

EXAMINATION

INTRODUCTION to COMMERCIAL LAW/UCC

INSTRUCTIONS:

- 1) You may have with you during the examination, writing implements, the scratch paper supplied, a copy of the Uniform Commercial Code annotated however you wish in your own handwriting and nothing else unless authorized by the Associate Dean;
- 2) You will have three hours within which to consider, formulate and record your responses to the questions propounded through the examination;
- 3) Record your responses in the examination books provided being sure to place your examination on the cover of each book you choose to submit.
- 4) Consider your responses deliberately before beginning to record them.

PART I

Carol impecunious has determined to enter the construction business after years of managing the books for Fred's Excavations. She is confident that she can get work that will not impinge on Fred's sense of entitlement to the same customers. Because Carol was the intermediary between Fred and his lenders Carol believes that she has the contacts with lenders necessary for her to secure the financing her new venture will require. Carol's target date for beginning her first contracted for project is January 15 of next year (2009) so that all of her financial activity will take place in the next fiscal year as her tax counselor has advised.

Carol has met and negotiated with Bank in order to secure funds for the ongoing expenses of her new business (materials, supplies, payroll, permit fees etc.). The bank has agreed to lend Carol money for these purposes as Carol requests to a total of \$100,00.00 so long as Carol signs a note payable to the bank in that amount and grants a security interest in all of the contracts for pay for work Carol is able to generate and finalize together with all equipment and materials she acquires. Carol signed the note as well as the Bank's standard security agreement and a financing statement on December 28, 2008. The security agreement, as well as the financing statement signed by Carol describes the collateral to be:

“ All equipment and materials acquired from this date as well as all contracts and rights to payment there under procured by Carol's Construction Company, INC until Carol's total indebtedness under the note given by Carol this date and secured by this security agreement is paid in full.”

The security agreement also provided:

“ Subject to the terms of this agreement, Bank, in its sole discretion, may extend credit to Carol’s Construction, INC. (Borrower) from time to time for the purpose of Funding borrower’s ongoing operations as barrower requests.”

Bank filed the financing statement after its return from the New Years holiday on January 14, 2009.

In order to be able to begin her company’s first project on January 15, 2009 Carol needed to procure earthmoving equipment by lease or sale. She negotiated the purchase of a D-28 Cummings Bulldozer for the price of \$95,000.00 which Equipment Supply Company would allow her to pay for over time with an interest rate 2.5 points lower than the Bank’s. Carol agreed to give ESC a note for \$95,000.00, signed a statement agreeing that ESC could take the dozer back if Carol failed to make monthly payments on time, signed a UCC-1 financing statement describing the dozer by identification number and took delivery of the dozer at Carol Company’s first construction site on January 15, 2009.

Carol had sufficient savings to meet the construction companies’ ongoing expenses including payments to Cummings and interest to Bank through the first project so has not received an advance from Bank. Carol believed that the payment on first project due from owner would provide sufficient liquidity for her to begin and complete Construction Companies’ next contract job and that thereafter, like a perpetual motion machine, job after job, her business would thrive.

- 1) Both the Bank and Cummings’ security agreements include insecurity clauses by which each may declare a default if they have a reasonable basis for insecurity. One week following the completion of the first project Carol Construction Company had not received payment as required by the contract with owner. Both Bank and Cummings are unsettled. Cummings has sent its employee to locate the dozer, pitch his tent and refuse to move from the dozer’s seat for anyone who is not a Construction Company employee.
 - a) Is Bank entitled to possession of the dozer if it brings the proper legal action? (If so ,why? If not, why not?)

PART II

Carl Carpenter is a master finish carpenter. He has promised Homeowner that he will design, install and completely finish cabinets for Homeowner’s kitchen when he completes the job he is currently finishing. Because the specialty woods required for the job are not always available Carl persuades owner to write a check payable to Carl in the amount of \$1,000.00 with which Carl is to purchase the necessary wood and stockpile it for the job to assure the necessary wood’s availability. Homeowner drew the check on his account at X bank \$1,000.00 payable to Carl dated April 28, 2008.

- 1) Unfortunately for Homeowner’s kitchen Carl has received a call to do good works in Africa (a small town in Wisconsin) to which he has moved with homeowners’ check before purchasing or finishing any wood. The call requires

that Carl deliver all his worldly possessions to Charitable Institution for which reason Carl has endorsed the check specially to the Institution and given it the check as so indorsed. Institution accepted the check from Carl then took it to Africa Bank who took the check and credited \$1,000.00 to Institutions' account after asking institution to sign the back of the check which institution did by stamping the back with it's corporate signature stamp. Africa's funds availability policy is that accounts to which checks in an amount more than \$500.00 are credited are frozen for 7 days from deposit. Africa Bank then forwarded the check for payment through the banking system. On Homeowner's instruction Homeowner's bank refused to pay the check and caused it to be returned to Africa Bank.

- a) Can Africa Bank establish a right to payment of the check to it from Homeowner?
- b) If the bank fails to secure payment from homeowner is there a basis upon which it can recover the money it credited to institution's account? If so how? If not, why not?
- c) If Institution must give up the \$1000.00 credit at Africa Bank can it recover that amount promised by Homeowner from Homeowner or anyone else?
- d) Would your answer to any of the above (a, b, c) be different in any way if on the memo line of the check drawn by homeowner homeowner had written the words 'for kitchen work'? If so why and how? If not, why not?