

THE UNIVERSITY OF BRITISH COLUMBIA
PETER A. ALLARD SCHOOL OF LAW

FINAL EXAMINATION – APRIL 2021

LAW 438.001
Secured Transactions

Bruce MacDougall

EXAM PASSWORD: SSu63N
RESUME CODE: B13707

TOTAL MARKS: 100

(8:50 AM PDT) **PREPARATION TIME ALLOWED: 10 MINUTES**
(9:00 AM PDT) **WRITING (INCLUSIVE OF READING) TIME ALLOWED: 2 HOURS & 45 MINUTES** (i.e. 165 minutes)

8:50-9:00 AM Preparation Time (Exam writing not permitted) – This time is given to students to download/print your exam questions once the exam has been made available online on Canvas, to read the Exam Password on this exam coversheet, to enter the Exam Password for the exam in Exemplify, and to progress in Exemplify until you see the **STOP SIGN**, where you will **WAIT until 9:00 AM. DO NOT proceed past the STOP SIGN. DO NOT begin typing your exam answers in Exemplify until 9:00 AM!**

9:00 AM Exam Writing Time – At 9:00 AM, you may proceed past the **STOP SIGN** in Exemplify and begin typing your exam answers. Students are required to calculate and monitor their own time for writing exams. All exam answer uploads will be monitored to ensure that typing of answers only occurred during the allotted Exam Writing Time.

This is an open book examination.

If you think you have discovered an error or potential error in a question on this exam, please make a realistic assumption, set out that assumption clearly in writing for your professor, and continue answering the question. Do not email your professor or anyone else about this while the exam is in progress.

ACADEMIC INTEGRITY

Any exam answers that raise suspicion of breaking any restrictions outlined on this cover page may be subject to being processed through academic integrity software. Students typing exam answers before or after the allocated exam writing time may receive a grade penalty.

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As this exam is being written off-campus and is unsupervised, any communication whatsoever (including, but not limited to in person, telephone, e-mail, text, social media, etc.) concerning the contents of this examination with anyone (other than the Student Services staff of the Allard School of Law) is strictly prohibited.

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- **I'm experiencing technical difficulties DURING THE WRITING of the exam**

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You must also upload to Canvas your hand-written exam answers into the "Exam Answer File Upload (Word Processor or Hand-written ONLY)" folder. Scan or take a picture of each page (.jpg) of your exam and put them into one folder to upload.

Your answer file should be named, and the coversheet of your answers should be titled with:
Your Exam Code, Course Number, Name of Course, and Instructor Name
i.e., **9999 LAW 100.001 Law of Exam Taking - Galileo**

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LAW 438, Section 1

Question One

MARKS**(100)**

1. David is in the business of buying and selling old pens and writing implements and related materials, including some fine papers. In general, his sales are to smaller dealers in these same items. He usually buys from bigger distributors, though often as well from individual sellers. Sometimes, too, he takes goods by way of consignment, a common practice in this type of business. He owns his own premises but is heavily indebted, partly because he owes lots of money himself but also because he often has to sell on credit.

Krenek, a dealer in office equipment, leaves pens X and Y on consignment with David. According to their written agreement of 5 February, David is to try to sell them for \$700 each and if he does, he will keep 10% of the proceeds for himself. If they are not sold in three years, David will return them to Krenek. Krenek is eventually advised that he should file a financing statement and this he does on 12 August – taking an interest in “X and Y and all proceeds”.

Krenek had earlier given an interest in all present and after-acquired property to Lowell to secure a loan of \$2000. The writing and financing statement relating to this matter were finished and the financing statement filed on 3 January. With Lowell’s approval, Krenek used some of that \$2000 (\$300 in fact) to buy X. (Krenek already had Y.)

David so likes X that he decides to try it and keep it for himself on 7 February. To pay the \$700 for it – which David cannot afford entirely at the moment – Krenek agrees to take \$200 as a down payment and to get a security interest from David in “all inventory”. All this is put in writing and a financing statement to that effect filed on 12 August. That second financing statement of Krenek of 12 August is accidentally removed from the Personal Property Registry on 12 September, but Krenek reregisters it on 24 September, unfortunately adding an “e” to David’s name – making it “Davide”.

David meets Lowell at a party on 8 October and shows off X and mentions that he has bought X on credit from Krenek.

Pursuant to a written agreement signed on 4 March, David gives an interest in “all present and after-acquired property” to Roger. Roger had been anticipating this arrangement and had filed a financing statement to this effect on 5 January. The

following advances have been made: 6 February (for \$300 – even before the agreement is signed!), 10 March (\$500), 18 September (\$500), 9 October (\$300), and 12 November (\$400). This money is used by David for various operating expenses, but \$100 is used with Roger’s approval to acquire desk F on 7 August.

On 12 April, David buys silver pen chests Z and B. They cost \$400 each and he gets them from Ana who inherited them from her grandmother. Because David gets Z and B on \$600 credit from Ana, Ana and David have a written agreement dated 22 April covering “all present and after-acquired inventory”. A financing statement covering “Z and B” is filed by Ana on 22 April. As mentioned, David gets Z and B on credit, but that was because of the \$600 credit given by Ana and another \$200 raised from a special loan from Otto who, according to the written agreement and the financing statement, gets a security interest from David in “all pen chests and proceeds therefrom only to the extent that the proceeds are accounts or inventory”. The writing is dated and the financing statement filed on 17 March.

On 12 October, David manages to sell chest B to Greening, another dealer. In payment, David gets \$150 in cash, a promise from Greening to pay another \$160 by Christmas and pens N and J. Pen N is subject to an existing security interest that is perfected by a financing statement filed by Émile on 12 June (the date of the written agreement between Greening and Émile). The written agreement says Greening is not to sell the pen without Émile’s permission – something never sought or given. On 12 November, however, Émile enters into a subordination agreement with Roger to subordinate Émile’s interest in N to Roger to the extent of \$1000 that David owes to Roger.

Of the \$150 that Greening gave David, David puts \$100 of it in his general bank account on 12 October. On 1 December, Greening pays \$100 of the \$160 owed and that too is put by David into the bank account on 1 December.

The other \$50 from the \$150 Greening payment, David uses to buy display cabinet W on 18 October. David affixes that to the wall the next day.

On 12 July, David gives a mortgage on his real property to Miram, who files that same day as required by law. Miram makes an advance of \$1000 that same day and a second advance of \$1000 on 12 November.

On 12 January, David gets a line of credit from Salinas. The written agreement of 12 January (and the financing statement of that same date) says Salinas gets an interest in “all present and after-acquired inventory and equipment and all money proceeds from the sale of inventory and equipment, such money to be held in trust for Salinas”. This interest secures advances made from the line of credit on 24

March and 27 July, both for \$750. Salinas gets David's birthdate wrong in the financing statement.

On 1 January, David already has in stock, pens I, Q and T.

David gets a loan of \$500 from Chirac on 10 March. To secure repayment, David gives Chirac pen T to keep. (Pen T is worth \$700). On 1 December, David thinks Vasilev might be interested in buying pen T so he gets it back from Chirac so Vasilev can keep it for a week to decide if he actually will buy it. Vasilev still has T but has not yet decided whether to buy it.

It is now 7 December. Giving reasons, describe the priorities on that day including the impact of any subordination agreement were it to be applied on that day.

You may make the following assumptions:

- All financing statements indicate registration for "Infinity" unless otherwise indicated.
- No permission is sought by David to deal with any collateral unless the facts expressly state otherwise
- All dates given are in the same year
- There are no other parties or personal property involved
- There are no carrying costs or interest charges relating to any amount lent
- Nothing is repaid unless the facts specifically indicate otherwise
- All facts happen in B.C.
- Any document *in existence* that needs to be signed, is signed, and a copy of that signed document is given to whomever ought to receive such a copy.

END OF EXAMINATION