

FINAL EXAMINATION
SECURED TRANSACTIONS
PROFESSOR G. FLINT

ESSAY
PLEASE READ CAREFULLY

**ALL ANSWERS ARE TO BE WRITTEN ON THE BLUE BOOKS
PROVIDED WITH THIS EXAM**

There are two questions of equal time and percent. The time for completing the examination is three hours.

1. This examination is "open book". You may use your casebook, statutory supplement, and class notes. Use of calculators and cleansed laptops is permitted.
2. Be sure to answer the specific question that is asked. Information supplied relating to some unasked question will not increase your score and consumes you time needed to answer the asked questions.
3. If additional facts are necessary to resolve an issue, specify what additional facts you believe to be necessary and why they are significant. You may not make an assumption that changes or contradicts the stated facts.
4. Quality, not quantity, is desired. Think through and briefly outline your answer before you begin to write.
5. Write legibly. Be sure to formulate your answers in complete sentences and paragraphs with proper grammar. Failure to do so will result in an appropriately lower score.
6. Do not seek an interpretation of language in the question from anyone. If you sense ambiguity or typographical error, correct the shortcoming by shaping the question in a reasonable way and by recording your editorial correction in your answer.

Under the Honor Code, when you turn in this examination, you affirm that you have neither given, received, nor obtained aid in connection with this examination, nor have you known of any one so doing. If you cannot make this affirmation, you shall note such fact on your examination and must immediately advise the Dean of the reason therefore.

I. (50 %--1 ½ hours)

You are an in-house counsel for The Arunah Hubbell State Bank located in San Antonio. One of the loan officers, Alice Whitcomb Burpee, has brought into your office documents relating a loan to Joseph Ferguson Manufacturing Corporation, a Texas corporation. Alice Whitcomb Burpee wants to know what additional legal work under secured transaction law she needs to do before the closing when the loan money will be released to Joseph Ferguson Manufacturing Corporation. Joseph Ferguson Manufacturing Corporation needs operational cash and is a manufacturer of solar panels used to heat water for swimming pools. The loan is in the amount of \$3,000,000. The Arunah Hubbell State Bank is taking a security interest in all the assets of Joseph Ferguson Manufacturing Corporation. Alice Whitcomb Burpee also wants to know how effective The Arunah Hubbell State Bank's security interests will be. What are your recommendations and advice with respect to the loan to Joseph Ferguson Manufacturing Corporation? Be sure to support your recommendations with rules of law, including Code sections and relevant case law. The following is a recitation of the information regarding the loan to Joseph Ferguson Manufacturing Corporation, provided by Alice Whitcomb Burpee.

The assets of Joseph Ferguson Manufacturing Corporation consist of a manufacturing plant located on a plot of land in the industrial park owned by Joseph Ferguson Manufacturing Corporation, but subject to a mortgage in favor of Moses Smith National Bank filed in Bexar County deed records on December 10, 1999. The manufacturing plant has machines built into and firmly attached to the manufacturing plant's concrete floor in such a manner as to be incapable of removal without destroying the concrete floor, for assembling the components of the solar panels, consisting of a copper plate, glass front, wood frame, and sealant to protect a vacuum between the glass and copper. Davis Flint Manufacturing Company manufactured these machines, sold them to Joseph Ferguson Manufacturing Corporation on credit with retained title, installed them on December 15, 1999, and has a UCC-1 filing on them with the Secretary of State of Texas dated December 20, 1999, on "equipment". Henry Adams Brass Corporation manufactured the copper plates, sold them on credit with retained title to Joseph Irwin Manufacturing Company, a wholly-owned subsidiary corporation of Joseph Ferguson Corporation, and has a UCC-1 filing on them with the Secretary of State of Texas dated January 10, 2002, on "inventory". There are no other filings with the Secretary of State of Texas. Joseph Ferguson Manufacturing Corporation has three stock certificates for the ownership of Joseph Irwin Manufacturing Company, a Texas corporation. Joseph Ferguson Manufacturing Company also maintains several vehicles for use by its sales force in the states of California and Texas. California does not require the lien-holder to be denoted on the vehicle title certificate, while Texas does. Joseph Ferguson Manufacturing Company maintains its bank accounts at Moses Smith National Bank. Moses Smith National Bank is headquartered in California, and so the bank

agreement between Moses Smith National Bank and Joseph Ferguson Manufacturing Corporation provides that California law will govern the banking relationship. That agreement also provides that Moses Smith National Bank will extend revolving credit to Joseph Ferguson Manufacturing Corporation up to \$50,000. Alice Whitcomb Burpee has heard that Joseph Ferguson, the president of Joseph Ferguson Manufacturing Corporation, is a devious businessman and so she is concerned that he might try to issue out additional shares of the subsidiary Joseph Irwin Manufacturing Company, diluting the Arunah State Bank's security interest, or pay dividends to the shareholders of Joseph Ferguson Manufacturing Corporation of which he is the major shareholder.

II. (50--1 ½ hours)

[NOTE: The facts listed in Problem I still apply in this Problem II. Whatever you recommended be done in Problem I was not done unless provided for below.]

You are bankruptcy trustee for Joseph Ferguson Manufacturing Corporation (the "Bankrupt"), whose business was described in the first problem. You are liquidating the Bankrupt. You have received all the claims of various creditors. You are ready to determine the rights of various creditors to the Bankrupt's estate. You are now preparing your report. What priorities would you give the various creditors? Be sure to support your priorities with dollar amounts to specific creditors, code sections and relevant case law. The following is a recitation of the information regarding the Bankrupt's creditors gleaned from the claims and petition.

The bankruptcy petition was filed May 5, 2005 (NOTE—this is not now, but next year in the future). The petition listed the assets and their value on that date as real estate \$200,000 subject to a mortgage of Moses Smith National Bank of \$250,000, assembling machines \$100,000 subject to a security interest of Davis Manufacturing Company of \$50,000, copper plates \$100,000 subject to a security interest of Henry Adams Brass Company of \$150,000, glass fronts, wood frames, and sealant \$50,000, finished solar panels of \$100,000, subsidiary stock \$50,000, Texas vehicles \$25,000, California vehicles \$25,000, and bank account \$50,000 subject to a security interest in favor of Moses Smith National Bank in the amount of \$25,000 all incurred 4 months prior to the bankruptcy filing. There is a buyer for this business willing to pay \$775,000.

Arunah Hubbell State Bank's loan with security agreement on all assets, enumerated, of Joseph Ferguson Manufacturing Corporation was made March 1, 2002, and the financing statement on "all assets" was filed on March 11, 2002. Arunah Hubbell State Bank is still owed \$530,000 having received payments of \$20,000 each on February 1, 2004, March 1, 2004, and April 1, 2004.

At the time of the bankruptcy, the inventory accounts of Joseph Ferguson Manufacturing Corporation indicated that the finished solar panels contained \$150,000 of copper plates, \$50,000 of glass fronts, and \$50,000 of wood frames and sealant.

Joseph Ferguson Manufacturing Corporation was unable to pay its taxes for the year 2003. The IRS assessed a deficiency in the amount of \$20,000 and filed on April 20, 2004 with the Secretary of State of Texas.