

The George Washington  
University Law School

May 26, 2022

Past Final Examinations In

SECURED TRANSACTIONS

(Course No. 6280)

Professorial Lecturer Gregory E. Maggs

This document contains the Secured Transactions examinations that I gave on these dates:

May 4, 2022  
April 19, 2021  
April 20, 2020

For additional secured transactions practice, please see problems IV-VI of my past examinations in Secured Transactions & Commercial Paper (Course No. 6281).

Final Examination In

SECURED TRANSACTIONS

(Course No. 6280-20; 2 credits)

Professorial Lecturer Gregory E. Maggs

Instructions:

1. Time. Absent special arrangements, you have 2 hours to complete this examination.
2. Word limit. Your answers may not exceed a total of 3000 words.
3. Weight of the problems. The examination consists of 4 problems of equal weight (i.e., 25 percent each). Each problem includes several specific questions. Points will be allocated among the questions within a problem according to their difficulty.
4. Use of outside materials. This is an open-book examination. In completing the examination, you may use any materials.
5. Ambiguities. 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.
6. Applicable law. Assume that the current official version of the Uniform Commercial Code applies in all problems, regardless of any dates or jurisdictions indicated.
7. Citations. You do not have to provide citations supporting your answers.
8. Suggestions. Draw a diagram of each transaction to avoid confusion. Write a brief answer to each question and then expand your answers as the time and the word limit permit.
9. Retention of the examination. You may keep this copy of the examination at the end of the examination period.

Good luck!

**PROBLEM I.**

**(25 percent)**

The following edited excerpt comes from Owner of Nashville Tractor Pleads Guilty to Fraud, Moultrie Observer, June 10, 2021:

[RC] was the president of NTI, a business that sold agricultural and construction equipment. In 2010, [RC] entered into an ongoing Wholesale Financing and Security Agreement with CNH Industrial Capital America LLC (CNH) to finance NTI's purchases of inventory for retail sale. He also entered into a Retail Financing Agreement with CNH under which CNH would purchase NTI's interest in retail installment contracts for the purchase of agricultural and construction equipment with retail customers.

NTI began having financial and cash flow issues which made it difficult to make payments due on the loans. During that time, [RC] began a practice of selling equipment but not paying the cash over to CNH and other creditors as required. [RC] sold at least 88 pieces of equipment valued at more than \$1.5 million subject to the security interest of CNH and sold other pieces of equipment securing financing from Kubota Credit, Ameris Bank, Bank of Alapaha and Diversified Financial. [RC] also created fraudulent retail installment contracts for the sale of equipment using the names of real people. [NTI sold] those fraudulent contracts [for] more than \$1.2 million.

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

- A. If CNH had a perfected security interest extending to NTI's after-acquired inventory, why would other lenders also agree to finance NTI's inventory purchases?
- B. How would CNH's purchase of non-fraudulent retail installment contracts affect CNH's security interests?
- C. How might NTI's alleged fraudulent actions have affected the rights of the various lenders?
- D. What steps could the affected lenders have taken to limit or prevent the kinds of fraud alleged?

**PROBLEM II.**

**(25 percent)**

The following edited excerpt comes from Tim Novak, Chicago Taxicab King No More, Chi. Sun-Times, Jan. 1, 2015.

A judge has ordered [SG] to pay \$47.6 million to settle one of many lawsuits his lenders have filed to collect the millions in loans they gave him based on the soaring prices of his taxi medallions, the embossed pieces of metal issued by the city of Chicago that confer the right to operate a cab and which are bought and sold for whatever price the market might bear.

[SG]'s rise and fall was part of a takeover of the taxi industry in Chicago by out-of-town investors who caused the price of medallions to soar, then used them as collateral to get millions in loans. All of that collapsed with the advent of ride-sharing and later the coronavirus pandemic.

[SG] is among a group who helped drive up the price of a cab medallion to \$375,000 in 2012. That's the year City Hall began allowing ride-sharing companies like Uber and Lyft, which face fewer regulations than cabs, to operate in Chicago. These days, a Chicago taxi medallion can be had for \$25,000.

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

- A. How could a lender create, perfect, and enforce a security interest in a taxi medallion?
- B. If multiple lenders had security interests in or judgment liens on SG's taxicab medallions, how would their priority be determined?
- C. How might the parties have addressed the possible volatility of the price of medallions in their security agreements?
- D. If a secured party takes possession of a taxi medallion and sells it, what circumstances might prevent the secured party from recovering a deficiency from the sale?

**PROBLEM III.**

**(25 percent)**

The following edited excerpt comes from John Magsam, Fayetteville Clothier, Bank Settle Foreclosure Sale Suit, Ark. Demo. Gaz., Feb. 12, 2019:

First Security Bank contended that Lauren James Enterprises Inc. defaulted on a loan agreement and then moved the company's inventory and accounts to New Jersey, in conflict with [their security agreement].

According to court documents, the bank said New Jersey-based LJ Apparel's later purchase of the company was a sham foreclosure -- a move to "extinguish First Security's lien on the inventory so Lauren James could continue to operate as a new entity, LJ Apparel."

First Security Bank initially loaned Lauren James Enterprises Inc. \$500,000 and was still owed \$338,720, according to documents. The bank valued Lauren James' inventory, which it contended was collateral for the loan, at \$1.3 million.

Lauren James Enterprises Inc. and LJ Apparel argued the foreclosure sale was valid and therefore extinguished First Security's interest in the inventory of the company. They said Legacy National Bank had first priority in Lauren James assets and Legacy's interest transferred to LJ Apparel.

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

- A. How would a court determine whether Legacy National Bank or First Security Bank had priority in Lauren James Enterprises Inc.'s inventory and accounts?
- B. If Legacy National Bank properly disposed of Lauren James Enterprises Inc.'s inventory and accounts after a default, would all of First Security Bank's rights be extinguished?
- C. How would the parties' rights be different if the disposition of the collateral was a sham as alleged?
- D. Could First Security Bank have used a letter of credit to provide further security against the fraud alleged?

**PROBLEM IV.**

**(25 percent)**

*This problem concerns Bitcoin. Bitcoin is a cryptocurrency, an intangible "decentralized digital medium of exchange which is created, regulated, and exchanged using cryptography." Collins Dictionary (2022). "A 'private key' in the context of Bitcoin is a secret number that allows bitcoins to be spent." Wikipedia (2022). "If the private key is revealed to a third party ... the third party can use it to steal any associated bitcoins." Id.*

The following edited excerpt comes from Erik J. Martin, Buying a Home with Bitcoin, Bluffton News-Banner, Mar. 9, 2022.

You can use cryptocurrency like Bitcoin to purchase cars, electronics, bling, and even insurance. So why not real estate? Milo's new low-interest rate 30-year crypto mortgage permits prospective borrowers with pledged Bitcoin to buy a home and be eligible for financing up to 100% of the transaction with no down payment in dollars needed, resulting in an even quicker purchase than via a conventional mortgage.

Good candidates for Milo's product include borrowers who have made large gains in crypto, "as it allows for the use of appreciation without paying tax," [one expert] notes. "This product is designed for a small segment of the population that has enough crypto to replace a down payment."

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

- A. How might a lender create and perfect a security interest in cryptocurrency?
- B. Would you recommend that a security agreement creating a security interest in cryptocurrency require the debtor to disclose the private key to the secured party?
- C. What risks does a lender face in relying on cryptocurrency as collateral and how might Milo be mitigating these risks?
- D. How might the possibility that a secured party has a security interest in cryptocurrency affect the willingness of merchants to take cryptocurrency in payment?

END OF EXAMINATION

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This examination quotes lengthy excerpts from news articles to ensure that the problems are realistic. Please note that words, sentences, and paragraphs were omitted from the quotations without indication by ellipses. Text appearing in brackets was added to the quotations for clarification or other purposes. The facts stated by the authors of the articles are not necessarily true.

Take-Home Final Examination In

SECURED TRANSACTIONS

(Course No. 6280-20; 2 credits)

Professorial Lecturer Gregory E. Maggs

Instructions:

1. Time. This examination will be available from April 19, 2021 at 6:30 p.m. Eastern Daylight Time (EDT) until April 20, 2021 at 6:30 p.m. EDT. You may choose when to begin the examination during this period but you must submit your answers within two hours after beginning it and before the period ends.
2. Word limit. Your answers may not exceed a total of 3000 words.
3. Weight of the problems. The examination consists of 4 problems of equal weight (i.e., 25 percent each). Each problem includes several specific questions. Points will be allocated among the questions within a problem according to their difficulty.
4. Use of Outside Materials. This is an open-book examination. In completing the examination, you may use any materials.
5. Ambiguities. 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.
6. Applicable Law. Assume that the current official version of the Uniform Commercial Code applies in all problems, regardless of any dates or jurisdictions indicated.
7. Citations. You do not have to provide legal citations in explaining your answers. But most students will find it easier to explain their answers if they cite relevant provisions of the U.C.C. and other laws.
8. Suggestions. Draw a diagram of each transaction to avoid confusion. Write a brief answer to each question and then expand your answers as the time and the word limit permit.
9. Retention of the Examination. You may keep this copy of the examination at the end of the examination period.

Good luck!

**PROBLEM I.**

**(25 percent)**

The following edited excerpt comes from Micah Maidenberg, *American Borrowers on Flier Club*, Wall St. J., Mar. 9, 2021:

American Airlines Group Inc. said it would raise \$7.5 billion backed by its frequent-flier program to repay a loan that the carrier took out from the federal government after the coronavirus pandemic decimated air travel. The airline said it would issue \$5 billion in notes and seek a \$2.5 billion term loan backed by AAdvantage, its loyalty initiative for customers, to secure the funds.

Airlines mainly earn money from frequent-flier programs by selling miles to banks and retailers that then award them to customers who sign up for credit cards and make purchases. That means airlines stand to benefit from every swipe of a co-branded card, whether customers are buying plane tickets or clothing. Airlines have said this revenue has held up better than ticket sales as travel demand dried up last year.

American said it would use the financing it expects to raise to pay back funds it borrowed from the Treasury Department. Airlines have been among the businesses hit hardest by the spread of the coronavirus, as companies slashed work-related travel and people postponed vacations and other leisure trips.

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

- A. How could American use money that it expects to earn from selling frequent flier miles to "back" a \$2.5 billion loan from a lender? (Explain the legal requirements and propose specific language for a possible agreement.)
- B. How could a lender guard against the possibility that American might undermine the lender's security by obtaining other loans that are purportedly backed by the same money?
- C. What steps might a lender take to ensure that American will use money earned from selling frequent flier miles to repay the loan and to obtain a remedy if American improperly diverts the money to other uses?
- D. Suppose a lender is concerned that hard times may continue, causing American to declare bankruptcy and go out of business. What legal and practical advice would you give the lender?

**PROBLEM II.**

**(25 percent)**

The following edited excerpt comes from William Morris, *Decorah Woman Takes on Ford, Claiming it Wrongly Repossessed Car*, Des Moines Register, Mar. 2, 2021:

According to court filings, Duncan purchased a new Ford Edge SUV in 2008. In 2010, she fell behind on payments, and made arrangements with a Ford representative to pay off her overdue balance, which she did in November of that year. However, two days later a repossession agent appeared at her workplace and claimed the vehicle, threatening to call police on her if she did not assent.

That seizure kicked off an ordeal lasting more than six months to get Duncan's vehicle returned. Duncan was bounced from office to office as she tried to find the right person with which to resolve the issue. Eventually, she had to send seven letters to 22 different addresses before finally getting a response, according to court filings.

A February letter [from Ford] informed her that she or her representative would need to sign a release of liability for her vehicle to be returned. In March, Ford promised to return her vehicle, but stood Duncan up at the appointed time. Duncan paid off her loan in April, but still did not get her car back.

In the end, after looking at numerous repossession lots, Duncan found her car at an unmarked lot in Utica, Minnesota, in June 2011, and Ford finally told her she could come retrieve the vehicle. In her lawsuit, Duncan is claiming damages to the vehicle worth \$3,000, \$4,000 for vehicle rental costs and nearly \$2,000 for personal property inside the SUV that was not returned.

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

- A. What claims might Duncan assert against Ford?
- B. If Duncan can show that her rights were violated, can she recover the types of damages that she seeks?
- C. Could Duncan recover other kinds of damages (including punitive damages) under any circumstances?
- D. What advice could you have given both Ford and Duncan for avoiding the unfortunate situation described here?

**PROBLEM III.**

**(25 percent)**

The following edited excerpt comes from Andy Brownfield, *Court Battle Between Panino, 3CDC Heats up in Advance of Court Date*, Cin. Bus. Courier, Mar. 3, 2020:

A shuttered restaurant and its former landlord are trading jabs in court filings. Panino, which opened in 2016 and closed at the end of last year, has been in a back-and-forth with its old landlord--Cintrifuse Landlord LLC, a division of the Cincinnati Center City Development Corp. (3CDC). Cintrifuse claims Panino owes \$85,000 in back rent and accused the restaurant of removing equipment that the landlord is owed as collateral [securing rent payments]. Panino fired back that the lease was broken because Cintrifuse didn't follow through with a promise to make their "best effort" to obtain a neighboring parcel for use as an outdoor bar and patio for the restaurant.

Panino argued that in addition to the lease being voidable based on the patio never being obtained, 3CDC has no right to the equipment that was removed from the restaurant because it was purchased with money from owner [N.L.]'s parents' retirement funds and loaned to [N.L.] and was not subject to the lease. The restaurant goes on to argue that 3CDC didn't file any paperwork to claim any collateral from Panino until after the restaurant had been cleaned out and vacated, and that [N.L.] left all of the kitchen fixtures that the landlord was entitled to under the lease. 3CDC disputed those arguments, claiming that if [N.L.]'s parents did indeed loan [money to buy] the equipment to Panino, they did not formalize that loan with any paperwork filed with the state, meaning 3CDC is the only creditor that has any claim to the equipment.

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

- A. What additional facts must be ascertained in order to resolve the dispute regarding the removed equipment?
- B. Might strict foreclosure of the kitchen fixtures that were left behind be advantageous to the parties?
- C. Did 3CDC need to "file any paperwork to claim any collateral from Panino" before the restaurant was vacated?
- D. Might 3CDC be in a better position if the parties had used a letter of credit to ensure payment of the rent?

**PROBLEM IV.**

**(25 percent)**

The following edited excerpt comes from Thomas Clouse, *Pasco Rancher Sued by Meat Packer over 200,000 'Missing' Cattle, Declares Bankruptcy*, Spokesman-Review (Feb. 1, 2021):

One of the biggest farming and ranching families in Washington filed for bankruptcy protection Monday, after Tyson Foods Inc. previously alleged in court records the family defrauded it of more than \$225 million related to 200,000 cattle that never existed. The modern-day cattle rustling case is alleged in a civil suit in state court filed last month by Tyson Foods against Easterday Ranches Inc.

The lawsuit was joined by Spokane-based Washington Trust Bank. An attorney for the bank told a judge the Easterday family has been transferring assets and selling collateral in violation of its loan agreement.

Tyson alleged Easterday Ranches had defrauded the company over a period of years by claiming to have purchased, fed and provided about 200,000 cattle that never existed. For several years, Tyson would reimburse the Easterdays for the purchase and feeding costs of cattle housed in Easterday feedlots that were then provided to Tyson's packing plant in Wallula.

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

- A. If Easterday had not declared bankruptcy, how could the bank have responded to Easterday's alleged sale of collateral securing loans without the bank's authorization?
- B. How if at all might the bankruptcy proceeding affect Tyson and the bank's claims against Easterday?
- C. If Easterday and Tyson had signed a security agreement providing Tyson with a security interest in the cattle that Tyson paid to feed, how if it all would that agreement benefit Tyson here?
- D. What steps might Tyson and the bank have taken to prevent the types of fraud alleged here?

END OF EXAMINATION

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Take-Home Final Examination In

SECURED TRANSACTIONS

(Course No. 6280-20; 2 credits)

Professorial Lecturer Gregory E. Maggs

Instructions:

1. Time. You have 24 hours to complete this examination, but you should be able to complete it in about 2 hours.
2. Word Limit. Your answers may not exceed a total of 3000 words.
3. Points. The examination consists of 4 problems worth a total of 120 points. Each problem includes several specific questions. Points will be allocated among the questions within a problem according to their difficulty.
4. Use of Outside Materials. This is an open-book examination. In completing the examination, you may use any materials.
5. Ambiguities. 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.
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Good luck!

**PROBLEM I.**

**(30 points)**

The following edited excerpt comes from a recent newspaper article, Chris Mathews, *Houston-area Pediatric Group Files for Bankruptcy Protection*, Houston Bus. J., Mar. 5, 2020:

MedCare Pediatric Group--along with affiliates MedCare Pediatric Nursing LP, MedCare Pediatric Rehab Center LP and MedCare Pediatric Therapy LP--voluntarily filed for Chapter 11 bankruptcy protection on March 1.

MedCare was forced to file for bankruptcy protection on an emergency basis, as the IRS was scheduled to file a federal tax lien for employment taxes incurred in 2019 on March 2, court documents show. The lien filing from the IRS might have triggered a default on MedCare's loans with Dallas-based Veritex Community Bank and "almost certainly would have made additional financing impossible to obtain," a court document states.

MedCare has five loans spread between four of its affiliates totaling approximately \$8.5 million.

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

- A. Why might a lien filing by the IRS have triggered a default on MedCare's Loans with Veritex Community Bank?
- B. Why might a lien filing by the IRS make additional financing impossible to obtain?
- C. Why might entering bankruptcy help MedCare avoid a default with Veritex Community Bank and help MedCare obtain additional financing?
- D. Under what circumstances would MedCare's bankruptcy filing have the least effect on Veritex Community Bank?

**PROBLEM II.**

**(30 points)**

The following edited excerpt comes from a recent newspaper article, *Owner of Closed Motorcycle Shops Owes Millions, Suit Says*, Seattle Times, Sept. 29, 2019:

VW Credit, a company that lends to car and motorcycle dealerships to buy inventory, sued [H.C.], a Microsoft program-manager-turned-motorcycle dealer whose NobleRush chain of [Ducati motorcycle] dealerships was abruptly shut down last week. The lawsuit claims that [H.C.] and his companies failed to make some payments on the bike loans and have refused to voluntarily surrender the bikes, which served as collateral for the loans.

In the meantime, skeleton crews of former employees spent days dealing with frantic customers to deliver bikes that had been paid for or brought in for service, or refunding deposits.

After visiting both Ducati dealerships and finding them closed, VW Credit notified [H.C.] and his companies they were in default and demanded they pay VW Credit some \$2.6 million by Sept. 24 or surrender the Ducati inventory, the suit says. Meanwhile, even though some bikes already have been repossessed, a visit to the Ducati dealership in Redmond found the showroom closed but filled with bikes.

[Assume a security agreement between VW Credit and H.C. gave VW Credit a security interest in "all of H.C.'s inventory now owned or hereafter acquired."]

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

- A. Does VW Credit have a security interest in motorcycles for which customers have (1) paid the full price and taken delivery; (2) paid the full price but not yet taken delivery; and (3) merely paid a deposit?
- B. If customers made written contracts in which they promised to pay H.R. for the motorcycles and granted H.R. a security interest in the motorcycles, to what extent should VW Credit rely on these contracts as collateral?
- C. How should VW Credit have perfected its security interests?
- D. Is there any way that H.C. might grant a lender a security interest in motorcycles merely brought in for repair?

**PROBLEM III.**

**(30 points)**

The following edited excerpt comes from a recent newspaper article, David Ramsey, *Farmer Sentenced to 33 Months for False Statements on Loan Applications*, Ark. Times, Nov. 2019:

[M.S.] operated [M.S.] Farms LLC, which farmed two parcels of land in Arkansas County and Prairie County. In April 2013, [M.S.] applied for a loan from AgHeritage Farm Credit Services that sought to recoup money his company allegedly spent acquiring a Case 290 Magnum Tractor. The tractor itself was to serve as collateral, and in support of the loan, [M.S.] gave AgHeritage an invoice from an equipment dealer reflecting the tractor had been purchased outright and a copy of the company check that had supposedly been used to pay. The tractor had not been purchased outright but had actually been financed through another lender. The real tractor bore a different serial number, and the check and invoice [M.S.] provided in support of the loan were both fabricated.

During his plea hearing, [M.S.] acknowledged this was only one of several instances where he lied to lenders in order to secure loans for his farming operation. At various points, he sought purchase money for farming equipment financed elsewhere using fictitious serial numbers and invoices, he understated debt to secure loans, and he double pledged collateral. All told, these false statements secured loans that occasioned over \$3.3 million in losses to AgHeritage, BancorpSouth, and Regions Bank.

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

- A. What will determine which lender has priority in the tractor?
- B. Why might lenders be willing to lend money for what they think is new equipment without checking whether another lender has already entered a security agreement granting a security interest in it?
- C. Do lenders need to know the correct serial number of equipment to obtain or perfect a security interest in it?
- D. What steps might the lenders have taken to prevent the fraud described in the article?

**PROBLEM IV.**

**(30 points)**

The following edited excerpt comes from a recent newspaper article, Heath Harrison, *Boyd County Car Dealership Raided*, Ironton Trib., May 5, 2017:

Federal agents descended on [F.] Toyota [and seized collateral belonging to the car dealership and Mr. G.F. and Mr. C.F., all of whom were sued by BB&T]. Among the items taken were 300 cars as well as coins and a firearms collection used as collateral on loans.

The defendants entered into a loan agreement with BB&T on Aug. 11, 2015. On June 17, 2016, BB&T sent two letters, notifying the borrowers that they were in default, [court] documents stated. On Aug. 12, 2016, the borrowers entered into a forbearance agreement with BB&T, and [C.F.] granted BB&T "a security interest in all of his tangible personal property, including his firearms collection, his jewelry collection and his coin and currency collection." On April 10, [2017], BB&T sent a letter to the borrowers, notifying them that, because they were [again] in default, BB&T had accelerated and declared all indebtedness immediately due and payable. [E]ach of the borrowers, under the original agreement granted to BB&T a security interest in all of "Borrower's inventory, goods, chattel paper, accounts [and other collateral]."

[BB&T representatives] arrived at the dealership on April 11, to take possession of collateral in accordance with the loan documents. According to the court documents, threats were made against the BB&T representatives, including [C.F.] telling [them] that he was going to "beat" and "kick" their "ass."

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

- A. Why might BB&T have decided to enter the forbearance agreement instead of immediately enforcing its rights?
- D. If BB&T provided funds only to F. Toyota, how could BB&T acquire a security interest in C.F.'s personal property?
- C. Did BB&T have to prove that its security interest was perfected and had first priority before enforcing it?
- D. How might the rights of the parties be different if the BB&T representatives had ignored the threats and taken possession of the property themselves?

END OF EXAMINATION

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