

## Secured Transactions

Randy Picker

December 2008

1. You should read the instructions, the entire exam and all of the questions before answering any of the questions.
2. Place your examination number on each page.
3. This is an open-book (but not open network), three-hour in-class examination. You may consult any materials you wish, except that (i) you may not consult anyone else and (ii) you may not search during the exam on the Internet or on any database service (such as Westlaw or Lexis/Nexis). Please do not discuss the exam with anyone until the examination period is over.
4. This examination consists of four pages. Please make sure that you have all of the pages.
5. There are four questions, with a total of 8 units for weighting purposes for grading. Each question consists of 2 units and the weight for the question is set forth next to the question.
6. **Exam answers are to be word processed or typed and should be double-spaced. Please begin your answer to each question on a new page.**
7. **Your answer is be no more than 3000 words (approx. 375 words per unit).** You must provide a word count at the end of the exam. Penalties may be assessed for failure to comply with these rules and the size of the penalty will be intended to deter violations of the rules.
8. Answers should be written in full English sentences and should refer to specific statute sections and cases where relevant. If an exam question is unclear, point out the ambiguity and then answer the question to the best of your ability. If you believe that there is a mistake in the exam, please see the proctor, who will contact me.
9. In answering the questions, you should assume that Revised Article 9 is effective in all jurisdictions. You should not assume that caselaw is dispositive of any question, even if it is the caselaw of the jurisdiction in question.
10. **You must connect your answers to the relevant provisions of Revised Article 9, the Bankruptcy Code or any other relevant statute.**
11. Good luck.

**Question 1 (2 units)**

The *Chicago Herald* had long been Chicago's leading newspaper, but like much of the industry, had fallen on hard times. The *Herald* was owned by HeraldCo, an Illinois corporation with its chief executive office in Chicago. HeraldCo also owned, operated and published two smaller, local newspapers: the *Oak Park Crier*, sold in Oak Park, Illinois and the *Gary Independent*, sold in Gary, Indiana. (These newspapers weren't separate legal entities but were just assets of HeraldCo.) The heart of the business was the printing equipment in its plant, the rolls of paper that it used to print the newspapers and the employees. Of course, the traditional business of newspapers has been to create great stories—all of which are copyrighted by HeraldCo—and to print them on paper to be distributed to the public at large. HeraldCo printed all three of the newspapers at its only plant located just over the border in Michigan.

On January 15, 2007, HeraldCo approached FirstChicagoBank (FCB), a Delaware corporation, for a new loan of \$1,000,000. The loan would be due one year later with simple interest of \$100,000, making a total due of \$1.1 million. FCB wanted a security interest for the loan and HeraldCo signed a security agreement containing the following clause:

“HeraldCo hereby grants a security interest in all of its printing equipment, now owned or hereafter acquired, its rolls of paper, past, present and future, and in its newspapers, to secure all debts now and hereafter owed by HeraldCo to FirstChicagoBank.”

That same day, FCB filed financing statements. In each statement, FCB just copied, in its entirety, the above paragraph from the security agreement into the box open for the description of the collateral. And in each statement, FirstChicagoBank was listed as the secured party. FCB filed three financing statements: (1) with the Illinois Secretary of State, listing “Heraldco” as the debtor; (2) with the Indiana Secretary of State, listing “The Gary Independent” as the debtor; and (3) with the Michigan Secretary of State, listing “HeraldCo” as the debtor.

**Question:** Discuss these transactions.

**Question 2 (2 units)**

As you might imagine, HeraldCo uses a great deal of paper. PaperUnlimited (PU), a Wisconsin corporation, provided much of HeraldCo's paper. PU had been providing paper to HeraldCo on an unsecured basis, but it was growing increasingly nervous about HeraldCo's financial position. On November 15, 2007, HeraldCo tried to order \$100,000 in paper rolls, with payment due on

January 15, 2008. PU agreed to sell the paper but only if HeraldCo provided collateral. HeraldCo executed a security agreement in favor of PU stating that:

“HeraldCo hereby grants a security interest in all of its rolls of paper, now owned or hereafter acquired, and the proceeds thereof, to secure all debts now and hereafter owed by HeraldCo to PaperUnlimited.”

That same day, PaperUnlimited filed a financing statement with the Wisconsin Secretary of State identifying “HeraldCo” as the debtor; “PaperUnlimited” as the secured party; and giving the description of the collateral as “newspaper.”

The next day, PU delivered new rolls of paper to HeraldCo’s printing plant in Michigan. HeraldCo used the new rolls to print *The Chicago Herald* and its other newspapers.

**Question:** Discuss these transactions.



### Question 3 (2 units)

To raise cash, HeraldCo was considering selling *The Gary Independent*. To do that, on December 15, 2007, HeraldCo set up a new Indiana corporation, The Gary Independent (GI). HeraldCo transferred \$10,000 worth of its unprinted paper rolls to the new company in exchange for a promise that GI would pay HeraldCo for the paper in 30 days. Of course, the reality is that before the sale, the paper was sitting at HeraldCo’s Michigan plant, and after the sale, it was sitting in exactly the same location. *The Gary Independent* was going to be printed as it had been before, but now the new corporation would pay HeraldCo for that service. Like everyone else, HeraldCo wanted a security interest for GI’s debt to it. GI signed a security agreement granting HeraldCo a security interest in “all of GI’s paper rolls.” HeraldCo decided not to file a financing statement as it thought that that was too much bother.

The next day, GI bought from PaperUnlimited, on an unsecured basis, \$5,000 worth of paper rolls. PU delivered that paper to HeraldCo’s printing plant in Michigan, since that was where *The Gary Independent* would be printed.

**Question:** Discuss these transactions.



### Question 4 (2 units)

On January 15, 2008, HeraldCo defaulted on the loan to FirstChicagoBank. (It didn’t pay the amounts due to PaperUnlimited either.) FCB immediately considered its options and decided that it should try to grab available collateral. HeraldCo distributes many of its newspapers in newspaper boxes available on the street. A customer puts in 75 cents or a dollar and buys one newspaper. But of course the customer could take more than one newspaper, and this is exactly

what FCB decided to do. It put in the required payment for one newspaper, took all of the newspapers, and then sold those newspapers to individual buyers. As you might imagine, all of this was a little clunky. FCB spent \$5000 doing this and sold the newspapers for \$25,000. Had all of the newspapers in the boxes been sold as per usual HeraldCo would have taken in \$50,000. FCB applied the \$20,000 net it took in to reduce HeraldCo's debt to FCB.

**Question:** Discuss these transactions.

