

Secured Transactions Problem
Fall Semester 2019
Professor Lawless

This problem requires you to draft documents for the transaction described below. It is an adaptation of Problems 9.8 and 18.7. The assignment is due and must be “filed” by 4:30 PM on Tuesday, November 5. Documents are “filed” when attached as an Adobe PDF or Microsoft Word document to an email sent to my faculty assistant, Sally Cook (sjcook@illinois.edu).

There will be no extensions of the deadline, even by a minute. Your email will be considered filed as of the time stamp given upon receipt of the email at the email address stated above. The time stamp on Ms. Cook’s machine is controlling. You may, of course, file early.

Facts

Triptych brews beer in Savoy, Illinois, and it has a tap room where you can drink their beers. It is one of my favorite places in the area, especially on Thursday nights when the Dragon Fire Pizza truck is parked there. You should try it sometime. If you are not a beer drinker, they have hard cider, and in the evenings, there is often a food truck that offers something nonalcoholic. The rest of this story is completely fictional, but we will assume it is true for the assignment.

Triptych needs capital to buy new brewing equipment as well as furniture for its tap room. Monolith Financial has agreed to provide \$65,000 of financing as provided in the term sheet at the end of this document. Your task is to act as the bank’s lawyer in drafting the documents necessary to execute the transaction. Assume that any financing statements already on file against Triptych would not cover Monolith’s collateral. This is an unrealistic assumption, but we will make it so that the assignment is easier.

Triptych is a real place. Monolith is not. For purposes of this assignment, you can consider me both Triptych’s owner and the loan officer at Monolith responsible for the transaction. You may email me and ask me questions in those capacities. I will respond in those capacities, not as your professor. If you bombard me with questions, however, I may begin to wonder as the loan officer why I hired you or as the small-business owner whether I can get lending from a more cooperative bank.

Tasks

As the bank’s attorney, there are three things you must do:

- (1) Prepare a binding legal document or documents that capture the terms of our transaction.

Note the terms of the agreement in our term sheet. The document you draft may contain the usual sorts of provisions in this type of an arrangement. The security agreement can be as short as you wish but may not exceed four pages. You may include the promissory note in the security agreement or as a separate one-page document. Page lengths will be determined using (1) paper size of 8-1/2" by 11", (2) font size not smaller

than 11-point type, and (3) standard one-inch margins. I will not accept documents that do not conform to these standards, which will result in a failing grade.

The parties will sign anything reasonable. If, however, you draft a document that imposes unreasonable terms on Triptych, you will have been deemed to have caused the transaction to collapse. In this case, you will receive a grade of “fail” for the assignment. I will not, in advance, confirm or reject any provision as reasonable. Examples of unreasonable terms include adding collateral or increasing the interest rate.

- (2) Prepare a financing statement that will perfect Monolith’s interest created by the document in part (1). “Perfection” will be taken to mean that Monolith’s interest would beat the bankruptcy trustee if Triptych filed bankruptcy at 4:31 PM on November 5. We will cover the nuances of what that last sentence means throughout the semester. For purposes of this assignment, there is one important thing you need to know: a security interest that has been defectively perfected does not beat the bankruptcy trustee.

Do not actually file any financing statements. If you need to file a financing statement, specify in the cover letter (see part (3)) either the postal address, fax number, or web site/URL where the financing statement should be submitted. Be specific.

- (3) Prepare a short cover letter to me transmitting the documents. Because you will not actually file the financing statement, specify in the cover letter either the postal address, fax number, or web site/URL where any financing statement should be submitted. Be specific. The cover letter probably does not need to be more than one page. So that I can grade the documents anonymously, DO NOT put your name in the cover letter (or anywhere else for that matter).

Rules and Other Thoughts

This part of the document offers some advice from me as your professor and not your hypothetical client.

First, Triptych is a real place. DO NOT contact the brewery or its owner directly or indirectly; the facts in this problem are entirely fictional. If you have any questions, send me an email as noted above, and I will reply as Triptych’s owner. You can assume my answers are binding on the brewery. Also, DO NOT actually file any documents with the secretary of state or any other office or person except to Ms. Cook as directed above.

For purposes of this assignment, you also can assume the following:

- Any document is authentic
- A UCC search on the Illinois Secretary of State’s web site is an official search
- The “corporation file detail report” on the Illinois secretary of state’s web site produces the precise name listed on the business articles of organization or articles of incorporation.
- At the time you submit your filing, all documents will have been executed.

The assignment is not as complicated as it might appear. These are the sorts of tasks a first-year associate might be expected to handle. Do not be intimidated by the assignment. We will cover the law necessary to complete the problem before the due date. Still, you may want to do some outside research on any issues that are unclear to you.

You may use form documents or other documents consistent with what would be the practice in a law office. On the class blog with this assignment are templates of a security agreement and promissory note. You can use these templates or any others you might find. Do not slavishly copy any documents. You are responsible for any documents you use. For example, mistakes in the form or using the wrong form are your error. Also, any forms will need to be adapted to meet the facts of the problem. For example, do not submit a form agreement with blanks that need to be completed (except for the signatures).

You may discuss the substantive issues involved with other students. You may not, however, collaborate with or copy from any other student in the actual drafting, and your submission of the assignment constitutes acceptance and agreement with these restrictions.

Submitting the Assignment

To submit the assignment, you will “file” by attaching the documents to an email sent to my faculty assistant, Sally Cook (sjcook@illinois.edu), by 4:30 PM on November 5. So that I can grade your document anonymously, it bears repeating that you SHOULD NOT put your name anywhere in the documents. The only place your name should appear is in the e-mail to Ms. Cook. She will assign an anonymizing code to your documents that I will use when I grade.

When submitting the documents, Adobe Acrobat PDF is most convenient for me, but if you do not have software to convert documents into this format, please feel welcome to submit the document in Microsoft Word format. In the email to Ms. Cook, it would help if you please use the subject line “Law 631, Security Agreement.” If you do not receive an acknowledgement of receipt, please contact Ms. Cook.

Every year, a few students seems to have problems because they have used a fillable form in Adobe Acrobat from the Internet, but the download did not save their work. Be sure your work is saved. Like in the real-world, problems with the software are your problem. If you submit a blank form, that is your error.

Grading

The assignment will be graded pass/fail. The grading criteria will be (1) whether all elements of the assignment are completed, (2) whether the documents create the obligations described in the assignment, and (3) whether the documents and your advice protect my interests in the collateral. If I have doubts, I may e-mail you asking for argumentation and case law supporting the enforceability of the documents and advice you gave me.

If your assignment does not receive a “pass,” your semester grade will be computed with a “fail” for 10% of the grade. This is roughly equivalent to failing one short essay on one of my final exams. Although such a result obviously is best avoided, it is entirely possible to overcome it by doing well on the final exam.

The goal here is to simulate the real world. In real life, a document that almost creates a legally enforceable security interest is a failed document. Similarly, there is no such thing as a security interest that is “almost” perfected. Attorneys who fall short on these tasks have a high probability of needing to call their malpractice insurance carriers.

TERM SHEET

August 26, 2019

This term sheet is presented solely as a basis for further discussion and is subject to completion of due diligence and final credit approval by Monolith Financial. The parties further agree that that they do not intend to and do not create a legally binding obligation on the part of Monolith.

BORROWER:	Triptych ("Borrower") 1703 Woodfield Dr. Savoy, Illinois 61874
LENDER:	Monolith Financial ("Lender") 504 E. Pennsylvania Av. Champaign, Illinois 61820
PERSONAL GUARANTOR:	none
AMOUNT BORROWED:	\$65,000
PURPOSE:	purchase of brewing equipment and tap room furniture
TERM:	7 years
INTEREST RATE:	5.25%
COLLATERAL:	brewing equipment and accounts receivable, now existing or acquired later
PAYMENTS:	monthly
DUE DATE:	first of each month
OTHER CONDITIONS:	(1) Borrower to maintain insurance on the collateral (2) Borrower to allow Lender access to its premises to inspect the collateral at reasonable hours (3) In the event of default, Borrower to turn over the collateral to Lender (4) Borrower to cooperate with lender