover the computer from Frodo, Gandalf will prevail because he has a perfected security interest in the computer.
- 6. Fran is a resident of Franklin County, Ohio, who grows sugarbeets on 400 acres of land located in Licking County, Ohio. Typically, Fran sells the beets on credit to I.M. Sweet Inc., which in turn processes them into sugar. In order to secure a loan from the Lamprey Finance Company ("Lamprey"), Fran grants Lamprey a security interest in her accounts receivable, which is evidenced by a properly prepared security agreement and financing statement. Lamprey files the financing statement with the county recorder's office in Licking County, believing that Fran resides there. Still in need of money, Fran approaches the Mother Theresa Loan Corp. ("Mother") for another loan, for which she again offers as security her accounts receivable. Unable to deceive Mother, Fran tells Mother all about the security agreement and financing statement she gave to Lamprey. After consulting her lawyer, Mother decides to make the loan. Fran again executes a properly prepared security agreement and financing statement, and Mother files the financing statement with the county recorder's office in Franklin County.

- 7. On November 8, George took a properly prepared financing statement naming Michael as the debtor and himself as the secured party to the appropriate office for filing. The statement was accepted by J. Danforth (who else?), the filing officer, who misfiled the statement under George's name, believing that George was the debtor and Michael the secured party. On November 10, after a thorough search of the filing index revealed no security interests in Michael's property, Lloyd took a security interest in the same collateral in which George had an interest, and filed a properly prepared financing statement. Jesse, a different filing officer in the same office, accepted the statement and correctly filed it so that the index showed Michael as the debtor and Lloyd as the secured party. Assuming that both George and Lloyd have created valid security agreements and that U.C.C. Section 9-312(5) determines priority, George will prevail over Lloyd in a priority dispute for the collateral because he was the first to file. [NOTE Sec. 9-312(5) IS NOT THE DISPOSITIVE SECTION WHICH ANSWERS THIS QUESTION.]
- a. Andy is in the business of selling new and used farming equipment. On April 1, Andy sells Barney, a farmer, a new tractor on credit and retains a security interest which he perfects by filing a properly prepared financing statement with the appropriate office on April 7. Barney later purchases a better tractor from Otis, another retailer of new and used farming equipment, and trades in the tractor he purchased from Andy. At his Fourth of July "Big Bang" clearance sale, Otis sells Barney's trade-in tractor to Goober, who knows nothing of Andy's security interest. If Barney defaults and Andy attempts to recover the tractor from Goober, Goober will prevail because he is a buyer in the ordinary course of business.
- 9. While on the road in California, Jack Kerouac, a resident of Circleville in Pickaway County, Ohio, purchased an old, but still attractive (in Jack's opinion anyway) boxcar from the Southern and Pacific Railroad ("railroad"). It was Jack's intention to use the boxcar in his new business, Railriders, Inc., to teach others the secret of enlightenment through riding in railway cars without ever having to leave Circleville. Jack paid the railroad \$1,000 and agreed to pay an additional \$1,000 per year for five years. Jack gave the railroad a security interest in the boxcar and signed a properly prepared security agreement and financing statement. The railroad filed its financing statement with Secretary of State's office in Franklin County, Ohio. Assuming for purposes of this question that the boxcar is a mobile good, and thus Ohio law governs perfection, and that no certificate of title law is applicable, the railroad has an unperfected security interest in the boxcar.

10. THE FOLLOWING FACTS PERTAIN TO MORE THAN ONE QUESTION.

After passing the bar exam (whew), you are sitting in your nicely appointed new offices when a prospective client walks in (double whew!) with the following tale of woe. It seems that the client, a restaurant operator whose name is Joe, visited the Shady Appliance Company which deals only in new appliances. Joe purchased a Ronco automatic dishwasher from Shady for \$1,000, which is approximately the price that most commercial dishwashers go for. Unfortunately, when Joe got the dishwasher back to his restaurant, he found that it shatters every dish and glass that is breakable, and melts plastic. He has incurred substantial damages as a result of the malfunction. When you examine the sales contract, you notice that all implied warranties have been properly disclaimed. However, the contract does not include a merger clause. When you ask Joe about what was said to him about the dishwasher, he recounts the following conversation that occurred in the store prior to the sale:

JOE: "I need a machine to wash the dishes in my restaurant."

MR. SHADY (the owner):"Here is the only commercial automatic dishwasher I carry. It's \$1,000."

JOE: "I'll take it."

Joe wants to sue Shady for "some kind of breach of warranty," as he puts it. You should advise Joe that based on the facts he has recounted, he probably has no such claim.

11 The facts set forth in the preceding question are incorporated, with the following changes. Assume that in the sales contract you find that the only reference to any implied warranties is a sentence which says, "This machine is sold As Is." This language is found on the front of the contract in the same size print as the other writing. There is not a great deal of writing on the face of the contract.

Your BEST argument, based on the express language of the UCC, that this attempted disclaimer of implied warranties is ineffective is that it is not conspicuous.

12. The facts set forth in the preceding two questions are incorporated, with the following changes. Assume, regardless of what you previously concluded as to the warranties, that express and implied warranties were extended to Joe by Shady. In addition, the sales contract into which Joe entered contains the following provision: "All warranties extended by the seller are personal to the buyer and the buyer's family, and SHALL NOT EXTEND TO ANY OTHER INVITEES, GUESTS, OR ACQUAINTANCES OF THE BUYER."

If Joe's friends, Moo and Larry, are injured in Joe's home by the malfunctioning dishwasher, they have a cause of action against Shady based on breach of warranty, notwithstanding Shady's attempt to limit its liability.

13. On January 10, Sam("S") loaned \$15,000 to Dave(D) and obtained a security interest in all of D's inventory. As of January 10, D's bank account had a \$6,000 balance. D then made the following deposits and withdrawals:

On January 13, D deposited \$5,000 that he received from the sale of inventory.

On January 16, D withdrew \$9,000 from the account for payroll.

On January 20, D deposited \$23,000 from the sale of a vacant lot he owned.

On January 21, D deposited \$1,000 that he received from the sale of inventory.

Utilizing the lowest intermediate balance rule of tracing, S, on January 21, has a security interest to the extent of \$6,000 in the bank account.

14. On September 1, Boris borrowed \$25,000 from Rocky and grants Rocky a security interest in his inventory. Boris executes a properly prepared financing statement which Rocky gives to Bullwinkle to file at the appropriate office in Frostbite Falls, Minnesota. Unfortunately, Bullwinkle misunderstands our plucky little hero and leaves the financing statement with a befuddled clerk at the Registrar's office of Whatsamatta University. On December 30, Boris files a bankruptcy petition.

Assuming that Rocky's security interest has not been otherwise perfected at the time the petition was filed, the trustee will be able to avoid Rocky's security interest. [FOR THIS

QUESTION, THERE ARE MORE THAN ONE DISPOSITIVE STATUTORY PROVISIONS FOR WHICH YOU MAY RECEIVE CREDIT. CITE TO ONLY ONE.]

15. On December 1, Mr. Data ("D") borrows \$3,000 from the Andromeda Savings and Loan ("A") for a down payment on a new personal computer to be used in D's business. D grants A security interest in "all computer hardware and software now owned or later acquired." A perfects by filing a financing statement, which is properly prepared and signed by D, with the appropriate office on December S. On December 7, D buys a new computer from Spock's Artificial intelligence Boutique for \$6,500. D uses the \$3,000 he obtained from A as a down payment and finances the balance with S. S retains a security interest in the computer, which it perfected by filing a properly prepared financing statement with the appropriate office on December 11.

In a priority dispute between A and S for the computer, S will prevail.

- 16. On February 1, Washington sells central air conditioning to Madison on credit. The air conditioning is installed on that date in an office building owned by Madison. Washington obtains a security interest in the air conditioning. On February 22, Washington files the financing statement, which is properly executed by Madison, in the office that is appropriate for chattel filings, rather than in the real estate records. On February 25, Jefferson, a creditor of Madison, takes a default judgment against, Madison. On that same day, after having searched the real estate records and discovered no prior liens, Jefferson properly files his certificate of judgment so that he obtains a lien on Madison's building. In a priority dispute over the central air conditioning, Washington's interest will prevail over Jefferson's.
- 17. In January, Prospero("P") sells Miranda("M") a video cassette recorder and retains a security interest in the VCR, which he perfects by filing a properly prepared financing statement. Miranda neglects to make the March and April payments. In may, M takes the VCR to Caliban's Repair Shop ("C"), because it is not recording properly. C fixes the VCR and retains possession, thereby creating a common law artisan's lien. Unfortunately, M can not afford to pay either P or C. The VCR is worth less than the total of P's and C's claims.

In a dispute between P and C over the VCR, P will prevail his security interest is effective because it is properly perfected according to its terms against creditors such as C.

18. Marge, a merchant, sells a vacuum cleaner to Homer and does not disclaim any implied warranties. Homer takes the vacuum home, and asks his son Bart (the little hellion) to sweep the carpet. Begrudgingly complying with Homer's request, Bart is operating the machine in a more-or-less reasonable fashion when it explodes, destroying Bart's skateboard but otherwise leaving him unscathed.

If Bart attempts to sue Marge on a breach of the implied warranty of merchantability, she will be precluded from raising privity as a defense to his claim.

PART TWO
Essay Question (TOTAL OF 90 POINTS--60 FOR PART A; 30 FOR PART B

PART A: (60 POINTS)
PAGE LIMIT--4 BLUE BOOKS;3 TYPEWRITTEN, DOUBLESPACED

Dave Dostoevsky ("Dave" or "D"), is a renowned concert pianist who resides in the state of Georgia. However, he spends much of the year performing with various orchestras throughout the United States.

On January 1, Dave purchased a beautiful Steinway Grand piano, which he nicknamed "Wonderboy," from Peter's Piano Pavilion ("Peter's) in Atlanta. Dave made a down-payment of \$20,000 and financed the balance of \$10,000 with the seller. In order to secure repayment, Peter's took a security interest in Wonderboy, which became the third piano owned by Dave. On the date of the sale, Dave signed a properly prepared security agreement and financing statement. The financing statement was filed by Peter's with the Secretary of State's office in Georgia on January 20. On January 27, Dave took possession of Wonderboy . After receiving his now piano, Dave set out on tour and took Wonderboy with him in a bus that had been specially modified to accommodate the instrument. (This was quite an undertaking, since no concert pianist in the world had ever before attempted to tour with his own piano.)

Upon arriving in Toledo, Ohio, Dave decided to take out a \$50,000 loan to cover tour expenses from one of the Glass City's leading financiers, Alexis Alexandrovitch ("Alexis") Alexis was a big fan of Dave's, but still wanted some security for the loan. Consequently, on February 1, she inspected Wonderboy and had Dave execute a security agreement and financing statement evidencing Alexis' security interest in what both documents described as, "one Steinway Grand piano" (Wonderboy). On the same day, Alexis had the financing statement filed in Georgia with office of the Secretary of State.

Dave then traveled on to Kokomo, Indiana, where he found it difficult to support his rather extravagant lifestyle without supplementing his concert income. Therefore, he sought another loan of \$60,000 from a well-heeled, Hoosier Handel-fancier and money lender, Bonnie Byelokonsky ("Bonnie" or "B"). Bonnie's representatives exhaustively searched the filing records in all states through which Dave had traveled since leaving Georgia and found Peter's filing and Alexis' filing, copies of which they "faxed" to Bonnie. After consulting her attorney, Bonnie decided to go ahead with the loan anyway, taking a security interest in Wonderboy, which she had examined and considered a "magnificent instrument." On February she had Dave execute a properly prepared security agreement, and financing statement. On that same day, copies of the financing statement ware filed with the offices of the Secretary of State in Georgia and Indiana.

After Kokomo, Dave hit Indianapolis, Fort Wayne, Muncie, and Gary. Unfortunately, he also continued to spend vast sums of money, and defaulted on his obligations to Peter's, Alexis, and Bonnie by failing to make the March payments on any of the loans. To make matters worse, on March 13, as Dave was loading up his bus to return home to Georgia, he was forced to suffer the ultimate indignity of having a local sheriff levy on and seize Wonderboy pursuant to a writ of execution issued by a local court. It seems that one of Dave's previous creditors, Connie Chernobyl had obtained a judgment against Dave for \$70,000 and had availed herself of the sheriff's services in enforcing the judgment.

Peter's, Alexis, and Bonnie informed the sheriff of their interests. They all agreed that it should be sold and that the funds obtained from the sale be distributed according to the rights of the parties. On April 1, Wonderboy was sold by the sherriff for \$40,000.

ASSUMING FOR PURPOSES OF THIS PORTION OF THE QUESTION THAT THE WONDERBOY PIANO IS ORDINARY GOODS UNDER 9-103, PLEASE DISCUSS THE

RIGHTS AND LIABILITIES OF EACH OF THE PARTIES.

PART B: 30 POINTS
PAGE LIMIT-2 BLUE BOOKS; 1 AND 1/2 TYPEWRITTEN, DOUBLESPACED

Please discuss how the outcome of this question would have differed if the Wonderboy Piano had been considered to be mobil goods under 9-103. Based on the language of the UCC, the policies underlying the Code, and the facts described above, what are the arguments for and against such a classification of Wonderboy?