

Past Examinations in
SECURED TRANSACTIONS AND COMMERCIAL PAPER

(Course No. 6181; 4 credits)

This document contains the final examinations in Secured Transactions and Commercial Paper that were given on the following dates:

Dec 7, 2017
May 4, 2017
Dec 15, 2015
Apr 30, 2015

In these examinations, problems I-III generally concern commercial paper under U.C.C. arts. 3 and 4; problems IV-VI generally concern secured transactions under U.C.C. art. 9; and problem VII generally concerns letters of credit under U.C.C. art. 5.

I did not teach this course on any other dates. But I have posted additional exams and grading guides for Commercial Paper (Course No. 6182) at <http://maggs.us/gwlaw/home.htm>.

Final Examination In
SECURED TRANSACTIONS & COMMERCIAL PAPER
(Course No. 6281-10; 4 credits)
Professor Gregory E. Maggs

Instructions:

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Each problem includes several specific questions. Points will be allocated among the questions within a problem according to their difficulty.

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You should make reasonable assumptions about any facts not stated in the problems. If you find aspects of the problems ambiguous, describe the ambiguity in your answer, and explain why the ambiguity matters.

Assume that no statute of limitations applies to any of the problems. Otherwise assume that the current official version of the Uniform Commercial Code applies, regardless of any dates or jurisdictions indicated.

SUGGESTIONS: Keep your answers brief or you will run out of time. Draw a diagram of each transaction to avoid confusion.

You may keep this copy of the examination at the end of the examination period.

Good luck!

PROBLEM I.

(26 points)

The following edited excerpt comes from a recent case:

In March, USIF issued a check for \$848 for disability benefits to Pintero. On April 24, Pintero contacted USIF and reported he had not received the check. That same day, USIF directed its bank to stop payment on the check. Despite the stop payment order, on May 3, the original check was cashed at Pennsauken Check Cashing (PCC), a licensed check cashing business.

On the back of the check appears what purports to be Pintero's signature, endorsing the instrument in blank.

Because of USIF's stop payment order, the Republic Bank of Chicago dishonored the check when PCC presented it for payment.

[Assume that Pintero's indorsement was forged and that Republic Bank returned the check to PCC after dishonoring it.]

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. What rights, if any, does PCC have against USIF, Pintero, the forger, and Republic Bank?
- B. May Pintero or USIF recover from PCC for conversion?
- C. What rights, if any, does Pintero have against USIF?
- D. If USIF had not ordered Republic Bank to stop payment, and Republic Bank had paid the check, what rights, if any, would Republic Bank have against USIF, Pintero, the forger, and PCC?

PROBLEM II.

(26 points)

The following edited excerpt comes from a recent case:

In February, Wright properly opened a campaign account with Wells Fargo Bank to run in the election for the office of Mayor. The qualifying period for this election terminated on June 2. On June 1, Wright tendered to the City Clerk, a check issued on the Wells Fargo Bank campaign account in the amount of \$620.00, which was the qualifying fee.

Wright's campaign account had ample funds to pay the qualification fee at all relevant times. Although the check was one of the first checks written by Wright after the opening of his campaign account, and therefore might be considered a starter check or "temporary" check, it bore his name, his campaign name, his campaign mailing address, and his campaign account number.

However, on June 16--more than two weeks later--the City Clerk was notified by the City's Finance Department that Wright's check had been returned to the City by its bank "because the account number on the check could not be located." [Wright was disqualified from participating in the election as a result.]

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Why is it unclear whether Wells Fargo met its deadline for returning the check?
- B. If Wells Fargo met its deadline for returning the check, what rights would Wright, the City, and Wells Fargo have?
- C. If Wells Fargo did not meet its deadline for returning the check, what rights would Wright, the City, and Wells Fargo have?
- D. If Wright had paid the qualifying fee with a cashier's check, how if at all would his rights be different?

PROBLEM III.

(26 points)

The following edited excerpt comes from a recent case:

Teri [and her husband John] opened a joint checking account with the Bank. Teri improperly endorsed and deposited into that account checks totaling \$146,004.67 that were payable to her employer, Timpson. There is no evidence in the record that John knew of Teri's deposits of these checks.

When the improper endorsements and deposits were discovered, the Bank paid Timpson \$146,004.67 in reimbursement for the checks wrongfully deposited by Teri in the joint account. To forestall civil or criminal action against Teri, because of her unlawful deposit of the Timpson checks into the joint account, John and Teri executed a promissory note payable to the Bank in the amount of \$146,004.67. Immediately before the execution of the note and agreement, the Bank's president allegedly told John that he had to sign the note [as a co-maker] or prosecution would result. No payments were ever made on the note. John and Teri divorced [a year later].

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Might Timpson have had a right to payment from anyone other than the Bank?
- B. Could there be any circumstances in which the Bank would not have had a duty to reimburse Timpson for the improperly indorsed checks?
- C. What rights would John have against Teri if he pays the note, and what rights would Teri have against John if she pays the note?
- D. How would the parties' rights be different if John had indorsed the note instead of signing it as a co-maker?

PROBLEM IV.

(26 points)

The following edited excerpt comes from a recent case:

In August, Cooper defaulted on an installment contract he entered five years earlier with Fulton Bank for the purchase of a camper. Despite being notified of the late payment by Fulton Bank, Cooper failed to cure his delinquent account. As a result, Fulton Bank hired R&A to repossess the camper. Two R&A representatives attempted to do so on October 26, without warning Cooper. Fearing a home invasion after seeing two men run up to his camper, Cooper retrieved his gun to detain the men. During the altercation, the R&A men identified themselves as repossessors, but Cooper suspected that the men were lying. The police, who were called by a passerby, did not. Cooper was arrested [and R&A took possession of the camper].

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. What would Fulton Bank have to show to establish that it had a right to repossess the camper without judicial process?
- B. What rights might Cooper now assert against the Bank?
- C. Fulton Bank was considering three options: (1) selling the camper at a public sale; (2) selling the camper at a private sale; and (3) strict foreclosure. If Fulton Bank had properly repossessed the camper, what might have been the advantages and disadvantages of each option?
- D. If Cooper had declared bankruptcy in September, how might the bankruptcy have affected Fulton Bank's rights?

PROBLEM V.

(26 points)

The following edited excerpt comes from a recent case:

[Mr. Nay is] indebted to MainSource pursuant to a Promissory Note, dated May 5. To secure repayment of the Note, [Mr. Nay] executed Security Agreements, dated July 23 and May 11 whereby [Mr. Nay] granted to MainSource a security interest in personal property, including, but not limited to, all present or future inventory, chattel paper, accounts, equipment, general intangibles, crops, farm products, livestock, farm equipment and instruments and all proceeds, profits, replacements and substitutions related thereto. The security interests were properly perfected by the filing of a financing statement on [the previous] February 4.

On or about December 17, LEAF made a loan to [Mr. Nay] to finance the purchase of a Terex TA400 Dump Wagon, evidenced by a Finance Agreement of that same date in the original principal amount of \$41,000. LEAF claims that it has a first priority security interest in the TA400 by virtue of the filing of a financing statement on December 21. The LEAF [financing statement lists] the Debtor's name as "Ronald Mark Nay" while the Debtor's actual name listed on his most recently issued unexpired driver's license, is "Ronald Markt Nay."

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Under what circumstances would LEAF's financing statement have perfected LEAF's security interest in the TA400?
- B. If LEAF's security interest was perfected by LEAF's financing statement, who has priority in the TA400?
- C. If LEAF's security interest was not perfected, could LEAF (1) repossess the TA400, (2) sell the TA400, and (3) retain the proceeds from the sale?
- D. If Mr. Nay sells the TA400 to another farmer, what rights would MainSource and LEAF have against Mr. Nay and the other farmer?

PROBLEM VI.

(25 points)

The following edited excerpt comes from a recent case:

In July, Crossett Ford [a car dealership] purchased a new Ford F-150 truck from Ford Motor Company. FNBC financed the purchase price of the F-150 by advancing \$34,072.98 to Crossett Ford on August 2. In accordance with the terms of the floor-plan agreement, FNBC retained [a security interest in the F-150]. FNBC alleged that it had perfected its interest in the new and used vehicle inventory, including the F-150, by filing financing statements [the previous] March.

On August 20, Murphy [the owner of Crossett Ford] executed a retail installment contract to purchase the F-150 from Crossett Ford. The contract was then assigned to FMCC, with Murphy signing his name as the buyer and signing on behalf of Crossett Ford as the seller and assignor. That same day, FMCC [indicated on a certificate of title] a lien on the F-150. Crossett Ford did not remit the funds received for the F-150 to FNBC.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. What is the priority of any interests that FNBC, FMCC, Crossett Ford, and Murphy have in:
- (1) the F-150?
 - (2) the retail installment contract and its proceeds?
 - (3) the funds Crossett Ford received for the F-150?
- B. Suppose another lender had a perfected security interest in all of Crossett Ford's inventory "now owned or hereafter acquired." Under what circumstances would this other lender have priority over FNBC or FMCC in the F-150 or its proceeds?

PROBLEM VII.

(25 points)

The following edited excerpt comes from a recent case:

Republic Steel began purchasing scrap metal from ProTrade. Republic Steel applied for a \$5 million letter of credit for the benefit of ProTrade from HSBC. HSBC agreed that in order to allow any draw on the letter of credit, ProTrade would be required to present: 1) the original letter of credit, 2) a copy of any unpaid commercial invoice, and 3) a statement from a ProTrade officer or representative that the unpaid commercial invoice was presented to Republic Steel, was not paid in accordance with the terms and conditions of the parties' contract, and was ten days past due.

The instant dispute centers on several purchase orders that were canceled by Republic Steel in December. Republic Steel contends that it was permitted to cancel these orders without liability [under the sales contract]. ProTrade claimed that it was permitted to recoup the loss of value of the scrap metal involved in the canceled orders. Accordingly, ProTrade sent an invoice to Republic Steel that reflected what it believed to be the losses related to the canceled orders. Republic Steel declined to pay the invoice, asserting that it properly canceled the orders. Thereafter, ProTrade submitted the letter of credit, its invoice, and a statement from its representative that the invoice had been submitted, refused, and was past due. In turn, HSBC honored the draft and paid out roughly \$1.2 million to ProTrade.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. How would a good faith contract dispute between ProTrade and Republic Steel affect HSBC's duties?
- B. Does HSBC's payment to ProTrade affect ProTrade and Republic Steel's rights against each other?
- C. Are there any circumstances under which a court could have enjoined HSBC from paying ProTrade?
- D. How could ProTrade have used a secured transaction to ensure recovery of the kind of claims that ProTrade asserted against Republic Steel in this case?

END OF EXAMINATION

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Good luck!

PROBLEM I.

(26 points)

The following edited excerpt comes from a recent case:

The Sams purchased a vehicle from Creswell Automotive, executing a purchase agreement for the car. The purchase was financed by Oupac, Inc. and secured by a promissory note on the vehicle.¹ Oupac paid Creswell \$14,309.54, and the Sams received their vehicle. Oupac was not affiliated, owned by, or even at the same location as Creswell. Sometime [later], the Sams' vehicle began to have mechanical problems. After several attempts to repair the vehicle, the Sams decided it was not worth the expense and surrendered the vehicle to Oupac after failing to make payments for multiple months. Oupac sold the vehicle and instigated the current litigation to recover the remaining amount owed on the vehicle. After trial on the merits, the trial court ruled that, despite the obvious flaws with the vehicle, the Sams owed Oupac \$8,208.29 plus interest for the debt remaining on the [note]. From this decision, the Sams appeal. They claim that the trial court erred in finding that there was no failure of consideration as to the promissory note.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Did the trial court err in finding there was no failure of consideration as to the promissory note?
- B. Why might Oupac's lack of affiliation with Creswell Automotive matter?
- C. Does the merger doctrine preclude the Sams from bringing any claims against Creswell Automotive or Oupac?
- D. Would the Sams have had more protection if they had borrowed the purchase price from Creswell Automotive and issued a note to Creswell promising to repay the amount borrowed?

¹ Oupac loaned money to the Sams to buy the vehicle; the Sams issued a promissory note to Oupac promising to repay the loan; and the Sams gave Oupac a security interest in the vehicle.

PROBLEM II.

(26 points)

The following edited excerpt comes from a recent case:

McDonald, an attorney, deposited a check at First Financial bank on July 7. The check purported to be Citibank Official [i.e. Cashier's] Check No. 260356932 in the amount of \$298,750; the remitter was listed as Accurate Manufactured Products Group, Inc. and the check was made payable to McDonald. First Financial sent the Check to Chase for forward processing.

The following day, July 8, Chase sent an electronic image of the Check to Citibank. Citibank determined that [the check was unauthorized]. Citibank therefore sent a notice to Chase at 8:34 p.m. on July 8, that indicated that the Check was being returned. Citibank sent the Check to the Federal Reserve Bank [which returned the check to Chase on July 9].

Chase notified First Financial that the Check had been returned by sending two letters by regular U.S. mail, one dated July 9th and the other dated July 13th. First Financial did not receive either letter until at least July 14th. In the meantime, on July 9 at 12:56 p.m., First Financial completed a wire transfer for McDonald of 90% of the amount of the Check -- \$268,825 -- to the Bank of China. Chase had no agreement with First Financial to handle returned checks expeditiously on First Financial's behalf.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Does Citibank have any liability?
- B. What rights does First Financial have against McDonald?
- C. What liability might Accurate Manufactured Products Group have?
- D. When did First Financial have a duty to give McDonald credit for the check?

PROBLEM III.

(26 points)

The following edited excerpt comes from a recent case:

Silver, a Baltimore City attorney, employed a legal assistant. For "several years," the Assistant stole "hundreds" of Silver's blank checks and made them payable to herself, unidentified fictitious payees, friends, and her creditors. The Assistant forged Silver's signature as the drawer on the checks, and she forged the payee's indorsement on "the majority" of the checks so that she could cash or deposit them into her personal bank account at Wells Fargo. The checks were often presented two or three at a time, contained no commercial stamp even though some were allegedly made out to commercial businesses, and were payable to non-account holders. At no time did Silver authorize the Assistant to sign Silver's name or indorse any checks. Wells Fargo, the "depository bank," [took] the stolen checks [from the Assistant] and presented them for payment to PNC, the "drawee." PNC paid the forged checks.

Silver first discovered the check fraud scheme several years after the scheme had started. Silver asked PNC to present warranty claims to Wells Fargo for [presenting] "highly irregular checks" with forged indorsements. PNC refused to do so. Neither PNC nor Wells Fargo has paid or credited Silver the amounts charged against his account due to the check fraud scheme.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Did Wells Fargo breach any warranty to PNC?
- B. On what grounds might PNC argue that it has a right to charge Silver's account for these checks?
- C. If PNC had dishonored one of the checks that the Assistant had made payable to a fictitious payee, could Wells Fargo enforce the check against Silver?
- D. What steps should Silver take to prevent, detect, and reduce losses from this type of fraud?

PROBLEM IV.

(26 points)

The following edited excerpt comes from a recent case:

Maxus entered into four loan agreements with PTM Technologies, Inc. ("PTM"). Maxus agreed to lend several million dollars to PTM in exchange for promises to repay and security interests in PTM's collateral. In order to perfect its security interests, Maxus filed a UCC1 Financing Statement. There was a problem, however, as Maxus's financing statement mistakenly identified the borrower as "PTM Tecno**l**ogies, Inc." -- which is to say, the letter "h" was omitted from the word "Technologies." Maxus, being unaware of the error in the meantime, went ahead and assigned its rights under two of the PTM loan agreements to GE Capital.

PTM later filed for bankruptcy. The bankruptcy court concluded that on account of the missing "h" "the financing statements are seriously misleading as a matter of law."

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Why might a missing "h" render the financing statement seriously misleading?
- B. Does a seriously misleading financing statement necessarily prevent perfection of a security interest?
- C. If PTM had defaulted under the security agreement before filing for bankruptcy, how would filing for bankruptcy affect the rights of the parties?
- D. What advice would you have given Maxus and GE Capital in this transaction?

PROBLEM V.

(26 points)

The following edited excerpt comes from a recent case:

1st Source Bank entered into a series of secured transactions with K & K Trucking and J.E.A. Leasing (collectively "Debtors"). The parties executed security agreements that granted 1st Source a security interest in Debtors' tractors and trailers, accounts, and in the proceeds from the agreed-upon collateral. In connection with these security agreements, 1st Source filed financing statements. The financing statements identified the collateral as the tractors and trailers and "all proceeds thereof."

[A]fter 1st Source filed its financing statements, Wilson Bank & Trust, Pinnacle Bank, and TransCapital & Leasing also entered into secured transactions with Debtors. [They] properly filed financing statements, which specifically provided that each of [them] had a security interest in "all accounts receivable now outstanding or hereafter arising."

Debtors defaulted on their loans. 1st Source contends that it possessed a perfected security interest -- and thus had first priority -- in Debtors' accounts, arguing that the term "all proceeds thereof" in its financing statements includes Debtors' accounts receivable. [Some of Debtors' accounts receivables are for money owed by customers who leased Debtors' tractors and trailers.]

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Who has priority in Debtors' accounts receivable?
- B. Suppose Debtors had sold the tractors and trailers to raise funds to pay off their loans. Would 1st Source's security interests, perfection, and priority continue:
 - 1. in the tractors and trailers after their sales?
 - 2. in any accounts arising from the sales?
 - 3. in chattel paper arising from the sales if Debtors sold the chattel paper to a third-party?

PROBLEM VI.

(25 points)

The following edited excerpt comes from a recent case:

The Debtor [Mr. Gannon] bought a used boat and trailer from a dealer under an installment sales contract, giving the dealer security interests in both items. The dealer immediately assigned the contract and security interests to the Bank. Later the Bank filed a financing statement identifying both items as its collateral, and also got its lien noted on a certificate of title the State of Kansas issued for the trailer.

[Several months later], the Debtor, for reasons not known to the Bank, obtained an Oklahoma certificate of title for the Boat. Although the certificate was issued by Oklahoma, it showed the Debtor's address to be in Kansas. The Debtor was a Kansas resident at all relevant times. Neither the Bank's nor any other lien was noted on the Oklahoma certificate of title.

[The Debtor subsequently filed for bankruptcy.] The [Bankruptcy] Trustee contends the issuance of [the Oklahoma] certificate of title terminated the perfection of the Bank's lien on the Boat.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Did the Bank ever have a perfected security interest in the boat?
- B. Would noting the lien on the Oklahoma certificate of title have perfected the security interest in the boat if Oklahoma had no other contacts with the boat or Mr. Gannon?
- C. If Mr. Gannon had not filed for bankruptcy, and the U.S. Government had imposed a federal tax lien on the boat, would the federal tax lien have priority over the Bank's security interest?
- D. If another lender had a perfected security interest in the Dealer's inventory, who would have priority in the contract and security interests that the dealer assigned to the Bank?

PROBLEM VII.

(25 points)

The following edited excerpt comes from a recent case:

Mago entered into a contract to sell chicken, beef, and other meat products to Genita. Mago required Genita to obtain [a standby letter of credit], issued by LHB. Under the terms of the letter, if Genita failed to pay Mago within forty-five days after the date of an invoice, Mago could present a defined set of documents to LHB and obtain payment. Among the documents LHB required was a "photocopy of B/L evidencing shipment of the goods to the applicant." [The term "B/L" apparently stood for "bill of lading."]

Mago shipped twelve containers of products to Genita under four invoices. Genita defaulted on all four invoices. Mago tendered its first set of documents to LHB on September 19, including unsigned bills of lading for two invoices. LHB rejected this tender for, inter alia, not containing signed bills of lading. Mago's second tender cured other deficiencies identified by LHB but contained the same unsigned bills of lading. LHB again rejected the tender, emailing Mago's managing director that the unsigned bills of lading were not in conformity with the terms of the letter. Mago's third tender occurred on October 8, the last day possible to submit a demand for payment. [I]nstead of unsigned bills of lading, Mago provided two telexes from the shipping company, MSC. These telexes announced that MSC had retained the original, signed bills of lading in its files. LHB rejected this tender as well. Finally, on October 11, Mago tendered a set of documents containing signed bills of lading for each invoice. LHB rejected this tender as untimely.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. If the letter of credit did not expressly specify that the bills of lading must be signed, how might LHB justify its actions?
- B. If LHB wrongfully dishonored Mago's presentations, what rights would Mago and Genita have?
- C. What steps might LHB have taken to avoid a dispute?
- D. What advice would you have given Mago when Mago, Genita, and LHB were setting up and executing the transaction?

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PROBLEM I.

(26 points)

The following edited excerpt comes from a recent case:

A check cashing service, RR Maloan Investments, Inc. [has] sued Houston Gold Exchange, Inc. to recover on a post-dated check upon which Houston Gold Exchange stopped payment

On September 23, Houston Gold Exchange issued a \$3,500 check as payor to McKee as payee to buy a purported Rolex watch from her. The check was post-dated September 26. McKee properly endorsed the check and [negotiated] it to RR Maloan, which cashed the check for her on September 24. On September 24, Houston Gold Exchange issued a stop payment order on the check based on information that the watch was counterfeit. RR Maloan presented the check to Houston Gold Exchange's bank for payment. Houston Gold Exchange's bank refused to honor the check based on the stop payment order.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. What arguments should RR Maloan make in its lawsuit against Houston Gold Exchange?
- B. Does RR Maloan have any rights against McKee or Houston Gold Exchange's bank?
- C. What rights, if any, would Houston Gold Exchange's bank have had if the bank had paid the check?
- D. Houston Gold Exchange may have post-dated the check to delay payment so that it would have time to stop payment if it discovered a problem in the transaction (as it did in this case). Was this a good protection strategy? Were there better options?

PROBLEM II.

(26 points)

The following edited excerpt comes from a recent case:

In March, David and Elizabeth executed a promissory note in favor of Merchants Bank for a \$400,000 business loan. The promissory note was secured by a mortgage on [their] personal residence. David had completed the loan application, and Merchants Bank had reviewed his financial information in determining whether to make the loan. David and Elizabeth signed the note on the lines provided at the end of the document.

[David and Elizabeth later] defaulted on the promissory note. Merchants Bank sued, alleging breach of the promissory note and attaching to the complaint the note as evidence of the debt. David did not answer the complaint, and Merchants Bank obtained a default judgment against him in the amount of \$415,142.57 plus interest on the judgment. Elizabeth did answer the complaint, arguing that the note was unenforceable against her because she had signed only to give a security interest in her and David's residence, not "for the purpose of agreeing to pay the debt evidenced thereby" and because she had not received consideration for her signature on the note.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. If David had answered the complaint, but did not deny the authenticity of his signature or raise any defense, what evidence would Merchants Bank need to present at trial to prevail against him on the note?
- B. How should Merchants Bank respond to Elizabeth's arguments?
- C. If Elizabeth pays Merchants Bank, what rights will she have?
- D. How, if at all, would the rights of the parties be different if Elizabeth had written the words "for accommodation" or "without recourse" next to her signature?

PROBLEM III.

(26 points)

The following edited excerpt comes from a recent case:

[In October,] Goodson received an email from "Fumiko Anderson" seeking his assistance in recovering funds owed pursuant to a divorce proceeding. Goodson then received a check, via UPS delivery, in the amount of \$86,176.96; the check was made payable to the "Law Office of Goodson" and drawn by First Aid Corporation on its account at First American [Bank]. Goodson endorsed the check and deposited it in his client trust account at RBS Citizens [Bank]. He then "caused RBS Citizens to wire some or all of the funds to Japan." RBS "took an electronic image of the check, transferred the image through the Federal Reserve System for payment by First American, and destroyed the original check."

Goodson received a second check in November; this check too arrived via UPS, was made payable to the "Law Office of Goodson" and was drawn by First Aid Corporation on its account at First American. As before, Goodson endorsed the second check and deposited it into his client trust account at RBS Citizens; that same day, he caused RBS to wire some or all of the funds to Japan. Again, RBS took an electronic image of the check, transferred the image through the Federal Reserve System for payment by First American, and destroyed the original check.

Both checks were fraudulent [i.e., the drawer's signature was forged], as the parties later learned.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Under what circumstances, if any, would First American Bank have had a right to charge First Aid Corporation's account?
- B. Under what circumstances, if any, could First American Bank recover from RBS Citizens Bank?
- C. Did RBS Citizens Bank need permission to destroy the original checks and present electronic copies? Did it lose any rights by doing so?
- D. What advice would you give Goodson about potential risks in these two transactions and how to avoid them?

PROBLEM IV.

(26 points)

The following edited excerpt comes from a recent case:

Odette purchased a Massey Ferguson tractor and loader from Jack Shields Sales and Service by signing a retail installment sales contract and security agreement. The sales contract granted the seller a security interest in both pieces of equipment. After the sale, Jack Shields Sales and Service assigned the contract to Agricredit.

The contract prohibits any transfers of ownership of the collateral without written consent: "The Buyer shall not sell, lease or otherwise dispose of, or transfer any interest in [the collateral] without the prior written approval of the Seller." Despite this prohibition in the contract, Odette transferred the tractor and loader to the Partnership.

Agricredit obtained a default judgment against Odette personally for \$5,931.49. Agricredit then secured a writ of execution directing the sheriff to seize the tractor and loader.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. How did the transfer of the tractor and loader to the Partnership affect Agricredit's rights?
- B. Why might Agricredit have decided to seek a writ of execution and have the sheriff seize the tractor and the loader instead of privately taking possession of them?
- C. For what business purpose might Jack Shields Sales and Service have assigned the sales contract to Agricredit?
- D. What advice would you have given the Partnership when it was contemplating acquiring the tractor and loader?

PROBLEM V.

(26 points)

The following edited excerpt comes from a recent case:

Hunt Tractor entered into the Wholesale Financing and Security Agreement ("WFSA") with CNH. Under the WFSA, CNH financed Hunt Tractor in buying inventory and equipment. Hunt Tractor granted CNH a security interest in inventory, equipment, all proceeds of inventory, Hunt Tractor's accounts, and other collateral.

In March, Hunt Tractor entered into a \$500,000 line of credit and took out a \$600,000 term loan (the "Bank Loans") with Commonwealth Bank. Pagano [who was a co-owner of Hunt Tractor] granted Commonwealth Bank a security interest in the stock (the "Pledged Stock") kept in his personal securities account for both of the Bank Loans.

Along with the Bank Loans, Hunt Tractor maintained a checking account at Commonwealth Bank. On November 9, Hunt Tractor received a \$825,347.00 check from the Kentucky Department of Transportation ("KYDOT") as payment for twelve backhoes. On November 12, Hunt Tractor deposited the KYDOT check in its Commonwealth Bank checking account. Hunt Tractor used the proceeds from the KYDOT sale to pay off both Bank Loans. None of the KYDOT proceeds went to CNH. Upon repayment of the two Bank Loans, Commonwealth Bank released Pagano's Pledged Stock.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Why would Pagano pledge his own property as collateral for a loan to Hunt Tractor?
- B. Assume Hunt Tractor gave Commonwealth Bank a security interest in its checking account when it obtained the Bank Loans. What would determine who had priority in the \$825,347.00 deposited into the account?
- C. What interest, if any, does CNH have in the backhoes that were sold to KYDOT?
- D. What advice would you have given CNH in drafting the security agreement with Hunt Tractor?

PROBLEM VI.

(25 points)

The following edited excerpt comes from a recent case:

Integrity was a manufacturer of utility trailers. Eclipse loaned money to Integrity secured by an all-assets lien on Integrity's accounts, chattel paper, equipment, and inventory. Action also loaned money to Integrity and perfected a first security interest in all of Integrity's accounts and contract rights. Eclipse executed a subordination agreement acknowledging the priority of Action's interest in Integrity's accounts.

Snowbear contracted with Integrity for the production of 10,000 utility trailers pursuant to a purchase order. Integrity issued invoices for the trailers manufactured for Snowbear and Action purchased those invoices pursuant to the security agreement between Action and Integrity.

Snowbear failed to pay for approximately 1,700 of the trailers. Integrity [then] defaulted on its obligations to Eclipse and Action. At the time of its default, the 1,700 remaining trailers remained on Integrity's property. The trailers were auctioned or sold and the funds are currently being held in escrow, pending resolution of this dispute. Eclipse and Action both [have] claimed a priority security interest in the trailers and resulting escrow funds.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. What arguments might Eclipse and Action make in support of their respective claims of priority in this case?
- B. Why might a subordination agreement have been necessary to make Eclipse's interest in Integrity's accounts subordinate to Action's interest in those accounts?
- C. Under what circumstances, if any, could Eclipse or Action take possession of trailers in Snowbear's possession?
- D. How might Snowbear's actions have caused Integrity's default? How might the lenders have anticipated such a risk and addressed it in their security agreements?

PROBLEM VII.

(25 points)

The following edited excerpt comes from a recent case:

This case involves a lawsuit against Reserves and Korotki based on applications for two letters of credit submitted by Reserves to Wilmington Trust Company (WTC). Reserves requested WTC to issue two letters of credit in favor of the Sussex County Council in connection with Reserves' residential development project in Sussex County. The Sussex County Council required the letters of credit to ensure that Reserves constructed the roads and stormwater drainage at its project in a timely manner. Korotki personally guaranteed Reserves' obligations. WTC issued the two letters of credit to the Sussex County Council. When Reserves did not complete the roads and stormwater drainage as required, the Sussex County Council demanded that WTC honor the letters of credit and pay it \$2,216,233.00. WTC did that and in turn demanded payment from Reserves and Korotki, who both refused to pay. WTC then filed this lawsuit.

Reserves and Korotki have raised two defenses. They argue that (1) WTC should have only paid to the Sussex County Council the amount of money that was "as reasonable as necessary" to complete the construction of the roads and stormwater drainage, and (2) the request for attorneys' fees is unconscionable. The following language appears in both of the Letters of Credit: "If satisfactory performance has not occurred by the Expiration of this Letter of Credit, Sussex County Council shall be entitled to draw funds as reasonable as necessary to complete construction or to procure others to perform the work."

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. On what legal theories might WTC seek to recover from Reserves and Korotki?
- B. Could WTC pay the \$2,216,233.00 only if this amount was in fact reasonable and necessary to complete construction?
- C. How might WTC respond to the contention that its request for attorney's fees is unconscionable?
- D. Given the letter of credit securing Reserves' obligations, was it reasonable to ask Korotki for a personal guarantee?

END OF EXAMINATION

For your reference, please note that words and punctuation were omitted from the preceding quotations without indication by ellipses. Text appearing in brackets was added to the quotations for clarification and other purposes. Because this is an open-book examination, the names of the cases upon which these problems are based will be revealed at a later time.

Final Examination In
SECURED TRANSACTIONS & COMMERCIAL PAPER
(Course No.6281-10; 4 credits)
Professor Gregory E. Maggs

Instructions:

Absent special arrangements, you have 3 hours to complete this examination.

The examination consists of 7 problems worth a total of 180 points. You should budget your time according to the points assigned to each problem (3 hours = 180 minutes).

Each problem includes several specific questions. Points will be allocated among the questions within a problem according to their difficulty.

This is an open-book examination. In completing the examination, you may use any written materials that you have brought with you.

You should make reasonable assumptions about any facts not stated in the problems. If you find aspects of the problems ambiguous, describe the ambiguity in your answer, and explain why the ambiguity matters.

Assume that no statute of limitations applies to any of the problems. Otherwise assume that the current official version of the Uniform Commercial Code applies, regardless of any dates or jurisdictions indicated.

SUGGESTIONS: Keep your answers brief or you will run out of time. Draw a diagram of each transaction to avoid confusion.

You may keep this copy of the examination at the end of the examination period.

Good luck!

PROBLEM I.

(26 points)

The following edited excerpt comes from a recent case:

Griscom Street LLC executed a Promissory Note in the amount of \$324,000 and a Mortgage in favor of GreenPoint Mortgage Funding. At the same time, Defendant Smith [guaranteed the Promissory Note]. Thereafter, the [documents] changed hands a few times; they were first assigned to Park National Bank (PNB) and then to the FDIC as receiver for PNB and finally to U.S. Bank National Association (Bank). According to the Complaint, [Griscom Street] failed to pay amounts due under the Note.

Mr. Smith disputes ownership of the debt. Essentially, he says that the Complaint's recital of the way the debt changed hands is "long and confusing," and that there is "insufficient proof to show ownership conclusively." However, Mr. Smith does not allege any facts that cast doubt on the debt's ownership, nor does he explain why the facts alleged are, or even may be, incorrect.

Mr. Smith also argues that the loan documents are unconscionable. He claims that he has the "right to present the surrounding circumstances of this loan, which contains extremely one-sided clauses, where defendant had no choice but to accept the clauses as drafted by the lender." [T]he Bank responds that as the holder in due course of the loan, it cannot be liable for any "personal" defenses that could have been raised against the original lender.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Must the Bank prove its ownership of the Promissory Note in order to enforce it?
- B. Under what circumstances, if any, would the Bank take the note free of Smith's asserted defense of unconscionability?
- C. What rights would Smith have if he pays the Note?
- D. If the Bank cannot recover from Smith, who else might be liable to the Bank?

PROBLEM II.

(26 points)

The following edited excerpt comes from a recent case:

On 12/10, Gilley Properties LLC (Gilley) issued a check in the amount of \$100,000 payable to Cile Way Properties LLC (Cile). The check was drawn on the account held by Gilley at Troy Bank. On 12/16, Cile deposited the check to its account at Citizens Bank. Citizens Bank presented the check for payment through the Federal Reserve Bank (FRB) and under-encoded the amount of \$1000 instead of \$100,000.

On the date the check was presented to Troy Bank, Gilley's account, which contained a balance of \$199,083, was debited \$1000 instead of \$100,000 because of Citizens Bank's encoding error. Cile's account was credited \$1000 at Citizens Bank.

On 1/22, Citizens Bank discovered the mistake and sent an adjustment through the FRB for the under-encoded amount of \$99,000. Upon receipt of the adjustment notice, Troy Bank honored the notice and made final payment of \$99,000 which was credited to Cile's account at Citizens Bank. Troy Bank never returned the item or sent written notice of dishonor to Citizens Bank.

On 3/17, Troy Bank sent a letter to Citizens Bank demanding payment in the amount of \$98,436.43 for damages it claimed to have suffered as a result of the encoding error because Gilley's account held insufficient funds on the date final payment of the \$99,000 was made.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Why might Troy Bank have believed that it had a duty to make a final payment of \$99,000 even if there were insufficient funds in Gilley's account when the payment was made?
- B. What amount may Troy Bank charge against Gilley's account?
- C. On what legal theory might Troy Bank support its claim against Citizens Bank?
- D. If Citizens Bank pays the amount claimed by Troy Bank, what rights, if any, will it have against Gilley and Cile?

PROBLEM III.

(26 points)

The following edited excerpt comes from a recent case:

A probate court appointed Cochonour executor of Jay's estate. Cochonour, acting in his fiduciary role, drafted a check for \$188,473, made payable from [a bank account belonging to] Jay's estate to Martha, which represented a portion of the \$400,000 inheritance Jay had bequeathed to her. The reverse side of that check contained the following instructions: "Pay Jones and Company." Although Martha's endorsement appeared below the instructions, Cochonour had forged that signature. Cochonour presented the forged check to [Jones and Company]. [Jones and Company did not] communicat[e] with Martha to confirm the validity of the \$188,473 check. Jones [and Company] deposited the check at issue into its bank account.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. What claims might Martha assert?
- B. What claims might Jay's estate assert?
- C. In subsequent litigation, the parties disagreed about whether Jones and Company had a duty "to ask Martha--the payee and purported endorser of the check--about the validity of that instrument." Did Jones and Company have this duty?
- D. Under what circumstances, if any, might the holder in due course doctrine shield any of the parties from the claims of others?

PROBLEM IV.

(26 points)

The following edited excerpt comes from a recent case:

Bank alleges that on August 9, it perfected a security interest in all of Lucky Moon's livestock, including all after-acquired livestock, to [secure a] debt owed by Lucky Moon to Bank of approximately \$2,000,000.

Barretts had been selling cattle to Lucky Moon for several years. Typically, [Barretts] would deliver the cattle, submit an invoice, and then give Lucky Moon a few weeks to pay. Barretts did not file a financing statement or perfect any security interest in the cattle. Between August 28 and December 1, Barretts made sales and deliveries totaling 903 head of cattle to Lucky Moon. Lucky Moon made two separate payments towards the total amount, one by wire transfer on October 13, and one by check on October 29. The remaining balance after payment was \$214,533, representing 393 head of cattle.

Bank filed a petition seeking declaratory relief arguing that it possessed priority based in its perfected security interest. Barretts argues that even if Lucky Moon had possession of the cattle it did not pay for them. Therefore, it could not transfer rights to the cattle pursuant to § 9-203(b)(2), making perfection of Bank's security interest in the cattle impossible.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Is Barretts's argument under § 9-203(b)(2) correct?
- B. Could Barretts prevail by arguing that it had a perfected security interest in the cattle under § 9-309(2)?
- C. Would you have advised Barretts not to sell the cattle on credit to Lucky Moon given the apparent security agreement between Bank and Lucky Moon?
- D. If Lucky Moon sells some of its cattle, what rights will Bank have with respect to the cattle sold and to the proceeds?

PROBLEM V.

(26 points)

The following edited excerpt comes from a recent case:

The Debtors jointly purchased [a] Honda [automobile] from a car dealership in Kalamazoo. As is customary, the Dealer arranged for financing, in this instance through AmeriCredit. Unfortunately, the Dealer submitted two conflicting applications for title. One correctly identified the lienholder as AmeriCredit; the other incorrectly identified American Honda Finance as lienholder, although that company had no involvement or interest in the transaction. The [state] initially issued a certificate of title naming American Honda Finance as the secured party, but later--after the Debtors filed their [bankruptcy] petitions--issued a corrected certificate of title at AmeriCredit's request.

The Trustee takes the position that due to the error made by AmeriCredit or its agent, AmeriCredit's lien was not properly perfected until after bankruptcy. For its part, AmeriCredit contends that because one of the forms [that the Dealer submitted to the state] correctly identified it as the secured party, it properly perfected its lien. It also argues that the [certificate of title] listing American Honda Finance as the lienholder was not "seriously misleading."

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Why might the timing of the perfection of AmeriCredit's lien matter?
- B. If the state statute requiring a security interest in automobiles to be indicated on a certificate of title does not specifically address AmeriCredit's arguments, what UCC provisions might AmeriCredit cite by way of analogy?
- C. If Dealer used secured credit from a lender to buy its inventory of cars, what rights, if any, would this lender have against the Debtors?
- D. If AmeriCredit does not prevail in its dispute with the Trustee, what rights would AmeriCredit likely have?

PROBLEM VI.

(25 points)

The following edited excerpt comes from a recent case:

March sold his restaurant to Linn. The parties entered into a purchase agreement for the assets [e.g. cooking equipment and furniture], a promissory note and security agreement, and an assignment of lease. Linn pledged as security all of the assets subject to the purchase agreement. A UCC-1 financing statement was filed to perfect the security interest. Linn paid \$50,000 down, and the promissory note was for \$160,000.

Under the Security Agreement, the parties agreed to the following: "[I]f Makers default on the terms of this Promissory Note and Security Agreement, Holders shall have the right to repossess the tangible assets subject to the transaction, and also to retake possession of the leased premises, so that Holders may resume operation of the restaurant."

Linn quit paying on the note in November. In February, March filed suit, asking for an order allowing him to repossess the restaurant assets and directing Linn to vacate the premises and [for] a judgment against Linn in the amount of \$54,586.29, the outstanding balance on the promissory note.

Linn argues March is not entitled to repossession of the collateral [unless March agrees to sell it as opposed to using the collateral when it resumes operations of the restaurant]. March responds that § 9-610 says that after default, the secured party may sell the collateral, which indicates that a sale is not required.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. What would be an example of how a secured party could dispose of collateral other than by selling it?
- B. Under what circumstances, if any, could a secured party repossess the collateral and not dispose of it?
- C. If Linn had sold some of the equipment covered by the security agreement, what rights would March have?
- D. Would the UCC filing statement suffice to perfect security interests in fixtures (e.g., ovens) sold to Linn?

PROBLEM VII.

(25 points)

The following edited excerpt comes from a recent case:

[HSBC Bank's predecessor] issued an irrevocable standby letter of credit (LOC) in favor of the defendant Benetton USA Corporation (Benetton USA) in the principal sum of \$500,000. According to [applicant] Weiss, his friend Markowitz needed the LOC to secure goods that Markowitz's corporations had purchased for resale in Markowitz's retail stores. On its face, however, the LOC did not require Benetton USA, as a condition of obtaining payment, to warrant that Markowitz's corporations owed a debt to it. Rather, the LOC provided only that [the bank] would pay Benetton USA upon a demand referencing the LOC's reference number and providing the LOC itself. Markowitz's corporations purchased goods from Benetton Trading Inc. (Benetton Trading), not from Benetton USA.

Markowitz's corporations owed Benetton Trading nearly \$1,000,000 for unpaid receivables. After Markowitz informed [Benetton USA and Benetton Trading] that his corporations would be unable to pay their receivables because he had lost his savings in the Bernard Madoff Ponzi scheme, Benetton USA informed HSBC Bank, that it was drawing upon the LOC. In that letter, Benetton USA referenced the LOC reference number and attached the LOC itself. HSBC remitted to Benetton USA the principal sum of \$500,000, and debited those funds from Weiss's account. Benetton USA then immediately transferred the funds to Benetton Trading, which applied the funds to reduce the debt owed to it by Markowitz's corporations.

On the basis of these facts, answer the following questions and briefly explain your answers:

- A. Was the letter of credit valid even though Benetton USA did not have to warrant that Markowitz's corporations owed Benetton USA a debt?
- B. What, if anything, would have prevented Benetton USA from making a baseless demand for payment?
- C. Assuming the letter of credit was valid, what rights do the parties have against each other now?
- D. Why might the parties have decided to use a standby letter of credit instead of a commercial letter of credit?

END OF EXAMINATION

For your reference, please note that words and punctuation were omitted from the preceding quotations without indication by ellipses. Text appearing in brackets was added to the quotations for clarification and other purposes. Because this is an open-book examination, the names of the cases upon which these problems are based will be revealed at a later time.