EXAMINERS' ANALYSIS OF QUESTION NO. 11

The Uniform Commercial Code (UCC) governs this question, specifically Article 9 of the UCC. This UCC article applies because the controversy involves secured transactions in personal property or goods. MCL 440.9109(1) (a). Personal property or goods become collateral when subject to a security interest. MCL 440.9102(1) (1). A security interest is a legal claim on collateral which secures payment or performance of an obligation. MCL 440.1201(2) (ii). A security interest must attach to be enforceable. MCL 440.9203 (1). Here, the security interests attached under the facts and attachment is not at issue.

With respect to the first question, SBS has an unperfected purchase money security interest (PMSI) in the credit card machine. A PMSI is a particular type of secured interest, a security interest taken in a specific good to secure the purchase price of that good. MCL 440.9103. The credit card machine would be considered "equipment" used in JJ's business. MCL 440.9102(1) (gg). Here, JJ gave and SBS took a security interest in the equipment. Security interests should be perfected to provide notice to others and to preserve rights against other creditors who may also have an interest in the good. MCL 440.9308. Perfection typically occurs via the filing of a financing statement with the appropriate governmental agency. MCL 440.9310; MCL 440.9501(1). Here, SBS did not file a financing statement. Therefore, the PMSI was not perfected. (If the credit card machine were a consumer good rather than equipment, then no filing of a financing statement would be necessary because a PMSI in consumer goods perfects automatically upon attachment. MCL 440.9309 [a]).

With respect to the second question, BF did obtain a security interest in the T-shirts JJ purchased with the loan money. The UCC allows security interests to be created in after acquired property, i.e., collateral the debtor does not own at the time of the agreement. MCL 440.9204. And, with inventory, such as the T-shirts, contractual language need not be explicit in describing the goods as inventory is expected to turn over.

With respect to the third question, a lien creditor is a creditor who acquires a lien through the judicial process, such as via attachment or levy. A judgment lien creditor (JLC) obtains priority if its lien is established before a security interest is perfected. On the other hand, a JLC is subordinate to a secured creditor who perfects its security interest before the lien is acquired. MCL 440.9317 (1) (b) (i). This reflects the general "first-in-time" rule. MCL 440.9322. Applying these principles, JLC has the superior claim to the credit card machine because SBS never perfected its security interest. And, BF has the superior claim to the T-shirt inventory because it did perfect its security interest by filing a financing statement prior to the lien.