

EXAMINERS' ANALYSIS OF QUESTION NO. 14

This factual scenario implicates Article 9 of the Uniform Commercial Code, which applies to all transactions that create a security interest in personal property. MCL 440.9109(1)(a). The restaurant equipment identified in the question, including the stand-mixer, are "goods" identified in the personal property categories. MCL 440.9102(1)(rr).

With respect to the relative interests of the parties, examinees might imply from the facts that K Co has a purchase money security interest. The general rule is that a perfected purchase money security interest has priority over a conflicting security interest in the same goods. MCL 440.9324(1). However, this rule would not apply here because any purchase money security interest held by K Co was unperfected. By contrast, the security interest of F Co was perfected. The applicable rule would give F Co priority as a perfected security interest over K Co. MCL 440.9322(1). More specifically, K Co may be considered to have a purchase money security interest because the value given to X enabled him to acquire the stand-mixer and he in fact so used the value given for that purchase. MCL 440.9103. The facts of the question do not suggest the stand-mixer can be characterized as a "consumer good" so as to result in automatic perfection of K Co's interest. And, the facts do not indicate that K Co filed a financing statement or otherwise perfected its security interest. Therefore, any purchase money security interest in the stand-mixer held by K Co is unperfected. On the other hand, the facts state that F Co properly filed a Financing Statement so as to perfect its security interest. MCL 440.9302.

An examinee might also conclude that F Co's interest is paramount on the basis that F Co does not have a security interest in the stand-mixer at all and merely has an unsecured extension of credit.

Besides demanding payment, after Xavier defaulted on his obligations, F Co had the statutory right under Article 9 to repossess the collateral pursuant to judicial process or via self help so long as they do not breach the peace. MCL 440.9609. Conflicting rights to possession are determined by Article 9's priority rules. MCL 440.9609, comment 5. Because F Co had priority under those rules as explained above, the right of repossession is in F Co. Once F Co repossesses the stand-mixer, F Co may then sell or otherwise dispose of it in a commercially

reasonable manner and apply the proceeds to the satisfaction of its obligations and any subordinate security interests such as K Co. MCL 440.9610; 440.9615.

Besides discussing the primary issues above, the examinee could be awarded points for also explaining that the security agreements reasonably identify the collateral in which a security interest is being claimed and are authenticated by Xavier. MCL 440.9108(1). The examinee may also be awarded points for discussing attachment, i.e., both K Co's and F Co's security interests properly attached because value was given, Xavier had rights in the collateral, and Xavier authenticated the security agreements that reasonably identified the collateral. MCL 440.9203(1) and (2). Attachment is a prerequisite to perfection (MCL 440.90302[1]); however, for purposes of discussing perfection and priority as is the call of the question, attachment may be assumed.