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Commercial Law II: Secured Transactions (May 1970)

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I. - 30 points

A made a loan of $50,000 to Better Bilt Mousetraps Inc. (BBM) pursuant to a security agreement which described collateral as follows: 2 semi-automatic Jensen boring machines, serial nos. 43728 and 43729 together with all other machinery of every kind now owned or hereafter acquired. This agreement and the collateral herein referred to will also be security for any further loans that A may make to BBM.

A financing statement was properly filed which omitted the underlined words and described the collateral in these words: 2 Jensen borers, model 1967

Actually these were Johnson boring machines, model 1967, and the correct serial numbers were 43738 and 43739. There were only two such machines in the plant.

60 days later A, being in need of funds, sold and assigned his right title and interest under the security agreement to X. By that time BBM was itself in need of further financing, and X loaned it an additional $50,000, with a memorandum signed by both parties showing that this was a supplemental loan under the original security agreement.

4 months later, Y, a manufacturer in another line of business, and desperately in need of boring machines, learned that BBM, in addition to the two machines described, had just bought and paid for a new machine. He offered BBM $175,000 for the three machines, which was a price so good BBM could not refuse. It accepted the cash, took the machines and gave him an unqualified bill of sale. Shortly thereafter BBM became insolvent; X learned of the sale and now seeks to recover the machines from Y who makes the following contentions:

1. As a buyer in ordinary course of business I am protected against security interests. **Wrong** 1-201-9; 9-307

2. I had no knowledge of the security interest; if I can show that the security interest was unperfected, then I will take priority even if I am not a buyer in ordinary course of business. **Right** 9-301(1) (c)

3. As to the first 2 boring machines the description in the security agreement and financing statement is so vague, inaccurate, inconsistent and misleading that it is invalid as notice to creditors, making the security interest therein unperfected. Reasonably identified to give rise to inquiry 9-110; 40-5-5; casebook 12-44. Only machines in plant. **Wrong** 9-302-2

4. X has no standing to claim the property because there was no filing as to his assignment from A who remains the creditor of record. **Wrong** 9-302-2

5. X has no security interest in the third machine because this is after-acquired property which was not mentioned in the financing statement. **Wrong** 9-302-2

6. If X has any claim, it is limited to the original $50,000 because the financing statement gave no notice of future advances. **Wrong** FS under 9-402 is to describe bilateral, not debt

Treat each of these as an independent defense; answer each number by the beginning word "Right" or "Wrong" and explain why on each.

Literally "Wrong" because X does have a security interest because the security agreement applies to the third machine. However Y is "Right" so far as effectiveness is concerned—the interest is unperfected in the 3rd machine. While A&P clause need not appear in FS where description is general ("contents" Firestone case 13-33) here the description is completely inelastic (limited to 2 machines)
Signed by Harry, Dick (as owner of collateral) Tom (to fix his liability). It will fix terms of loan, establish pledge and describe coll. FS need refer only to and be signed by Harry and Dick (no sec. int. is claimed vs. Tom). 9-203; ( 9-105 (d) as to debtors; 9-402 as to FS; 9-304 must file to perfect as to acts; also must file as to chattel paper because Dick must retain it to object collections. File (9-401 (1) (c) in State Corp. Comm and James City county. Mention proceeds in FS. Separate assessment of FS Cond. Sale Cont.

II. - 20 points from Dick to Harry advisable

Of three brothers, Tom, Dick and Harry, the rich one is Harry who is willing to help his brothers but on a strictly business basis.

Tom wants to borrow $10,000 from Harry to make a down payment on a home; Harry will make the loan only if Dick, a building contractor, will put up as collateral his total accounts receivable, which represent building work completed but not paid for. One account is that of A who owes $400; the other is that of B who owes $3,000. Harry will also require as collateral a note for $6000 which Dick owns, signed by C, secured by a conditional sale contract between Dick and C, in proper form, on a mobile home occupied by C. Dick is willing to put up these 3 assets as security for Harry's loan to Tom but he wants to retain all dealings with A, B and C, including collections, without disclosing to them the existence of the pledge arrangement.

All the parties are Virginians; Dick and Harry live in James City County and Dick's sole place of business is also there; neither Tom nor Harry is in business; Tom lives in York County. A, B and C live in Charles City County. Virginia filing places are governed by page 598 in your Code book. All blanks in that page should read "Clerk of the Court in which deeds are admitted to record"; also in the first line of (l)(c) change Secretary of State to State Corporation Commission.

For the purposes of this question, assume that the mobile home is personal property and is not a motor vehicle.

As Harry's lawyer:

1. What documents will you prepare and who should sign them? How will you describe the collateral? Where should any documents be filed? Tell why.

2. What further action, consistent with the indicated desire of the parties should be taken now to protect Harry's interests, or are they fully covered by what you have done? Stamp note of C and Cond sale cont. with notice of Harry's rights to cut off transfer under 9-308 or 309. Check for previous proper filings on contract between Dick and C to be sure Dick's III. - 20 points sec. int was perfected; this may or may not be a purchase money sec. int; whether or not using for $6000 it should be filed to cut off transfer under 9-304(3). FS and C also can file to cut off transfer under 9-304(2).

A. Discuss the interplay between Sections 9-204(3) and 9-108 of the Code, and Section 60 of the Bankruptcy Act regarding preferences.

"All"

B. Suppose that A on January 1 mortgages hydraulic presses for a $50,000 cash loan from C. The security agreement, containing the required information and signed by both parties is filed in all necessary state and county offices.

On the following October 1 A's loan is due and he cannot pay it. A and C join in an amendment to the security agreement adding an after-acquired property clause. This amendment is not filed anywhere. On October 15 A acquires another similar press and pays cash for it. December 15 A is declared bankrupt.

Will C's security interest in any or all of the presses have priority over the bankruptcy trustee? Discuss. Clearly prior as to first 2. SA, value, etc. It is also perfected as to FS. Value is antecedent debt. Amendment of SA is legally valid and there is no filing requirement. No amendment as to FS was filed as none is necessary. The filed description is of a "type of collateral" 9-402 and to notice that there may be one or fifty hydraulic presses. We need not be shown in FS (Firststone case 7-3). Nonthwithstanding perfection bankruptcy trustee will prevail -- the only value given goes back to Jan 1 and it was exhibited by the 2 presses for which it was given; the transfer of Oct 15 cannot relate back prior to Oct 1 on which date the "river" or "floating mass" was created.
A security agreement for a $100,000 loan was entered into between B Bank and C, and a financing statement was filed in the proper offices. Various collateral was listed in both including "$20,000 negotiable note signed by X Corp." and "proceeds of all collateral."

A week later the $20,000 note, which had been in the possession of B Bank was turned over to C on trust receipt so he could have it exchanged for a like note of Y Corp. which was successor to X Corp. in a merger. The next day, upon receiving the new note of Y Corp., instead of delivering it to B Bank C pledged it to D Bank in return for a loan of $15,000. C signed his own note for the $15,000 but there was no written security agreement and no filing.

(a) Did B Bank at any time have a perfected security interest as to the $20,000 note? Explain.
(b) Explain when, if ever, its security interest became unperfected.
(c) Did D Bank at any time acquire a perfected security interest in the Y Corp. note? Explain.
(d) Who has priority between B Bank and D Bank as to the Y Corp. note? Explain.

Michael Muscles, a blacksmith, goes shopping for an anvil at Durable Iron Works. He picks one out, paying $200 on account of the $700 price, with the oral understanding that he will try it out for 10 days; if satisfied he will keep it and sign a conditional sale contract; if not Durable will take it back and refund his deposit. Monthly payments, interest rate, maturity etc. were also orally agreed on.

"To save time," a financing statement is prepared meeting minimum Code requirements - names, addresses and signatures of both parties and a statement describing the anvil.

Within the 10 day period, Michael telephones to say he is happy with the anvil; Durable mails him a contract, and places the financing statement on file in the proper public office. Upon receipt of the contract, Michael is incensed to find in the fine print a provision for proceeds of all collateral.

Later events could solidify or change them.

1. Can prove attachment between B and C then:
   1. D has a perfected security interest, but it is unenforceable under Statutory Fraud provision of 9-203(1) (b)
   2. F has a perfected security interest for some reason, plus valid Statutory silence

2. F defaults as to F, xxxxxxxxxx who puts in bankruptcy, D's claim filed in Ct is disallowed as unenforceable so F is paid as holder of only valid interest in anvil? ??
3. F, instead, B and D can come to terms and sign a contract, B turns is perfected security interest will be enforceable and take priority over F under 9-312 (3) because of D's prior filing.

Note: It can be argued that by signing the financing statement B and D both conceded or agreed to "attachment" and "D's rights in collateral". However there is a case holding that a financing statement is not a security agreement, but some writers do not like the case. Both these attachment concepts are vague in the Code; clearly F has "rights" of some sort in the anvil.

He can deny possession to the whole world except B and F; he can acquire title anti to this $700 item by paying $500--that is a right.