Question 4 Selected Answer #1

1. Tim has a superior security interest in "all of the equipment, supplies, and inventory of ABC and the after-acquired property until January 1, 2008. Under the Texas Business and Commerce Code, a perfected security interest loses perfection when the debtor changes its name. The Texas Business and Commerce Code (TBCC) gives the secured party a break and allows the secured party to perfect in after-acquired property for four months after the name change. The name change makes the filed financing statement seriously misleading, and the secured party loses perfection as to any goods after the 4 month period unless the secured party reperfects by filing another financing statement under appropriate name in the debtor index.

Here, Tim did not reperfect his security interest by filing a financing statement under "The Crooked Needle Knitting Co." While he is perfected and would a priority argument with anyone as of Dec. 31, 2009. He is unperfected as to any after-acquired property as of January 1, 2009 because his financing statement is now seriously misleading. He should have refilled a financing statement within the 4 months as provided by the TBCC.

2. Video Shack has perfected purchase money security interest in all items purchased on the credit card.

Under the TBCC, a security agreement must reasonably identify the collateral. Here, while merchandise is seemingly ambiguous, the fact that the credit card provides a way to identify the goods with extreme accuracy makes the security agreement valid.

Moreover, under the TBCC, a purchase money security interest is entitled to superior priority status and will prevail over most perfected security interests. A purchase money security interest (PMSI) is defined essentially as a sale or credit. Here, Jillian had a credit line with Video Shack via her credit card and, therefore this was a PMSI. Moreover, Video Shack perfected its security interest by filing and as such, Video Shack has superior priority rights provided by the TBCC and will prevail over any secured party claiming an interest in the merchandise.

3. First Bank has not filed its financing statement as required by the TBCC, in order to perfect a security interest; one must either file or physically possess the property.

Here, First Bank is unperfected and would lose to any perfected security interests. Because Tim is also unsecured as of January 1, 2009, First Bank and Tim have a priority fight. Where two unperfected secured parties have priority arguments, the first to attach its security interest governs.

Moving on….

END OF EXAM

1. The sewing machine, supplies and knitting inventory only, and the cabinets if First Bank doesn't file a Financing Statement. When a debtor changes its name, a second creditor remains perfected in all of the debtors current collateral and all collateral acquired for the four months after the name change. A secured creditor will not be secured in collateral acquired after four months unless the secured creditor files a new financing statement, identifying the newly named debtor, within the four months after the name change.

Thus, since Tim took no further action after ABC changed its name to The Nook, Tim cannot be perfected as to any collateral acquired 4 months after the name change – which occurred on 9/1/08. So Tim is only perfected as to collateral owned by ABC/The Nook as of 1/1/09.

It appears from the facts that The Nook only has the assets originally acquired in the transaction with Tim – sewing machine, supplies, and knitting inventory, $5k of merchandise from Video Shack, and a set of solid oak display cabinets. The $5k merchandise and cabinets were acquired by The Nook after 1/1/09. Thus, because Tim didn't refile his financing statement as to "The Nook" by 1/1/09, he does not have a perfected security interest in the $5k merchandise or the cabinets. He remains perfected on the assets acquired by ABC/The Nook in the original transaction – sewing machine, supplies & knitting inventory, because he had a valid security agreement, gave value, and debtor rts in the collateral, and perfected by filing. The sewing machine is Equipment per the security agreement, and the supplies and knitting material is inventory – also covered by the security agreement.

Tim has priority on these items because he was the first to file or perfect on them and there is no PMSI here to defeat him. So Time has the superior security interest only as to the sewing machine, supplies, and knitting inventory. Though not perfected, he has a superior security interest in the cabinets too, because there is not other perfected security interest in the cabinets and he is first in time. (See #3 for more discussion)

2. Video Shack has a superior security interest on the $5k of merchandise purchased from Video Shack.

This is not a consumer goods issue because Jillian is not buying the goods for personal, family, or household use. Rather she is buying them for her business. It is no problem that the Credit Agreement & Security Agreement are the same document. There is attachment because value was given, $5k merchandise, there is a valid security agreement signed by the debtor, Jillian, and The Nook has rights in the collateral, taking ownership of the merchandise. Moreover, Video Shack properly filed and thus perfected. If this merchandise were considered equipment, or supplies, or inventory, there could be competition with Fast Bank's perfected security interest. But even if so, Video Shack will still win as a purchase money security (PMSI) holder that presumably filed w/in 20 days of the debtor taking the merchandise. Unless it is considered inventory, in which case the PMSI would only win if Video Shack filed before the Nook took possession and had sent notice to First Bank of Video Shack's PMSI in inventory. Presumably though, this is not the case and the merchandise will be considered equipment as to The Nook – which is the default asset characterization. Video Shack will have the superior security interest as to the $5k of merchandise.

3. Fast Bank will have a superior security interest in The Nook's cabinets if it files a financing statement, but right now Tim has the superior unsecured interest. Per #1 above, Tim is not perfected in these cabinets acquired after 1/1/09. And Video Shack's security interest is only in merchandise charged to the credit card. Here, Jillian bought the cabinets with cash.

Fast Bank has attachment, gave value of $15k, security agreement signed by Jillian covering such equipment after acquired, and Jillian has ownership of the cabinets (paid cash for them) and thus rights in the collateral. BUT, Fast Bank never perfected by filing a financing statement!! If they had perfected, they would beat Tim, who didn't perfect under the new name. But as between two unperfected secured parties, the first in time will prevail. (First Bank should file right away to win.) Thus Tim has the superior security interest in the cabinets at this time.

END OF EXAM

4)

1) Tim will have priority to any equipment and supplies of ABC that it had as of 8/01/08; anything acquired within 4 months after 9/1/08 but it will not have priority to anything acquired by The Nook after 1/1/09. In Texas, a creditor is perfected when it files a financing statement with the Texas Secretary of State; takes possession of the collateral or takes control of the collateral. Tim acquired a security interest in all of the equipment, supplies and inventory of ABC, now owned or after acquired. Tim perfected by filing a financing statement on 8/5/08. Since he perfected within 20 days of attachment then his perfection will relate back to the date of attachment. Attachment occurs when a creditor gives value; a security agreement is entered into and the debtor has rights in the collateral. Here, Tim gave value of $30,000, Jillain signed a security agreement for ABC and Jillian received the money. Attachment occurred on 8/1/08, so by perfecting on 8/5/08, Tim's perfection will relate back to 8/1/08.

When a debtor changes its name, the creditor will remain perfected in the collateral acquired before the name change and in collateral acquired within 4 months after the name change but if the creditor does not file a new financing statement with the Debtor's correct name then the creditor will lose priority for collateral acquired 4 months after the name change. Here, ABC changed its name on 9/1/08 to The Crooked Needle Knitting Nook Co. (The Nook). Tim will remain perfected for 4 months after the name change, so until 1/1/09. Tim will maintain priority over any collateral covered by Tim's security agreement until 1/1/09. However, Tim will lose priority after 1/1/09 because he failed to file a new financing statement with the Debtor's new name. The current financing statement listed under ABC does not serve its purpose, which is to put other creditors on notice that the debtor may have used its assets as collateral for another loan. Now, searching under "The Nook" a creditor will not find Tim's financing statement. Tim does not have priority over the $5000 of merchandise The Nook purchased on 3/5/09 or the cabinets it purchased later on in March 2009 because these purchases were more than 4 months after The Nook changed its name and Tim did not refile a correct financing statement.

2) Video Shack will have priority over the $5000 of merchandise The Nook purchased on credit with Video Shack on 3/5/09. The bank is a secured creditor but it will not have priority over the merchandise purchased from Video Shack. The bank attached on 2/2/09 by giving The Nook $15,000, executing a security agreement and giving The Nook rights to the money. However, the Bank has not filed a financing statement to perfect its interest; therefore, it will not have priority over the merchandise, which would likely be equipment, inventory or supplies that are covered by the bank's security agreement. Even if the bank had filed a financing statement, it would still lose to Video Shack because Video Shack has a purchase money security interest (PMSI) in the collateral purchased on credit from Video Shack. As a PMSI creditor, Video Shack will have priority over other perfected creditors as long as it was perfected when the debtor received the collateral or perfected within 20 days after the debtor receiving the collateral. Here, Video Shack perfected by filing a financing statement on 3/5/09, the day it extended credit to The Nook and the merchandise was purchased. The fact that the security agreement was on the back of the credit agreement will not affect Video Shack's PMSI status. Jillian signed the agreement, with obvious notice of the security agreement written above the signature line. Jillian is not required to sign the financing statement, since she has signed the security agreement.

3) The bank does not have a superior credit interest in any of The Nook's collateral. As discussed, the bank did not perfect its interest by either filing a financing statement or taking possession of the collateral. Attachment occurred on 2/2/09; however, Tim attached on 8/1/08. Since both the bank and Tim are unperfected secured creditors, the first to attach will have priority. Here, Tim's security agreement covered all equipment, supplies and inventory of ABC now owned or hereafter aquired. The Bank's security agreement also covers equipment, supplies and inventory now owned or hereafter acquired. The cabinets will likely be equipment in The Nook's hands. Equipment is anything used in the business. The display cabinets will be equipment. Even if the cabinets are determined to be inventory, Tim will still prevail. Inventory is goods held for sale or lease; materials used up; or work in progress. Tim lost his priority status by failing to file a new financing statement but he is still a secured creditor. Since the bank is unperfected as well, the first to attach will prevail. Therefore, Tim will have a superior right to the cabinents.

Video Shack will not because its security agreement only covers merchandise bought at Video Shack on credit. The cabinets were purchased from Harry's Cabinets for cash.

END OF EXAM