

Question 1: Key Missing Issues

Issues and Points: 31 point baseline (of 33 max)

31

<p>1. Failure to address (“FTA”) basic mechanics of creating an attached security interest in the KSC oven (9-203 sets out key rules regarding attachment of the SI; value must be given and financing price of oven will suffice; Filet and Baker acquire rights in the oven in the deal and the bill of sale should qualify as a SA under 9-102(a)(74); all of this should suffice to create as SI in oven to secure all of the debts associated with the oven under the bill of sale): -3</p>	
<p>2. FTA description requirement in SA (9-203 requires that the SA contain a description of the collateral and 9-108 sets out the standard for the sufficiency of the description; bill of sale will almost certainly refer to KSC oven by name and that should suffice): -2</p>	
<p>3. FTA PMSI status of KSC security interest (a financed sale of equipment is the classic situation covered by the 9-103 PMSI regime; the key to achieving PMSI status is to meet the timing requirements of 9-324(a) and those were met here): -3</p>	
<p>4. FTA basic mechanics of perfecting SI in KSC oven and classification of oven (KSC oven should qualify as equipment under 9-102(a)(33) (and not consumer goods under 9-102(a)(23) as oven is professional oven being used in business); FS requires name of debtor and secured party under 9-502): -3</p>	
<p>5. FTA appropriate state for filing FSs (everything here is in Illinois so far, so no other choice would make sense but 9-301 indicates that the location of the debtor matters for the governs perfection question; under 9-307(b)(1), individual debtor’s are located at their principal residence, here the rented Illinois apartment): -2</p>	
<p>6. FTA appropriate secured party name for FSs (SP name is much less important; filed as “Kitchen Supply” when actual name is “Kitchen Supply Corp.”, but should suffice): -1</p>	
<p>7. FTA appropriate name for filing FS for Filet (under 9-503(a)(4), the driver’s license name is required for an individual; for Filet, that means “Robert O. Filet”; statement was filed as “Roberto Filet”; under typical standard search logic approach of 9-506(c), initial question is whether “robertoilet” will find “robertoilet” which it will; cases like <i>Summit Staffing</i> and <i>Planned Furniture</i> suggest that should suffice though do note that the FS as filed lists a nonexistent person as the debtor): -4</p>	
<p>8. FTA appropriate name for filing FS for Baker (same test for individual, so for Baker that means “Susan Ann Baker”; statement was filed as “Susan Anne Baker”; under typical standard search logic approach of 9-506(c), question is whether “susanannbaker” will find “susanannebaker” and it will not so filed name should be seriously misleading): -3</p>	
<p>9. FTA filing in name of The Fabulous Bakers (at this point in the exam, this name is just a doing business as name and there is no separate legal entity and therefore no separate debtor using that name, so this FS should have no effect at this point): -2</p>	
<p>10. FTA description requirement in each of the FSs (9-504 points back to 9-108; there are two ovens at that location; Filet and Baker have no ownership interest in the oven that came with their rented apartment, though they do have whatever rights arise derivative of their rental agreement for the apartment; those rights would almost certainly be classified as a general intangible, while the KSC oven is equipment; courts like that in <i>Thorpe</i> would probably find this description suffices): -3</p>	
<p>Total Deductions</p>	

Question 1: Additional Points

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Question 1: Final Score

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Question 2: Key Missing Issues

Issues and Points: 31 point baseline (of 33 max)

31

<p>1. FTA issue of survival of SI in KSC oven on transfer to new entity TFBI (SIs generally survive transfer under 9-315(a)(1) unless called off by something like 9-320 and that won't apply here; prior FSs by Baker and Filet will remain effective under 9-507(a)): -3</p>	
<p>2. FTA new debtor issue re TFBI and KSC (new debtor question is critical re after-acquired property, but KSC SA didn't pick that up, so much less important here; courts have interpreted new debtor provision (9-203(d)) aggressively in finding new debtor becomes bound under old SA and would likely do so here): -2</p>	
<p>3. FTA effectiveness of prior FS filed by KSC against The Fabulous Bakers (given common approach to noise words, this statement will be found in a search against TFBI; statement wasn't authorized by TFBI but 9-509(c) treats acquisition of collateral subject to SI as authorization on its alone and 9-509(b) does the same as to new debtors; real question is whether these authorize the <i>preexisting</i> statement): -3</p>	
<p>4. FTA issue of stock in TFBI as proceed of KSC oven (although a number of assets are put into corporate solution, most of which are SI-free, the KSC oven is part of the swap for the stock in the new entity and should qualify as proceed under 9-102(a)(64); perfection is 9-315(d); there were original filed FSs, subject of course to mistakes in Q1, and the stock should qualify as investment property under 9-102(a)(49) and filing can be made for that under 9-312(a), so perfection should apply to stock as proceeds): -4</p>	
<p>5. FTA issue of status of cash and cupcakes (the cupcakes should not be understood to be a proceed of the KSC oven under 9-102(a)(64); they don't arise from the oven itself but from the knowledge that Filet and Baker have; the oven is just another input in that just as the gas or electricity is; that should also cutoff any claims as to an SI in the cash received from the cupcakes): -2</p>	
<p>6. FTA FCB SI attachment (basics again under 9-203 re value and rights in the collateral; express coverage of after-acquired property under 9-204(a); collateral description by type is permitted under 9-108(b)(3)): -2</p>	
<p>7. FTA mistake in listing of promissory note in FCB SA (key issue in SA is that it refers to a promissory note dated "July 10, 2011" when the actual promissory note is dated "July 1, 2011" so the purported obligations secured under misstated; this is the recent CA7 <i>Duckworth</i> case and court rejected SI there): -3</p>	
<p>8. FTA location/choice of law issues re FCB FS (as before, controlled by 9-301; corporate debtor like TFBI is located where it is incorporated under 9-307(e) and that is Illinois, where FS was filed, so OK): -1</p>	
<p>9. FTA debtor's name in FCB FS (another glitched name and a replay of <i>Jim Ross Tires</i>; adding additional information in the debtor's name will almost certainly make it impossible to find the FS and thus it will be ineffective under 9-506(c)): -3</p>	
<p>10. FTA collateral description in FCB FS (this really puts the <i>Thorp</i> notice idea to the test; on its face, the FS doesn't provide <i>any</i> independent indication (9-504) of what the collateral is by incorporating a non-filed document (and it provides the wrong date for that document); that would mean that it would be easy to change that in a fraudulent fashion since it isn't already on public record; it would be better to reject this but a real <i>Thorp</i> court might not): -2</p>	
<p>11. FTA perfection of FCB SI in deposit account (original collateral SIs in DAs have to be perfected by control under 9-312(b)(1) and 9-314; FCB will be perfected under 9-104(a)(1) by being the bank where the DA is maintained): -3</p>	
<p>12. FTA priority as to KSC oven (a priority question, finally, with both KSC and FCB claiming an interest in the KSC oven; FCB is unperfected given the name problem in the FS and maybe even unattached under <i>Duckworth</i>; KSC should have an SI and probably is perfected under the now applicable The Fabulous Bakers FS; and KSC will claim priority under 9-325(a) but that requires it to be perfected at the time of transfer and that depends on the Filet statement, but it should win anyhow as a perfected SP (based on the TFB FS statement and the fact that FCB is no better than unperfected)): -3</p>	
<p>Total Deductions</p>	

Question 2: Additional Points

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Question 2: Final Score

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Question 3: Key Missing Issues

Issues and Points: 31 point baseline (of 33 max)

31

<p>1. FTA effect of issuance of franchise to Newbie on FCB (there is a natural classification question re the franchises but the FCB SA was clearly drafted with the idea of taking that off the table, consistent with our overall approach to managing transactional uncertainty; the SA affirmatively addresses after-acquired property under 9-204 and the franchise isn't one of the forbidden types set out in 9-204(b); the issuance of the franchise should trigger sufficient rights in the collateral to cause the SI in favor of FCB to attach, subject to all of the perfection issues from Q2; then of course the franchise is issued to Newbie and this raises disposition questions again; idea of BIOCOP is limited to goods, so 9-320 won't apply; 9-321 might apply and probably should apply though that will depend on whether the franchise can be characterized as a license): -5</p>	
<p>2. FTA effect of check from Newbie and deposit of \$5000 cash into DA at FCB (these are both proceeds of the franchise so FCB could claim an interest in them as such under 9-315(a)(2) and qualify as cash proceeds under 9-102(a)(9), so FCB would be perfected in them as such under 9-315(d)(2), plus FCB can claim an interest in the value added to the DA as original collateral per Q2): -4</p>	
<p>3. FTA effect of fact that Newbie's business is based in Milwaukee, WI (not enough information to address this fully and certainly not ripe but this could raise issues eventually under 9-316(a)(3)): -1</p>	
<p>4. FTA creation of new FoodTrucks entity by Filet and Baker (this seems to be outside of the FCB SA though FCB very well might see this as an evasion of the intended breadth of the "rights associated with TFBI franchises" language in the FCB SA): -2</p>	
<p>5. FTA TFBI document in favor of KSC (this is effectively a guarantee and SA all together; KSC oven will probably work as an acceptable description; under 9-509(b) execution of SA operates as authorization to file FS which may directly authorize the original TFB FS filed in Q1, but do note that no new FS is filed here by KSC): -3</p>	
<p>6. FTA consequences of Baker and Filet execution of KSC debt extension (this squarely raises question about the refinancing of PMSIs; 9-103(f)(3) provides that refinancing doesn't destroy PMSI status in a non consumer-goods transaction and the KSC oven is used in the business, so PMSI status should be preserved): -3</p>	
<p>7. FTA installation and use of deactivation device on food truck (the franchise agreement with Newbie authorized TFBI to take whatever steps it deemed appropriate to collect the franchise royalties; FoodTrucks installed the remote deactivation device, but FoodTrucks and TFBI are different entities even though they are both owned by Baker and Filet; but the installation of the deactivation device doesn't do anything on its own and it is TFBI that gives the order to FoodTrucks to deactivate the truck remotely and FT will be acting as the agent of TFBI in doing that; 9-609(a)(2) contemplates that equipment may be rendered unusable but that applies to secured parties, and TFBI doesn't really have an SI in the food truck if we apply the framework we saw in <i>Clark</i>): -4</p>	
<p>Total Deductions</p>	

Question 3: Additional Points

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Question 3: Final Score

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