Exam #

The following is a plan which determines the order and rights and of all creditors under the UCC.

1. Monitors

Security Interest in the Monitors

Before considering priority, it first must be determined which parties have a security interests in the monitors.

Under the facts, Inverness is a general financer and has taken a security interest in all present and after acquired inventory. Inverness has properly executed security agreement under 9-203 and has properly Filed under 9-310. As such Inverness has a properly perfected security interest.

In contrast, Silver Screen works has taken a security interests in all screens sold or that will sell to MM. Many of the monitors include SilverScreens, while other monitors don't.

While the facts state that Inverness has a security interest in the monitors, it is important to determine whether the SilverScreens are included in that interest or if the Silver Screen Company, maintains an interest in those screens.

Accessions

Under 9-102, an accessions are goods that are physically united with other goods in such a manner that the identity of the original goods is not lost, and regardless of the cost or difficulty of removing the accession from other goods. Under 9-335, a security interest may be created in an accession and continues in collateral that becomes an accession.

Here, under the facts that SilverScreens are inserted into the monitors. If the screens can be inserted into the monitors it seems that they can just as easily be removed.

Therefore, SliverScreens has an interest in the screens even thought they are installed in the monitors

Priority

Under 9-322(a)(1) conflicting perfected security interests rank according to priority in time of filing or perfection.

Under 9-324, a purchase money security interest will be prior to a secured creditor coming under 9-322(a)(1) if certain conditions are met. A purchase money secured creditor is a seller who sells the goods on credit and retains a security interest, or a lender who enables, or provides the money so the debtor can purchase the goods.

If the security interest is in Inventory, the security interest is perfected when the debtor receives the goods, but the creditor must provide notification to

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the other creditors of the inventory within 5 years prior to the debtor's possession.

Here the facts indicate that MM has an inventory consisting of large monitors. Because these are held out for sale they are likely to be considered inventory. Further, according to the facts, SilverScreens has sent timely notices to Inverness, so it will have priority in the screens installed in some of the monitors

However, even though Silver Screen Co. will have priority in the SilverScreens, Inverness will have priority in the monitors, including the MM screens placed inside certain monitors, since they are both considered inventory, and no other party has a valid security agreement covering inventory.

<u>FreeStanding Silver Screens</u>

As mentioned above, since Silver Screen CO, has likely satisfied the purchase money priority requirements of 9-324, it will likely have priority in the free-standing Silver Screens as they have clearly not been co-mingled.

<u>Used computer parts</u>

Under 9-315, a security interest in original collateral continues in any identifiable proceeds.

Inverness has a security interest in all of MM's inventory, and subsequent proceeds from that inventory. Here, the used computer parts appear to be proceeds as they were received by MM in exchange for inventory which Inverness had a security interest in. The computer parts also seem to be identifiable, assuming they have not been subsequently installed or merged together with different computer parts. As such, they don't seem to be commingled, and Inverness should maintain its interest in them as proceeds.

Moreover, some of the computer parts were merely returned, so they will remain inventory, and part of Inverness's security interest.

2. Cash

<u>Proceeds</u>

As mentioned, under, 9-315, a security interest in proceeds is a perfected security interest if the security interest of the original collateral was perfected. However, the proceeds must be identifiable. Cash Proceeds that are commingled with other property must be traced to be identifiable.

Under the facts, Al had a security interest in all of MM's accounts, and subsequent proceeds from the accounts. The cash from accounts maintained by MM was placed in a special deposit. Here the special deposit was used to pay different creditors. From this, it seems as though the cash was co-mingled, and is unidentifiable.

As such, even though Al has a security interest in accounts, it does not seem as though the proceeds form the accounts can be traced. Al therefore has lost his interest in the proceeds.

3. Conditional Sales contracts

Conditional Sales contracts come under article 9 of the UCC, as the sellers are deemed to have reserved a security interests. Under 9-203 a security interest is enforceable if value has been given, debtor has rights in the collateral, and either the debtor has authenticated a security agreement, or the collateral is in possession of the secured party.

Here, value is easily satisfied, as value can be past present or future, and since the contracts state that there are obligations to be paid, the value element is satisfied.

Further, the debtor's here are customers of MM, so it is assumed they have rights in the collateral as they have likely received product from MM.

Since it appears from the facts that there was no valid security agreement signed, MM must have possession of the collateral to satisfy the third requirement. Here, it appears that MM only has possession of the contracts. Contracts here are considered accounts because they are a right to repayment of a monetary obligation, and since they are accounts, they qualify as collateral.

Therefore, MM has created a valid security interest in the conditional sales contracts and will be secured as to these assets.

<u>Fixtures</u>

Fixtures are items of personal property that become permanently attached to real property. Security interests in fixtures must be filed at the recorder's office in the county where the real estate is located.

Here the facts indicate that MM has formed a conditional sale contract relating to fixtures. As mentioned above, Conditional Sales contracts are considered a security agreement and must comply with article 9. Assuming that MM did comply with article 9, priority in regards to the fixtures will depend on who filed first, MM or the banks.

Regarding the **Class A suppliers**, the facts indicate they have a lien. Under 9-317, lien creditors don't take priority over secured creditors. Therefore, during chapter 11 liquidation, lien creditors will be subordinate to all secured creditors above.

Regarding the **Class B suppliers**, they are general unsecured creditors and are in a difficult position as they will be behind the Class A suppliers in priority. They will only recover if there is a surplus left over after the secured creditors and lien creditors are paid

Regarding the **Banks** they have right to be informed the proceedings they secured creditor