<u>QUESTION 14</u> THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK V

Xavier has been a chef at various local restaurants his entire adult life. Xavier has decided to fulfill his lifelong dream of opening a restaurant--Xavier's Eats--in his hometown of Flint, Michigan.

Xavier is determined to succeed on his own. Xavier thinks he has a fair collection of culinary equipment that he has accumulated through his years as a chef. But, Xavier does not have an industrial stand-mixer, which he thinks he will need. While out scouting the area for a suitable rental location, Xavier happens to see a restaurant supply company--The Kitchen Company ("K Co")--which is advertising various items at bargain prices. Xavier decides to take advantage of the pricing and purchases a stand-mixer via a six-month financing plan offered by K Co. Xavier has just enough money to make the first payment on the stand-mixer and plans to make the future payments from his business income after he opens. Xavier proceeds with signing the documents that outline his purchase of the stand-mixer under K Co's financing terms. Xavier takes possession of the stand-mixer and continues to search for a suitable location for his restaurant.

Xavier soon finds a rental vacancy to his liking. Maintaining his goal of opening the restaurant alone, Xavier declines financial support offered by his family and friends, and, instead, opts for a general business loan with Flint First Finance Company ("F Co"). Xavier thinks that a $10,000 business loan should be just enough to pay his first month's rent and meet his food and bar stocking requirements. Xavier plans to make his loan payments to F Co with income from his business. Xavier signs the documents outlining the terms of his loan, with F Co claiming an interest in "any and all restaurant equipment, presently owned or hereafter acquired." Following execution of the loan documents, F Co files a proper Financing Statement with the Michigan Secretary of State.

Xavier's Eats opens in the ensuing weeks and initially appears to be a success. Its first two months of operation generate enough income to enable him to make his payments to K Co and F Co per his respective agreements with them. But, Xavier's Eats' success proves brief and illusory. Its food is unpopular, there is no repeat business, and business dramatically deteriorates. Xavier is forced to close Xavier's Eats before fully repaying the balance of what he owed to K Co for the stand-mixer or the $10,000 loan from F Co. K Co and F Co want satisfaction.

(1) Which of their interests has priority with respect to the stand-mixer? Explain your answer.

(2) Other than demand payment under the agreement, are there any other remedies under the UCC available to the party who has priority? If yes, identify and explain them. If not, why?

*******THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK V*******