Law 889 **Professor Stephen Ware**
Bankruptcy **Spring 2020**

EXAMINATION

This two-hour exam is open, so electronic, as well as paper, resources are available to you. However, you may not communicate with anyone other than me until you submit your completed exam.

When typing your exam:

- Insert an answer separator before your answer to each question. ("Tools" on the top menu.)
- Do not copy and paste from one part of your answer to another unless you are confident that I should be reading the same thing twice.

This exam consists of three questions. Each question is preceded by the suggested time to be allocated to it. The number of points a question is worth is in proportion to its suggested time. The suggested time for reading these instructions is 10 minutes.

If you identify an issue on which more than one party has a strong argument, or for which you need more facts, then write the rest of your analysis in the alternative.

Organization counts, so you should think before you write. Start a new paragraph when you start discussing a new topic. More paragraphs are better than longer paragraphs.

References to relevant statutes, case law and other authority are valuable. Assume that all relevant jurisdictions are in the United States and have adopted the Official Text of the Uniform Commercial Code, the Uniform Fraudulent Transfer Act, and the Uniform Motor Vehicle Certificate of Title and Anti-Theft Act.

Good luck.

Question 1
Suggested Time 35 minutes

Dee is a 30-year-old single parent of two children, ages 5 and 3. Dee and her children live in a dull but safe two-bedroom apartment less than a mile from the Kansas/Missouri border.

Until March 2020, Dee worked 30 hours per week as a hairdresser, earning $2000 per month after taxes, and she received $500 per month, as court-ordered child support, from her ex-husband. As of March 1, Dee was current on all her bills, except her credit cards. Dee's credit card debt grew from $3000 on Dec. 1, 2019, to $8000 on March 1, 2020. Dee attributes this growth to her splurging on holiday gifts, and a nice long vacation she took with her kids.

In late February 2020, Dee's employer granted Dee's request that, starting in April 2020, Dee would work 40 hours per week and earn more per hour, which would have resulted in Dee earning $3000 per month after taxes. This good news prompted Dee to buy a used car, on secured credit, from Super Cars, LLC, at the end of Feb., so she would no longer have to rely on the bus or her friends for transportation.

Unfortunately, on March 30, Dee's place of employment closed and stopped paying her. Dee's ex-husband lost his job almost simultaneously, and he has not made a child support payment since, although he seems sincere when promising Dee that he will make up the missed payments as soon as he is able to.

Dee has applied for unemployment benefits and all the other government payments to which she is entitled. However, Dee's mistakes navigating that process, combined with government agencies overwhelmed by similar applications from many other newly unemployed people, caused significant delay. So Dee received no income from any source during the entire month of April 2020. While she was barely able to buy food and pay her rent and utilities, she missed her first monthly car payment, so she fears imminent repossession of her car. In addition, Dee's credit card debt is now "maxed out" at $10,000 and she is unable to find additional sources of credit.

Dee just yesterday received (as a direct deposit into her checking account) her first unemployment payment. She expects a monthly income (after taxes) of $2000 until she is able to return to her job. Her employer is not sure when that will be and, even then, does not expect to have enough customers to employ Dee 40 hours per week. Dee also lacks affordable child-care options and fears she will not be able to take a job until schools and daycare centers reopen widely—perhaps in August?

After yesterday's direct deposit, Dee's checking account now has a balance of $652. Her only other property, not listed above, consists of clothes, furniture, and similarly common household goods.

With respect to Dee and her creditors, what do you expect to happen?

Question 2
Suggested Time 50 minutes

Drive Corp. owns dozens of gas stations and accompanying convenience stores. The company grew steadily from its 2010 founding through 2019. In Nov. 2019 Drive Corp. committed to another major expansion of its business, scheduled to occur the following spring and summer, as warmer weather and school vacations typically increase vehicle miles travelled (VMT) and thus travelers buying fuel and other items from Drive Corp.

In Nov. 2019 Drive Corp. borrowed several million dollars from creditors discussed below. In that same month, Drive Corp. also formed contracts to buy:

- twenty parcels of land (on which Drive Corp. planned to build new gas stations) for a total of ten million dollars, with the closing of these purchases scheduled for April, May, and June 2020; and
- five million dollars' worth of inventory (mostly fuel and snack foods) for delivery in the spring and summer of 2020.

Drive Corp. has been breaching both types of contracts over the last six weeks, resulting in several lawsuits. Drive Corp. has been breaching those contracts because of a steep decline in its sales over the last six weeks.

In each month from April 2019 through Feb. 2020, Drive Corp.'s revenues exceeded its expenses by about a million dollars. However, March 2020 saw an unusual decline in vehicle miles travelled. Drive Corp.'s expenses for March 2020 exceeded its revenues by about half a million dollars, as people generally bought less gasoline and entered convenience stores less often. The national decline in vehicle miles travelled accelerated in April 2020 and Drive Corp.'s expenses for that month exceeded its revenues by about a million dollars.

Drive Corp. laid off (stopped paying and seeking work from) a fifth of its employees in early April and another fifth in late April. Hundreds of those former employees have sued Drive Corp. seeking money damages for alleged violations of the Fair Labor Standards Act.

The U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) has begun an enforcement action against Drive Corp. OSHA seeks to compel Drive Corp. to:

(1) install and pay for equipment designed to protect employees and customers from infectious diseases; and
(2) pay penalties for various alleged workplace safety violations.

Drive Corp. owes ten million dollars to its (unsecured) bondholders, who are represented by their indenture trustee, Big Bank. On April 15, Drive Corp. missed its quarterly interest payment on those bonds. This constitutes default, but the major bondholders and Big Bank are willing to work with Drive Corp. because they believe the fundamentals of its business are solid and its long-term prospects are good.

Less inclined to work with Drive Corp. is its only secured creditor, Solar Capital, LLC, to which Drive Corp. owes $3 million. While Drive Corp. is current on its monthly payments to Solar Capital, Drive Corp.'s default on its bonds also constitutes default on its debt to Solar Capital, which is threatening to repossess and foreclose on its collateral unless it quickly receives significant additional collateral in exchange for its forbearance.

With respect to Drive Corp. and its creditors, what do you expect to happen?

Question 3
Suggested Time 25 minutes

How would your answer to Question 2 change if the facts are similar except that:

(1) instead of gas stations, the debtor owns dozens of movie theaters;
(2) instead of growing steadily from 2010 through 2019, the debtor's business gradually shrank during those years; and
(3) the bondholders and Big Bank believe the debtor and other major chains of movie theaters will not return to profitability for several years, if ever, because fewer people will be seeing movies in theaters?