Empire College School of Law
Professor Fallon
Bankruptcy Law - Summer Final
Tuesday, August 13, 2013

Student ID#______________

FINAL EXAM - TAKE HOME
BANKRUPTCY SUMMER 2013

1. Identify yourself with your student ID#, do not use your name.

2. Email exam answers in either Word or WordPerfect to manders@fallonlaw.net.

3. Read through each question to the end before you start writing.

4. Your answer should reflect your knowledge of the subject by stating the issue, identifying the law, applying the facts to the law and reaching a conclusion. Do not assume the reader has any knowledge of bankruptcy law; your conclusion standing alone is not enough;. If appropriate, what advice would you give the debtor.

5. The following is an example of how you might identify and discuss each issue.

Issue No. 1. The transfer appears to be fraudulent.

Here we are told the debtor transferred the property to her Uncle Bob because she was concerned her creditors might seize the property. It is the debtor's concern that suggests the debtor transferred the property with the intent of defrauding her creditors. As such, it appears the chapter 7 trustee could avoid the transfer pursuant to 11 USC § 548 for the benefit of the creditors: A transfer is fraudulent if the debtor transferred the property with the intent to hinder, delay or defraud a creditor. A transfer may also be fraudulent if the property was transferred for less than fair value and the debtor was either insolvent at the time of the transfer or was rendered insolvent by the transfer. (11 USC § 548). It also appears the debtor could lose her discharge because a debtor who transfers property to another with intent to hinder delay or defraud a creditor within one year of the filing of the petition could be denied a discharge pursuant to 11 USC § 727(a)(2). I would suggest the debtor immediately unwind the transaction then file her petition.

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Question No. 1:

In 2008 David, together with is wife Sandra, were the owners of a single family dwelling at 44 Mirabel Avenue, Santa Rosa ("Mirabel"), which they purchased during their marriage, taking title as David and Sandra (Husband and Wife) Community Property. In June of 2011 a judgment for $250,000 was entered against David for a claim arising out of real property owned by him, property he acquired through an inheritance from one or both of his deceased parents. In June of 2011, David owed not less than twenty creditors a total of $700,000 from a failed auto towing business.

In August of 2011, David transferred his interest in Mirabel to Sandra with Sandra taking title as her sole and separate property. In March of 2012, in response to a complaint brought by the judgment creditor to avoid the transfer of Mirabel to Sandra as fraudulent Sandra sold Mirabel and from the sale proceeds paid the judgment and purchased a single family dwelling at 171 El Condor Court, Santa Rosa ("El Condor") taking title as "Sandra, Married Woman as her sole and separate property." David and Sandra have lived at El Condor continuously thereafter paying the mortgage and other living expenses with the income David receives from his private disability plan.

In April of 2014, David, who is smarter than just about anyone, and certainly smarter than any attorney he has ever worked with, filed a chapter 7 bankruptcy without the assistance of counsel. In May of 2014, the day after his meeting of creditors, David comes to you directly from the meeting of creditors where he was told by the chapter 7 trustee they should retain an attorney.

1. Identify the issues facing David;

2. Identify the issues facing Sandra.

3. Identify the issues facing the judgment creditor.

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Question 2

Ray and Joan Rush purchased a Peterbilt Tractor for $150,000 for their cow hauling business with a $125,000 loan financed by Easy Credit Corporation; Ray and Joan agreed to repay the loan with 18% interest over 120 months. Four years later, with 800,000 miles on the tractor, Ray and Joan found that with the drought in the south and mid-west there was not much demand for their services. With Easy Credit Corporation pressing for its $1,350 per month payment and Rhino Petroleum demanding payment of the $65,000 delinquent fuel bill, Ray and Joan pay you a visit to discuss their options under the Bankruptcy Code.

During the meeting you learn that if Ray and Joan turned the tractor over to Easy Credit it is probable that Easy Credit would get no more than $25,000 for the tractor at an auction sale, but if they were to stay in business, which is what they want to do, and had to replace the tractor it could cost them as much as $55,000. The balance due to Easy Credit is $82,000.

[Just prior to your meeting with Ray and Joan, you learn the interest rate available for the Bank of America's most favored customers is 3.5% per annum]

Ray and Joan are also behind on the payments on their $375,000 home they purchased in May of 2007 for $550,000, with a first mortgage in the amount of $475,000 funded by Countrywide Home Loans and a second mortgage in the amount of $75,000 also funded by Countrywide. The first mortgage has a variable interest rate that started out at 2% per annum, $1,755 per month, but is due to reset at 5.5% interest in 2014. Ray and Joan are 10 months behind in the payments, and they are two years behind on the $5,500 annual property taxes. They have not paid the second mortgage in two years. Countrywide started the foreclosure process on the first mortgage 85 days ago.

You are told that on April 15, 2010, Ray and Joan filed income tax returns for tax years 2005-2009, and for those tax years they owe a total of $35,000. They tell you they are current with their tax filings, but that they owe $13,000 for 2010 Federal Taxes; 15,000 for 2011; and $8,500 for 2012.

Joan owes $3,600 in delinquent child support, and she owes an equalizing payment of $15,000 to her former spouse.

In addition to their home and the Peterbilt tractor Ray and Joan own a 2002 Toyota Camry with 145,000 miles that has a fair market value of $4,500, but which Joan transferred to her Uncle Bob, a former law student who did not take this class, who counseled Joan to get the car out of her name; a 2012 Toyota Camry valued at $18,000 that is collateral for a $28,000 loan that is made up of the $24,000 purchase price plus $4,000 they owed on the 2009 Honda Accord they traded in to get the Camry; the balance on the loan is $22,500.

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Assume Ray and Joan want to stay in business and keep all of their assets. Can they? How can they do it? What additional information will need before you can finally conclude the relief available to Ray and Joan?