Past Examinations in Secured Transactions and Commercial Paper
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This document contains all of the past examinations that I have given in Secured Transactions and Commercial Paper. These examinations were given on the following dates:

December 15, 2015
April 30, 2015

For more practice problems, please my see past examinations in Commercial Paper. (I used to teach Commercial Paper as a separate course.) Problems 1-4 and 7 in those past examinations cover some of the material covered in Secured Transactions and Commercial Paper.
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!
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?
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?
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?
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?
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?
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Good luck!
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." The 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?
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] communicate 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?
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?
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?
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?
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