

Question 1 – February 2018 – Selected Answer 1

(1) (a)

Bank has the superior security interest in the savings account. The issue is whether Finance Co ever perfected its security interest in the Bank Account. Under the UCC to create a security interest the secured party must give value, the borrower must sign a security agreement describing the collateral (with some exceptions not relevant here) and the Borrower must have an interest in the collateral. Here, both bank and financeco created security interests in the savings account. Ann signed a security agreement describing the savings account for both bank and financeco. She had an interest in the account at the time she signed the security agreements. Bank Gave value in the form of a \$10,000 loan, and Finance Co gave value in the form of a 15,000 loan. Thus both parties have security interest in the savings account. Next we must consider whether either party is perfected. Under the Texas UCC the only way to perfect a security interest in a bank account is to have control of the account. Bank has control of the account because the account is at Bank. The fact that they did not file anything about the account is irrelevant. However, Financeco does not have control of the account. Therefore FinanceCo is not perfected. Under the Texas UCC when a perfected secured party vs. an unperfected secured party the perfected party has priority. Here only bank is perfected therefore it has priority.

(b)

FinanceCo has priority. Both bank and FinanceCo are perfected secured parties as to the clothing presser. Bank's security agreement for note 2, which they gave \$8,000 worth of value for described equipment now owned or thereafter acquired. This is permissible under the Texas UCC. Equipment is defined as goods used in a trade or business, the clothing presser is used in Ann's business therefore it is equipment. Thus, Bank has a valid security interest in the clothing presser. For the same reasons FinanceCo also has a security interest in the clothing presser. Further, Under the Texas UCC both parties perfected at one point. Under the Texas UCC a secured party may perfect an interest in equipment by filing a financing statement in the proper office. In this case, the Bank properly filed its financing statement according to New Mexico Law. FinanceCo properly perfected by filing its financing statement with the Texas Secretary of State which is the proper office for such a filing. However, the issue is whether the New Mexico Financing Statement remains effective after Ann moved from New Mexico to Texas. Under the Texas UCC the a financing statement in New Mexico was sufficient to maintain Bank's perfection in the clothing presser for four months after which in order to maintain perfection Bank would have had to file a financing statement in the state of Texas. It does not appear that they did. Had they the issue would be governed by the first to file or perfect rule under which Bank would have priority because their "filing/perfection" date for purposes of the rule would have been the date they perfected in New Mexico. However, because they did not they are unperfected as of Jan. 1, 2017. Therefore, FinanceCo has priority as a perfected party vs. an unperfected party as discussed above.

(c)

Bank has priority. The issue is whether FinanceCo has a valid security interest in the display cases. Bank has a valid security interest in the display cases via the after acquired property clause included in their security agreement. The Texas UCC recognizes the enforceability of these provisions. Thus, the Bank's security interest automatically attached to the display cases at the time Ann gained an interest in the display cases. On the other hand, FinanceCo's security agreement merely applied to "existing business equipment." At the time the security agreement was executed Ann did not own the display cases. Thus, she did not have an interest in which the security agreement could attach. Therefore, FinanceCo is not a secured party as to the display cases. In the case of a secured party vs. an unsecured creditor the secured party prevails under the UCC. Because Bank has a security interest in the display case and FinanceCo does not, Bank has the superior interest.

Question 1 – February 2018 – Selected Answer 2

(1) The savings account:

Bank has the superior interest in the savings account. At issue is which party has a superior security interest in a savings account between two secured creditors when one creditor has control. Under the Texas Business and Commerce Code, deposit accounts can be perfected by control. In fact, that is the only way deposit accounts can be perfected. Between secured creditors, the creditor who has control over the deposit account has priority over one who does not.

Here, the savings account that Ann had at Bank is a deposit account. Bank's security interest attached in June 2015 when Ann signed the promissory note and security interest because she did so for value and had rights in the account. Bank's security interest in the account also perfected in June 2015 because the account was at Bank, giving Bank control of the deposit account. Since the Bank perfected by control, the fact it did not file a financing statement is irrelevant.

FinanceCo, on the other hand, obtained a security interest in the account on April 1, 2016, when Ann signed a promissory note and security agreement giving FinanceCo a security interest in the account and her existing equipment. FinanceCo's security interest also attached on that date because the agreement was signed, Ann took for value, and FinanceCo had rights in the account. But, FinanceCo's attempt to perfect its security interest in the account had no effect because deposit accounts can only be perfected by control. Further, even if deposit accounts could be perfected by filing, a security interest perfected by control takes priority over one taken by filing. Thus, Bank has the superior interest. The fact the account is in New Mexico does not give FinanceCo a superior interest because location is determined by the collateral's location.

(2) The clothes presser:

FinanceCo has the superior interest in the clothes presser. At issue is the effect that a move by the debtor has on security interests. When a debtor moves with the collateral, a creditor's

security interest in the previous state remains perfected for four months without having to refile. After four months, the creditor must refile.

Here, Bank obtained a security interest in the clothing presser in July 2015. The clothing presser is equipment because it is not consumer goods, inventory, or farm products. Ann signed a promissory note and security agreement granting Bank a security interest in "all business equipment then owned or thereafter acquired by her." The after-acquired clause, or "floating lien" is valid and gives Bank a security interest in the clothing presser. Bank's interest perfected on July 15, 2015 when filing.

FinanceCo obtained a security interest in the clothing presser the same time it obtained the security interest in the savings account--on April 2, 2016 when it filed. FinanceCo's security interest was for Ann's "existing business equipment," and Ann already owned the presser. Thus, FinanceCo's interest perfected on that date.

Ann moved on February 1, 2016 and notified Bank. Accordingly, Bank's security interest remained perfected until June 1, 2016 without Bank having to refile. Bank did not refile. In a dispute between a perfected security interest and an unperfected security interest, the perfected creditor has priority. Thus, on January 1, 2017, FinanceCo had the superior interest.

(3) The display cases:

Bank has the superior security interest in the display cases. At issue is who has a superior interest after a move when one security agreement does not cover the collateral. Here, as demonstrated above, Bank has a security interest in after-acquired equipment, which covers the display cases, which is equipment because it is not consumer goods, farm products, or inventory. But, Bank's security interest is not perfected because it has not refiled and Ann has been out of the state for four months as of January 1, 2017.

But, FinanceCo does not even have a security interest in the display cases. FinanceCo's security interest covers "existing business equipment." Here, the facts indicate that Ann purchased the display cases after she received the funds from FinanceCo and gave it the security interest. If FinanceCo had used a floating lien like Bank, then it would have priority. But, between an unperfected creditor and a creditor with no interest in the collateral, the unperfected creditor prevails. Accordingly, Bank has priority.