

EXAMINERS' ANALYSIS OF QUESTION NO. 4

This UCC Article 9 Secured Transactions question primarily tests whether the examinee can recognize a Purchase Money Security Interest (PMSI), make a distinction among different PMSIs, and correctly determine the priority of competing security interests.

Article 9 of the UCC applies here because the three loans created security interests in Jamie's personal property (computer and/or conference table). MCL 440.9109(1) (a).

A security interest must attach to be enforceable. MCL 440.9203(1). Attachment occurs where: value has been given; the debtor has rights in collateral; the debtor grants the creditor security in the collateral; and, the parties sign a security agreement reasonably describing the collateral. MCL 440.9203(2). The question is designed such that the examinee should conclude attachment occurred with respect to each loan.

A security interest should be perfected. MCL 440.9308. Perfection can occur by filing a financing statement with the appropriate governmental agency, usually the Secretary of State. MCL 440.9501(1); MCL 440.9310. But, in some cases no financing statement need be filed because perfection is automatic upon attachment. MCL 440.9309.

Who perfected and when is the primary focus of the question. Priority will rest with the party who perfects or files first. MCL 440.9322 (1) (a).

A PMSI in consumer goods is automatically perfected upon attachment. MCL 440.9309(a). A PMSI is a particular type of secured interest, a security interest taken in a particular good to secure the purchase price of that good. MCL 440.9103. There is no PMSI automatic perfection for non-consumer goods, such as equipment. Instead, a financing statement is to be filed to perfect the security interest.

COMPUTER: Applying these rules here, Mike has first priority with respect to the computer. He has a PMSI in the computer. He loaned Jamie money to buy a specific computer; she used the money to buy it; she had granted him a security interest in her computer; their understanding was committed to a

signed agreement describing the collateral; and, she took immediate possession. The computer was for Jamie's "personal use." It was therefore a consumer good. A "consumer good" is a good used or bought "primarily for personal, family, or household purposes." MCL 440.9102(1)(w). Being a consumer good, Mike's PMSI perfected automatically upon attachment. The fact he did not file a financing statement does not matter.

Local Financing also has a perfected security interest in the computer. Its interest attached under the above attachment criteria and the company perfected by properly filing a financial statement. But, the financing company's interest is subordinate to Mike's automatically perfected PMSI in a consumer good.

CONFERENCE TABLE: Local Financing has priority with respect to the conference table. Office Supply has a PMSI in the table, but it was not perfected. Office Supply loaned Jamie money to buy it, she used the money to buy the table and granted Office Supply a security interest in the table. Their agreement was committed to a signed agreement identifying the table, and Jamie took possession. Unlike Mike's PMSI, however, Office Supply's PMSI did not perfect automatically. The table should be considered equipment for Jamie's business office, not a consumer good. "Equipment" means "goods other than inventory, farm products, or consumer goods." MCL 440.9102 (1)(gg). Jamie did not buy or use the large conference table for personal, family or household use, but instead for business use. MCL 440.9102(1)(w). Because there is no automatic perfection for equipment, Office Supply needed to file a financing statement to perfect, and they did not. Local Financing did perfect their security interest by filing an appropriate Financing Statement. Therefore, it has first priority.