Question MEE 4 – February 2023 – Selected Answer 1

<u>Question 1</u>

The issue is whether the the furniture store's security interest was perfected without filing a filing statement on the couch.

Under Article 9 of the UCC a secured creditor must have a valid security interest. A security interest requires that there be value given between the creditor and debtor, the debtor has rights in the collateral, and that there is a valid security agreement between the parties. A valid security agreement requires that the agreement be authenticated, that the parties intended to enter into a security agreement, and that the collateral be sufficiently described in the agreement. Once a secured creditor has a valid security interest in a piece of collateral it may perfect that security interest in many different ways such as filing a filing statement.

Here, the furniture store has what is known as a purchase money security interest in the couch sold to the lawyer. The store provided the couch and the lawyer provided a security interest and promise to pay so value was given between the two. Even though the lawyer purchased the couch on credit, he is still the owner of the couch and therefore he has value in the collateral. Finally, the lawyer authenticated the security agreement by signing it, the agreement described the couch by its model number, and there appears to be a clear intent to enter into this security agreement. Therefore the store has a PMSI because there is a valid security interest that arose from the store providing the financing to purchase the collateral with the security interest.

The store did not, however, file a financing statement with the central filing office in state X. Without doing so, the store could only perfect its security interest by taking possession of the couch. However, because the store did neither, it currently has an unperfected purchase money security interest in the couch.

Therefore, the state X furniture store has an enforceable security interest in the couch, but that interest is not perfected. As such, the furniture store may resposses the couch but if a priority battle arises over the couch, the furniture would lose if another secured creditor had a perfected interest in the couch.

<u>Question 2</u>

The issue is whether there is a valid security agreement between the furniture store and the lawyer for the table.

Under Article 9 of the UCC a secured creditor must have a valid security interest. A security interest requires that there be value given between the creditor and debtor, the debtor has rights in the collateral, and that there is a valid security agreement between the parties. A valid security agreement requires that the agreement be authenticated, that the parties intended to enter into a security agreement, and that the collateral be sufficiently described in the agreement. Article 9 provides that a security agreement need not be explicitly named a security agreement.

Here, the furniture store provided a table and the lawyer provided a security interest and promise to pay so value was given between both of them. Even though the store said they retained title to the table until it was payed off, the clear intent of the agreement was that the store was maintining a security interest in the table as a way to gurantee payment. Therefore, even though this is not specifically stated to be a security agreement, the courts will interpret it as such. Therefore, the lawyer owns the table and therefore has value in the collateral. Finally the security agreement was signed, decribed the table, and showed an intent that the store maintained a security interest in the table.

Again, because the table was purchased using money financed from the store, the store had a purchase money security interest in the table. The big difference between the table and the couch was that the table was to be used for personal use at the lawyers home rather than for his work. Because the table was to be used for household purposes, it is a consumer good. A PMSI in consumer goods are automatically perfected.

Therefore, the state C furniture had an enforceable and perfected purchase money security interest in the table at the lawyer's house.

<u>Question 3</u>
The issue is whether the furniture store's filing of the filing statement in state Y was sufficient to create a perfected security interest against the lawyer.

Under Article 9 of the UCC a filing statement must be filed in the central filing office of the state in which the debtor lives.

Here, as with the other items from the State X store, the state Y store has a valid security interest in the desk. The store gave the desk and the lawyer gave a security interest and promise to pay so value was given between the two. The lawyer owned the desk so he has rights in the collateral. Finally there was a valid security agreement signed by the lawyer, describing the desk, and clearly indicating an intent for this to be a security agreement. Furthermore, because the store financed the money to purchase the collateral, this is a purchase money security interest in the desk.

Now it is without question that the filing statement is insufficient to perfect the security interest because it was filed in the wrong state. The point of filing a filing statement and perfect is to give notice to all other creditors that there is a security interest in a piece of collateral. To file a filing statement in any state other than where the debtor lives would do very little to accomplish that goal. Therefore the filing statement is certainly insufficent to perfect.

The question is whether the desk is considered consumer good or equipment. While the desk was delivered to the lawyer's parent's house which suggest it is for household purposes, the facts also show that the desk was used exclusively for work purposes. If a court determined that this was a consumer good then it would be a PMSI in consumer goods that was automatically perfected. If a court determines that this is equipment used for work, then the PMSI would be unperfected due to the insufficient filing statement.

Therefore, this issue will turn on whether the desk is a consumer good or equipment. Because it is used only for work it is likely to be seen as equipment and therefore the PMSI is unperfected.

Question MEE 4 – February 2023 – Selected Answer 2

1. Does the State X furniture store have an enforceable and perfected security interest in the couch used by the lawyer in her office waiting room in State X? Explain.

The couch used in the lawyer's office would be classified as equipment. Collateral is classified according to its intended use by the debtor. Here, the attorney intended to use the couch in the seating area of her business,

A security interest in personal property becomes enforceable once it has attached. For attachment to occur, the creditor must give some value, the debtor must have rights in the collateral, and a security agreement containing a proper description of the collateral must be authenticated by the debtor. A proper description is one that allows for the collateral to be properly identified.

Here, the store extended credit to the lawyer to purchase the couch, which she then was entitled to use as collateral. The store produced an agreement that properly described the couch by manufacturer and model number so it would be easily identifiable, so State X furniture store does have an enforceable security interest

When a seller of consumer goods provides the money (financing) to the debtor with which to purchase the collateral, the creditor then has a PMSI - a purchase money security interest. A purchase money security interest in consumer goods is automatically perfected without the need for filing additional documents. Consumer goods are personal property mainly for personal or household use.

Here, State X furniture store does have a PMSI with regards to the couch, but the couch is being used by the lawyer in her office, and it is therefore classified as equipment. A PMSI in equipment can be perfected by filing a financing statement, but the store failed to do so and here automatic perfection does not apply. Therefore, the store does not have a perfected security interest in the couch.

2. Does the State X furniture store have an enforceable and perfected security interest in the table used by the lawyer in her dining room in state X? Explain.

The table being used by the lawyer in the dining room is classified as a consumer good because the lawyer has acquired it for personal use at home. As mentioned above, a PMSI in consumer goods is automatically perfected. A title retention clause does not actually reserve title to the collateral to the creditor. Instead, it creates a security interest in the collateral, but the debtor is the one that has title.

Here, the store sold the table to the lawyer by financing the table, and the lawyer signed an agreement providing the proper description of the collateral by manufacturer and model number. The store has a PMSI in a consumer good, which is automatically perfected. Even if the security interest in the table had not been automatically perfected, the store would still have an enforceable and perfected security interest in the table because of the title retention clause included in the sales agreement.

3. Does the State Y furniture store have an enforceable and perfected security interest in the desk used by the lawyer in her office in State Y? Explain.

The desk used by the lawyer at her parents' home is classified as equipment. While the desk is being used at her parents' home, it is still being used for business purposes, so it would not be classified as a consumer good.

A security interest that has attached can be perfected by: filing a financing statement with the appropriate office (usually the Secretary of State); taking possession of the collateral; acquiring control over the collateral; or by title. The appropriate office in which to file the financing statement is where the debtor is domiciled.

Here, the store in State Y does have an enforceable security interest but it is not perfected. The security interest has attached, because the lawyer purchased the desk on credit (creditor gave value), she now has rights in the collateral, and she has signed an agreement granting the store a security interest. Despite having filed a financing statement, the store in State Y filed the financing statement in State Y - not in State X. A financing statement that is not filed in the appropriate office is not effective in perfecting a security interest. Therefore, the security interest in the desk is not perfected.

Question MEE 4 – February 2023 – Selected Answer 3

STATE X FURNITURE STORE'S SECURITY INTEREST IN THE COUCH

State X Furniture Store has an enforceable, but unperfected PMSI in the lawyer's couch because they have not taken any sufficient action to perfect their interest in the lawyer's equipment.

A purchase money security interest (PMSI) is created when the debtor purchases the collateral on credit extended by the seller. The PMSI is enforceable as between the creditor and the debtor upon attachment, which takes place when the following conditions are met:

- The parties enter into a security agreement, which they memorialize in an authenticated writing that sufficiently describes the collateral;
- *Satisfied here by the "Credit Sales Agreement," entered into and signed by the Debtor and an authorized agent of the Creditor.*
- The debtor has rights in the collateral; and
- *Satisfied by the lawyer's purchase of the couch.*
- The creditor gives value in exchange for a security interest in the collateral.
- *Satisfied by the store's provision of the financing used to purchase the couch.*

The PMSI in this instance is not perfected because it is a PMSI in equipment that has not been perfect by any of the acceptable means of perfection. The couch constitutes equipment because it is used in the course of the lawyer's business, not for the lawyer's personal use. This complicates the issue of perfection because, unlike a PMSI in consumer goods, a PMSI in equipment does not automatically perfect. When a PMSI is created in equipment, the creditor may perfect their interest by filing a UCC-1 financing statement, putting a notation on the certificate of title issued by the state (for a vehicle), or maintaining possession of the collateral. Here, the furniture company has not taken any of those steps; thus, while their security interest is enforceable against the debtor because it has attached, it is not subject to the protections afforded to a perfected security interest.

STATE X FURNITURE STORE'S SECURITY INTEREST IN THE TABLE

State X Furniture Store has an enforceable, perfected PMSI in the lawyer's table. As previously discussed, a purchase money security interest (PMSI) is created when the debtor purchases the collateral on credit extended by the seller. The PMSI is enforceable as between the creditor and the debtor upon attachment, which takes place when the following conditions are met:

- The parties enter into a security agreement, which they memorialize in an authenticated writing that sufficiently describes the collateral;
- *Satisfied here by the agreement entered into and signed by the Debtor and an authorized agent of the Creditor.*
- The debtor has rights in the collateral; and
- *Satisfied by the lawyer's purchase of the table.*
- The creditor gives value in exchange for a security interest in the collateral.
- *Satisfied by the store's provision of the financing used to purchase the table.*

The issue of the debtor's rights in the collateral may seem to be complicated by the provision that the store has retained title to the table; however, the fact that title has not yet passed to the Debtor does not negate the fact that the Debtor has some rights in the collateral--namely, the right to use. As of attachment of the store's interest, the store may enforce their rights upon default by revoking the Debtor's right to use through repossession. The Debtor has sufficient rights to leave available some remedy for the Creditor; thus, the attachment is valid.

Since the table was bought for personal use, it falls under the definition of consumer goods--that is, moveable goods owned for personal and family use as opposed to commercial use. As mentioned above, a PMSI in consumer goods is automatically perfected upon attachment; thus, the store has an enforceable, perfected PMSI in the lawyer's table.

STATE Y FURNITURE STORE'S SECURITY INTEREST IN THE DESK

The State Y Store has an enforceable PMSI in the lawyer's desk that is unperfected due to the fact that the financing statement was not filed in the Debtor's home state.

To reiterate, a purchase money security interest (PMSI) is created when the debtor purchases the collateral on credit extended by the seller. The PMSI is enforceable as between the creditor and the debtor upon attachment, which takes place when the following conditions are met:

- The parties enter into a security agreement, which they memorialize in an authenticated writing that sufficiently describes the collateral;
- *Satisfied here by the agreement entered into and signed by the Debtor, as the party to be bound.*
- The debtor has rights in the collateral; and
- *Satisfied by the lawyer's purchase of the desk.*
- The creditor gives value in exchange for a security interest in the collateral.
- *Satisfied by the store's provision of the financing used to purchase the desk.*

The State Y Store's PMSI is an unperfected interest in equipment because, while the store filed a UCC-1 financing statement with the appropriate filing office for State Y, they do not have a financing statement on file in the Debtor's home state.

The proper state where a financing statement shall be filed is dictated by the nature of the collateral. For fixtures and accessions, the financing statement must be filed in the state where the real property containing the fixtures is located. However, due to the moveable nature of personal property that is not a fixture or accession, the Debtor's home state is the appropriate place to file the applicable financing statement for non-fixtures. Here, although the Debtor conducts business in State Y and uses the desk in State Y, she is still a domiciled resident of State X; thus, State X is the appropriate state for filing a financing statement. By failing to file the financing statement in State X, the State Y Store retains an enforceable, but unperfected PMSI in the lawyer's desk.