

American Bankruptcy Board of Certification
Sample Exam
Creditors' Rights Multiple Choice
Total Time – Two Hours

NOTE: The Creditors' Rights Multiple-Choice exam contains 50 questions. You must correctly answer 60%, or get at least 30 correct. We offer the following sample questions to give you an idea of the scope of the questions you are likely to encounter, as well as the types of subject matter covered.

1. Landlord entered into a commercial lease with Tenant for the operation of a restaurant. The lease was recorded. Landlord paid \$1,000,000 for Tenant's leasehold improvements. The lease provided that "in order to secure future rents and the leasehold improvement payments, the landlord reserves a landlord's lien (recognized by this State), on all personally brought on these premises". The lease further provided that "upon expiration or termination of the lease, the personality and fixtures on the premises become the property of the landlord." Subsequently, Tenant entered into a contract with Best Furniture for restaurant furnishings. The contract provided for several payments before delivery and final payment upon delivery. Upon delivery, Tenant did not make the final payment. Subsequently, Best Furniture obtained a judgment against Tenant for the final payment and executed upon the restaurant furnishings. In a dispute between Landlord and Best Furniture, who would prevail?

- a. Best Furniture, because when goods are delivered on the condition payment be made, the seller may reclaim the goods when payment is not made.
- b. Landlord, because the landlord's lien was prior in time to the execution lien.
- c. Landlord, because an execution lien is subordinate to all consensual liens in the same collateral.
- d. Best Furniture, because Tenant never became buyer of the furnishings in the ordinary course of business because Tenant never made the final payment, and therefore landlord never obtained any rights in the furnishings.

The answer is B. B is correct because the landlord lien is prior in time than the execution lien. See, Florida East Coast Properties, Inc. v. Best Contract Furnishings, Inc., 593 So. 2d 560 (1992).

2. Which of the following propositions concerning prejudgment remedies is correct?
- The use of prejudgment remedies is subject to due process limitations.
 - Prejudgment remedies are barred if the debtor is subject to the court's jurisdiction.
 - Consumer assets (i.e., wages) receive greater constitutional protection from prejudgment remedies than commercial assets (i.e., business equipment).
 - To obtain a prejudgment remedy, the party seeking the remedy must have a security interest in the debtor's property.

The answer is A. B is wrong because the objective of prejudgment remedies is to protect property, not to obtain jurisdiction over the debtor. C is wrong because consumer assets and commercial assets are treated the same under the Constitution. See, North Georgia v. DI Chem., 419 U.S. 601 (1975). D is wrong because such remedies are not limited to secured creditors.

3. The Ace Appliance Store, a client of yours, sells refrigerators to the general public. Almost all of these refrigerators are purchases for use in the customer's home. Tom buys a refrigerator to use in his restaurant. Your client extends credit to Tom and takes a security interest in the refrigerator. Which of the following is correct?
- Your client is not automatically perfected because Tom's refrigerator is equipment.
 - Your client is automatically perfected because it has a purchase money security interest.
 - Your client is automatically perfected because Ace Appliance Store is generally known to be engaged in selling consumer goods.
 - Your client is not automatically perfected because Tom's refrigerator is consumer goods.

A is correct since 9-302(d) provides for automatic perfection if there is a purchase money security interest in consumer goods. Tom's refrigerator is equipment.

4. A judgment was entered in favor of Creditor against Corporation. Thereafter, Creditor instituted supplementary proceedings (discovery) and served Tom, a nonparty, with notice to appear and answer concerning the assets of Corporation. May Tom be examined?

- a. Tom may be examined without regard to his relationship to the debtor.
- b. Only the debtor may be examined in supplementary proceedings.
- c. Tom may be examined if he is an agent of the debtor.
- d. Tom may be examined if he is an employee of the debtor.

The answer is A. See, *Burchinal v. Whitehead*, 571 S. 2d 281 (1990).

5. Judy has an IRA (individual retirement account) at a local bank. Judy wishes to borrow from lender, and use her IRA account as collateral for a family vacation. How would you classify the collateral?

- a. The collateral is chattel paper.
- b. The collateral is a general intangible.
- c. The collateral is an instrument.
- d. The collateral is a deposit account.

The answer is D. An IRA is a deposit account under UCC 9-102(29).

6. Article 2 of the Uniform Commercial Code would not cover a sale of which of the following items?

- a. Wheat yet to be harvested.
- b. One hundred shares of IBM stock.
- c. An unborn racehorse.
- d. An autograph by Babe Ruth.

B is correct because shares of stock are investment securities governed by Article 8.

7. On March 1, Steve's Auto Parts contracted to sell goods to Bob's Shop. After delivery on March 20, Steve's Auto Parts discovers that Bob's Shop's filed for chapter 11 bankruptcy protection on April 1. When must Steve's Auto Parts make a reclamation demand after discovering Bob's Shop bankruptcy filing?

- a. April 9 (twenty days after delivery)
- b. April 21 (twenty days after filing)
- c. May 4 (45 days after delivery)
- d. May 16 (45 days after filing)

ANSWER: C is correct based on 11 U.S.C. Sec. 546(c)(1). Reclamation demand can be made not later than later of 45 days after receipt of goods by debtor or 20 days after commencement of case.

8. You are a sole practitioner in the process of representing a client as a plaintiff in a lawsuit when the defendant counterclaims alleging that you violated a state law by harassing the defendant in a pre-suit telephone call. Which of the following is correct?

- a. You may continue to represent the plaintiff without notifying the client of the counterclaim.
- b. You may continue to represent the plaintiff if the plaintiff consents.
- c. You may not continue to represent the plaintiff in this case.
- d. You may continue to represent the plaintiff in this case if the court approves your representation.

The correct answer is C.

9. Davidson opened a bank account with Big Bank. On March 1, Davidson's bank account balance was \$1,000.00. On March 2, Big Bank erroneously credited Davidson's account with an \$80,000.00 deposit. On March 3, before Davidson or Big Bank discovered the error, Davidson filed chapter 7. Did the entire \$81,000.00 become property of Davidson's bankruptcy estate?

- a. Yes, because all of Davidson's legal and equitable interests in property on the petition date become property of the bankruptcy estate.
- b. Yes, because Davidson had legal title and not just an equitable interest in the \$81,000.00.
- c. No, because \$80,000.00 will be subject to a constructive trust in favor of Big Bank.
- d. No, because \$80,000.00 is the subject of a resulting trust in favor of Big Bank.

The answer is "C". Collier has a discussion of constructive trusts, resulting trusts, and 11 U.S.C. §541(d) at 5-541 Collier on Bankruptcy, ¶541.28 Property in Which Debtor Holds Only Legal Title and Not an Equitable Interest: Property Held in Trust; § 541(d).

10. Acme, a company which manufactures and leases telephone equipment to businesses, brought suit against Mike's Depot, a large retail chain, for failure to make lease payments. Acme moved for summary judgment on its claim. Acme contends that Mike's Depot admits it has failed to make the lease payments, and that summary judgment is warranted. Mike's Depot filed opposing affidavits contending that the equipment was defective and misrepresented; these claims were included in a counterclaim for breach of warranty. What is the most likely ruling on Acme's motion for summary judgment on its claim?

- a. Summary judgment is appropriate because there is no genuine issue of material fact.
- b. Summary judgment is inappropriate because there is a genuine issue of material fact.
- c. Summary judgment is appropriate because, although there is an issue of fact, it is not a material fact.
- d. Summary judgment is inappropriate because there has not yet been a trial on the claim.

Answer C. is correct because the motion for summary judgment has just been filed by Acme "on its claim." Although the opposing affidavits probably raise an issue of fact on the counterclaim, they are not material to Acme's claim under the lease.