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Part 1

The contending parties as to the chandelier are Domestic Bank (DB) and Freindly Bank (FB). Domestic Bank has the superior interest. Both DB and FB are secured creditors, but under TX law all security interest in real property and in fixtures must be properly recorded in the Real Property Records of the county in which the security interest is obtained for the security interest to be perfected. If the security interest is not perfected, then you will lose priority to a perfected security interest, unless the fixture is that of the nature of a trade fixture or temporary fixture. Here the chandelier is a fixture under TX law, because its character has been merged as part of the house and does not retain its own separate character properties. Because FB failed to file a proper fixture filing in Madison County, the financing statement will not give priority over DB's interest in the home via the mortgage and the proper filing of the mortgage in Madison County. FB could make an argument that the chandelier is easily removable and can be done without leaving damage, and because so it does not qualify as a fixture, but merely an accessory to the home. Although the argument would be stronger if it was a TV or a washer and dryer, the essential function of a chandelier is to provide the home with character and lighting, and thus once installed, it most likely becomes part of the house. Therefore that argument would most likely fail, and DB will have priority over FB with regards to the interest in the chandelier.

Part 2

It does not appear the Better Buy (BB) would have a contending interest in the TV with another party, but if there were a party that would want to try to make a claim than that would be Domestic Bank. As between DB and BB, Better Bank would have the superior interest. For a valid perfected security interest, you must have attachment plus perfection. For attachment, you need for the creditor to give value to the debtor, there must be a contract (not necessarily have to be in writing), and the debtor must have a right in the collateral to which will be the basis of the agreement. When all three elements are met, you have attachment. There are three different ways to perfect: 1) filing 2) control and 3) Possession. But under TX law, secured creditors in the sale of goods can gain automatic perfection with a Purchase Money Security Interest (PMSI). When

the collateral is acquired through the financing from the seller of the collateral, you have a PMSI, and therefore automatic perfection. Because BB retained a security interest in the TV it sold to Dwight, BB retained a PMSI, and therefore was protected against subsequent perfected secured creditors. DB would claim that since it filed first and BB did not file, that the TV should merge into the house as a fixture, and DB would have the superior interest to the TV as a fixture over BB, as the better perfected secured party. That argument fails for two reasons: 1) the character of a TV is that of a consumer good that is used in the home regardless of how it is mounted to the wall (brackets to secure TV is not a merging technicality) and 2) BB did not need to file, because it was already perfected at the time of attachment through the PMSI. Therefore BB has superior title as to the other parties.

Part 3

The competing parties as to the compressor are Domestic Bank and Heat-n-Air Company (HC). HC should have the superior interest. Much like the interest BB had in the TV, HC has a PMSI in the compressor that it sold Dwight. Under TX law, a PMSI has superior interest as to other previously perfected secured creditors as long as the security interest is properly filed with 20 days of attachment. The difference in this contest is that in the BB v DB issue, BB was already perfected and superior before DB gained a perfected security interest. In the issue of DB v HC, DB already has a perfected security interest in the home including fixtures, and will take priority over junior interest that come later. When you have two or more perfected security interest it is usually the first to file OR perfect who had superior interest. The exception again is the PMSI secured creditor. Here, it could be disputable that the compressor was not part of the house, because it was installed near the garage and it could easily be removed, but we don't even need to contest that matter, because under the facts, it appears that HC did file a proper fixture filing because it filed in Madison County, and the only reason it would file over there would be to file a fixture filing. Attachment was effective July 6, so HC had 20 days from attachment to file the proper financing statement to keep its superior perfect security interest as the PMSI. HC properly filed in Madison County on July 12, less than 20 days after the attachment, therefore it keeps its PMSI. Therefore as to the compressor, HC with its PMSI security interest beats DB with its first to file perfection.

END OF EXAM

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This problem contains a series of secured transactions therefore article 9 of the UCC applies.

1. The chandelier

Both Friendly Bank and Domestic bank are contending parties for a security interest in the chandelier.

Friendly bank took a security interest in the chandelier in exchange for a \$10K loan to Dwight. The chandelier attached to the security interest on November 8, 2010 when Dwight signed a writing in exchange for value and took rights in the collateral.

Domestic Bank took a security interest in the chandelier in exchange for a home equity loan. The chandelier was included in the security agreement because it is a fixture attached to the house which was the subject of the security interest. The security interest attached to the house and the chandelier on January 13, 2009 when Dwight signed the deed of trust granting a mortgage in his home in exchange for the rights to the loan. The bank may repossess the house and all fixtures should Dwight default on the loan.

The chandelier is a fixture since it is attached to the property, installed with special architectural supports, and can most likely not be removed without causing substantial damages to the house. Additionally, it was installed when the house was built in the 1900's and has become a part of the house by virtue of the length and manner of its attachment.

A party's security interest priority is usually determined by the date of its perfection.

Friendly attempted to perfect its interest in November 10th but was unsuccessful. In order to perfect an interest in a fixture such as a chandelier, the creditor must file the financing statement in the office of the county where the property is located. Since the chandelier has effectively become part of the property, this is required in order to give subsequent creditors with an interest in the home notice that the chandelier, though a fixture, is encumbered. Article 9 requires

this.

Domestic successfully perfected its interest in the real property by recording the deed of trust with the real property records in Madison County, Texas on January 15, 2009. Since Friendly did not successfully perfect its interest, Domestic perfected first and therefore has priority over Friendly with regard to the chandelier.

2. The TV

Better Buy and Domestic Bank each may contend for a security interest in the Television

Better Buy obtained a purchase money security interest in the television since it sold Dwight the TV on credit. Its interest gives it the right to repossess the television should Dwight default on a payment. The security interest attached when Dwight signed the written security agreement on March 8, 2008, acknowledging the security interest and his obligation to pay.

The TV is a consumer good since Dwight bought it for personal use in his home. However, it may be considered a fixture since it is bolted into the bedroom wall with brackets and may not be successfully removed without causing damage to the property. If this is the case, Domestic Bank may have a security interest in the Television by virtue of its deed of trust. As discussed above, Domestic Bank attached its security interest on January 13 and perfected on January 15. The fact that it perfected two days later does not affect its claim. If the television is a fixture and part of the home, their interest in the TV perfected at this time.

Though Better Buy never filed a financing statement, a purchase money security interest in consumer goods like the television is automatically permanently perfected when the Debtor signs the agreement and takes possession of the property. Therefore, Better Buy's interest perfected on March 8, 2008, several months before Domestic's interest would have perfected.

The facts indicate that the television is most likely not a fixture. It can easily be removed and most people would not consider it part of the property. Therefore, Domestic's claim to it is tenuous at best. Better Buy's PMSI in consumer goods perfected automatically at purchase.

However, if it became a fixture, they would be forced to refile their interest in Madison County. Better buy does not have to refile and has the superior interest.

3. The air conditioner

Both heat and air and domestic bank may contend for a security interest in the compressor.

Once again, the compressor is a fixture since it was attached to the concrete slab and most likely not be removed without causing damage to the house. Moreover, most people would consider the compressor to be a fixture and part of the home.

It is also a consumer good since Dwight bought it for personal use in his home.

Domestic's claim perfected as to the compressor when it's interest in the home itself perfected as discussed above. Since the compressor is a fixture and is part of the home, their interest perfected on January 13.

Typically, a prior perfection grants priority over subsequent creditors, but once again, Heat and Air has a purchase money security interest in the A/C perfected automatically. Additionally, since they must have known it would be a fixture, they perfected again as to the fixture on July 12, 2009 by filing a copy of the security agreement with the real property records of Madison County. Since they did this within 20 days of attachment, they are perfected against all creditors, including those who perfected earlier like domestic bank. Heat and Air has priority.

END OF EXAM

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1. Friendly Bank and Domestic Bank are the contending parties for a security interest (SI) in the chandelier. Domestic has a superior interest in the chandelier because Friendly's attempt to obtain an Article 9, security interest in the chandelier failed because the chandelier was not a good or any other type of personal property at the time the security interest was created, but rather a fixture that had become part of the real estate (i.e. the home).

A fixture is a good that is affixed to real property and is so incorporated into the real property that it ceases to be a good (i.e. personal property) and becomes a part of the realty. Factors that indicate whether a good is a fixture are the intent of the affixor and whether or not the good can be removed without causing substantial and serious damage to the real property. Here, the chandelier in the Dwight's historic home was installed with special architectural supports when the home was built. This indicates that his deceased parents intended that the chandelier become permanently affixed and part of the real estate. Furthermore, the means by which the chandelier was installed indicate that it is not easily removable and, if removed, it would very likely cause substantial damage to the structure/home itself because it is an older structure (i.e. a historic home from the nineteenth century) and thus, more susceptible to serious damage.

Friendly attempted to obtain security interest in the chandelier because it loaned Dwight \$10,000, they signed a security agreement, and the agreement provided that the chandelier would be the collateral to secure repayment of the debt. However, in order to obtain an Article 9 security interest in a fixture, the secured creditor must file a fixture filing within 20 days of the affixing of the good/equipment/personal property to the realty. Furthermore, Friendly needed to file a fixture filing in the real property records of the county in which the home/realty was located (i.e. Madison County). Although properly and duly executed, Friendly's filing of a financing statement with the secretary of state was ineffective to perfect a security interest in the chandelier.

Domestic has a security interest in the chandelier because it gave Dwight a home equity loan and the parties signed a deed of giving Domestic a mortgage on Dwight's home to secure the loan. As explained above, the chandelier is a fixture and thus, a part of the home/realty. Domestic's security interest in the home includes a security interest in all fixtures. Thus, Domestic Bank has

the superior interest to the chandelier.

2. Better Buy and Domestic Bank are the contending parties for a SI in the flat-panel TV and Better Buy has the superior interest because it has a purchase money security interest (PMSI) in the tv. Best Buy is a purchase money secured creditor because he sold the tv to Dwight on credit (i.e. gave value), Dwight was given immediate possession of the tv (i.e. rights in the collateral), and the parties signed a security agreement. The tv is a consumer good because it was purchased by Dwight for personal or household use. Thus, Better Buy has a PMSI in consumer goods, which is automatically perfected upon attachment. Better Buy's SI in the tv was perfected and superior to Domestic despite the fact that Better Buy filed no financing statement because perfection was automatic.

Domestic will argue that like the chandelier, the tv is a fixture and therefore, Domestic's security interest in the home includes all fixtures. However, the tv would not constitute a fixture because Dwight merely used brackets to attach it to the bedroom wall, meaning that removing the tv will do little or no damage to the home/realty. Further, the facts do not indicate any intent on Dwight's part to permanently affix the tv to the wall so as to incorporate it into the realty. Thus, Better Buy will prevail as having the superior consumer good PMSI.

3. Heat-n-Air Co. ("Heat") and Domestic are the contending parties for a security interest in the compressor and Heat has the superior interest. The compressor is a fixture (see #1 above, chandelier) because it was bolted into a concrete pad adjacent to the garage of the home. It was affixed to the real estate with the intent that it become a fixture. However, unlike the chandelier, the compressor was installed/affixed to the realty AFTER attachment of Heat's SI. Heat has a PMSI in the compressor because it financed the purchase of the compressor (i.e. sold it to Dwight on credit), all elements of attachment were satisfied.

While the compressor is arguably a consumer good, being used for Dwight's household use, it is not automatically perfected. However, the holder of a PMSI in a consumer good fixture is given a 20 day grace period to perfect it's SI. Heat properly filed a fixture filing in Madison County, where the real property is located, and his fixture filing satisfies all the statutory requirements for a proper fixture filing, including a legal description of the house and lot to which the compressor

is affixed.

As to Domestic, both are properly perfected secured creditors but a PMSI holder of fixtures has priority over a mortgage secured creditor as long as it properly perfects within 20 days of the affixation of the fixture to the real property and does so by properly filing a fixture filing.

END OF EXAM