Secured Transactions
Spring 2012 Final Exam

INSTRUCTIONS

IN YOUR RESPONSE, PLEASE CREATE A HEADER WITH YOUR EXAM NUMBER SO THAT IT APPEARS ON EACH PAGE. DO NOT USE YOUR NAME ON YOUR RESPONSE.

SAVE YOUR ANSWER AS A WORD DOCUMENT USING THE FOLLOWING FORMAT FOR THE FILE NAME (SUBSTITUTING YOUR EXAM NUMBER FOR THE ****):

**** SECURED TRANS ANSWER

UPLOAD THE ANSWER TO TWEN

This is a three hour timed examination. Your exam will be time stamped. I will allow you an additional 10 minutes to download and upload the exam. If for any reason your exam does not upload, immediately send it as an attachment to my assistant Leigh Ann Moore at leigh.moore@uky.edu Send a copy to yourself as well.

This is an open book examination. You may use any materials you wish. Although this examination is open book, statutory and case citations are not required and you are urged not to spend much time reviewing such materials. The better answers will include a thorough analysis of the issues presented rather than a string of citations.

Conciseness and clarity of expression, organization and clarity of presentation, while not separately taken into account in the grade, necessarily have some impact on the grader’s evaluation of your understanding of the subject matter.

This examination consists of 10 questions. Each question is assigned a time limit that corresponds to the points available for that question. **ALL ANSWERS MUST BE EXPLAINED.** Your grade will be based on your analysis of the issues rather than your ability to come to a single "correct" solution.
Questions 1-3

On January 15, 2007 Big Bank filed a properly completed financing statement in the correct location describing the collateral as all of the “inventory, accounts and equipment” of XYZ Manufacturing Co. On January 21, 2007 XYZ and Big Bank executed a security agreement containing the same description of the collateral and including an after acquired property and future advance clause. Big Bank loaned XYZ $2 million on January 21, 2007. On July 1, 2008, Equipment Sales Co. sold and delivered a Caterpillar Bulldozer to XYZ and the parties entered into a security agreement describing the collateral as “Bulldozer.” Equipment Sales filed a properly completed financing statement describing the collateral as a “Bulldozer” in the correct location on July 30, 2008.

Question 1 (15 minutes)

XYZ filed a bankruptcy petition on December 10, 2011. As of that date, what are the priorities to the Bulldozer?

Question 2 (15 minutes)

Would your answer change if Equipment Sales delivered the Bulldozer to XYZ on July 20, 2008?

Question 3 (15 minutes)

It is now April 11, 2012, nothing further has been filed in the relevant secretary of state’s office. Does that change your answer to question 1, above?

Questions 4-6

You have been assigned to work on a $10 million loan that your client, Second Bank, is planning to make to XYZ Manufacturing, Inc., a Kentucky corporation. Second Bank insists on a first priority security interest in all of XYZ’s accounts, inventory, and equipment as a condition of its loan.

Question 4 (20 minutes)

Your search has revealed one financing statement filed by Finance Company on January 15, 2009 with the Secretary of State of Kentucky under the name The XYZ Manufacturing Corporation, which financing statement describes the collateral as “equipment.” The debtor has presented you a letter from Finance Company that states “We claim a security interest in one industrial drill press Model XY354. The current balance on this loan is $6,000.” In light of this letter and the insignificance of the drill press and the amount, you are inclined to ignore this financing statement. Should you?
Question 5 (20 minutes)

Your due diligence has disclosed that about half of the equipment that XYZ currently owns was purchased 2 years ago by XYZ from Acme Corporation, an Indiana corporation. Does this revelation cause you any concern? If so, what do you need to know and what will you do?

Question 6 (20 minutes)

Three years ago, XYZ Manufacturing filed an amendment to its Kentucky Articles of Incorporation that changed its name from The XYZ Corporation to XYZ Manufacturing, Inc. Do you need to do an additional search? Why or why not?

Questions 7-10

On January 15, 2009, Finance Co. entered into an Inventory Lending Agreement with ABC Distributing Company, a distributor of consumer electronics. ABC buys consumer electronics from manufacturers and resells those electronics to retailers. Under the agreement, Finance Co., agreed to lend up to 80% of the value of the inventory, provided that ABC was not in default of the agreement. The Inventory Lending Agreement described the collateral as “now existing and hereafter acquired inventory” and included a future advance clause. Finance Co. filed a properly completed financing statement in the correct location on January 15, 2009. ABC defaulted on the agreement in September, 2011 and filed a bankruptcy petition on February 1, 2012. As of the date of the petition inventory was valued at $5.0 million and Finance Co. is owed $8.0 million. The following transactions and events have since come to light.

Question 7 (20 minutes)

As of the date of the petition, ABC had accounts with a value of $2 million, all of which reflect amounts owed by retailers for the purchase price of consumer electronics. First Bank claims a security interest in those accounts based on a Security Agreement that was executed by ABC on July 1, 2010. That Security Agreement describes the collateral as “now existing and hereafter acquired accounts and proceeds thereof.” First Bank filed a properly completed financing statement (with the same description) in the correct location on July 2, 2010. Who has priority in those accounts, Finance Co. or First Bank?

Question 8 (20 minutes)

$1.5 million dollars worth of the inventory that ABC currently has was acquired on October 1, 2011 in a liquidation sale from Defunct Manufacturing, a now dissolved manufacturing company. The acquisition was conducted by a broker, who made no representations regarding the title of the inventory and the inventory consisted of damaged and discontinued items. It turns out that Defunct Manufacturing had granted a security interest in all of its inventory to Second
Bank, which security interest was perfected by a financing statement filed on March 1, 2009. Who has priority in this $1.5 million in inventory, Finance Co. or Second Bank?

Question 9 (20 minutes)

On September 1, 2011, ABC sold $250,000 of inventory to Liquidators, Inc. in exchange for a check in that amount. ABC indorsed the check over to its CEO, Arnold B. Comer, and he deposited the check, along with $50,000 of his own money, into a newly created bank account in his own name. Immediately after those deposits, Comer wrote a $200,000 check on the account to Caesar’s Gaming, a casino company, in payment of Comer’s personal gambling debt. Can Finance Co. recover the funds from the account? Can Finance Co. recover any of the $200,000 payment from Caesar’s?

Question 10 (15 minutes)

On September 15, 2011, an unpaid supplier of ABC obtained a judgment lien on $500,000 worth of inventory (which is currently located in the sheriff’s impound facility). On September 30, 2011, Finance Co.’s representative made a check of inventory noting to the bank that ABC was out of trust by $500,000. On October 15, 2011, Finance Co. made an advance to ABC in the amount of $100,000. On November 10, Finance Co. loan made an advance to ABC in the Amount of $200,000. To what extent does Finance Co have priority over the supplier?

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