1973

Secured Transactions: Final Examination (May 1973)

William & Mary Law School

SECURED TRANSACTIONS
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May, 1973
Final Examination

N O T E

A. This examination is given and will be graded under the Uniform Commercial Code 1972 Official Text; but any student may elect to have all his answers graded under the 1962 Official Text by so stating in his handwriting on the cover of his bluebook.

B. If in any question the place of filing (9-401) is material, use Third Alternative Subsection (1) on page 691 of 1972 text. Blanks in (a) and (c) should read "County Clerk"; the first line in (c) should include "Secretary of State".

I

15 Points

A has plans for borrowing $4000 from Heartless Finance on his sailboat. They have looked at it and have agreed to make the loan; however, A needs $1000 right now and his sailing companion B orally offers to lend him this amount for 20 days (pending the larger financing) provided A turns over possession of the boat to B as security. This arrangement is completed immediately without further formality.

Next week A signs a security agreement and financing statement with Heartless; their representative says "I want to see the boat", and A replies, "I let B take his wife and children for a sail - they should be back by suppertime." There is no disposition to wait and A gets his $4000. Heartless files the financing statement, covering the boat and proceeds.

B's repayment is now overdue; A appeals to their friendship, confesses that he borrowed the $4000 without disclosing B's loan and that Heartless has been threatening to rescind for fraud unless A shows up in possession of the boat. B consults a friend who is a student in Secured Transactions who has just received a mail order license to practice law in Tasmania. He draws up a financing statement and security agreement on the $1000 boat loan; these are signed by A and B and the financing statement is filed. B turns the boat back to A who totally wrecks it next day -- there is $3000 of applicable insurance payable to A. The insurer files interpleader naming A, B and Heartless and pays $3000 into Court. Discuss and decide the relative rights of B and Heartless in the collateral and in the $3000.

I I

~~12~~ 16 Points

Bank owns an installment purchase contract signed by Charles Crud as debtor, involving a high-speed electric typewriter costing $1300. Crud is a profit hungry and prolific producer of pornographic paperbacks, turning out on the average five per year. The contract has been properly filed in Tennessee where the bank is located and where Crud lived and worked in his home at the time the debt was created. The first and second monthly installments are past due and two letters addressed to Crud have come back marked "Moved-left no address." The Bank had no reason to think he would move away but now has a report that he and his typewriter are now located in Moose Bend, Wisconsin and are still turning out the literature.

Should Bank right now (1) do nothing; (2) seize the typewriter through a bill collector; (3) file something in Wisconsin (specify the document and signer or signers and filing place); (4) seek Crud's cooperation in signing something now to be filed somewhere; or, (5) file suit for the purchase price. Weigh these alternatives (state your evaluation very briefly on those alternatives you reject) and state your advice to Bank.

I I I

40 Points

Hapless was a home appliance dealer handling only General Electric ranges, refrigerators, vacuum cleaners and irons. He decided to expand and to concentrate on large appliances. On January 2 he borrowed $10,000 from Friendly Bank, signing a security agreement covering:

(1) Home appliances of every description, now owned or hereafter acquired;

(2) All chattel paper and accounts now existing or hereafter arising from whatever source derived.

On January 10 Friendly Bank filed the security agreement (which was in proper form) with the office required by 9-401.

While the above financing arrangements were under way, Hapless, who was both unscrupulous and inept, already had started with his plans to unload the irons and vacuum cleaners - he had contacted several dealers as prospective purchasers, but without success. Finally, in response to an ad in a trade journal, Sylvester Sharp, an operator of a "Bargain Barn" in a distant city, appeared at Hapless' store with his truck on January 8 and bought all the irons and vacuum cleaners for cash at a substantial loss to Hapless and took them away.

On January 20, Hapless contacted another financer, Granite Bank, and obtained a $17,000 loan under a security agreement specifically covering: (a) $2000 worth of power tools, hand tools, benches and other furnishings (bought from Dealers Supply Co.) for creating an appliance repair shop, to supplement his retail business; and (b) $15,000 worth of new washing machines and dryers bought from Whirlpool Corp.

On January 24, Granite Bank notified Friendly Bank, by writing duly received the same day, of its expectation of a purchase money security interest in the collateral described as above; on the 26th, Granite filed a financing statement and paid the two sellers direct for the property involved, which was delivered to Hapless on the 29th.

Hapless soon found that the idea of a repair shop was a mistake - he couldn't hire a competent repairman and had to refer his repair work to Sad Sam's Shop. The tools and furnishings he had paid $2000 for were worthless to him and he was glad to sell them to Sam for $1350 (a fair price).

Six months later, Hapless had sold off most of his stock, had acquired no further merchandise, still owed the banks, and was declared bankrupt. Assume there are no other creditors.

Analyze and explain the respective rights and priorities, if any, of Friendly Bank and Granite Bank in each of the following:

(1) The small appliances sold to Sylvester Sharp, or their value;

(2) The tools and furnishings sold to Sad Sam (all of which he still has);

(3) Unsold Whirlpool washers and dryers still held by Hapless;

(4) $500 accounts receivable in favor of Hapless which are traceable to sales of General Electric appliances; and

(5) $1000 accounts receivable in favor of Hapless traceable to sales of Whirlpool appliances.

I V

16
~~20~~ Points

County Bank made a loan to Ralph Ranger, who signed a "collateral note" prepared by the bank in which he promised to pay $30,000 on or before 6 months after date. The document further stated "the signer hereby pledges to County Bank as collateral, 800 head all grades and breed beef cattle located on the Ranger Ranch."

Next day a financing statement in due form was filed, describing the collateral as:

> "800 head all grades and breed beef cattle located on Ranger Ranch, and any increase thereof by birth or purchase. Proceeds of this collateral are also included."

Two months later, unforeseen expenses having occurred and the cattle being worth more, Ranger signs a new note with the bank for $40,000, the $30,000 note is cancelled and he receives $10,000 cash, part of which he uses to purchase 40 additional cattle which are transported to the ranch.

Now the note is past due; Ranger sells the 840 animals for $60,000 and disappears with the proceeds. Bank sues the purchaser who asserts the following defenses:

1. As a good faith purchase for value I take free of your security interest.

2. Your $40,000 debt is unsecured because no new financing statement was filed following the creation of the new debt of $40,000.

3. In any event, you have no interest in the 40 additional cattle or their proceeds.

Discuss and decide on each of these, considered independently.

V

13 Points

January 2. A loans $30,000 to B under a security agreement covering all machinery in A's factory now owned or hereafter acquired. The present equipment is valued at $40,000. There is a proper security agreement and financing statement filed today.

February 23. B buys and installs a $20,000 machine and A voluntarily increases the loan by $15,000.

April 5. B buys and installs another $20,000 machine. A says he can loan no additional money.

June 6. B becomes bankrupt. A claims all the equipment for security for his $45,000 loan. This is special purpose machinery and though it cost $80,000 there is no assurance that it will sell for more than $45,000. The Bankruptcy Trustee thinks he can prove most elements of preference in these transactions but to succeed he must prove them all. We are concerned only with the two that can give him trouble which are:

(1) Are the transfers within 4 months of bankruptcy?

(2) Are the transfers for or on account of an antecedent debt?

A. Comment briefly, in succession, on the trustee's attempt to set aside the transactions of January 2 and February 23. Decide each.

B. Discuss at greater length the status of the April 5 transaction, mentioning theories supporting A's claim or the trustee's claim, and decide.