

Question 1: Key Missing Issues

Issues and Points: 20 point baseline (of 22 max)

20

<p>1. Failure to address (“FTA”) basic mechanics of creating a security interest in the DistantChef assets (9-203 sets out key rules regarding attachment of the SI; the contract between DistantChef and BuildIt will qualify as a security agreement under 9-102(a)(74); value must be given and financing the purchase price of the 48 RoboChefs will suffice; DistantChef will acquire rights in the RoboChefs presumably no later than the time they are built or delivered (the contract isn’t clear on that)): -2</p>	
<p>2. FTA attachment of the security interest in RoboChefs (the grant clause as to the RoboChefs has a typo (“RoboChiefs”); contracts are often interpreted against the drafter, unspecified here but probably BuildIt; that said, court that applies <i>Bollinger</i>-type analysis is likely to find effective attachment here; need not classify RoboChefs for attachment given description in contract which should be adequate under 9-108): -3</p>	
<p>3. FTA PMSI status of SI in RoboChefs (this is classic seller financing and will qualify under 9-103; priority will depend on complying with terms of 9-324): -3</p>	
<p>4. FTA appropriate state for filing FSs (9-301 indicates that the location of the debtor matters for the governs perfection question; under 9-307(e), DistantChef is an Illinois corporation and therefore FS was appropriately filed in Ill.): -2</p>	
<p>5. FTA debtor and secured party names in FSs (9-502(a) requires that the FS have the debtor’s name and the secured party’s name; 9-503(a)(1) requires the record name for a registered organization debtor and that is DistantChef, Inc. as set forth in the FS; secured party’s name is correct as well): -1</p>	
<p>6. FTA collateral description in FS as to RoboChefs (under 9-108(b)(3), the use of an Article 9 collateral type such as equipment is fine, the real issue here is whether the RoboChefs qualify as equipment under 9-102(a)(33) or inventory under 9-102(a)(48); given DistantChef’s business model, this should qualify as inventory hence BuildIt can’t perfect its SI in the RoboChefs via the FS): -3</p>	
<p>7. FTA attachment and perfection of the security interest in the contract (contracts right can qualify as collateral (<i>HSF Holding</i>) and will likely be classified as general intangibles under 9-102(a)(42); the description itself should suffice under 9-108 for attachment but they are not mentioned in the FS, so no perfection via the FS as to these): -2</p>	
<p>8. FTA attachment and perfection of security interest in property required to operate the RoboChefs (the phrase “any property required to operate the RoboChefs” is a pretty open-ended description (though not quite the same as a super-generic under 9-108(c)); best guess is that a court will accept this and will turn to classification; again, probably a general intangible under 9-102(a)(42) (and note the reference there to software and the instructions database seems software like); BuildIt will seek to have the instructions database classified as goods under 9-102(a)(44) (and note the relevant language in the definition there); the classification question is a close one and perfection turns on it, as no description in FS and have to file to perfect in general intangibles but possession of a copy of the instructions database might work for goods under 9-313(a)): -4</p>	
Total Deductions	

Question 1: Additional Points

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Question 1: Final Score

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Question 2: Key Missing Issues

Issues and Points: 40 point baseline (of 44 max)

40

<p>1. FTA the three RoboChefs (1-3) sitting at BuildIt's plant (the classification question shouldn't depend on the location of the RoboChefs and we should continue to treat them as inventory but these are now in BuildIt's possession and BuildIt will claim perfection via possession under 9-313): -3</p>	
<p>2. FTA the RoboChef (4) located at DistantChef in Chicago (this is the one RoboChef most naturally classified as equipment – the default goods category in Article 9 – given that DistantChef isn't really trying to sell this RoboChef or otherwise monetize it directly; that would mean that BuildIt would have a perfected SI in this RoboChef): -2</p>	
<p>3. FTA the four cash sale RoboChefs (5-8) and the FCB checking account as proceeds (the funds from the sale of the RCs can be traced into DC's checking account with FCB; the FCB will be an identifiable cash proceed under 9-102(a)(9) and 9-315(a)(2); whether that SI will be perfected under 9-315(d)(2) depends, under 9-315(c), whether the original SI in the RC was perfected, which it probably was not, so this SI will be unperfected as well): -3</p>	
<p>4. FTA the RoboChef sold to the Jones Law Firm (9/5th sale) as DC SI (the attachment of the DistantChef SI in the RC would be straightforward under 9-203 and would have PMSI status under 9-103; DC tries to perfect through possession by appointing the law firm as its agent, but we know that doesn't work under 9-313): -3</p>	
<p>5. FTA the RoboChef sold to the Jones Law Firm as proceed (the obligation of JLF to pay DistantChef would qualify as an account under 9-102(a)(2) save for the SI and that makes it chattel paper under 9-102(a)(11) and paper that can be traced directly to the sold RC, so it would qualify as an identifiable proceed under 9-315(a)(2); the perfection of that interest turns, under 9-315(d), as to whether BI was perfected originally, which it probably was not, so the SI in the proceed will be unperfected as well under 9-315(c), 9-315(d)): -3</p>	
<p>6. FTA survival on transfer issue as to BuildIt's SI in sold RoboChefs (BuildIt had unperfected SIs in each of the sold RoboChefs; based on info in question, should assume that these sales were in the ordinary course of business and hence purchasers took free of the SIs under 9-320): -2</p>	
<p>7. FTA the two Northwestern RoboChef (10-11) leases as proceeds (these transactions are also proceeds of the RCs; these will be chattel paper under 9-102(a)(11) and will be identifiable under 9-315(a)(2) but unperfected under 9-315(c) and 9-315(d)): -3</p>	
<p>8. FTA the credit card transactions and subsequent deposit into FCB checking account as proceeds of proceeds (the obligations of the credit card companies to DistantChef will qualify as payment intangibles under 9-102(a)(61) and will suffer from the same perfection problems as the other proceeds in this question; the subsequent deposit into the deposit account at FCB of payments on the credit card obligations will be proceeds of proceeds and will create an attached security interest in the deposit account as proceeds but will be unperfected given that the original SI in the RCs was unperfected): -4</p>	
<p>9. FTA last RoboChef at Disneyworld (12) (the only issue here of interest is the movement of the RoboChef from Illinois to Florida, but while movement of collateral can change the EPNP&P law that only matters if nonuniform and no info on that here): -2</p>	

<p>10. FTA new assets as possible original collateral under deal between DistantChef and BuildIt (the transaction between DistantChef and the Jones Law Firm would create chattel paper under 9-102(a)(11), as would the transaction between DistantChef and Northwestern, but chattel paper isn't covered as collateral under the original SA between DC and BI nor were any of the other assets created in this set of transactions): -2</p>	
<p>11. FTA attachment issues in deal between DistantChef and BigBank (this is a pretty plain-vanilla SI under 9-203, with both principal and accruing interest secured): -2</p>	
<p>12. FTA perfection issues in deal between Distant Chef and BigBank (as in Q1, the financing statement was filed in the correct state, and while the secured party's name is fine, the debtor's name has an extra "the" at the beginning but probably a noise word and not seriously misleading; the use of Article 9 categories in the FS is acceptable under 9-108; the key issue here is the attempt to file against a deposit account to perfect; that doesn't work, as control is required for an original SI in a deposit account under 9-312(b)(1), so BigBank is perfected as to accounts, inventory, equipment and general intangibles, but unperfected as to the deposit accounts): -3</p>	
<p>13. FTA priority issues between BuildIt and BigBank (most natural conclusion so far is that BuildIt is unperfected for everything other than the demo RoboChef at DistantChef and the three RCs in its possession and as to those four RCs, BuildIt has priority under 9-322(a)(1) and under 9-324(a); the JLF paper and Northwestern leases are chattel paper and BigBank's SI doesn't extend to chattel paper, so BuildIt's unperfected proceeds interest in the chattel paper is ahead of BigBank's non-interest; as to the other property, BuildIt is unperfected and is therefore junior to BigBank): -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: 30 point baseline (of 33 max)

30

1. FTA consequences of transfer of instructions database to IDB Holdings

(BuildIt likely holds an unperfected SI in database, while BigBank holds a perfected SI in it; transfer is outside the ordinary course of business, so SIs should survive transfer under 9-315(a)(1); BuildIt will continue to remain perfected under 9-507(a); 9-325 irrelevant here given that IDB doesn't attempt to create a security interest in the database after it acquires its interests in the property; no meaningful new debtor issue as IDB doesn't do anything; future thereby debtor issue under 9-316(a)(3) given that IDB, as a California corp, is located in California under 9-307(e)): **-4**

2. FTA declaration of event of default by BuildIt and BigBank (we aren't told the exact terms of the contracts between DistantChef and either BuildIt or BigBank but the parties are generally free to define events of default under 9-601): **-2****3. FTA BuildIt notification to Northwestern** (under 9-607(a)(1), secured party has the right after default to notify account debtor to make payment to secured party; account debtor under 9-102(a)(3), covers accounts, chattel paper and general intangibles; BuildIt will pursue these via its original SI in the RoboChefs with the leases as proceeds of those, so BuildIt within its rights to take this action): **-3****4. FTA BuildIt notification to DistantChef** (this is effectively an effort to "repossess" the collateral under 9-609(a)(1) and here is a good situation for being able to do that without a breach of the peace; the statement of an intent to exercise rights under Part VI of Article 9 is pretty indefinite; is this an intent to do a 9-610 disposition or a 9-620 retention of collateral; all of this requires particular forms of notices and timing under 9-611/9-621): **-4****5. FTA sending of wireless shutdown code to other nine RoboChefs** (9-609(a)(2) authorizes a secured party to render "equipment" unusable without removal after default and the wireless code is consistent with that; but the limitation to equipment, for whatever reason, suggests that the same rule would not apply to inventory and that takes us back to the earlier discussion of the classification of the RoboChefs; and BuildIt has acted against property in which it no longer has a security interest (the RoboChefs sold free and clear of its original SI) and that is likely to trigger a conversion action): **-4****6. FTA efforts of three parties to access funds in FCB deposit account** (BigBank has an unperfected SI in the deposit account as original collateral and might have rights to some of the funds in the account as proceeds of its perfected SI in other collateral, subject to tracing and identification issues; BuildIt may be able to claim an interest in the account as proceeds, again subject to tracing and identification; as the comments to 9-607 make clear, FCB need not respond to either of these, as neither holds control; under 9-205, the debtor has full rights to use collateral notwithstanding the existence of a security interest on the collateral; FCB would be well within its rights to turn over the funds in the account to DistantChef and that is almost certainly the safest course for it, but you could imagine FCB filing an action asking a court to determine who should receive the funds.): **-4****Total Deductions****Question 3: Additional Points**

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Question 3: Final Score

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