

ANSWER TO QUESTION NO. 5

The examinee should conclude that the question implicates Article 9 of the Uniform Commercial Code. MCL 440.9109(1)(a). The Article applies to all transactions, regardless of form, that create a security interest in personal property (not real property) or fixtures by contract. The issue posed by this question is whether ABC has a purchase money security interest in the "A-Type batteries," that is superior to that of Bank A.

(1) ABC must establish under MCL 440.9103(2) that it has a purchase-money security interest in the "A-Type batteries." That section provides:

"(2) A security interest in goods is a purchase-money security interest to the following extent, as applicable:

"(a) To the extent that the goods are purchase-money collateral with respect to that security interest.

"(b) If the security interest is in inventory that is or was purchase-money collateral, also to the extent that the security interest secures a purchase-money obligation incurred with respect to other inventory in which the secured party holds or held a purchase-money security interest."

Further, a "Purchase-money obligation" "means an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used." MCL 440.9103(1) (b).

ABC can establish that the "A-Type batteries" are subject to a \$20,000 purchase money security interest. DD used the line of credit extended by ABC to purchase \$20,000 of the "A-Type batteries" and ABC has a purchase money security interest to the extent of that collateral, the "A-Type batteries." There are no facts suggesting that DD had previously purchased goods in its inventory from ABC from which ABC could claim a purchase money security in that inventory as well. Thus, ABC can establish that the "A-Type batteries" are subject to a \$20,000 purchase money security interest.

(2) Assuming ABC has a purchase-money security interest, the examinee should attempt to classify the "A-Type batteries." The "A-Type batteries" are likely considered "'[i]nventory' [which] means goods, other than farm products . . . held by a person for

sale or lease or to be furnished under a contract of service." MCL 440.9102(vv) and (ii). The "A-Type batteries" are clearly "goods" under MCL 440.9102(1) (rr). Even though the "A-Type batteries" are ultimately intended for consumer use, "[c]onsumer goods" means goods that are *used or bought for use* primarily for personal, family, or household purposes." MCL 440.9102(w). As the question indicates, while the eventual purpose of the goods is for personal, family, or household purposes, DD's purpose for purchasing the goods better reflects that they would be considered "held for sale" and thus "inventory." MCL 440.9102(vv) and (ii). As an example cited in White and Summers 6th, §31.6 at 157, equipment held by a dealer for resale was held to be inventory rather than consumer goods. The examinee should attempt to distinguish between the eventual purpose of the goods and DD's use of the "A-Type batteries" under which ABC is asserting its security interest, and conclude that the goods purchased from ABC were intended for resale and are thus properly considered inventory.

Because "A-Type batteries" are inventory, ABC's security interest in the "A-Type" batteries is in conflict with Bank A's earlier filed security interest in DD's entire inventory. ABC will argue that it has a purchase money security interest in the "A-Type batteries" under MCL 440.9324, which provides that "a perfected purchase-money security interest in inventory has priority over a conflicting security interest in the same inventory" if:

"(a) The purchase-money security interest is perfected when the debtor receives possession of the inventory.

"(b) The purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest.

"(c) The holder of the conflicting security interest receives the notification within 5 years before the debtor receives possession of the inventory.

"(d) The notification states that the person sending the notification has or expects to acquire a purchase-money security interest in inventory of the debtor and describes the inventory." MCL 440.9324(2).

The answer should reflect that establishing a security interest in inventory, as opposed to consumer goods, has the above additional statutory requirements. MCL 440.9324(1). The facts of the question generally reflect that ABC established the above requirements for the "A-Type batteries."