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**Commercial Finance
May 2005**

Essay Question

1. This part constitutes one third of the exam and consists of one essay question.
2. Read the facts carefully. Answers based on incorrect facts are treated as incorrect answers. If you think that important facts are missing or ambiguously stated, make reasonable and explicit assumptions about them; do not make assumptions that make the entire problem vanish. Do resolve the issues; don't just discuss them for a while and then drop them without any conclusion.
3. Write legibly. **We do not read illegible answers.** Abbreviate where appropriate.

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Lightning Computer (LC) store has three lenders: 1. GetGoing (GG), who makes startup financing to individuals setting up new businesses, and secures this financing by a security interest in all the debtor's assets other than inventory and accounts; 2. InvenLoan, (IL) who finances Lightning's inventory, secured by all of Lightning's present and after acquired inventory; and 3. ActionAct, (AA) who finances all credit sales to customers made by Lightning, and is secured by a security interest in all present and after acquired accounts and chattel paper. All three lenders properly drafted their security agreements and properly filed their financing statements.

Recently, Lightning was approached by Marfar (MF), manufacturer of a new computer accessory called Thinkkey, that allowed users just to think the words that they wanted typed on their keyboards. Marfar told Lightning that it could sell these at retail for \$1000 each, but that Marfar would sell them to Lightning for \$400 each, with payments due only as they were sold. Lightning agreed and ordered 100 Thinkkeys. Marfar took a security interest in all Thinkkeys sold to Lightning, filed a proper financing statement for them, and properly notified all of Lightning's creditors. (Marfar, by the way, gets its financing from Totalflo (TF), who has a security interest and financing statement on every asset Marfar has.)

The Thinkkeys did not do well. Several that were sold to businesses were promptly returned; their buyers were given full cash refunds for what they had paid. Some other businesses were so dissatisfied that they stopped paying entirely (some of these sales had been on open credit and others on conditional sales contracts), Some other businesses found other merchants to take the Thinkkeys off their hands, and they resold the items to them, taking whatever they could get – cash or credit from these now buyers. A few businesses did find them useful and continue to use and pay for them.

Some Thinkkeys were also sold to individuals for home, but with similar unhappy effects, i.e. some buyers returned them, some buyers stopped paying, some resold them, and only a few kept and are still paying for them.

The moneys Lightning did get from Thinkkey sales and credit payments were put into its business bank account, from which refunds were made to customers who returned them. Other than that, Lightning has not paid any other bills in the last 30 days because it has been trying to hold off its creditors.

Lightning has now decided that its business has failed, and it has made an assignment for the benefit of creditors to ABC. ABC asks you to advise it regarding the claims of all of the parties mentioned above. Lightning's assets consist of some cash in the bank, some equipment, some unsold inventory, and some open accounts and some conditional sales contracts. As indicated above, some of the accounts and conditional sales contracts are being paid and some are not. Lightning's records also show the locations all of the Thinkkeys that were sold; the whereabouts of those that were resold may be harder to get, but can be done.) You can ignore the claims of all other creditors except those named in this story