Secured Transactions

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1. You should read the instructions, the entire exam and all of the questions before answering any of the questions.

2. This is an open-book (but not open network), three-hour in-class examination. You may consult any materials you wish, except that (i) you may not consult anyone else and (ii) you may not search during the exam on the Internet or on any database service (such as Westlaw or Lexis/Nexis). Please do not discuss the exam with anyone until the examination period is over.

3. This examination consists of four pages. Please make sure that you have all of the pages.

4. There are 3 questions, with a total of 9 units for weighting purposes for grading. Each question consists of 3 units and the weight for the question is set forth next to the question.

5. **Your answer should be no more than 3000 words (approx. 333 words per unit).** Penalties may be assessed for failure to comply with these rules and the size of the penalty will be intended to deter violations of the rules.

6. Answers should refer to specific statute sections and cases where relevant. If an exam question is unclear, point out the ambiguity and then answer the question to the best of your ability. If you believe that there is a mistake in the exam, please see the proctor, who will contact me.

7. In answering the questions, you should assume that Revised Article 9 (including the 2010 amendments (using alternative A in 9-503)) is effective in all jurisdictions. You should not assume that caselaw is dispositive of any question, even if it is the caselaw of the jurisdiction in question.

8. **You must connect your answers to the relevant provisions of Article 9, the Bankruptcy Code or any other relevant statute.**

9. Good luck.

Question 1 (3 units)

Our story is set in the rise and fall of the cupcake craze. Bobby Filet and Susie Baker met while they were students at the Chicago-based The French Pastry School. They fell in love and planned to be together in life and business forever. The day after graduation they set about launching their new business, The Fabulous Bakers.

But first a little background information on Filet and Baker. Filet was born on February 1, 1989 and his given name on his birth certificate is "Robert Oscar Filet." He holds a current Illinois driver's license and the name given on that is "Robert O. Filet." Susie Baker was born on February 10, 1989 and her given name on her birth certificate is "Susan Anne Baker." She also holds a current Illinois driver's license and the name given on that is "Susan Ann Baker." Filet and Baker live in a rented apartment at 666 Devilsfood Lane, Chicago, IL 60614. Their apartment isn't anything fancy and the kitchen contains a standard oven, refrigerator, range and dishwasher.

Baker and Filet planned to start by running the business out of their rented apartment in which they lived and to sell the cupcakes using a food truck. They knew that they needed a better oven. They approached Kitchen Supply Corp. ("KSC"), an Illinois corporation, to buy a double-deck wheeled electric convection oven (the "KSC oven"). Filet and Baker excitedly explained the plans for their new business, The Fabulous Bakers, but the KSC sales person just really wasn't interested.

The list price of the oven was $12,000. On September 1, 2010, Filet and Baker each signed a bill of sale in which KSC sold the oven to Filet and Baker and they each agreed to be obligated for the debts associated with the oven. That included the sales price, annual interest at a rate of 10% and other assorted contractual obligations (such as any possible collection costs). The loan was to be repaid one year later. The bill of sale contained the following clause: "Purchaser(s) hereby agree and grant a security interest in the good sold hereunder by Seller to Purchaser(s) and further agree that such security interest shall secure all obligations hereunder as well as any obligations subsequently owed by Purchaser(s) to Seller. Purchaser(s) hereby authorize Seller to make all appropriate filings in connection with this security interest."

The next day, KSC filed three financing statements with the Illinois Secretary of State, the proper location for financing statement filing in Illinois. In each statement, the secured creditor was listed as "Kitchen Supply." In the statement filed regarding Filet, the debtor was listed as "Roberto Filet", while in the statement filed regarding Baker, the debtor was listed as "Susan Anne Baker". A third statement was filed as well and that listed the debtor as "The Fabulous

Bakers". In each statement, the collateral was described as "oven at 666 Devilsfood Lane, Chicago, IL 60614."

Question: Discuss these transactions.

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Question 2 (3 units)

By mid-2011, the business was going sufficiently well that Baker and Filet thought that it was time to formalize business matters. On June 1, 2011, they set up an Illinois corporation, The Fabulous Bakers, Inc. ("TFBI"). In exchange for 50% of the stock of the new corporation, Baker and Filet each contributed $10,000 in cash to TFBI—derived by each from profits so far from selling cupcakes—and together they contributed the KSC oven. They also contributed the recipes that they had developed so far in making and selling cupcakes.

On June 2, 2011, TFBI went to FirstChicago Bank ("FCB") to set up a checking account for TFBI transactions. The $20,000 cash contributed by Baker and Filet was deposited into the checking account at FCB.

Baker and Filet had big plans for TFBI, though they still planned to operate the business out of their rented apartment. They had a vision for nationwide fleet of cupcake food trucks. The food trucks would be locally owned and operated and TFBI would sell franchises to local operators. The franchise would give the local operator the right to use TFBI's cupcake recipes and other knowhow that Baker and Filet had developed in running the business. In exchange for all of that, a TFBI franchisee would pay $5000 upfront to TFBI and then a 10% royalty fee of the franchisee's gross revenues, payable each month. Franchisees would be required to buy or rent their food trucks from a firm designated by TFBI.

TFBI believed that it needed to launch its franchise business with an extensive advertising campaign. On July 1, 2011, TFBI approached FCB to try to borrow $1 million for the ad campaign. FCB agreed to lend the money on a secured basis with the loan due in full one year later and with an annual interest rate of 10%. On that day, July 1, 2011, TFBI executed a promissory note in favor of FCB setting out those terms. That same day, TFBI and FCB entered into a separate security agreement. That agreement authorized FCB to file appropriate financing statements for these transactions. The security agreement contained the following provision: "TFBI hereby grants to FCB a security interest in all now owned or hereafter acquired accounts, deposit accounts, inventory, equipment (all as defined in the Illinois version of Article 9) and all rights associated with TFBI franchises and all proceeds thereof (the "Collateral") to secure the promissory note dated July 10, 2011 of principal amount of $1 million and the other obligations therein." On July 2, 2011, FCB filed a financing statement with the Illinois Secretary of State. In that statement, the debtor was identified as "The Fabulous Bakers, Inc., an Illinois corporation", the secured party as FirstChicago

Bank and the collateral was identified as "'Collateral' as defined in the July 2, 2011 Security Agreement between Debtor and Secured Party."

Question: Discuss these transactions.

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Question 3 (3 units)

On August 1, 2011, TFBI issued its first franchise to Ima Newbie, who planned to base her business in Milwaukee, Wisconsin; received a check from Newbie for the $5000 upfront franchise fee; and deposited that check into TFBI's checking account with FCB. The franchise document signed by Newbie contained the following provision: "Franchisee hereby acknowledges its monthly obligation to remit royalty payments to TFBI and hereby authorizes TFBI to take whatever steps it deems appropriate to ensure full payment of said royalties."

Newbie needed a food truck and had an obligation to buy or rent a truck from the firm designated by TFBI. Baker and Filet set up a new firm, Expensive Food Trucks, Inc. (FoodTrucks"), an Illinois corporation, to buy and sell food trucks for TFBI. Besides selling expensive trucks to franchisees, FoodTrucks made sure to install a remote deactivation device on the food truck. On August 15, 2011, Newbie, a former law professor who had decided to follow her passion for food, paid cash for her new food truck from FoodTrucks.

On September 1, 2011, Baker and Filet were due to repay the loan for the KSC Oven owed to KSC. They considered repaying the loan from cash in TFBI's checking account with FCB, but recognizing that cash is king, they decided to see if they could just roll over the loan for another year. KSC was willing to do that, but wanted it be made absolutely clear that TFBI was also on the hook for the debt. On that same day, TFBI executed a document containing the following provision: "TFBI hereby agrees that it will pay all debts of Baker and Filet to KSC and further hereby grants a security interest in the KSC oven as collateral for those obligations. TFBI also authorizes the filing of any necessary documents." In addition, Baker and Filet each executed a new document extending the due date on the original KSC loan out to September 1, 2012.

The first monthly royalty payment to TFBI was due from Newbie on September 1, 2011. When no check had been submitted by September 5, 2011, TFBI instructed FoodTrucks to deactivate the truck remotely and it did so in a safe fashion.

Question: Discuss these transactions.

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