

**FACULTY OF LAW
FINAL EXAMINATION – APRIL 2006**

LAW 587:B1 Personal Property Security Law – Prof. Tamara M. Buckwold

Time Allotted: 2 hours and 15 minutes.

Code Number: DO NOT ENTER YOUR NAME ON ANY ANSWER BOOKLETS. A list will be circulated and your name is to be entered opposite a number on that sheet. That number will be your code number FOR THIS EXAMINATION ONLY. Students who are writing by computer will be instructed regarding entry of the examination number in the electronic examination file. Students who are writing in the usual manner should enter the examination number on the examination booklets in the space provided for your surname.

Special Instructions:

1. This examination paper contains 7 questions on 4 pages. Check to ensure that it is complete.
2. Answer ALL questions.
3. **MARKS** allotted on this examination **TOTAL 50**. Questions are NOT of equal value. Apportion your time accordingly.
4. This is an OPEN BOOK examination.
5. Cell phones, pagers, beepers and related equipment are strictly forbidden. These items must be turned off and stowed.
6. Adhere to the time limitation imposed on this examination strictly. Failure to stop writing at the end of the examination may lead to a deduction of grades or a failure to accept the examination paper.
7. If you are writing by computer, you must close your examination file when time is called by the invigilator and proceed through the exam up-load process. Do not leave the examination room unless you have completed the up-load process successfully.
8. To avoid disturbing your classmates, please do not leave the room during the last 15 minutes of the examination.
9. DO NOT replicate your analysis of the same issue as it may appear with respect to the same party in successive questions (e.g. attachment of a security interest). Simply refer to your prior analysis to establish the point in issue.

General Facts

Edmonton resident Bryanna Bryant obtained a degree in Kinesiology from the University of Alberta in 2004. A keen outdoor enthusiast, she decided that instead of becoming a personal trainer, as did most of her classmates, she would go into business selling outdoor recreational equipment. To that end, she obtained a start-up business loan from Canadian Western Bank (CWB) in the fall of 2004 and opened a store on Whyte Avenue in Edmonton. Bryanna signed a general security agreement under which she gave CWB a security interest in all her present and after-acquired personal property to secure the amount advanced and all such sums as might at any time be owed by her to CWB. CWB registered a financing statement in the Personal Property Registry under Bryanna's name on October 1, 2004, describing the collateral as "all present and after-acquired personal property".

Part A

On May 1, 2005 one of Bryanna's former professors, Frank Fitt, agreed to buy an expensive kayak from her. The model Frank wanted (the Waverider 2000) was available only on special order from the manufacturer, who produced them as orders were received. However, Frank was in no hurry as he planned to be in California training for a triathlon from the middle of May until mid-June. Frank signed a contract of sale under which the \$2,000 purchase price was payable by way of a \$500 down payment (which he made), and the balance of \$1,500 on delivery. Bryanna immediately placed the order with the manufacturer, Paddle Pro Ltd.

On May 2, an unfortunate episode occurred in which Bryanna, in the mistaken belief that a shopper had pocketed an expensive campers' knife, prevented him from leaving the store until the police arrived. As it turned out, the knife Bryanna had seen was owned by the shopper, whose name was Larry Larsen. The bad publicity resulting from the incident caused a significant decline in Bryanna's business. To make matters worse, Larry sued Bryanna for false imprisonment and obtained a \$10,000 default judgment. He registered the judgment against her name in the Personal Property Registry on July 10, 2005.

Bryanna received a shipment of 10 kayaks from Paddle Pro Ltd. on May 30, 2005. The shipment included the Waverider 2000 ordered for Frank Fitt. The shipment was acquired from Paddle Pro on the terms of credit established by a security agreement signed by Bryanna on May 1, 2005 when she placed the order. Under the agreement, Bryanna gave Paddle Pro a security interest in the kayaks purchased to secure their price, which was payable 30 days from the date of delivery. On May 27, before shipping the kayaks, Paddle Pro sent a notice to CWB stating that the company claimed a purchase money security interest in kayaks delivered by it to Bryanna. CWB received the notice on May 29. On June 3, Paddle Pro registered a financing statement under Bryanna's name, describing the collateral as "kayaks and canoes".

As at July 1, 2005, Bryanna owed CWB \$5,000. Because she had kept her payments current throughout their relationship, CWB agreed to advance a further \$50,000 on July 15. Before advancing the funds CWB conducted a search of the Personal Property Registry. The search result revealed the registrations made by Paddle Pro and Larry Larsen.

Bryanna failed to pay Paddle Pro for the kayaks on June 30, as she was required to do under the security agreement. On July 20, the 8 Paddle Pro kayaks remaining in Bryanna's inventory were seized by Alberta Civil Enforcement Agencies, acting on Paddle Pro's instructions. Included among them was the Waverider 2000, which was on display in Bryanna's showroom. The retail value of the kayaks seized is \$9,000. (The Waverider 2000 is worth \$2,000. The other kayaks are each worth \$1,000.)

Assume it is August 15, 2005 and CWB and Larry Larsen have advanced claims with respect to all of the kayaks under seizure. In addition, Frank Fitt claims that he is entitled to the Waverider 2000 upon paying the \$1,500 balance of its purchase price.

Determine the priority of the following competing claims to the kayaks, stating reasons for your conclusions. In questions 1 and 2, consider CWB's position with respect to recovery of both the \$5,000 owed by Bryanna as at June 1 and the \$50,000 advanced on July 15.

Marks

- | | |
|-----------|---|
| 10 | 1. CWB vs. Paddle Pro Ltd. |
| 5 | 2. CWB vs. Larry Larsen |
| 5 | 3. Larry Larsen v. Paddle Pro Ltd. |
| 10 | 4. Paddle Pro Ltd. v. Frank Fitt with respect to the Waverider 2000 |

Part B

Bryanna sells to her customers on both cash and credit terms. In most cases, credit is advanced on an unsecured basis. However, with respect to sales of high-priced merchandise such as bicycles and watercraft, Bryanna requires customers to sign a security agreement under which she is given a security interest in the items purchased to secure payment of their purchase price. Bryanna uses the accounts receivable and chattel paper generated by credit sales as collateral supporting a \$50,000 line of credit extended to her by Scotiabank. Although Bryanna signed a security agreement in December of 2004 giving Scotiabank a security interest in "accounts and chattel paper" to secure payment of funds advanced on the line of credit, the loan officer in charge of the file inadvertently neglected to register a financing statement.

In January of 2005, Bryanna bought a 2005 GMC delivery van from Whyte Motors. She made a \$5,000 down payment and signed a security agreement giving Whyte Motors a

security interest in the van to secure payment of the balance of its \$30,000 purchase price. Whyte Motors registered a financing statement under Bryanna's name on January 10, describing the collateral as "GMC utility van" and including its serial number.

By the summer of 2005 Bryanna's business was in trouble, so she decided to sell the van and buy something more economical. However, mindful of her obligations to Whyte Motors, she advised them of her intentions before doing so. Whyte Motors consented to the sale on the understanding that they would be paid out from the proceeds. On July 5, Bryanna sold the van for \$27,000. Bryanna deposited the purchaser's cheque for that amount in her business account at Scotiabank. The account interacts with the \$50,000 line of credit arrangement Bryanna has with Scotiabank. The deposit of the cheque reduced the negative balance of the account from \$45,000 to \$18,000.

On July 9, Bryanna bought a used 1999 GMC van from Ultimate Auto Sales for \$15,000. She paid for the van by way of a cheque written on the Scotiabank account. On the same day she wrote a cheque for \$10,000 on the account, took it to Whyte Motors and advised them that she couldn't pay the entire balance of what she owed them immediately. Whyte Motors demanded that she provide the serial number of the van she had purchased from Ultimate Auto and, on July 10, registered a financing change statement adding that serial number to their registration against Bryanna.

On July 11, Bryanna had new brake pads installed in the van by Auto Tuners Inc., taking advantage of their "Fixit Now Pay Later" campaign. In order to obtain release of the van Bryanna was required to sign a document acknowledging the work done and agreeing to pay the amount invoiced for parts and labour within 60 days. In addition, Auto Tuners registered a financing statement in the Personal Property Registry complying with the requirements of the applicable regulations before allowing Bryanna to take the van.

By the end of July Bryanna had reached the limit on her line of credit and Scotiabank was becoming concerned about recovering on their loan. At the request of her loan officer, Bryanna delivered the chattel paper she then held to the bank. A week later the bank declared her to be in default, as they were entitled to do under the terms of their security agreement.

Assume it is August 15, 2005 and all of the following claimants remain unpaid. Determine their respective priority positions with respect to the property identified, offering reasons for your conclusions:

Marks

- | | |
|-----------|---|
| 10 | 5. CWB v. Whyte Motors with respect to the 1999 GMC van |
| 6 | 6. CWB v. Auto Tuners Inc. with respect to the 1999 GMC van |
| 4 | 7. CWB v. Scotiabank with respect to the chattel paper in Scotiabank's possession |

- End of Examination -