

Examination Number _____

**FACULTY OF LAW
MID-TERM EXAMINATION – FEBRUARY 2006**

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

Time Allotted: One hour and 15 minutes.

Code Number: DO NOT ENTER YOUR NAME ON ANY ANSWER BOOKLETS OR ON THIS EXAMINATION PAPER. 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 and should be entered on the examination booklets in the space provided for your surname AND ON THIS EXAMINATION PAPER in the space indicated above.

Special Instructions:

1. This examination paper contains 3 questions on 4 pages. Check to ensure that it is complete.
 2. Answer ALL questions and ALL PARTS of each question. Provide BRIEF reasons for your conclusions on all questions.
 3. This examination is assessed on the basis of a potential total of 50 marks. The marks allocated to each question are indicated in the left margin. Questions are NOT of equal value. Apportion your time intelligently.
 4. This is a CLOSED BOOK examination, subject to the following qualifications: Students may bring into the examination room an unannotated copy of the “Statutory Materials” for this course. A clean copy of miscellaneous additional statutory provisions and the course syllabus/table of contents is provided for your reference.
 5. THIS EXAMINATION PAPER **MUST** BE HANDED IN ALONG WITH YOUR ANSWER BOOKLETS.
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1. Each of the two factual scenarios below involves a priority dispute between two competing parties. Determine whether the issue of priority in each instance would be resolved on application of the *Personal Property Security Act*, or any other legislation considered in this course. You are **NOT** expected to resolve the priority issue itself.

Marks

- 5 a) Brenda Brennan owns and operates a store on Whyte Avenue in Edmonton called “Artists & Artisans”. The store sells a mix of reproduction and original art, crafts and small furniture items. Brenda purchases the reproduction items from various wholesale suppliers. She acquires the original pieces from local artists, crafters and woodworkers on a consignment basis. The consignment agreements between Brenda and her local suppliers provide that the consignors will not be paid for the items delivered to Artists & Artisans until such time as they are sold, and that the consignors retain ownership of the items until their sale. Brenda sets the sale price at which each item is sold and remits a predetermined amount (established under the consignment agreement) to the consignor. Brenda does not have the right to return unsold items to the consignors, although they may agree to take them back at her request if they wish to do so. Each original item in the store is tagged with the name of the artist or artisan who created it. The store advertises itself as, “Your source for art – authentic reproductions and original works from artists and artisans direct to you.” Brenda owes a significant sum of money to the Business Bank of Edmonton (BBE), secured by a security interest in all Brenda’s inventory. A priority dispute arises between BBE and the consignors of the original art and craft pieces in Brenda’s store.
- 5 b) Delmer Driscoll operates a “pre-owned” automobile dealership called “Del’s Deals on Wheels” in Leduc, Alberta. On January 15 of 2005, Delmer leased a four wheel drive Ford pick-up truck from his neighbour, Sam Samson, on a month to month basis. Sam is a retired farmer who no longer needs the truck but isn’t prepared to get rid of it entirely. Delmer wanted the truck for garbage disposal and other hauling errands associated with his business, as he didn’t want to take a vehicle out of inventory for that purpose. Both parties to the lease were entitled to terminate it at any time on 10 days’ notice. The lease was in writing and signed by Delmer and Sam. In December of 2005 Delmer, whose business ran on a “shoe string” at the best of times, was desperate for cash. He obtained a \$10,000 loan from the Leduc Credit Union. Under the loan agreement, Delmer gave the Leduc Credit Union a security interest in the Ford pickup truck. When Delmer defaulted in the first payment due to the Credit Union, the Credit Union seized the truck. Sam claims to be entitled to the truck as against the Credit Union.
2. In each of the scenarios below, determine whether the identified parties have an attached and perfected security interest. In those instances in which you conclude that a security interest is attached and/or perfected, identify the date or point in time at which attachment and/or perfection occurred.
- a) Eunice Easton owns and operates a small incorporated courier service in Calgary, Alberta. The corporation’s name is “Easton Holdings Ltd.”, but

it carries on business under the name “Downtown Deliveries”. The corporation obtained a business start-up loan from Scotiabank in 2005. Scotiabank registered a financing statement in the Personal Property Registry on May 25, 2005. A security agreement setting out the terms of the loan was signed by the parties on June 1, 2005 and the funds were advanced on June 5. Under the agreement Easton Holdings Ltd. granted Scotiabank a security interest in all its present and after-acquired personal property to secure the amount outstanding. The financing statement registered by Scotiabank identified the debtor as “Easton Holdings Ltd.”, and described the collateral as “all present and after acquired personal property”. The company had no assets at the time the loan was granted but shortly thereafter acquired several bicycles and furnishings for its office premises.

On December 20, 2005, Eunice, on behalf of her company, ordered a new Chrysler mini-van from Alberta Motor Products (AMP) for use in the business. She gave AMP a company cheque in the amount of \$2,000 by way of down payment and signed a security agreement under which Easton Holdings Ltd. gave AMP a security interest in the van ordered to secure repayment of its purchase price. The contract included a description of the van by make, model, colour and year. Since a van meeting the contract specifications had already been manufactured and was tagged for shipment to AMP, AMP was able to obtain a serial number, which it included in the financing statement registered in the Personal Property Registry on December 21. The financing statement identified the debtor as “Eunice Easton”. A search of the registry conducted using the name “Easton Holdings Ltd.” does not disclose the registration, but it is revealed by a serial number search. Easton Holdings took delivery of the van on January 15, 2006.

Marks

- 10** i) Consider the security interest claimed by Scotiabank in the Chrysler mini-van and in the bicycles owned by Easton Holdings Ltd.
- 5** ii) Consider the security interest claimed by AMP in the Chrysler mini-van.
- 10** b) John Johnson is a third year law student who recently found himself in the happy situation of having won \$100,000 on a Lottery 649 ticket, and the less happy situation of being asked by a number of his impoverished friends for a “small” loan to get them through the remainder of the school term. He reluctantly agreed to loan \$5,000 to his roommate, Steve Stevenson. Having taken PPSL in his second year of law school, John realized that he should get some security for repayment, so he discussed the matter with Steve. Steve agreed to give John a security interest in all the electronic audio and video equipment he owned (Ipod, stereo speakers,

T.V., DVD player, etc.) and signed a paper stating “I hereby acknowledge receipt of a loan of \$5,000 from John Johnson, repayable in full on July 1, 2006 (without interest).” The document was dated February 1, 2006. John knew that in order to protect himself fully he needed to register a financing statement in the Personal Property registry, which he did. The financing statement indicated Steve’s legal name and described the collateral as “electronic audio and video equipment”. Steve celebrated his birthday on February 12, and received as a birthday gift from his parents a new wide screen T.V. John is not aware that Steve owes significant sums of money to other people, and is on the verge of bankruptcy.

Consider the security interest claimed by John in Steve’s audio and video equipment, including the new T.V.

3. On January 10, 2006, Shawna Shaw borrowed \$20,000 from BMO Bank of Montreal. She signed a security agreement under which she granted BMO “a security interest in the item(s) of property described below: Mazda RSX sedan, blue, serial no. 12345ABCDE”. Shawna was in fact leasing the vehicle described in the security agreement from Metro Mazda under a 24 month lease – a detail she neglected to share with BMO. Although BMO had searched the Personal Property Registry using the serial number of the vehicle before advancing the loan, the search result did not disclose Metro Mazda’s interest. BMO registered a financing statement in the Personal Property Registry on January 10, setting out Shawna’s name and a description of the vehicle, including its serial number. Although Metro Mazda had registered a financing statement on September 15, 2005 to protect its interest as lessor of the car, it had mistakenly entered the serial number of the car as 54321ABCDE. Had BMO conducted a search using Shawna’s name, it would have discovered Metro Mazda’s registration.

Under pressure from a number of unpaid creditors, Shawna sought the advice of Tom Thomson, a licensed trustee in bankruptcy to whom she disclosed the details of her financial situation, including the terms of her vehicle lease with Metro Mazda and her loan from BMO. Tom advised Shawna that bankruptcy would give her a fresh financial start. Shawna made an assignment into bankruptcy on February 10. You may assume that Shawna uses the RSX sedan for non-business purposes.

Marks

- 10** a) Assume that BMO asserts priority over Metro Mazda with respect to the RSX sedan. Determine whether Metro Mazda has a perfected security interest in the vehicle for purposes of that priority competition.
- 5** b) Is Metro Mazda entitled to the RSX sedan as against Shawna’s trustee in bankruptcy, Tom Thomson?

- End of Examination -