Question 6 – UCC – July 2012 - Selected Answer 1

1. The Bank has priority in the copier.

To get a security interest in collateral, the creditor must first get attachment. Attachment occurs when the creditor gives value to the debtor, the debtor has or acquires an interest in the collateral and the debtor and creditor create a security agreement, or contract between the debtor and creditor. If the collateral remains in the possession of the debtor, the security agreement must be evidenced by an authenticated writing (a signed writing). The security agreement must include a description of the collateral, but it is okay to describe the collateral by broad categories. If there is no security agreement, there is no security interest and the creditor is unsecured. The security agreement establishes the rights of the creditor against the debtor. Once a secured party has a security agreement, it can achieve perfection by a variety of means. One method of perfection is filing a financing statement with the secretary of state in Austin. A financing statement sets out the rights of the secured creditors against the world and other secured creditors. The UCC states that as between an unsecured creditor and a secured creditor, the secured creditor will have priority.

Here, Printers sold CopyCo the copier on credit, but did not get a valid security agreement, meaning that it is an unsecured creditor. On 5/01 the bank got a security agreement in all currently owned and after-acquired furniture, equipment, inventory and accounts receivable. It perfected this security interest by filing a financing statement the next day. The copier is a good, specifically equipment. The Bank's security interest attached to the copier as soon as it gave value and it perfected that interest the next day. Therefore, because Printers is unsecured and Bank is a perfected, secured creditor, the bank will have priority over the copier in the bankruptcy.

2. Technology has priority in the computers.

A purchase-money security interest (PMSI) is created when funds are obtained to buy a specific item which becomes the collateral for the loan. Although PMSIs are not automatically perfected for non-consumer goods, the UCC gives a 20 day grace period to PMSI creditors to perfect their interest and still retain priority that relates back to the moment of attachment, when the debtor receives the goods. After-acquired clauses are valid and allow creditors to attach property acquired after the security agreement is written, however, a PMSI has a super claim to property that is also subject to an after-acquired clause in a security agreement and/or financing statement.

Here, Bank has a perfected security interest in the computers as they are equipment subject to the after-acquired property clause in the security agreement. Technology also has a perfected security interest in the computers that relates back to the moment CopyCo acquired them because they filed the financing statement within 20 days (here they did it in 9 days). Therefore, when comparing the priorities of a perfected secured creditor and a perfected PMSI creditor, the PMSI creditor wins and Technology has priority.

3. The Bank has priority in the workstations.

A PMSI creditor can get a priority date that relates back to the moment of attachment if they perfect within 20 days of the debtor receiving possession. When a debtor files for bankruptcy, the filing of petition immediately invokes the "automatic stay" which prevents any creditors from seeking to collect from or gain greater rights from the debtor. The trustee in bankruptcy acts like a judicial lien creditor for the purposes of establishing priority in secured collateral. Although the automatic stay does prevent the creditors from perfecting interests not already perfected, a PMSI creditor may still file their financing statement within 30 days and get the benefit of priority relating back. Here, the Bank had a perfected security interest in the workstations as furniture (which is also equipment) based on the after-acquired clause in its security agreement. Furniture also has a perfected (and superior) security interest because it perfected within the 20 day window after CopyCo received the workstations (they received them on Nov. 28 and perfected on Dec. 15). They were not precluded from filing the financing statement, despite the automatic stay of the bankruptcy, because the Bankruptcy Code provides an exception for PMSI filings. Therefore, Furniture has priority relating back to Nov. 28, the bank has second priority because it perfected before the TIB (first in time) and the TIB is third.

4. The Bank has priority in the accounts receivable.

A security interest in accounts receivable must be perfected by filing a financing statement. The UCC provides that as between two perfected secured creditors, the one who filed or perfected first will have priority.
Here, even though Technology acquired a security interest in the accounts receivable that was perfected on 6/10, the Bank had a prior perfected interest that was perfected on 5/1. The Bank perfected first, therefore, Technology's interest is subordinate and the Bank will have priority.

5. The TIB will have priority in the shares of Widget stock.

The TIB is given the power to invalidate transfers for value made by the debtor within 90 days of filing for bankruptcy as a preference. A preference is a transfer of an interest by the debtor to the creditor made on an antecedent debt while the debtor is insolvent that puts the debtor in a better position than he would have been in a Ch.7 liquidation. A transfer includes perfecting interests. There is a rebuttable presumption of insolvency 90 days before bankruptcy. Here, the debtor transferred the stock to the Bank as additional collateral on a prior loan (the antecedent debt). The Bank perfected its interest in the stock by taking control of it on 11/02. The stock increased the amount of collateral that the Bank could claim in bankruptcy and thus put its in a better position. Because the transfer occurred within the 90 day window, the TIB can invalidate the security interest and demand that the creditor return the stock to the bankruptcy estate. The bank might try to argue that the new value exception applies, but here they did not add anything to the estate and so might not fit under that exception.

Question 6 – UCC – July 2012 - Selected Answer 2

1) The copier. The bank has the superior interest in the copier. The copier is equipment, since it is used long-term in Edward's copying business. Copy co. does not have a security interest in the copier. In order for a security interest to attach to an item, the debtor must have rights in the item, the creditor must give value, and there must be i) a written security agreement give rights or ii) an oral security agreement and possession. Here, Copyco did not have either possession or a written security agreement, it does not have a security interest in the copier.

The bank had a perfected security interest in the copier as of May 2, 2011. The bank gave value, in the form of a loan of $50,000. Edward had rights in the copier to give to the bank. There was a written security agreement giving the bank a security interest in the copier. A written security agreement must be signed by the debtor, and contain an adequate description of the collateral. An adequate description of collateral in a security agreement can be by category (equipment, inventory, etc.). Here, the collateral was described by category so was adequate. It covered after acquired furniture, equipment, inventory and accounts receivable. One way of perfecting is the file a financing statement with the secretary of state. The bank filed a financing statement in the proper office on May 2, 2011, hence had a perfected security interest as of that date.

A bankruptcy trustee has the status of a hypothetical judicial lien creditor on any collateral as of the date of filing. It is perfected as of the date of filing. Here, Copy Co. filed bankruptcy on December 10, 2011, giving the trustee statuts a hypothetical lien creditor. As between two perfected interests, the first in time to file or perfect has superior interests. The bank filed it financing statement on May 2, before the trustee perfected on December 10. Therefore the bank has superior interest.

2) The computers are equipment in Edward's business as they are used long term. The bank has a perfected security interest as of May 2, 2011, as described above.

Technology Co, has a perfected purchase money security interest in the computers as of June 10, 2011. a purchase money security interest (PMSI) is granted when the creditor gives the debtor value to buy the collateral. Here, Technology gave Copy Co. the money to buy the computers. If a creditor with a PMSI in equipment perfects within 20 days of the debtor taking delivery, it has superpriority and beats out all the other creditors with a security interest of the collateral, even if perfected before. Here, technology delivered the computers on June 1, and perfected by filing a financing statement on June 10, which was within 20 days. therefore it has superpriority. As noted earlier, the trustee was perfected on Dec 10.

Since technology has a PMSI superpriority, it has a superior interest to the bank and the trustee (although it filed before the latter so had a superior interest despite the superpriority).

3) Furniture inc has a superpriority in the work stations. The workstations are equipment. It gave value for the workstations to that the debtor could buy them. The debtor took delivery on November 28, and Furniture Inc. filed on December 15, which was within 20 days. Filing for bankruptcy does not terminate the ability of a creditor with PMSI status from filing to perfect and having a superior interest than the bankruptcy trustee. Therefore, Furniture has a superior interest to the bankruptcy trustee and the bank, although they perfected first, due to its superpriority status. Its security interest was given within 90 days of the bankruptcy, however it is not avoidable as a preference because it was taken contemporaneously with the value given (the workstations). There is a 30 day grace period between attachment and filing. So, even though it didn't file until a few days later, it is considered contemporaneous.

4) The bank has a superior interest in the accounts receivable. As mentioned earlier, the bank perfected its security interest in the accounts receivable on May 2, 2011. Technology also has an interest in the accounts receivable. Technology perfected this interest on June 10, 2011. However, Technology's interest in the accounts receivable are not considered a PMSI, as they did not lend the debtor the money to purchase the accounts receivable. Hence, its interest in the accounts receivable do not get superpriority. Since the bank was the first in time to file, it will have priority in the accounts receivable (and rights superior to the trustee, as described above).

5) The bankruptcy trustee has the superior interest in the stock. The bank had a perfected security interest in the stock, as it gave value for the stock in the form of extending the due date, and took possession of the security certificates. Perfection can also be obtained by taking possession of the collateral. However, since this took place within 90 days of the bankruptcy filing, the trustee will be able to avoid it under its avoidance power. The bank did not give value for the stock under the bankruptcy code, as extending the time is not value. Hence, it does not fall under any exception under
the bankruptcy code. Since it gave additional collateral to the bank, the bank will get more than it would get under a chap 7 liquidation, and hence is a preference.

Question 6 – UCC – July 2012 - Selected Answer 3

1) Bank has a superior interest in the copier. Because the copier is used in CopyCo's (Copy's) business, it is equipment under the UCC. Although Printers sold the copier on credit, Albert never signed a security agreement. Because attachment requires evidence of an agreement (by possession of the lender or a written authenticated document), Printers has no security interest in the copier. Bank will also claim an interest because it's security agreement specifically included equipment. Bank's financing statement was properly recorded, so it had a perfected interest. Between a perfected secured creditor and a general creditor with no security interest, Bank, the secured party, will always win.

2) Computers. The computers are also equipment of Copy's business. As such, Bank will claim that it's May 2, 2011 financing statement gives it a superior interest. However, Technology sold the computers on credit, creating a PMSI in the equipment. A PMSI holder can prevail against a previously recorded secured creditor if it records within 20 days of the debtor receiving the property. Because Technology recorded on June 10 (only 9 days after Copy received the computers), it has a superior interest. As such, it will prevail against Bank.

3) Workstations. Furniture has a superior interest in the workstations. The general rule of priority between 2 secured creditors is first to file or perfect. Because Bank filed first, it will claim a superior interest. However, Furniture will prevail because it perfected its PMSI within 20 days of Copy's getting delivery. Thus, it will prevail against bank even though Bank was a prior secured creditor.

4) Accounts receivables. Between Bank and Technology, Bank will win priority in the accounts receivables. First, Bank properly perfected its security interest by filing on May 2, 2011. Because Furniture didn't file until November 10, 2011 and because Technology didn't have a PMSI in the accounts, Bank had a superior interest. In a priority battle between 2 secured creditors, the general rule is first to file or perfect will prevail. Because there is no applicable PMSI exception here, Bank has a superior interest.

5) The trustee will have a superior right in Widget's stock. The trustee is the representative of all creditors of the bankruptcy estate. It has the power to undo preferential transfers that occur within 90 days of the bankruptcy filing if the debtor was insolvent when the transfer was made. Here, Copy granted Bank additional collateral on November 1. Because this was within the 90 days window and because the debtor had defaulted on his loan and was experiencing financial difficulty, the trustee will likely be able to set the transfer aside as a preference. As such, the Widget stock will be part of the bankruptcy estate. It will be distributed to creditors on a pro rata basis.