

**American Board of Certification  
Creditors' Rights  
Multiple Choice Sample Questions**

NOTE: The Creditors' Rights Multiple-Choice exam contains 50 questions. You must correctly answer 60%, or get at least 30 correct. Ten sample questions are offered below. As you can see, the subject matter is quite broad.

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 property brought on this premises". The lease further provided that "upon expiration or termination of the lease, the property and fixtures on the premises would 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 and levied upon the restaurant furnishings. In a dispute between Landlord and Best Furniture, select the best answer.

A. Best's execution lien is superior to the landlord's lien because Landlord never filed a financing statement.

B. The landlord's lien is superior to Best's execution lien.

C. Best has priority over Landlord because when goods are delivered on the condition payment is made and payment is not made, the seller's right of reclamation has priority over any competing claim to the goods.

D. Best has priority over Landlord because Tenant never made the final payment and therefore never became buyer of the goods in the ordinary course of business, so Landlord's lien never attached to the goods.

***The answer is B because, although Tenant had voidable title to the purchased furnishings, the landlord is a "good faith purchaser for value" within the meaning of § 2-403(1) and defeats the claim of Best. See, e.g., Florida East Coast Properties, Inc. v. Best Contract Furnishings, Inc., 593 So.2d 560 (1992).***

2. Which of the following proposition(s) concerning prejudgment remedies is most correct?

- A. Due process limitations do not apply unless the debtor's possessory rights are interfered with.
- B. Due process requires pre-seizure notice and an opportunity for a hearing.
- C. Consumer assets receive greater constitutional protection from prejudgment remedies than commercial assets.
- D. The Constitution requires a showing of exigent circumstances.

***The answer is D under Connecticut v. Doehr, 501 U.S. 1 (1991). North Georgia Finishing, Inc. v. Di-Chem, Inc., 419 U.S. 601 (1975), established that commercial assets are protected. Both cases make clear that pre-seizure notice is not required in all cases.***

3. Ace Appliance Store sells refrigerators to the general public. Almost all of these refrigerators are purchased for use in the customer's home. Tom buys a refrigerator to use in his restaurant. Ace extends credit to Tom and takes a security interest in the refrigerator. Ten days after Tom took possession of the refrigerator, a judgment creditor executed and levied upon the refrigerator. Ace became concerned when it heard about the levy and three days later properly filed a UCC financing statement covering the refrigerator. Which of the following is most correct?

- A. Ace has priority in the refrigerator because its security interest was automatically perfected.
- B. Ace has priority because it filed its financing statement 13 days after Tom received possession of the refrigerator.
- C. The levying creditor has priority because it levied before Ace filed its financing statement.
- D. The levying creditor has priority because Ace had knowledge of the levy before it filed its financing statement.

***B is correct because § 9-317(e) provides a 20-day grace period in which a holder of a purchase money security interest in equipment may perfect and thereby prevail over an intervening lien creditor. Knowledge is not relevant so D is incorrect. Automatic perfection does not apply because the***

***refrigerator is not “consumer goods” because Tom will use it in his business.***

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. Which of the following statements is most correct?

- A. Tom may be examined regarding the assets of Corporation, regardless of his relationship to Corporation.
- B. Tom may not be examined because a third person, nonparty, is not subject to supplementary proceedings.
- C. Tom may be examined only if he is an agent of Corporation.
- D. Tom may be examined only if he is an employee of Corporation.

***The answer is A under Fed. R. Civ. P. 69(a)(2). See, e.g., Ex parte Burchinal, 571 So.2d 281 (Miss. 1990).***

5. Judy owns a \$10,000 5-year “certificate of deposit” account at a local bank. The account is reflected in the bank’s records but it is uncertificated. Judy wants to borrow \$6,500 from Friendly Finance for a family vacation and wants to use the CD account as collateral. Which of the following statements is most correct?

- A. The collateral is chattel paper that can be perfected by possession or filing a UCC financing statement.
- B. The collateral is a general intangible that can be perfected only by filing a UCC financing statement.
- C. The collateral is an instrument that can be perfected by possession or filing a UCC financing statement.
- D. The collateral is a deposit account, but on these facts UCC Article 9 does not govern the transfer of a security interest in the account.

***The answer is D. An uncertificated CD is a deposit account under UCC 9-102(a)(29). Although Article 9 does cover some deposit accounts, this loan is a “consumer transaction.” UCC§ 9-102(a)(26). Thus, Article 9 does not cover it. See § 9-109(c)(13).***

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. Supplier Inc. delivered 1,000 toasters on credit to Store Inc. on January 1. The agreement required Store Inc. to pay for the toasters within 15 days of receipt and further provided that title to the toasters would remain in Supplier Inc. until Store Inc. paid for them. On January 5, Supplier Inc. discovered that Store Inc. was insolvent. Store Inc. had not yet made the payment that was due on or before January 15. Which of the following statements is most correct?

- A. Supplier Inc. may recover the toasters because it still holds title to them.
- B. Supplier Inc. may recover the toasters because Store Inc. is insolvent.
- C. Supplier Inc. cannot recover the toasters because Store Inc. is not yet in default.
- D. Supplier Inc. cannot recover the toasters because it failed to file a UCC financing statement.

***B is correct because a credit seller has a right to reclaim goods upon demand made within a reasonable time after buyer's receipt of the goods if it discovers that the buyer received the goods while insolvent. See UCC § 2-702(b). This is true even if payment is not yet due, so C is not correct because Supplier Inc. can recover the toasters regardless of default. A is incorrect because retention of title is limited in effect to a security interest and Store Inc. is not yet in default, so UCC § 9-609 does not yet permit repossession. D is not correct because the filing of a financing statement affects perfection and does not limit the rights a creditor has against its debtor (outside of bankruptcy).***

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 client consents after full disclosure.

C. You may continue to represent the plaintiff if you indemnify the client.

D. You may not continue to represent the plaintiff in this case.

***The correct answer is D. See Model Rule of Prof. Conduct 1.7(a).***

9. Owner owns two vacant lots. Owner wished to improve the lots by constructing homes on them. On July 1, Owner hired Contractor to construct two homes on the lots. On July 2, Owner entered into a construction loan agreement and mortgage with Bank. On July 5, Contractor began construction. On July 10, the mortgage relating to the construction loan was recorded. Subsequently, Owner dissipated the construction funds and did not pay the Contractor in full. Which of the following is not correct?

A. On July 2, the mortgage was valid only between Owner and Bank and not against third parties.

B. A mechanic's lien attached in favor of Contractor on July 5.

C. A mechanic's lien generally has priority over all liens and encumbrances, which are subsequent to the commencement of the work.

D. The construction mortgage has priority over the later-arising mechanic's lien because it was recorded within 10 days of execution.

***The answer is D since all of the other statements are correct. See, e.g., Shade v. Wheat Craft Industries, 809 P.2d 538 (1991).***

10. Allcalls, a company that manufactures and leases telephone equipment to businesses, brought suit against Mike's Burnin' Barn, a large retail chain, for failure to make lease payments. Mike's Burnin' Barn admits that it has failed to make the payments. Allcalls moved for summary judgment on its claim. Mike's Burnin' Barn 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 Allcalls' motion for summary judgment on its claim?

- A. Summary judgment is appropriate because there is no genuine issue of 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 not the proper motion to be filed at this time.

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

## **American Board of Certification -- Sample Exam**

### **Creditors' Rights Ethics**

#### **Answer Two Questions out of Four**

#### **Total Time -- One Hour**

NOTE: The following questions and sample answers are based on questions used in past examinations. The sample answers are based on the status of the law as of the date the questions were written. In some instances, the sample answer may no longer reflect the prevailing view of the law. Although an excellent paper would discuss in detail all of the issues raised in the sample answer, a paper may receive a passing grade even though the analysis is less thorough.

## **Sample Question A**

You represent Bank, which has a duly perfected security interest in the inventory and accounts receivable of Debtor Inc. Debtor Inc. has not asserted any challenge to the perfection of your security interest, but has not been willing to acknowledge that this interest is unavoidable. You, as counsel for Bank, are not aware of any facts that would support an avoidance claim of Bank's interest. A Trustee has been appointed in Debtor Inc.'s case and is in the process of liquidating assets. The Trustee has refused to give Bank relief from stay and asserts that the Bank is fully secured.

The Trustee has initiated multiple preference actions against various trade creditors. The local rules require local counsel to represent any corporation in Bankruptcy Court. Your firm has been contacted by several preference defendants to represent them on the preference actions that have been brought against them. Each of the actions was brought as a separate adversary proceeding, and all are unrelated to each other.

Please discuss the following questions. (Be sure to identify the state where you practice and indicate, if you know, whether the ethical rules in your jurisdiction are patterned after the ABA Model Code of Professional Responsibility (usually numbered as "DR 2-105," etc.), the ABA Model Rules of Professional Conduct (usually numbered as "Rule 7.4," etc.), or neither.)

- 1) May you represent the Bank and one of the trade creditors?
- 2) May you represent more than one of the trade creditor?

## **SAMPLE ANSWER Question A**

1) A lawyer should exercise independent professional judgment on behalf of a client. This means that the lawyer must weigh carefully the possibility that his judgment may be impaired or his loyalty divided if he accepts or continues employment of multiple clients. He should resolve all doubts against the propriety of the representation and should not represent in litigation multiple clients with different interests if that would adversely affect the representation. If the interests vary only slightly and he can retain his independent judgment on behalf of each client, the client must be given the opportunity to evaluate his need for representation free from potential conflict and obtain other counsel if the client so desires. Thus, the attorney must make full disclosure to the clients and obtain their consent to the multiple representations. It would also be important for the attorney to consider the disruptive effect that withdrawal might have if the potential conflicts of interest become actual conflicts.

There always exists a conflict between a secured creditor and an unsecured creditor. In this case, even though the security interest of Bank appears to be uncontested, it has not been determined to be valid and thus is subject to attack by other creditors. Additionally, the value of the collateral has yet to be determined and the parties may have different interests as to how the property would be sold. Thus, it would be problematic for

a firm to represent both an unsecured and a secured creditor unless all issues regarding the security interests and the value of its collateral have been previously determined.

2) As for representing more than one of the trade creditors, it is likely that their interests would be very similar, although the goal of each creditor is to maximize the preference recovery from the other creditors and minimize the preference recovery from that creditor. Once the amount of the claims is determined, however, the interests would be identical. Whether you could represent more than one defendant in a preference action would be determined on a case-by-case basis. Important factors would be:

1. The amount of the preference claim in relation to the other potential clients; and
2. The common defenses that the parties may have.

If the amounts are relatively equal and the defenses are the same, then it is likely that the attorney would be able to represent each without impairing his independent professional judgment. A practical problem exists in small communities where there may be more claims than attorneys. In such instances, competent local counsel may be very difficult to find unless local attorneys represent multiple clients.

## **American Board of Certification -- Sample Exam**

### **Creditors' Rights Sub-Specialty Essay**

#### **Answer Four Questions out of Six Questions**

#### **Total Time - 3 Hours plus a 15 Minute Reading Period**

NOTE: The following questions and sample answers are based on questions used in past examinations. The sample answers are based on the status of the law as of the date the questions were written. In some instances, the sample answer may no longer reflect the prevailing view of the law. Although an excellent paper would discuss in detail all of the issues raised in the sample answer, a paper may receive a passing grade even though the analysis is less thorough.

#### **Sample Question A**

A collection attorney, representing Largo Industries, obtained a judgment against Fred, who is *pro se*, in the amount of \$55,000 for breach of contract. Shortly after the judgment was entered, Largo's counsel called Fred at 10:00 p.m. and threatened to contact his employer if Fred didn't make payment arrangements. Fred said, "Call me at a reasonable time," and hung up the phone. A week later, Largo's counsel called Fred at 10:00 p.m. again, used profanity in referring to him, and demanded payment. Fred repeated his request to be called at a reasonable time and hung up the phone. Two days later, Fred received a letter in the mail, from Largo's attorney and addressed to

him which stated, “You owe our client \$55,000 for a judgment entered against you by a judge in this county. Please contact us immediately to make payment arrangements or we will have no choice but to exercise our client’s post-judgment remedies.”

Fred was so fed up that he called Largo’s counsel and offered to pay \$1,000 per month (for 55 months) in full settlement of the judgment. Largo’s attorney wanted a voluntary wage garnishment, but Fred said that he would have to pay by check because his employer would fire him if he had a wage garnishment.

Please discuss the following:

- 1) Has Largo’s counsel done anything wrong?
- 2) Can Fred’s employer fire him for a wage garnishment?

### **SAMPLE ANSWER Question A**

1) The attorney’s behavior is regulated by the Fair Debt Collection Practices Act (15 U.S.C. Section 1692 *et seq.*). It prohibits debt collectors (which include attorneys) from harassing a consumer. One form of harassment is to engage a person in telephone conversation repeatedly with intent to annoy abuse or harass any person at the called number. Another form is the use of obscene or profane language. In addition, it is also a violation of the Act to communicate with a consumer in connection with the collection of a debt at any unusual time or place, with the statutory assumption that a reasonable time is between 8:00a.m. and 9:00p.m. Largo’s counsel violated all these provisions of the Act and may be subject to penalties provided for therein.

2) The Consumer Credit Protection Act (15 U.S.C. Section 1601 *et seq.*) provides in Section 1674(a) that “No employer may discharge any employee by reason of the fact that his earnings have been subject to garnishment for any one indebtedness.” If this wage garnishment is Fred’s only one, this Act prohibits the employer for discharging him for the reason Fred fears.

### **Sample Question B**

Bethany’s Bread Emporium’s test kitchen is in desperate need of new baking equipment. President Bethany Yeast approached her long-time bank, Southern Trust, for an additional \$ 50,000 loan. Bethany’s Bread currently owes Southern Trust \$ 250,000, and Southern Trust, as of two years ago, has a security interest in all of Bethany Bread Emporium’s now owned and after-acquired equipment (which was properly filed). Southern Trust refused any further advance.

Ms. Yeast then approached Owen's Oven Supply, who agreed to provide financing for \$ 45,000 of the purchase price (at an attractive rate), provided Yeast provided a down payment of the remaining \$ 5,000. Not having the \$ 5,000 down payment, Ms. Yeast approached Northern Trust for a \$ 5,000 loan. They agreed, provided that their loan would be secured by the new baking equipment. Northern Trust filed its financing statement describing the baking equipment on March 1. Northern Trust made its loan on March 10, and Ms. Yeast purchased the baking equipment the same day. Owen's Oven Supply filed its financing statement on March 27.

Who has priority with respect to the new baking equipment – Southern Trust, Northern Trust or Owen's Oven Supply?

### **SAMPLE ANSWER Question B**

Southern Bank is the original perfected secured creditor. Because Southern Bank was first to file, it should prevail under § 9-322(a)(1) unless there is an exception.

Northern Trust lent Debtor the money to enable Bethany's to acquire new baking equipment (which constitutes "equipment" under § 9-102(a)(33)). Therefore, its security interest in the baking equipment is a purchase-money security interest under § 9-103. Owen's Oven Supply also holds a purchase-money obligation (defined as including an obligation incurred for all or part of the purchase price of the collateral under § 9-103(a)(2)) and therefore also holds a purchase-money security interest. Both of the PMSIs were properly perfected by filing.

The rules that governs this priority contest are found in § 9-324(a) & (g). A purchase-money security interest prevails over a conflicting security interest in the same goods if it is perfected when the debtor receives possession of the collateral or within 20 days thereafter. Both PSMIs therefore have priority over Southern Bank.

If more than one PMSI qualifies for priority in the same collateral under § 9-324(a), the security interest securing an obligation incurred as all or part of the price of the collateral has priority over a security interest securing an obligation incurred for value given to enable to debtor to acquire the collateral. § 9-324(g) Because Owen's Oven Supply has a security interest securing part of the purchase price of the collateral; it would have priority over Northern Trust's security interest which does not.