

Commercial Law

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Problems: PPSA Registration and Priorities

Unless otherwise specified, all events take place in the order in which they are described. In order to avoid lengthy descriptions of irrelevant facts, you may assume that no issues are raised by facts which are not mentioned. For example, if a problem states that “a financing statement is registered” without specifying the collateral description or the names of the parties, you may assume that the parties are accurately identified and that description of the collateral in the financing statement encompasses the collateral as described in the security agreement. Unless otherwise stated, the loan is advanced when the security agreement is entered into. If there are different parts to a question, the facts described in the parts are independent: that is, if Part A says that the debtor went out of business, do *not* assume that the debtor has gone out of business in Part B unless it is specifically so stated in Part B.

In all cases, as well as providing the answer to the question, explain your answer with reference to the relevant section(s) of the PPSA.

Problem 1

SP1 enters into a security agreement with D in which D’s chair is collateral for a loan of \$1000. SP1 advances the \$1000. SP2 then enters into a security agreement with D in which D’s chair is collateral for a loan of \$500. SP2 advances the \$500. SP2 registers a financing statement relating to its agreement. SP1 registers a financing statement relating to its agreement.

Part A

D defaults. Who has priority?

Part B

Assume that D had told SP2 about the prior loan and security agreement with SP1 before SP2 had entered into the agreement with D. Otherwise the facts are the same. Is the result different?

Problem 2

SP1 enters into a security agreement with D in which D’s chair is collateral for a loan of \$1000. SP1 registers a financing statement describing the collateral as “D’s chair and couch.” SP2 enters into a security agreement with D in which D’s couch is collateral for a loan of \$2000. SP2 registers a financing statement describing the collateral as “D’s couch.” D defaults on both loans. As between SP1 & SP2 who has rights to the couch and chair and what are their priorities?

Problem 3

SP1 enters into a security agreement with D in which the collateral is described as “D’s red couch”. SP1 registers a financing statement to that effect and advances the loan. D does not own a red couch at the time the financing statement is registered. D then buys a red couch. Does SP1 have a valid security interest in the red couch?

Problem 4

SP1 and D enter into a security agreement in which D’s inventory is collateral for a loan of \$10,000. SP1 registers a financing statement to that effect and advances the money. D makes regular payments as scheduled and finally pays off the debt in full. D then approaches SP2 for a loan. SP2 agrees to lend \$5,000 with D’s inventory as collateral. SP2 registers a financing statement to that effect and advances the \$5,000. D then approaches SP1 for a new loan. SP1 enters into an agreement with D to lend \$1500 with D’s inventory as collateral, and advances that amount in full. D defaults on both its outstanding loans without having made any payments. What are the priorities as between SP1 and SP2?

Problem 5

SP1 and D enter into a security agreement in which D’s couch is used as collateral. SP1 registers a financing statement in which the collateral is described as D’s chair and couch. SP1 advances \$1,000. D approaches SP2 for a secured loan. SP2’s search of the Registry discloses SP1’s registered financing statement. SP2 requests D to have SP1 forward details of SP1’s security interest pursuant to s. 18. SP1’s reply states that the collateral is D’s couch. SP2 enters into a security agreement with D in which D’s chair is used as collateral and registers a financing statement accordingly. SP2 advances \$2,000. SP1 has D’s couch appraised and discovers that it is only worth \$500. SP1 insists that D agree to put up D’s chair as additional security. D does so and enters into an agreement with SP1 to that effect. D defaults. What are the priorities as between SP1 and SP2?

Problem 6

SP1 enters into a security agreement with D to lend \$10,000, with all D’s present and after-acquired personal property as collateral. SP1 advances the money. D approaches SP2 for a second loan. At the outset of the negotiations D tells SP2 of the existing agreement with SP1 and the associated outstanding secured debt. D explains that he is looking for a “second mortgage”. SP2 searches the registry and finds no financing statement registered against D. SP2 agrees to lend D \$5,000 and enters into a security agreement with D, taking all D’s present and after-acquired property as collateral. SP2 registers a financing statement accordingly. D defaults. What are the priorities as between SP1 and SP2? Would the answer have been different if SP1 had registered a financing statement after SP2 had registered, but before D’s default?

Problem 7

SP1 enters into a security agreement with D to lend \$10,000, with all D's present and after-acquired personal property as collateral. A financing statement is registered to that effect. The money is to be advanced in four equal monthly installments of \$2,500. After two months have passed and \$5,000 has been advanced D approaches SP2 for a second loan. SP2 searches the PPR and finds the prior registered financing statement. SP2 agrees to make a loan of \$3,000, taking all D's present and after-acquired property as collateral. SP2 registers a financing statement to that effect, advances the \$3,000 and informs SP1 in writing of the security agreement between SP2 and D and that the money has been advanced. SP1 nonetheless continues to advance the next two loan installments as scheduled. D defaults. What are the priorities as between SP1 and SP2?

Problem 8

Fred's Farm Equipment is a retailer of farm machinery. Fred's has about two dozen tractors in stock at any given time. Fred's business is financed by a secured line of credit from the Bank of Fredericton, with Fred's inventory as collateral. The financing statement describes the collateral as "inventory". It does *not* describe the collateral by the serial numbers of the tractors. Fred's seeks a subsequent loan from Miramichi Trustco. Fred agrees to use one of the tractors currently in stock as collateral. The Trustco registers a financing statement which describes the tractor in question by its serial number.

Part A

Fred's defaults on both its loans. Who has priority with respect to the tractor taken as collateral by the Trustco?

Part B

Before default, Fred's sells a tractor to Pamela. Pamela does not search the PPSA before making the purchase and is not aware of either security interest. Fred's then defaults. Can either the Boff or the Trustco seize the tractor in the hands of Pamela?

Problem 9

Fred is a farmer. He owns two tractors. His farming business is financed by a secured line of credit from the Bank of Fredericton, with Fred's tractors as collateral. The financing statement describes the collateral as "tractors." It does *not* describe the collateral by the serial numbers of the tractors. Fred's seeks a subsequent loan from Miramichi Trustco. Fred agrees to use one of the tractors currently in stock as collateral. The Trustco registers a financing statement which describes the tractor in question by its serial number.

Part A

Fred defaults on both of his loans. Who has priority with respect to the tractor taken as collateral by the Trustco?

Part B

Before default, Fred sells the tractor in which MT had taken an interest to Pamela. Pamela does

not search the PPSA before making the purchase and is not aware of either security interest. Fred then defaults. Can either the Boff or the Trustco seize the tractor in the hands of Pamela?

Problem 10

Marsha Motors is a retail used car dealer. MM is financed by a secured line of credit from the Bank of Fredericton. MM's inventory is used as collateral, and a separate financing statement is registered by the Boff for each car as it is acquired, which describes the car by serial number.

Part A

Pat buys a car from MM, but the financing statement relating to that car is not discharged. MM then defaults on its loan. Can the Boff seize the car in Pat's hands?

Part B

Quality Used Cars is a competitor of Marsha Motors. Quality is financed by a secured line of credit from the Miramichi Trustco. Quality's inventory is used as collateral, and a separate financing statement is registered by the Trustco for each car as it is acquired, which describes the car by serial number. Quality goes out of business and its inventory is bought in bulk by Marsha Motors. The proceeds of the sale are not enough to discharge the debt, and the financing statements registered by the Trustco are not discharged. When MM buys the cars from Quality, the Boff registers financing statements in respect of those cars, as usual. Pat buys a car from MM, but the financing statements relating to that car is not discharged. Can the Trustco seize the car in Pat's hands? Would the result be different if the Trustco had entered an incorrect serial number in respect of the particular car purchased by Pat, so that a serial number search would not reveal the Trustco's interest?

Part C

Peter Owens purchased a car for his personal use from Quality Motors. He financed the purchase with a loan from the Miramichi Trustco, using the car as collateral. The Trustco registered a financing statement in respect of this agreement, describing the car by serial number. Peter then went to Marsha Motors and traded the car in for a new pick-up truck. He did not pay off his debt to the Trustco and the financing statement was not discharged. The Boff registered a financing statement against the car Peter had purchased, as usual. Pat then bought the car from MM. The Boff's financing statement was not discharged. Can the Trustco seize the car in Pat's hands? Would the result be different if the Trustco had entered an incorrect serial number in respect of Peter's car, which was ultimately purchased by Pat, so that a serial number search would not reveal the Trustco's interest?

Problem 11

Marsha bought a car on credit from Fredericton Motors. Fredericton Motors registered a financing statement in respect of the transaction, describing the car by serial number. Marsha then sold the car to Justin for his personal use for \$12,000. The financing statement was not discharged. Justin did not search the PPR and was not aware of the security interest. Marsha did not pay off the car loan, stopped making payments, and moved to Arizona. Can Fredericton Motors seize the car in the hands of Justin? Would the answer be different if the sale price were \$500?

Problem 12 (Fall 2006 Exam – 22 marks/minutes)

Denise Deborah Dutt purchased an orange Honda Element automobile for use in her business from Fredericton Motors. The purchase was financed by a loan from Fredericton Motors Finance (FMF). FMF registered a financing statement in the PPR in respect of the transaction, describing itself as the secured party, Denise as the debtor and the orange Element as collateral. It also described the Element by serial number in the serial number field of the online registration form. All of the information provided was correct, *except* for the serial number, which had two numbers reversed. As a result, a search by “Denise Deborah Dutt” would return the financing statement registration as an exact match, but a search by the correct serial number would not return the registration at all.

Denise defaulted on the loan when she missed a payment on the first day of the month. FMF immediately seized the car, without providing any notice to Denise, who was away for a few days on a business trip. FMF advertised the car widely through a variety of channels and ultimately sold it to Paul Patel for \$25,000. FMF then sued Denise for the deficiency, which amounted to \$2,000.

Denise comes to you for advice. Advise specifically (a) whether she gets the car back from Paul; and (b) whether she has a defence to the deficiency action. In each case explain whether the rule is sound as a matter of policy. Would the answer to either question be different if the car had been purchased for personal use? Explain whether any difference between the rules with respect to personal and business use is justified.

***** THE END *****