

ANSWER ALL QUESTIONS IN BLUE BOOK

Question one

(worth 10 points)

In 2008, Bank of America made a loan to Allied and was granted a security interest in all of Allied's existing and after acquired inventory and accounts as well as the proceeds of that collateral. The bank promptly filed a financing statement that perfected that security interest. In 2010, CCFC entered into a factoring agreement with BCI, which owned a soda business. Under the agreement, CCFC made loans to BCI. To secure the loans, BCI granted to CCFC a security interest in all of its existing and after-acquired inventory and accounts as well as proceeds of that collateral. CCFC promptly filed a financing statement that perfected that security interest. Later in 2008, BCI sold its business to Allied. As part of the sale, BCI, transferred assets to Allied. Among the assets were inventory and accounts in which CCFC had a perfected security interest. Both Bank of America and CCFC claim priority with respect to the inventory and accounts transferred by BCI to Allied and to proceeds of that collateral including accounts that arose as the result of inventory by Allied after its purchase of the business from BCI. Resolve the priority dispute. Fully support your answer.

Question two

(worth 5 points)

Lender perfects a security interest in debtor's equipment by filing. The equipment is business machines used in debtor's law firm. In violation of a provision in the security agreement, debtor sold some of the machines to dealer without lender's knowledge or consent. Dealer buys and sells used business machines in question to buyer for cash. Buyer bought machines for use in business. Neither dealer nor buyer knew about lender's security interest in the machines.

Query: What are lender's rights with respect to machines now in buyer's possession?
Fully support your answer.

Question three

(worth 1 point each - 5 points total)

Does Article 9 govern the following transactions? Fully support your answer.

- A. A borrows \$100,000 from B and secures its repayment obligation, evidenced by a promissory note, by granting to B a mortgage on A's land.
- B. What if B sells the promissory note to X?
- C. What if B gives a security interest in the note to secure B's own obligation to X?
- D. Leases.
- E. Consignments.

Question four

(worth 5 points total)

Your brother-in-law, a small time painting contractor, borrows \$10,000.00 from you to deal with what he describes as an emergency. You are skeptical both about the existence of an emergency, and in the light of his credit history with you, his likelihood of repaying the money within two months as he said he would. But, in the interest of family harmony, you give him the money. However, in order to impress upon him that you expect to get your money back fairly soon, you extract from him as security for the loan a written assignment of his right to be paid under the contract he has with the owner of the building that he is now working on. When he finishes his work he will be owed approximately \$12,000 on that contract. How should your interest be perfected?

Fully explain your answer.

Question five

(worth 5 points)

Sullivan Bank ("SB") finances Cathy's acquisition of a new \$50,000 machine and takes a security interest on the machine. The machine is delivered on November 5. SB filed its financing statement on November 6th. SB gave no notice to Friendly Finance. Friendly Finance had previously perfected a security interest in Cathy's existing and after acquired equipment by filing a financing statement.

Does SB nevertheless have priority over Friendly Finance? Fully support your answer.

Question six

(worth 5 points total)

On March 1, debtor granted a non purchase-money security interest in described collateral to SP in a signed security agreement; SP advanced value to debtor on that date. On March 5, creditor's judicial lien attached to the same collateral. On March 9, SP filed a financing statement covering the collateral. Who has priority? Fully support your answer.

Question seven

(worth 5 points total)

On March 1, debtor granted a non purchase-money security interest in described collateral to SP in a signed security agreement; SP filed a financing statement covering debtor's collateral on that date. On March 5, creditor's judicial lien attached to the same collateral. On March 9, SP advanced value to debtor. Who has priority? Fully support your answer.

Question eight

(worth 10 points total)

On January 1, SP made a loan to D Corporation and D granted SP a security interest in its factory in Maine to secure the loan. The same day, SP filed a financing statement in the proper office identifying D as "Dee Corp." On February 1, after D refused to pay payroll taxes it owed the federal government the IRS properly filed notice of a tax lien in Maine.

- A). In a contest between the IRS and SP over D's equipment in use, who prevails? Fully support your answer.

- B). Suppose that on January 1, the financing statement SP filed omitted D Corporation's address. Does the result in (A) change? Why or why not? Fully support your answer.

ANSWER ALL QUESTIONS IN BLUE BOOK

Question One

(worth 5 points)

On May 15, 2010, Adam files financing statement covering a certain item of debtor's equipment described with reasonable accuracy. On June 1, 2010, Betty files a financing statement covering the same equipment. On June 19, 2010, Betty makes a loan to debtor, and obtains a security interest on the equipment. On June 23rd, Adam makes a loan to debtor and obtains a security interest on the same collateral. Adam knows of Betty's security interest when Adam made its advance.

Who has priority? Fully support your answer.

Question Two

(worth 1 point each - 5 points total)

Does Article 9 govern the following transactions? Fully support your answer.

- A. A borrows \$100,000 from B and secures its repayment obligation, evidenced by a promissory note, by granting to B a mortgage on A's land.
- B. What if B sells the promissory note to X?
- C. What if B gives a security interest in the note to secure B's own obligation to X?
- D. Leases.
- E. Consignments.

Question Three

(worth 5 points)

On May 1, 2007, Kilti sold a business to A Co. , retaining a security interest in items specifically described as inventory on hand on May 1, 2007. The description of collateral was obscure and scattered through several documents, but the court held it to be the equivalent of "inventory and equipment." The security agreement did use "after

acquired” language with respect to accounts receivable. The financing statement extends to after acquired equipment. When the buyer defaulted in October of 2009, Kilti seized all of the inventory and equipment then in the possession of the buyer. The buyer filed bankruptcy and the trustee, Stow, sued Kilti for return of the after-acquired inventory and equipment.

What result? Fully support your answer.

Question Four
(worth 5 points)

As a senior associate, explain the permissible way to perfect the following items of collateral. Describe the process.

- A. The cash in the cash registers of a debtor that operates a concession stand in a football stadium.
- B. A negotiable promissory note.
- C. Money the debtor is keeping in a bank account
- D. Share of stock in IBM, for which a certificate was issued.
- E. The obligations of customers of a used car lot to pay for the cars they purchased. The obligations are evidenced by promissory notes and security interests in the cars purchased.

Question Five
(worth 5 points)

Sullivan Bank (“SB”) advises Friendly Finance Company in writing that it plans to finance the acquisition of new textiles for Cathy, who now decides to manufacture dresses. Friendly Finance Company had previously filed a financing statement covering Cathy’s existing and after acquired textiles. A new supply of textile was delivered to Cathy on November 3. SB files its financing statement the next day on November 4. Does SB prevail over Friendly Finance Company? Fully support your answer.

Question Six
(worth 10 points)

Mandy is in financial difficulty. Mandy’s friend Phil Gold decides to lend Mandy

\$20,000, which is to be secured by construction equipment owned by Mandy and located in Mandy's construction yard. On May 7, Mandy signs a financing statement, security agreement, and promissory note, but Phil didn't disburse the money. Phil filed the financing statement that same day and orders a search. On May 10, the Sheriff levies on the equipment pursuant to a writ of execution in favor of Star Paving. On May 11, Phil receives from the filing offices the report of her expedited search showing Phil's interest to be the first filed.

- A). As matters now stand, is Phil's perfected?
- B). If Phil makes the \$20,000 loan despite the levy, will he have priority over Star Paving?

Question Seven

(worth 10 points)

Clyde runs a retail appliance dealership. Sullivan State Bank extended a loan of \$300,000 taking a security interest in Clyde's existing and after-acquired inventory of appliances and duly filed a financing statement. Jack Smith buys a television for cash from Clyde's.

Will Jack Smith take the television set free of the Bank's prior perfected security interest if at the time he buys the set he has knowledge of State Bank's prior perfected security interest? Why or why not?

Question Eight

(worth 5 points)

Sullivan Bank ("SB") finances Cathy's acquisition of a new \$50,000 machine and takes a security interest on the machine. The machine is delivered on November 5. SB filed its financing statement on November 6th. SB gave no notice to Friendly Finance. Friendly Finance had previously perfected a security interest in Cathy's existing and after acquired equipment by filing a financing statement.

Does SB nevertheless have priority over Friendly Finance? Fully support your answer.

ANSWER ALL QUESTIONS IN BLUE BOOK

Question One

(worth 10 points)

Treats Inc., is a candy shop. The candy sold by Treats Inc. is made on the premises. The health consciousness of the community created cash flow problems for Treats, so its sole shareholder, Linda More, goes to Bank One on Friday, May 11, for a loan. After reviewing the loan application documents, the Bank One loan officer gets Ms. More's authorization to file a financing statement. Ms. More is told that Bank One will do credit and UCC -1 checks and if everything is satisfactory, Bank One will make a loan of \$25,000 against Treats Inc. equipment and inventory. The following Monday, May 14, Bank One files the financing statement with the Secretary of State listing Treats Inc. as the debtor and the collateral as all equipment and inventory. Three days later, on May 17, tired of waiting for a call from Bank One, Ms. More goes to Bank Two to inquire about a loan. After reviewing the loan application documents, Bank Two's loan officer has Ms. More sign a security agreement and a financing statement on behalf of Treats, Inc. covering all equipment and inventory, now owned and hereafter acquired by the business and Bank Two gives Ms. More a \$25,000 check made payable to the order of Treats, Inc., which Ms. More promptly deposits the same day. Bank Two promptly files the financing statement with the Secretary of State. The following Monday, May 21, Bank One contacts Ms. More ready to make the loan to Treats Inc. On Tuesday, May 22, Ms. More signs a security agreement of behalf of Treats Inc. granting a security interest in all of the equipment and inventory, now owned and hereafter acquired by the business. Bank One gives Ms. More a check for \$25,000 which she promptly deposits.

On September, 16, Treats Inc., in serious financial difficulty, files for bankruptcy under Chapter 7. Bank One and Two are each owed \$25,000. The proceeds from the sale of all inventory and equipment are \$25,000. Who will prevail? Bank One, Bank Two, or the trustee? Fully support your answer?

Question Two

(worth 10 points)

In January 2012, the debtor entered into two wholesale financing and security agreements with ITT Credit Corp. for the purpose of purchasing boats, motors, and related accessories for his business operation known as Marine Inc. ITT was granted a security

interest in several items listed as exhibits and made part of the record. ITT properly perfected its security interest in these items by filing the necessary financing statements.

The small business administration, through the American Bank of Commerce, subsequently loaned Marine Inc. certain sums of money and in return was granted a security interest in the inventory and equipment. In July 2012, the American Bank of Commerce forwarded to all known creditors of Marine Inc. a letter regarding their security interest in said inventory and equipment. That letter provides in pertinent part:

Gentleman: The American Bank of Commerce has taken on plans to take a security interest in the following equipment located at the customer's place of business at Salisbury, Massachusetts, mailing address Highway #1A: all machinery and equipment; inventory; accounts receivable; automotive equipment; furniture and fixtures, now owned or hereafter acquired; all used boats and motors, now owned or hereafter acquired including but not limited to: (listings numerous items with specific descriptions and serial numbers).

/s/ John Freeman

ITT admits that it received the subject letter and raises no question regarding time of receipt, description of the collateral, or other points beyond the issue raised by this proceeding.

In April of 2012, pursuant to an order of this court, the Small Business Administration concluded a foreclosure sale of property in which it claimed a security interest pursuant to agreements with the debtor as previously set forth. Among the property sold at the foreclosure sale were certain items in which both ITT and the Small Business Administration through the American Bank of Commerce, claimed a security interest. Who has first priority? Fully support your answer.

Question Three
(worth 10 points)

In October 2009, plaintiff sold three snow making machines to Stowe Mountain with payments due in installments. Plaintiff was to retain title to the machines as collateral until the contract was paid in full. Stowe Mountain defaulted on the payments with an outstanding balance due of \$151,360. In June 2012, plaintiff commenced a replevin action against Stowe Mountain and obtained an order of seizure from the Supreme Court of the state permitting plaintiff to recover the machines. While attempting unsuccessfully to execute the order, plaintiff learned that Stowe Mountain had transferred possession of

the machines to defendant together with other real and personal property comprising the Stowe Mountain ski area.

Defendant had entered into a contract of sale with Tuttle Recreation, LLC, owner of Stowe Mountain, to purchase the ski resort. Although the contract was dated September 11, 2012, the sale actually closed in May 2013. In the interim, defendant and Tuttle entered a master lease agreement which provided that defendant could “manage, operate, and control” Stowe Mountain October 1, 2012 – to March 31, 2013, during which time defendant was to obtain financing. The lease agreement further provided that defendant would pay Tuttle monthly rent, a portion of which would apply to purchase price if the parties closed on the sale. As additional rent, defendant was also required to pay taxes and insurance premiums on Stowe Mountain. By letter dated December 8, 2012, plaintiff’s president informed defendant’s representative of plaintiff’s interest in the three snow making machines. On May 21, 2013, the parties closed on the sale, and the snow making machines, and other personal property, as well as the realty, were transferred to defendant.

Plaintiff commenced this action against defendant seeking the return of the snow making machines and/or full payment on the balance due. By order to show cause plaintiff sought a prejudgment order of seizure and a temporary restraining order against defendant. Supreme Court granted the motion prompting an appeal.

What result? Fully support your answer.

Question Four

(worth 10 points)

The debtor’s business is primarily in operating video games. The issue in this case comes down to whether the creditor has a valid perfected security interest in the cash revenues generated by the video game machines and vending machines.

The debtor executed a security agreement covering “All of the assets of Shazam Enterprises, Inc. including without limitation all ... equipment, ... inventory ... accounts receivable, contract rights, intangibles, video games, cigarette machines, coin changers, and any and all other personal property, or assets owned and used by the debtor in its business wherever located as well as any and all personal property hereafter acquired.” The same items were listed on the financing statement which was filed with the Secretary of State, and the debtor also checked the box which provides products of collateral are covered.”

Analyze and answer the issue.

Question Five
(worth 10 points)

To secure a loan on March 1, D grants to SP a security interest in “all inventory now or hereafter acquired by D”. A financing statement is duly filed on March 2. On November 1, a bankruptcy petition is filed. On this date, the amount of the debt owed by D to SP was \$120,000; the value of the inventory subject to the security interest was \$110,000. Ninety days before the bankruptcy petition was filed, the amount of the debt owed by D to SP was \$150,000; the value of the inventory subject to the security interest was \$100,000.

- A). By what amount did SP improve its position?
- B). Of the \$110,000 (value inventory at the date of filing the petition), what amount can SP claim?

Professor Sullivan & Professor Dimitriadis
Examination Instructions
UCC Article 9 - Fall 2012

Spread out as much as possible by leaving space between yourself and anyone seated nearby.

Nothing may be on your desk or the floor near your desk except a pen(s). Put all bags, books, coats, purses and anything else you have with you against the wall.

You may not begin until instructed to do so.

You have 90 minutes to complete the exam.

You may leave the room if absolutely essential but only one at a time and must sign out when you do so.

Print or write so I can read it. If I cannot read it, you receive no credit.

Student Identification Numbers only.

Pass in all bluebooks used as well as the exam.

TURN OFF ALL CELL PHONES, AND NO CELL PHONE MAY BE ON YOUR PERSON. IF YOUR PHONE RINGS DURING THE EXAM YOU WILL GET A "0" ON THE FINAL.

Good luck.

PRINT NAME: _____

SIGN NAME: _____

Professor Sullivan & Professor Dimitriadis
UCC - Fall 2012 Examination
Article 9 – Secured Transactions

Question One
(worth 2 points)

Bank One takes a security interest in the inventory of Ace Hardware Store. The inventory - tools, lawn mowers, garden tractors, shovels, and the like, is intended for sale to consumers. Is the bank a purchase money creditor of consumer goods so no filing is necessary? Support your answer.

Question Two
(worth 2 points)

Debtor Joyce Inc. gives a perfected security interest in its equipment and inventory to bank on September 30th. Joyce Inc. changes its name to Zoos on October 31st. Five months later Zoos continues to own the original equipment, but all of its inventory held on April 1st was acquired in March. Is the bank perfected if it files no new financing statement? Support your answer.

Question Three
(worth 1 points)

Creditor lends, takes and perfects a security interest 10 days before debtor files for bankruptcy. Will the trustee be successful in challenging the transfer as a preference? Why or why not? Support your answer.

ESSAY QUESTIONS

Question One

(worth 5 points)

Debtor applied to bank for a loan. On June 3, bank filed a financing statement authorized by debtor covering all debtor's equipment, along with a search request for information about any other financing statements on file under debtor's name. Debtor also applied to lender for a loan. On June 6, debtor signed a written security agreement covering all its equipment; lender advanced the proceeds of the loan to debtor and electronically filed a financing statement covering the equipment. On June 10, the filing office notified bank that there were no other financing statements on debtor on file on June 3. Bank advanced the loan proceeds to debtor on that date and debtor signed the security agreement. Which creditor has priority over the equipment? Fully support your answer.

Question Two

(worth 5 points)

Debtor applied to bank for a loan. When bank asked for collateral, debtor entrusted a valuable jewel to bank under a pledge agreement that allowed bank to retain possession of the jewel until the debtor repaid the loan with interest. Bank advanced the funds. Later, debtor borrowed money from lender and granted lender a security interest in various items of its property in a security agreement, including the jewel. Lender perfected its security interest by filing a financing statement. Which creditor has priority over the jewel? Fully support your answer.

Question Three

(worth 5 points)

Bank lent debtor \$100,000 and took a security interest in debtor's equipment to secure the obligation. On October 1, bank filed a financing statement covering the equipment. The security agreement stated that the collateral covered not only the original advance but any future advances that bank made to debtor. Later lender advanced \$75,000 to debtor on the same equipment and filed a financing statement on November 1. On December 1, bank made an additional advance of \$100,000 to debtor pursuant to the

future advance clause. When debtor defaults on all debts, the collateral was found to be worth over \$150,000.

A). How should sum be divided?

B). If lender had notified bank of its loan before bank made its subsequent advance, would that affect your answer to part A?

Question Four

(worth 5 points)

In 2010, Bank of America made a loan to Allied and was granted a security interest in all of Allied's existing and after acquired inventory and accounts as well as the proceeds of that collateral. The bank promptly filed a financing statement that perfected that security interest. In 2011, CCFC entered into a factoring agreement with BCI, which owned a soda business. Under the agreement, CCFC made loans to BCI. To secure the loans, BCI granted to CCFC a security interest in all of its existing and after-acquired inventory and accounts as well as proceeds of that collateral. CCFC promptly filed a financing statement that perfected that security interest. Later, BCI sold its business to Allied. As part of the sale, BCI, transferred assets to Allied. Among the assets were inventory and accounts in which CCFC had a perfected security interest. Both Bank of America and CCFC claim priority with respect to the inventory and accounts transferred by BCI to Allied and to proceeds of that collateral including accounts that arose as the result of the sale of inventory by Allied after its purchase of the business from BCI. Resolve the priority dispute. Fully support your answer.

ANSWER ALL QUESTIONS IN BLUE BOOK

Question one

(worth 20 points)

On May 21, Century Bank lent \$2 million to Pilots 4 Paws. Century took a security interest in “flight simulation equipment, now owned or hereafter acquired” and perfected by filing a financing statement naming Pilots 4 Paws as debtor. On June 21, First Bank lent \$2.5 million to Flight Analysis, Inc. First Bank took a security interest in “flight simulation equipment, now owned or hereafter acquired” and perfected by filing a financing statement naming Flight Analysis, Inc. as debtor. On July 21, Century lent \$3.5 million to Flight Analysis, Inc. Century took a security interest in “flight simulation equipment, now owned or hereafter acquired” and perfected by filing a financing statement naming Flight Analysis, Inc. as debtor. On November 4, Flight Analysis, Inc. sold an MO-80 simulator to Pilots 4 Paws and deposited the proceeds of \$750,000 to Flight Analysis’ bank account at Century.

- A). As between Century and First Bank, who has priority in the MO -80 simulator? Fully support your answer.
- B). The boiler plate agreement that Flight Analysis signed when it opened the Century account stated that “the customer grants a security interest to Century in this deposit account and any amounts deposited into this account to secure any amounts that are now, or in the future might be owing from the customer to Century.” Century has not done anything about perfecting their interest. As between Century and First National, who has priority in the \$750,000?

Question two

(worth 10 points)

Sara Wise has been manufacturing high quality speakers for audio systems since 1980. Her speakers are among the best available and her prices are reasonable. For the past few years orders have been running in excess of her manufacturing capacity, and she has been unable to fill all the orders she receives from the dealers.

At the same time she has been losing a considerable amount of money on bad debts. In your initial conference, she told you about a case in which she sold \$150,000 worth of speakers to a dealer who promptly filed bankruptcy. The dealer still had most of her speakers in stock when it closed its doors, but the bankruptcy court gave them to the inventory lender. Sara literally ended up having to buy back her own speakers to fill other orders. Her attorney in the bankruptcy case explained to her that “the bank got the speakers because they had the first security interest.”

- A). Sara thinks she should have the first security interest and would like you to tell her what to do to get it. Advise her.
- B). What problems do you foresee? What can Sara do about them?

Question three
(worth 10 points)

The Equitable Lending Group (ELG) specializes in high-risk, high-profit lending. It lends to debtors in possession under Chapter 11 and buys non-performing loans from other institutions and restructures them. ELG is now interested in a new lending concept and would like your opinion on it. Harley Davidson, who recently moved to ELG from his position at Century and brought ELG to you, explains a typical case.

Silicon Micro Chip (SM) is a manufacturer of computer components. Its business is fundamentally sound, but the company is overburdened with debt. First National Bank has a perfected security interest in its inventory and accounts worth about \$6 million securing First National’s loan in the amount of \$8.2 million. The SM-First National relationship is currently in a holding pattern while the parties attempt to renegotiate. While they are doing that, ELG wants to finance SM’s acquisition of new inventory and have purchase-money priority over First National in both the inventory and the accounts that arise when the inventory is sold. Harley says he can handle the problems of monitoring the collateral, but wants you to tell him whether ELG can get the priority it seeks without agreement from First National. Advise and fully support your answer.

Question four
(worth 10 points)

A). The Faith Diamond was stolen from the Faith Family Museum. The thief sold it to Borges, a professional fence, who then sold it to Madame Downs, an English baroness who claims not to have known Borges’s true profession at the time. Her story is made

somewhat more credible by the fact that she paid the reasonable value of the diamond, not the reduced price that a stolen diamond would be expected to bring.

If a representative of the Faith Family Museum claims the diamond from Madame Downs, who wins? Fully support your answer.

B). Add some more facts. The representative didn't find the diamond that quickly. Instead, Madame Downs took the diamond to Fair Child and Sons, a retail jewelry store, and selected a setting for a diamond ring. The proprietor suggested that Madame Downs stop back in a week to pick up her ring. During the week, Fairchild and Sons sold the diamond to Curtis Whittington, a customer who visited Fairchild's store in the Flamingo Mall. Whittington grossly overpaid for the diamond and had no suspicion of its tortured history. Fairchild and Sons filed for bankruptcy. When Whittington made a gift of the ring to the Guru Maraji during his U.S. tour, the story hit the newspapers. The museum, Madame Downs, the trustee in bankruptcy for Fairchild and Sons, Curtis Whittington, and the Guru all claim the diamond.

Who prevails? Fully support your answer.

Question One
(worth 2 points)

GM Corp. makes 1,000 car loans (complete with perfected security interests) to 1,000 consumer car buyers, then sells those loans to a trust that issues shares to investors. Does article 9 govern? Why or why not?

A). _____

B). How should buyer perfect their interest?

Question Two
(worth 2 points)

Mortgage company takes notes secured by real estate mortgages from 1,000 account debtor homeowners and transfers its notes and mortgages to a trustee.

A). Is this covered by Article 9? Why or why not?

B). What steps are required by buyer/trustee?

Question Three

(worth 2 points)

Bank One takes a security interest in the inventory of Ace Hardware Store. The inventory - tools, lawn mowers, garden tractors, shovels, and the like, is intended for sale to consumers. Is the bank a purchase money creditor of consumer goods so no filing is necessary? Support your answer.

Question Four

(worth 2 points)

Debtor Joyce Inc. gives a perfected security interest in its equipment and inventory to bank on September 30th. Joyce Inc. changes its name to Zoos on October 31st. Five months later Zoos continues to own the original equipment, but all of its inventory held on April 1st was acquired in March. Is the bank perfected if it files no new financing statement? Support your answer.

Question Five

(worth 2 points)

Creditor lends, takes and perfects a security interest 10 days before debtor files for bankruptcy. Will the trustee be successful in challenging the transfer as a preference?

Why or why not? Support your answer.

Question Six

(worth 5 points)

In 2009, Bank of America made a loan to Allied and was granted a security interest in all of Allied's existing and after acquired inventory and accounts as well as the proceeds of that collateral. The bank promptly filed a financing statement that perfected that security interest. In 2011, CCFC entered into a factoring agreement with BCI, which owned a soda business. Under the agreement, CCFC made loans to BCI. To secure the loans, BCI granted to CCFC a security interest in all of its existing and after-acquired inventory and accounts as well as proceeds of that collateral. CCFC promptly filed a financing statement that perfected that security interest. Later, BCI sold its business to Allied. As part of the sale, BCI, transferred assets to Allied. Among the assets were inventory and accounts in which CCFC had a perfected security interest. Both Bank of America and CCFC claim priority with respect to the inventory and accounts transferred by BCI to Allied and to proceeds of that collateral including accounts that arose as the result of inventory by Allied after its purchase of the business from BCI.

Resolve the priority dispute. Fully support your answer.

Question Seven

(worth 5 points)

Lender perfects a security interest in debtor's equipment by filing. The equipment is business machines used in debtor's law firm. In violation of a provision in the security agreement, debtor sold some of the machines to dealer without lender's knowledge or consent. Dealer buys and sells used business machines in question to buyer for cash. Buyer bought machines for use in business. Neither dealer nor buyer knew about lender's security interest in the machines.

Query: What are lender's rights with respect to machines now in buyer's possession?

Fully support your answer.

Question Eight

(worth 3 points)

Sullivan Bank ("SB") finances Cathy's acquisition of a new \$50,000 machine and takes a

security interest on the machine. The machine is delivered on November 5. SB filed its financing statement on November 6th. SB gave no notice to Friendly Finance. Friendly Finance had previously perfected a security interest in Cathy's existing and after acquired equipment by filing a financing statement.

Does SB nevertheless have priority over Friendly Finance? Fully support your answer.

Question Nine

(worth 2 points)

On May 1, Bank 1 commenced negotiation with debtor and expecting to make a loan, filed a financing statement. On May 8, Bank 2 signs a security agreement with debtor, advances funds to debtor and files a financing statement. A week later, on May 15, Bank 1 advances funds and signs a security agreement with debtor.

A). Which bank perfected first? _____.

B). Which Bank has priority? _____.

Professor Sullivan
UCC - Fall 2010
Article 9 - Examination

Question One

(worth 1 point)

Article 9 applies to:

- i. Agricultural liens
- ii. Consignments
- iii. An assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract.
- iv. A landlord's lien, other than an agricultural lien.

- A. i, ii, and iii
- B. i, ii, and iv
- C. All of the above.
- D. i and ii

Question Two

(worth 1 point)

The following security interests are perfected when they attach:

- (A) A purchase - money security interest in equipment.
- (B) An assignment of accounts/ or payment in tangibles which does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts or payment intangibles.
- (C) A security interest in farm products.
- (D) A security interest in a motor vehicle.

Question Three -Essay

(worth 2 points)

On August 15, Andy makes an advance secured by machinery in debtor's possession and files a financing statement. On September 15, Betty makes an advance secured by the same machinery and files a financing statement. On October 15, Andy makes a further advance under the original security agreement, against the same machinery. Who has priority in the October advance if Andy knows of Betty's intervening advance? Fully support your answer.

Question Four - Essay

(worth 3 points)

Debbie creates a security interest in her existing and after acquired inventory in favor of secured party #1, who files a financing statement covering "inventory". Secured party #2 subsequently takes a purchase - money security interest in certain inventory and properly gives notice to secured party #1 and files its financing statement before Debbie takes possession of the inventory. This inventory is then sold, producing accounts. Who has priority in the accounts? Fully support your answer.

Question Five

(worth 3 points)

The Rawley Bank had a perfected security interest in the equipment of Willey's Dog Grooming. One day Willey's customer, Milly asked about buying a grooming table, scissors, and tub for personal use in grooming her two standard poodles. Willey promptly sold her for cash the items she wanted. When Willey failed to make its payments, Rawley repossessed all of Willey's equipment and sought to repossess the table, scissors and tub from Milly. What result when Rawley Bank sues Milly for conversion? Fully support your answer.

Question Six

(worth 5 points)

In October 2009, Rick's Auto obtained a revolving credit line of \$300,000 from Sullivan Bank. Under the terms of the credit agreement, Sullivan Bank agreed to make periodic cash advances to Rick's Auto under the credit line to finance Rick's Auto used car inventory. In exchange, Rick's Auto granted Sullivan Bank a security interest in its inventory and in all proceeds from the sale of the inventory. Sullivan Bank perfected its security interest in the inventory and proceeds by filing a financing statement with the Secretary of State.

In December 2009, Rick Clark, the President of Rick's Auto entered into an agreement with Murphy to display a Cadillac on Rick's Auto lot and to remit to Murphy any sales

proceeds in excess of \$18,500. Murphy delivered the Cadillac to Rick's Auto together with the certificate of title. Rick then requested an advance of \$18,400, under the Sullivan Bank's credit line and represented to Sullivan Bank that he would use the advance to finance Rick's Autos' purchase of the Cadillac. Clark delivered to Sullivan Bank the certificate of title for the car, a bill of sale showing that Murphy had sold a Cadillac to Rick's Auto, and a power of attorney authorizing Rick's Auto to transfer title to the car. Sullivan Bank then made the requested advance to Clark.

Rick's Auto subsequently defaulted under the terms of the credit agreement and Sullivan Bank demanded immediate payment. Sullivan Bank then began to assess the inventory on the lot. Clark informed the Bank that Murphy had an interest in a certain Oldsmobile on the lot but did not mention the Cadillac; a Sullivan Bank representative then called Murphy to verify this fact. Murphy informed the representative that he claimed an interest in both the Oldsmobile and the Cadillac.

A few days later, Sullivan Bank agents went to Rick's Auto to repossess all existing used automobile inventory and Clark informed them that Elizabeth Howard had agreed to purchase the Cadillac. Clark asked permission to move the car to a local "clean up" shop and the agent agreed. After the meeting, Murphy made the following statement to the Sullivan Bank agents, "We are clear on the Cadillac. The Cadillac is not a problem."

Later that day, a Sullivan Bank representative telephoned Murphy and again asked him if he was claiming an interest in the car and that he had sold the car to Rick's Auto.

On the next day, Howard went to Rick's Auto and gave the dealership a \$4,285.25 personal check and a \$15,200.00 cashier's check issued by the local credit union. Rick's Auto endorsed both checks and gave them to Sullivan Bank, which then learned that Murphy was claiming an interest in the Cadillac. What result? Fully support your answer.

Question Seven
(worth 5 points)

Trace 1 Callar calls a niece of equipment to Buyer on credit and retains a security

Question Eight

(worth 5 points)

Sullivan State Bank finances Claude's acquisition of a new \$50,000 machine and takes a security interest in the machine. The machine is delivered on November 5. Sullivan State Bank files its financing statement on November 6. Sullivan Bank gave no notice to finance company. Finance company had previously perfected a security interest in Claudes' existing and after-acquired equipment by filing a financing statement. Who has priority? Why?

Professor Sullivan
UCC - Article 9
Final Exam - Fall 2004

Question One
Worth 2.5 Points

On October 1, Seller sold a piece of equipment to Debtor on credit. Seller retains an enforceable security interest in equipment to secure the purchase price. Seller delivered equipment to Debtor on October 5th. On October 10th, Manny became a lien creditor. Manny's lien encumbers the equipment as of October 10th. Seller files financing statement on Oct. 12th. Who has priority? Fully support.

Question Two
Worth 5 Points - 1 Point each Part.

Discuss whether Article 9 applies to the following:

- A. Sale of Chattel paper.
- B. Commercial real estate mortgages.
- C. Consignments of hats to a seller of used clothing.
- D. Furniture leases taken by Finance Co. from the lessor Sullivan Inc., a company that sells and leases furniture throughout Massachusetts.
- E. Agricultural liens.

Question Three
Worth 2.5 Points

On March 1, A makes advances to debtor under a security agreement covering "all debtor's machinery, both existing and after-acquired." A promptly files a financing statement. On May 1, B takes a security interest in all debtor's machinery, existing and after-acquired to secure an outstanding loan. The following day, B files a financing statement. On June 1, debtor acquires rights in a new machine. Who acquires a security interest in the machine? Who has priority? Fully support.

Question Four

Worth 5 Points

On June 1, Debtor authenticates a security agreement granting to A, a security interest in all debtor's existing and after-acquired inventory. The same day, A files a financing statement covering inventory. On July 1, Debtor authenticates a security agreement granting B a security interest in all Debtor's existing and future accounts and properly files. On August 1, Debtor sells inventory to a customer on 30 day unsecured basis. When Debtor acquires the account, who has priority? Fully support.

Question Five

Worth 2.5 Points

Debtor creates a security interest in its existing and after acquired inventory in favor of SP-1, who files a financing statement covering inventory. SP-2 subsequently takes a purchase money security interest in certain inventory and properly files a financing statement and gives proper notification. Therefore, SP-2 achieves priority in this inventory. This inventory is then sold, producing accounts. Who has priority as to the accounts? Fully support.

Question Six

Worth 2.5 Points

A owns an item of equipment subject to a perfected security interest in favor of SP-1. A sells the equipment to B, not in the ordinary course of business. If B then creates a security interest in the equipment in favor of SP-2, who has priority? Fully support?

Question Seven

Worth 5 Points

Friendly Franks has a perfected security interest in all photocopiers held for resale by Bourque Enterprises. Bourque signed a valid Security Agreement covering the copiers. Friendly Franks then filed a financing statement in the proper place. The collateral was described in the financing statement as "all photocopiers held for resale and all proceeds thereof."

Bourque wished to buy photocopiers from Cop Inc.

Friendly Franks refuses to extend credit for this purchase. However, Bourque convinces Cop Inc. to sell it copiers on a conditional sales basis. Cop Inc. filed a financing statement covering this transaction prior to delivery and called Friendly Franks and left a voice mail detailing the arrangement.

After Cop Inc. delivers the photocopiers, Friendly Franks notifies Bourque that the Cop Inc. transaction violates the terms of the agreement between Bourque Enterprises and Friendly Franks

(assume this is correct). The notice also states Friendly Franks in accelerating the debt. Friendly Franks then repossessed all the photocopiers.

In a priority dispute between Friendly Franks and Cop Inc. concerning the repossessed photocopiers, who will prevail? Fully support.

Professor Sullivan
UCC - Article 9
Summer 2004

Question One
Worth 5 Points

On October 1, Seller sold a piece of equipment to Debtor on credit. Seller retains an enforceable security interest in equipment to secure the purchase price. Seller delivered equipment to Debtor on October 5th. On October 10th, Manny became a lien creditor. Manny's lien encumbers the equipment as of October 10th. Who has priority? Fully support.

Question Two
Worth 9 Points - 3 Points each Part.

- A. A borrows \$100,000 from B and secures its repayment obligation evidenced by a promissory note by granting to B a mortgage on A's land. Does Article 9 govern this transaction? Why or why not?
- B. What if B sells the promissory note to X? Support your answer.
- C. What if B gives a security interest in the note to secure B's own obligation to X? Support your answer.

Question Three
Worth 5 Points

On March 1, A makes advances to debtor under a security agreement covering "all debtor's machinery, both existing and after-acquired." A promptly files a financing statement. On May 1, B takes a security interest in all debtor's machinery, existing and after-acquired to secure an outstanding loan. The following day, B files a financing statement. On June 1, debtor acquires rights in a new machine. Who acquires a security interest in the machine? Who has priority? Fully support.

Question Four
Worth 11 Points

On June 1, Debtor authenticates a security agreement granting to A, a security interest in all debtor's existing and after-acquired inventory. The same day, A files a financing statement covering inventory. On July 1, Debtor authenticates a security agreement granting B a security interest in all Debtor's existing and future accounts and properly files. On August 1, Debtor sells inventory to a customer on 30 day unsecured basis. When Debtor acquires the account, who has priority? Fully support.

Question Five

Worth 10 Points - 5 Each Part

- A. Debtor creates a security interest in its existing and after acquired inventory in favor of SP-1, who files a financing statement covering inventory. SP-2 subsequently takes a purchase money security interest in certain inventory. This inventory is then sold, producing accounts. Who has priority as to the accounts? Fully support.
- B. Assume SP-3 had filed (in Part A) against accounts before either SP-1 or SP-2 filed against inventory. Who has priority? Fully support.

Question Six

Worth 10 Points - 5 Each Part

- A. A owns an item of equipment subject to a perfected security interest in favor of SP-1. A sells the equipment to B, not in the ordinary course of business. If B then creates a security interest in the equipment in favor of SP-2, who has priority? Fully support?
- B. What if SP-2 took a purchase money security interest? Why?

UCC
Article 9
Final Examination - Fall 2003
Night Class

Question One

(5 Points)

Debbie inherits a harp from her grandmother. She takes it to the shop of Sam, an expert in instrument repair and restoration and enters a contract to have the harp restored for \$800.00. Sam promises to have the work done in 6 weeks. Six weeks later, Debbie goes to Sam's shop and asks to be given the harp. Sam responds he is only willing to turn it over upon payment because under state statute he is entitled to "a lien" on the instrument to assure payment of any amounts due as a result of the work done on it. Assuming there is such a state statute, is the interest Sam claims an Article 9 security interest? Fully support your answer.

Question Two

(5 Points)

Candy borrowed \$100,000.00 from Busy Bank on March 1, 2003. The loan was secured by a valid security interest in Candy's equipment and accounts. The security agreement, dated March 1, 2003, included an after-acquired property clause and prohibition on Candy's acquiring future debt in excess of \$10,000 without prior bank consent. Busy Bank filed properly on March 6, 2003.

On June 10, 2003, Candy bought a \$420,000 piece of equipment on credit from the seller without first seeking bank consent. The Seller retained an enforceable security interest in the system to secure the purchase price. The seller delivered and installed the system on June 18, 2003. Seller filed a proper financing statement in the appropriate office on June 30, 2003.

In a priority dispute over the equipment who prevails and why?

Question Three

(5 Points)

On May 1, Debtor authenticates a security agreement granting to A, a security interest in all debtor's existing and after-acquired inventory. The same day, A files a financing statement covering inventory. On June 1, Debtor authenticates a security agreement granting B a security interest in all Debtor's existing and future accounts. On July 1, Debtor sells inventory to a customer on 30 day unsecured basis. When Debtor acquires the account, who has priority? Fully support.

Question Four

(5 Points)

Harriet Gale purchased a yacht with money borrowed from Sullivan National Bank which took a security interest therein and promptly filed a financing statement. Harriet quickly grew tired of sailing and sold the boat to Marblehead Yards, a marina that sold used boats, informing them of the boat's security interest. Marblehead Yards sold the boat to Mr. Smith an innocent buyer for the appraised market value. Mr. Smith believed Marblehead Yards had clear title. In a priority dispute over the boat, who prevails? Why?

Question Five

(5 Points)

Diane Dancer ran an apparel store. When Diane needed money she approached Andover Bank and asked to borrow \$40,000.00 using her inventory as collateral. Uncertain whether she would receive the loan, Diane also approached Lawrence Bank for the money. Each bank approved Diane's request. Andover Bank filed its financing statement, on October 25, but did not loan her any money until November 15. Lawrence Bank filed on November 1st and loaned her the money that same afternoon. Which bank has the superior right to the inventory? Fully support.

UCC
Article 9
Final Examination - Fall 2003
Day Class

Question One

(5 Points)

Andy Corp., manufacturer, sells its products to Sears and other retailers under a standard agreement calling for the buyer to pay within 45 days of receipt for any goods delivered. Once a shipment is sent out pursuant to such an arrangement, Andy records the amount due as an account receivable.

- A. Andy Corp., needs some funds to buy materials so it obtains a loan from Andover Bank by agreeing to give the bank a security interest in "all of its accounts receivable now held or hereafter acquired." Does the bank have a valid Article 9 interest? Why?
- B. What if Andy had (in Part A) instead sold its account receivable to Sullivan Factors Inc., for the sum of \$1 million. Would this transaction be governed by Article 9? Fully explain.

Question Two

(5 Points)

Candy borrowed \$100,000.00 from Busy Bank on March 1, 2003. The loan was secured by a valid security interest in Candy's equipment and accounts. The security agreement, dated March 1, 2003, included an after-acquired property clause and prohibition on Candy's acquiring future debt in excess of \$10,000 without prior bank consent. Busy Bank filed properly on March 6, 2003.

On June 10, 2003, Candy bought a \$420,000 piece of equipment on credit from the seller without first seeking bank consent. The Seller retained an enforceable security interest in the system to secure the purchase price. The seller delivered and installed the system on June 18, 2003. Seller filed a proper financing statement in the appropriate office on June 30, 2003.

In a priority dispute over the equipment who prevails and why?

Question Three

(5 Points)

On May 1, Debtor authenticates a security agreement granting to A, a security interest in all debtor's existing and after-acquired inventory. The same day, A files a financing statement covering inventory. On June 1, Debtor authenticates a security agreement granting B a security interest in all Debtor's existing and future accounts. On July 1, Debtor sells inventory to a customer on 30 day unsecured basis. When Debtor acquires the account, who has priority? Fully support.

Question Four

(5 Points)

Harriet Gale purchased a yacht with money borrowed from Sullivan National Bank which took a security interest therein and promptly filed a financing statement. Harriet quickly grew tired of sailing and sold the boat to Marblehead Yards, a marina that sold used boats, informing them of the boat's security interest. Marblehead Yards sold the boat to Mr. Smith an innocent buyer for the appraised market value. Mr. Smith believed Marblehead Yards had clear title. In a priority dispute over the boat, who prevails? Why?

Question Five

(5 Points)

Diane Dancer ran an apparel store. When Diane needed money she approached Andover Bank and asked to borrow \$40,000.00 using her inventory as collateral. Uncertain whether she would receive the loan, Diane also approached Lawrence Bank for the money. Each bank approved Diane's request. Andover Bank filed its financing statement, on October 25, but did not loan her any money until November 15. Lawrence Bank filed on November 1st and loaned her the money that same afternoon. Which bank has the superior right to the inventory? Fully support.

Professor Sullivan
Secured Transactions Final Examination
Summer 2003

EACH OF THE FOLLOWING QUESTIONS ARE WORTH 10 POINTS.

Question One

In late June, Dinty Moore ("DM") applied to Bank One for a loan against equipment. Without committing to make the loan, on July 1 Bank One filed a financing statement showing DM's equipment as collateral. Also in late June, DM applied for a similar loan from Bank Two. On July 5, Bank Two approved the loan and filed a financing statement against DM showing the equipment as collateral. Bank Two and DM signed a security agreement on July 5 and Bank Two advanced the funds to DM that day. On July 7, Coyne Inc., a supplier and judgment creditor of DM, became a lien creditor by levying on the equipment. On July 10, Bank One received the report of their U.C.C. search and approved the loan to DM. Bank One and DM signed a security agreement, and Bank One advanced funds against the equipment. Who has priority in the equipment and in what order? Fully explain.

Question Two

- A. A owns an item of equipment subject to an unperfected security interest in favor of SP-A. A sells the equipment to B, who gives value and takes delivery of the equipment without knowledge of the security interest. Who has priority? Fully support.
- B. Same facts as in A except that B knows of SP-A's security interest? What result? Why?

Question Three

Seven months ago, Ginger Sol borrowed \$27,500.00 from Interstate National Bank ("INB") to purchase a computer for her pottery business. The security agreement she signed at that time provided that the collateral would consist of the computer and any "substitutions, replacements, or accessions." The security agreement contained no future advance clause, because none was contemplated. INB filed a financing statement indicating the collateral was "equipment".

INB just approved a \$150,000.00 line of credit for Ginger, to be secured by the equipment in her pottery business.

Must INB prepare a new security agreement and/or file a new financing statement? Fully

support your answer.

Question Four

On May 1, Debtor authenticates a security agreement granting to A, a security interest in all debtor's existing and after-acquired inventory. The same day, A files a financing statement covering inventory. On June 1, Debtor authenticates a security agreement granting B a security interest in all Debtor's existing and future accounts. On July 1, Debtor sells inventory to a customer on 30 day unsecured basis. When Debtor acquires the account, who has priority? Fully support.

Question Five

- A. Debtor creates a security interest in its existing and after acquired inventory in favor of SP-1, who files a financing statement covering inventory. SP-2 subsequently takes a purchase money security interest in certain inventory. This inventory is then sold, producing accounts. Who has priority as to the accounts? Fully support.
- B. Assume SP-3 had filed (in Part A) against accounts before either SP-1 or SP-2 filed against inventory. Who has priority?

Professor Sullivan
UCC - Article 9
Summer 2002

Question One

Worth 9 Points - 3 Points Each Part.

- A. A borrows \$100,000 from B and secures its repayment obligation evidenced by a promissory note by granting to B a mortgage on A's land. Does Article 9 govern this transaction? Why or why not?
- B. What if B sells the promissory note to X?
- C. What if B gives a security interest in the note to secure B's own obligation to X?

Question Two

Worth 10 Points - 5 Points Each Part

- A. On March 1, A makes advances to debtor under a security agreement covering "all debtor's machinery, both existing and after-acquired." A promptly files a financing statement. On May 1, B takes a security interest in all debtor's machinery, existing and after-acquired to secure an outstanding loan. The following day, B files a financing statement. On June 1, debtor acquires rights in a new machine. Who acquires a security interest in the machine?
- B. Who has priority? Why?

Question Three

Worth 11 Points

On May 1, Debtor authenticates a security agreement granting to A, a security interest in all debtor's existing and after-acquired inventory. The same day, A files a financing statement covering inventory. On June 1, Debtor authenticates a security agreement granting B a security interest in all Debtor's existing and future accounts. On July 1, Debtor sells inventory to a customer on 30 day unsecured basis. When Debtor acquires the account, who has priority? Fully support.

Question Four

Worth 10 Points - 5 Each Part

- A. Debtor creates a security interest in its existing and after acquired inventory in favor of SP-1, who files a financing statement covering inventory. SP-2 subsequently takes a purchase money security interest in certain inventory. This inventory is then sold, producing accounts. Who has priority as to the accounts? Fully support.
- B. Assume SP-3 had filed (in Part A) against accounts before either SP-1 or SP-2 filed against inventory. Who has priority?

Question Five

Worth 10 Points - 5 Each Part

- A. A owns an item of equipment subject to a perfected security interest in favor of SP-1. A sells the equipment to B, not in the ordinary course of business. If B then creates a security interest in the equipment in favor of SP-2, who has priority? Fully support?
- B. What if SP-2 took a purchase money security interest? Why?

Question Six

Secured Transactions
Professor Sullivan
Final Examination - Article 9
Fall 2001 - Day Class

Question One

Harry Mechanic ran a garage and needed money. He went to two lenders, First Loan Company and Second Loan Company offering his equipment to secure the loan. Each lender had Harry sign a security agreement and financing statement. First Loan filed on September 1st and subsequently lent him the money on September 15th. Second Loan filed on September 2nd and advanced the loan the same day.

Query: In a priority dispute over Harry's equipment, which Loan Company has the superior interest? Fully explain.

Question Two

Polly bought a ring from Rings, Inc. on July 10th, 2001. Polly agreed to give Rings, Inc. a security interest in the ring. Polly left with the ring and Rings, Inc. doesn't file.

On August 10th, 2001, Polly asked Easy Bank to lend her \$4,500.00. Easy Bank had Polly sign a security agreement giving the bank a security interest in the ring. The Bank told Polly they would send her a check if her credit was satisfactory. Polly agreed to repay the loan October 1, 2001. Easy Bank filed August 20, 2001

On August 15, 2001 Polly went to the Finance Company seeking a loan of \$500.00. The Finance Company agreed and had Polly sign a security agreement giving the Finance Company a security interest in the ring. Polly agreed to repay September 1, 2001. The Finance Company had Polly leave the ring until it filed a financing statement which it did on August 17, 2001. On August 18, the Finance Company gave Polly back the ring.

On August 17, Polly received the Bank's check.

In a priority dispute, who would prevail and in what order? Fully support your answer.

Question Three

Manufacturer, who is in the business of manufacturing appliances, owns manufacturing equipment subject to a perfected security interest in favor of Bank. Manufacturer sells the equipment to Dealer, who is in the business of buying and selling used equipment. Buyer buys the equipment from Dealer. Query: Does buyer take free of Bank's security interest? Fully support your answer.

Question Four

On February 1, Andy makes advances to Debbie under a security agreement covering "all Debbie's machinery both existing and after-acquired". Andy promptly files a financing statement. On April 1, Betty takes a security interests in all Debbie's machinery, existing and after acquired to secure an outstanding loan. The following day, Betty filed a financing statement. On May 1, Debbie acquires a new machine. Query:

(A) Who has a priority? Fully explain.

Secured Transactions
Professor Sullivan
Final Examination - Article 9
Fall 2001 - Evening Class

Question One

On March 1, A makes an advance secured by machinery in the debtor's possession and filed a financing statement. On April 1, B makes an advance secured by the same machinery and files a financing statement. On May 1, A makes a further advance, under the original security agreement, against the same machine:

- A. Who has priority as to the May 1st advance? Fully explain your answer.

Question Two

Milly Hatter ran a hat store and needed some funds. Accordingly, Milly went to two financial institutions, Easy Financier and Hard Financier. Each lender asked Milly to use her equipment to secure the loan. Easy Financier had Milly sign a security agreement and financing statement on May 1st and subsequently lent her the money May 5th. Hard Financier filed on May 3rd and advanced the loan the same day.

Query: In a priority dispute over Milly's equipment which financier has the superior interest? Fully explain.

Question Three

Sam bought a television from Cable Inc. on June 1, 2001. Sam agreed to give Cable Inc., a security interest in the television. Sam left with the television and Cable Inc. doesn't file.

On July 10, 2001, Sam asked Easy Finance to lend him \$3,300.00. Easy Finance had Sam sign a security agreement giving the finance company a security interest in the television. The finance company told Sam they would send him a check if his credit was satisfactory. Sam agreed to repay the loan October 1, 2001. Easy Finance filed July 20, 2001.

On July 15, 2001 Sam went to the Bank seeking a loan of \$5,000.00. The Bank agreed and had Sam sign a security agreement giving the Bank a security interest in the television. Sam agreed to repay September 1, 2001. The Bank had Sam leave the television until it filed a financing statement which it did on July 17, 2001. On August 18, the Bank gave Sam back the television.

On August 17, Sam received the Finance company's check.

In a priority dispute, who would prevail and in what order? Fully support your answer.

Question Four

Mr. And Mrs. Hill purchased a snowblower with money borrowed from Andover Bank which took a security interest therein and promptly filed a financing statement in the proper location. The Hills sold the snowblower to Snowblower Haven, Inc., a used snowblower dealership telling Snowblower Haven, Inc., of the bank's interest and of the necessity of making monthly payments to the Bank. Snowblower Haven resold the snowblower to the Bourques, innocent people, who paid full value for the snowblower believing Snowblowers had clear title. When Andover Bank did not receive its usual monthly payment, it investigated, found the snowblower, and repossessed it. Has the Bourque's property been converted? Fully explain.

Professor Sullivan
Secured Transactions
Final Examination
Spring 2000

Question #1

Worth 10 points

Gale Glamorous owned a hat shop that was doing extraordinarily well so she decided to expand. Accordingly, Gale borrowed 1.6 million dollars from Sullivan National Bank ("SNB"). SNB took a security interest (according to the filed financing statement) in "all inventory, accounts receivable, equipment, instruments, general intangibles, and personal property." The bank also made her pledge her extensive jewelry possession making her bring it to the bank and put it into the bank's vault. Forty days later, Gale was the recipient of the Small Business Association's 1999 Business Person of the Year. Gale asked the bank if she could have her garnet ring back to wear it to the dinner banquet, and the bank let her do so. Before she could return it to the bank, another creditor seized it by legal process. You are the lawyer for the bank.

- A. What is your argument?
- B. Who will prevail? Fully support your answer.

Question #2

Worth 10 points

Happy Hardware ran a hardware store and needed money. She went to two banks, First Bank and Second Bank offering her equipment to secure a loan. Each bank had Happy sign a security agreement and financing statement. First Bank filed on April 4th and subsequently lent her the money on May 15th. Second Bank filed on May 1st and advanced the loan the same day.

Query: In a priority dispute over Happy's equipment, which bank has the superior interest? Fully explain your answer.

Question #3

Worth 20 points

On November 16, 1996, L.C. executed a retail installment contract to O, Inc., to cover the purchase of an XT equipment identified as XT-123. This contract was for a total amount of \$110,149.44. Absent was any provision for future advances. On November 17, 1996, a financing statement covering equipment XT-123 was filed.

On December 19, 1996 Bay finance made a cash advance to L.C. taking a security interest in XT-123. On December 24, 1996, Bay Finance filed its financing statement.

On September 17, 1997, L.C. purchases a new piece of equipment XT-898 from O. Inc. The retail installment contract included both pieces of equipment - - #XT-123 and XT-898. The contract provided that the first contract was cancelled. The balance owing under the first contract was included in the purchase price stated in the second contract.

On September 27, 1997, O filed a new financing statement covering both pieces of equipment.

When L.C. defaulted on its loan, Bay Finance had taken possession of XT-123.

On February 16, 1998, O notified Bay Finance of its claim to a senior security interest on equipment XT-123.

On March 1, 1998, Bay Finance sold the equipment XT-123.

O brings an action for conversion of equipment XT-123, claiming a senior and prior security interest?

Please write the opinion of the trial court.

Question #4

Worth 30 Points

The controlling historical facts and sequence of events are not in dispute. They are:

On November 20, 1998, to secure an obligation owed to FCA, Bankrupt executed a chattel mortgage security agreement covering all chattels and equipment of Bankrupt listed on an attached schedule. A financing statement was properly filed in Worcester County, Massachusetts on November 21, 1998, covering all equipment "presently existing or to be hereafter created or acquired" as well as the proceeds of the collateral therein described.

On January 30, 2000, Bankrupt and HMC entered into a purchase and security agreement for the new binder involved in this dispute. It called for a cash purchase price of \$84,265 plus an installation charge of \$2,160 for an aggregate sales price of \$86,425. It further provided for a down payment in cash at the time of the order of \$6,442.50, cash before delivery in the amount of \$6,442.50, a trade-in allowance of \$22,000, leaving a balance of \$51,540. The trade-in provided for in the contract was Bankrupt's Sheridan binder (the old binder).

Fifteen cases of component parts for the new binder were shipped from Europe and arrived in New York on May 18, 2000 under a negotiable bill of lading to the order of Rohner, Gherig & Company, shipping agents for HMC.

By HMC's invoice to Bankrupt dated May 22, 2000 and following Bankrupt's second payment of \$6,440, the component parts of the new binder were identified to the contract by particular description and serial numbers. HMC also called for cash payment of \$51,562.50 on completion of installation.

On instructions from HMC, the shipper Rohner, Gherig & Company directed Hemingway Transport Inc. to pick up the fifteen cases of binder component parts from dockside in New York to deliver them to Bankrupt in Massachusetts. These cases as well as two other cases transported from HMC's plant by Hemingway, all containing component parts for the binder, arrived at Bankrupt's plant on several dates from May 26, 2000 through June 2, 2000.

The purchase and security agreement between HMC and Bankrupt dated January 30, 2000 contained among its provisions the following:

"The installation charges mentioned herein include the furnishing by the Seller of a competent man to supervise the erection and put said property in first class running order and the instruction of a qualified operator of Purchaser in the operation and maintenance of the equipment."

Pursuant to the provision, several representatives of HMC were at the Massachusetts plant of Bankrupt supervising installation of the new binder on virtually all working days from May 27, 2000 through June 19, 2000. It is clear from the records in evidence that the installation and testing phase of the work was completed not earlier than June 13, 2000 and possibly as late as June 19, 2000. HMC's representatives were engaged in training employees of the Bankrupt to operate the new binder at least during the period June 8, 2000 through June 13, 2000.

On June 15, 2000, HMC filed a financing statement in Worcester County covering the new binder.

On June 18, 2000 the Bankrupt signed a certificate stating that delivery and installation had been satisfactorily completed.

This dispute arises out of the bankruptcy of the bankrupt. HMC filed an application in the bankruptcy proceeding to reclaim the binder and accessory units. FCA intervened in the proceedings and claimed a superior interest in the binder under its own security agreement with Bankrupt. The trustee in bankruptcy has disclaimed any interest.

Query: Who has priority? Fully support.

Question #5

Worth 10 points

Tammy Winner was a professional tennis player to whom Sullivan National Bank (SNB) loaned \$2,000 so she could buy tennis equipment. On May 3, Tammy purchased the equipment, and on May 11, SNB filed its financing statement in the proper place. However, in the interim, on May 7, Tammy sold the equipment to Used Tennis Equip. Inc., which bought with no knowledge of the bank's purchase money interest. Who has the superior claim to the equipment? Fully support your answer.

Question #6

Worth 20 points

Mable purchased a bicycle with money borrowed from First Bank ("FB") which took a security interest therein and promptly filed a financing statement in the proper location. Mable thereafter sold the bike to Bikes Inc., telling them of the bank's interest and the need to make monthly payments to the bank. Bikes Inc. resold the bike to Bill Buyer, who purchased the bike paying full value and believing Bikes had good title. When FB did not receive its monthly payment, it found the bike and repossessed it. Who prevails? Fully support your answer.

+

Scoring:

- Question 1: Worth up to 30 points
- Question 2: Worth up to 20 points
- Question 3: Worth up to 20 points
- Question 4: Worth up to 30 points

SECURED TRANSACTIONS EXAM
FINAL EXAM - SPRING 1994
PROFESSOR SULLIVAN

Q1. Debtor lived on a 60 acre tract in New Essex where he bred cows, grew hay and grazed livestock. The bank started loaning debtor money on his livestock operation in January 1990. Several loans covered by security agreements were made prior to January 1990.

Debtor told the bank at the time of the January 1990 loan that some of the cattle being purchased were bred, the others would be bred, and he intended to pasture them for six to 12 months on land owned by his father in North Andover, selling them just before they calved. He hoped to pay the loan through enhancement in their value. The bank loaned debtor \$666,000.00 to purchase 48 cows.

On March of 1991, the debtor sold 12 of the cows to Manny. The bank was unaware of this sale until the debtor filed bankruptcy in May of 1991. However, it is undisputed that the debtor took Manny's check for \$240,000.00 to the bank the day after the sale. His version is that he told the bank he'd sold some of the cattle and was permitted to deposit the money in his checking account rather than have it applied on the note. He said he spent the money on cattle which became substitute collateral. The bank records show the check was deposited in his checking account. The bank denied that the debtor told them of the sale and said if he had the money would have been applied on the cattle loan.

Additionally, debtor testified he'd told Manny of the bank's security agreement on the cattle at the time of sale and the debtor assured Manny he would take care of it.

Among other things, the security agreement contained the following clauses:

§1 DEBTOR MAY NOT SELL. Debtor is expressly forbidden from selling the collateral under this security agreement without the prior written consent of the bank. Upon any sale that is authorized by the bank, debtor shall procure payment directly.

to the bank or jointly to the bank and debtor.

§2. NO WAIVER. None of the provisions of this security agreement may be waived except in writing by an authorized officer of the bank. No waiver or trade practice or course of performance in any past case will operate as a waiver in any future case. Thus, the fact that the bank permits debtor to sell cattle or other products and keep the proceeds shall not be regarded as a grant of authority to do that in the future. Discuss the issues that will arise in the ensuing priority dispute.

- Q2. On January 15, 1994, Andover Bank filed a financing statement covering "accounts existing and after acquired" of Nexus Corp. However, Andover Bank did not make any agreement to lend at this time. On January 20, 1994, Lowell Bank filed and lent money on the same collateral. Andover Bank lent money to Nexus Corp. on January 30, 1994 and continued to make a series of subsequent advances to Nexus Corp. with full knowledge of the loan and filed financing statement to the Lowell Bank. Which bank has priority?
- Q3. In December of 1991, Chase entered into an agreement with Mobile Homes Inc., under which Chase agreed to finance Mobile's inventory of Mobile Homes. Mobile Homes Inc. delivered to Chase certain manufacturer's certificate of origin on mobile homes to secure repayment of the loan and gave Chase a security interest in the vehicles by way of a security agreement between the parties. Miles sold four mobile homes in the regular course of his business to certain individuals on security agreement contracts. These four security agreement contracts were then sold and assigned to Eastern Bank, in the ordinary course of its business for a certain sum which was paid to the dealer. Unfortunately, the dealer did not use these funds to pay off its outstanding loans owed to Chase.

Discuss fully all issues presented.

- Q4. Pedals Inc., is a Massachusetts Corporation that processes and packages oats, honey and other grains and sells the finished product "Carbo bars." For the past four years, Pedals' operations have been financed on a weekly basis by Citicorp. To secure its financing, Citicorp has properly perfected a lien on Pedals' assets, inventory and all after-acquired property, including grains, oats, wrapping paper, and honey that it purchases for processing.

From May 12 through May 23, 1992 several farmers delivered grain and oats to Pedals. Although the sellers/farmers did not receive payment for the sale simultaneously with delivery of the grain, checks were subsequently issued to the

sellers/farmers, usually within 30 hours. On May 23, 1992, before these checks had been paid, Citicorp deemed itself insecure and refused to advance any more funds to Citicorp. On the same day, Pedals filed a petition in bankruptcy. Since Citicorp refused to advance more funds, Pedals' checks issued in payment for grain and oats were dishonored.

Assume for purposes of this question that the Department of Agriculture has a regulation which gives them a 24 hour window to inspect the grain. Thus, no payment could be made to the seller/farmers for a period of 24 hours.

Discuss fully the ensuing priority dispute.

SECTRANS.94/DS

(WORTH 20 points)

Q2: The plaintiff, on or about March 25, 1988, received by mail a "Credit Application for Property Improvement Loan" which contained the purported signature of William Smith and Eva Smith, his wife; the application requested the loan for purposes of renovating the home occupied by Eva and William; the plaintiff had no physical or personal contact with William. After a superficial investigation by the plaintiff, which is characterized as revealing nothing derogatory, a promissory note in the amount of \$2493.93 was sent by mail to William Smith; the note was returned by mail containing the purported signatures of William and Eva; plaintiff then forwarded its check by Mail to William. The plaintiff received thirty-six monthly installments of \$41.57. On or about April 18, 1992, plaintiff received by mail a second "Credit Application for Property Improvement Loan"; the application indicated the funds would be used for interior and exterior decorating; plaintiff based on the past transactions referred to herein and without physical or personal contact with William approved the second loan and sent by mail a promissory note in the amount of \$27,779.20; the note was returned by mail containing the purported signatures of William and Eva. Plaintiff issued its check, payable to William and Eva, by letter, through the mail once again, addressed to William.

The check, which is the subject of this action, was presented to Central Federal for deposit to the account of Ms. Joan Screwball, the daughter of William and Eva, who resided with them. The check bore the purported endorsements of William and Eva; it was accepted for deposit and the proceeds were credited to Mrs. Screwball's account. Central Federal endorsed the check and forwarded same to the defendant, Chemical Bank for collection. Chemical Bank presented the check to the plaintiff who paid same.

The plaintiff received five payments of \$461.32. Subsequent to October 1992, plaintiff failed to receive any further payments; after receiving no response to several notices sent to William, the matter was referred to plaintiff's collection department. On November 18, 1992, William advised the plaintiff that Eva had died during October 1992, and he denied any knowledge of a loan or indebtedness to the plaintiff. Furthermore, Mr. Smith personally appeared at plaintiff's bank on December 1, 1992 and was permitted to inspect the loan documents; he denied any knowledge or participation in the loan transactions, and stated that the signatures on the loan documents were forgeries. On December 1, 1992, the balance on deposit in Mrs. Screwball's account was in excess of \$30,000; the notice of the suspected forgery was sent to the defendant, Central Federal on December 7, 1992, at which time the savings account of Mrs. Screwball contained a balance of \$88.00

Discuss the liabilities of all parties.

SULLIVAN\EVWMSM.004

NOTE: I recommend you spend
1 hour per question, as
questions are weighed
equally.

Professor Sullivan
Secured Transactions-2 Credits
Final Examination-Spring 1993

Q1. On November 15, 1991, Coyne's Fish Process, Inc., a Massachusetts Corporation, sold certain equipment to Devlin Industries, also a Massachusetts Corporation, but retained in the equipment a security interest pursuant to a security agreement executed the same day. Each party knew that the other intended to change its name in the near future. The security agreement reflected this knowledge as follows: "...it is anticipated that the Debtor will change its name to that of the Secured Party and it is further anticipated that the Secured Party will change its name to D.M.S. Corp." On the following day a financing statement was filed with the Secretary of State. The statement gave the debtor as Devlin Industries and the secured party as Coyne's Fish Process.

On April 1, 1992, Easy Bank made a loan to Coyne's Fish Process, Inc. for \$150,000.00. Coyne's Fish Process executed a promissory note for \$150,000.00 with Easy Bank giving it a security interest in certain machinery and equipment. Easy Bank perfected its security interest in the collateral by filing a financial statement. Approximately 3 months later, with Coyne's Fish Process, Inc. owing \$65,000.00 in unpaid principal, Coyne's Fish Process enters into a loan agreement with Velvel Enterprises. Velvel Enterprises undertook to pay off the \$65 K owed in return for an assignment by Easy Bank to Velvel Enterprises of the original note and security agreement.

Coyne's Fish Process Inc. executed a promissory note to Velvel Enterprises evidencing the agreement containing the following provision:

Security: This promissory note is secured by security interests in certain security agreements between Coyne's Fish Process, Inc. and Easy Bank...and in a financing statement filed by Easy Bank..., and is further secured by security interests in a certain security agreement to be delivered by Coyne's Fish Process, Inc. to Velvel Enterprises with this promissory note covering the identical machinery and equipment as identified in the

Easy Bank security agreement and with identical schedule attached in the principal amount of Eighty Five Thousand Dollars.

No formal security agreement was executed between Coyne's Fish Process, Inc. and Velvel Enterprises.

Velvel Enterprises did record a new financing statement signed by Coyne's Fish Process, Inc. containing a detailed list of machinery and equipment originally taken as collateral by Easy Bank for its loan to Coyne's Fish Process.

As envisaged by the security agreement, the parties, by amendments to their respected charters, changed their names: the secured party became D.M.S. Corp. on May 10, 1993. In November 1, 1992, the debtor, Devlin Industries, had become Coyne's Fish Process, Inc.

D.M.S. Corp. goes bankrupt.

Discuss the rights of all parties to the collateral.

Q2. Michael's Running Store Outlet is a retail store that sells running shoes and apparel to the public.

Sullivan National Bank (hereinafter SNB) has a properly perfected lien on all assets, inventory and after acquired property of Michael's Running Store Outlet as security for its line of credit. New Track is the primary brand of running shoes carried by Michael's Running Store Outlet, although most leading brands are carried in stock.

During an 11 day period in May, New Track delivered shoes to Michael's Running Store. Although not simultaneous with the purchase, Michael's would issue a check to New Track.

Prior to checks being paid, but subsequent to their issuance, SNB believed itself insecure and refused to advance any more funds.

Michael's filed a petition for bankruptcy the same day.

Ultimately, the checks issued to New Track were dishonored.

Who has what rights in the collateral. Discuss fully all issues presented.

STFEXAMS93.DS

SECURED TRANSACTIONS
FINAL EXAMINATION
SPRING, 1992
PROFESSOR SULLIVAN

Worth 20 points.

- 1. AKA
EVIDENCE*
- Q1. September, 1991, D, through its officer D.L., purchased 30 Yamaha golf carts and 2 Yamaha dumpsters for \$75,900.00 from P. This was an unsecured transaction. D paid P \$8,500.00 at some point near the date of the transaction. The balance of the purchase price has never been paid. The golf carts were delivered to D 9-13-91. A written demand was made by P on December 31, 1991. D's chapter 11 proceeding was filed in January, 1992. As of the same date C Bank had a perfected security interest in all assets and equipment of D.

Query: Who gets the golf carts and dumpsters? Discuss fully.

Worth 15 points.

- Q2. On October 8, 1991, P executed a writing authorizing and directing (D) Upper Florida Milk Producers Assoc. (which regularly purchased milk products from P's dairy farm) to pay \$1,700.00 per month of the funds owing by milk producers to him, to A Credit Corp. It is undisputed that it was the understanding of P and A Credit Corp. that the assignment, which was to run for seven years, was made as a method of payment by P for A Harvestore, an item of farm equipment. It is further undisputed that A Credit Corp. suggested the assignment as its preferred means of payment and that while A Credit Corp. retained a security interest in the Harvestore, there was no security agreement or filing of a financing statement with respect to the milk assignment.

Additional Fact:

- Milk assignment amounted to 2.5367% of the monthly check at the time of this assignment.

You sit In U.S. Bankruptcy Court. Query: What issues are presented in this fact pattern and how would rule on them?

Worth 20 points.

- Q3. On 4-14-91, Debtor purchased a 1986 Ford Turbine from Southwest seller in Worcester, MA. At that time he executed

a conditional sales contract which was assigned by the seller to the First Bank of Worcester. Neither the seller nor assignee filed a financing statement evidencing the security interest.

In July of 1991, CC Credit Co., lent debtor money. Debtor executed a chattel mortgage on the turbine in favor of the lender. The lender filed a financing statement evidencing the chattel mortgage on the turbine on July 14, 1991. At the time of this transaction C.C. Credit Co. had actual knowledge of the unperfected security interest of the Bank in the turbine.

Debtor was duly adjudicated a bankrupt on May 7, 1992, after the filing of a voluntary petition in bankruptcy.

Who has priority in the turbine? Discuss fully the rights of all parties.

Worth 15 points.

- Q4. X pledges 40 of its promissory notes (notes X has received from its clients) to CBT Bank in return for a loan. CBT took possession of these notes. X asked for 10 notes back for presentment to makers and the bank turns them over. X discounts to another bank, Fleece Bank, although resale was a direct violation of X's agreement with CBT Bank.
- a) Which bank is entitled to the instrument? Why?
 - b) Would your answer change if the instruments were attached to a retail sales contract containing a security agreement so that they became chattel papers.
 - c) What if the instruments were non-negotiable.

STFES92.DS

SECURED TRANSACTIONS
MID-TERM EXAMINATION
PROFESSOR SULLIVAN 1991

QUESTION #1:

On November 16, 1990, L.C. executed a retail installment contract to O, INC., a dealer for X, to cover the purchase of an XT equipment identified as XT-123. This K was for a total amount of \$110,149.44. Absent was any provision for future advances. The contract was assigned to X's Credit Corp, who financed the transaction. On November 17, 1990, a financing statement covering equipment XT-123 was filed.

On December 19, 1990, Bay Finance made a cash advance to L.C. taking a security interest in XT-123. On December 24, 1990, Bay Finance filed its financing statement.

On September 17, 1991, L.C. purchases a new piece of equipment XT-898 from H. Inc., another dealer of X. The retail installment contract included both pieces of equipment--#XT-123 and XT-898. The K provided that the first K was cancelled. The balance owing under the first K was included in the purchase price stated in the second K.

On September 29, 1991, X, as assignee of K #2 from H. Inc., filed a new financing statement covering both pieces of equipment.

When L.C. defaulted on his loan as Bay Finance had taken possession of XT-123.

On February 16, 1992, X notified Bay Finance of its claim to a senior security interest on equipment XT-123.

On March 1, 1992, Bay Finance sold the equipment XT-123.

X, Inc. brings an action for conversion of equipment XT-123, claiming or senior and prior security interest?

Please write the opinion of the trial court.

QUESTION #2:

The debtor, L.C.I., was engaged in business in Houston, Texas. It provided office space for lease to attorneys and furnished certain services to them on a commercial basis, including the use

of a law library owned by L.C.I.

On August 23, 1991, M.J. Walter, Secretary-Treasurer of L.C.I., met with the sales representative for the West Publishing Company regarding the possible sale of books to L.C.I. At the meeting, Walter signs a purchase order for law books totalling \$20,800.00 in value. The purchase order constituted an installment sales contract, which provided for a down payment and a specified monthly payment for the balance. Walter, a practicing attorney, did not sign the purchase order in the space provided for the purchaser's signature; instead, he signed the space provided for a "personal guaranty" of the contract.

In a short paragraph located just beneath the statement of credit terms and printed in the same-sized type as the other portions of the instrument, the purchase order contains a statement that "[t]his contract is subject to approval by vendor, who retains title to said books until paid and is not transferable by vendee."

Thereafter, West filed a financing statement. The financing statement contained the name and address of L.C.I. as the debtor and West as the secured party. It was signed by West, but not the debtor, L.C.I. Also, it did not describe the collateral; instead, it contained the following notation: "LAW BOOKS SEE ATTACHED SECURITY AGREEMENT." A photostatic reproduction of the purchase order was attached to the financing statement.

L.I.C. goes bankrupt.

Discuss the rights of all parties.

STMTS92.SULLIVAN