

EXAMINERS' ANALYSIS OF QUESTION NO. 14

1. Did Sally Dexter have a security interest in the television and was it perfected?

a. Is there a security interest in the TV? Article 9 of the Uniform Commercial Code applies to security interests in consumer goods. A security interest is a legal claim on collateral that has been pledged, usually to obtain a loan. MCL 440.1201(2)(ii). For a security interest to exist there must be a secured party (the lender of credit) and a debtor (the borrower). There also must be collateral, which is property in which the debtor has an interest, and which is subject to the security interest of the secured party. MCL 440.9102(1). A consumer good is a good that is used or bought for personal, family or household use. MCL 440.9102(1)(w).

Here, Sally and Jane entered into an agreement where Sally agreed to loan Jane \$2,500. Sally is the lender and Jane is the debtor. The Sharp Smart HDTV is the collateral. The facts indicate that Jane borrowed the money from Sally and purchased the television on February 1, 2013.

After the purchase, Jane had an interest in the television, which was to be used in her home and which therefore qualifies as a consumer good. Thus, there is a security interest in a consumer good (the television).

b. Was the security interest perfected? A security interest is not enforceable unless it has attached. There are three requirements that must be met in order for attachment to occur. The three requirements can occur in any order but they must coexist before the security interest attaches.

(1) The parties must have an agreement that is **written, signed by the debtor** and contains a **description of the property**. MCL 440.9203(2)(c)(i). Here, Sally and Jane entered into a written agreement. It was signed by Jane, the debtor, and the television was identified as a Sharp 70 inch Smart HGTV. The description of the property need only reasonably identify the property. MCL

440.9108(1). The description provided the brand name, size and the type of television. This is sufficient. Therefore, there is a valid agreement.

(2) There must be value given. MCL 440.9203(2)(a). Here Sally gave Jane \$2,500 to purchase the television. This element is met.

(3) The debtor must have rights in the collateral. MCL 440.9203(2)(b). This means that the debtor must have some ownership interest in the property. Here, Jane bought the television on February 1, 2013, from TV, Inc. TV, Inc. transferred its ownership rights to Jane upon the sale. Therefore, Jane had an interest in the TV and this element is met.

All three elements are satisfied, therefore the security interest attached and Sally's security interest in the television are established.

In order to acquire maximum priority over other parties who have rights in the collateral though, the secured party (Sally), must also perfect the security interest. Generally, this involves filing a financing statement in the appropriate state or county office. However certain transactions are perfected by attachment without taking any additional steps. A purchase-money security interest (PMSI) in consumer goods is a qualifying transaction. MCL 440.9309(a). A PMSI in consumer goods can be given to a person other than the seller when the security interest is taken to secure the giving of value (money) to the debtor to enable him to purchase (acquire rights in) the collateral, if the debtor actually uses the money to acquire the collateral. MCL 440.9103(2)(a). Here, Sally gave Jane money specifically to allow her to purchase the Sharp Smart HDTV. Jane purchased the television. The security agreement reflects this precise transaction. Therefore, Sally has a PMSI and her security interest is perfected.

2. Did Neighborhood Bank have a security interest in the computer equipment and, if so, was it perfected?

a. Here the facts indicate that Neighborhood Bank had a valid security interest in Jane's computer equipment.

b. Was it perfected?

(1) As mentioned previously, the security interest must first attach to the collateral. In order to attach, there must be an agreement, value given and the debtor has to have rights in the collateral. Here, there was an agreement that was written and signed by Jane, the debtor. There was a reasonable description of the property in that the agreement pertains to all of Jane Dexter's computer equipment. The bank gave \$50,000 to Jane. So value was given. Lastly, Jane had rights in the computer equipment because she was the owner of the equipment.

(2) Next, did Neighborhood Bank perfect its interest in the computer equipment? A financing statement must be filed to perfect all security interests unless the Code provides an exception. MCL 440.9310(1). Here the facts indicate that on April 18, 2014, Neighborhood Bank filed a financing statement in the appropriate governmental office. Therefore, Neighborhood Bank's security interest was perfected on that date.

3. Who has the superior claim with regard to the television and the computer equipment?

(a) Television (Sally v Judgment Lien Creditor): "A security interest is subordinate to the rights of . . . a person that becomes a lien creditor before . . . the time the security interest is perfected." MCL 440.9317(1)(b)(i). A PMSI in consumer goods is perfected automatically without filing. The facts indicate that Sally earned a perfected PMSI on February 1, 2013. The judgment lien creditor's levy was not authorized until April 10, 2014. Sally perfected first and did not need to file. Therefore, she has priority over the judgment lien creditor with regard to the television.

(b) Computer equipment (Neighborhood Bank v Judgment Lien Creditor): An unperfected security interest is subordinate to the rights of a person who becomes a lien creditor before the security interest is perfected. MCL 440.9317(1)(b)(i). Here the judgment lien creditor was given authority to levy on Jane's property on April 10, 2014. Neighborhood Bank perfected its security interest on April 18, 2014. Neighborhood Bank's

security interest is subordinate to the rights of the judgment lien creditor because the judgment lien creditor's rights were actionable on April 10, 2014, 8 days prior to when Neighborhood Bank filed its financing statement. Therefore, the judgment lien creditor has priority over the computer equipment.