

Secured Transactions
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Sample Exam Questions - Set #2 - Model Answers

2.1. Southland Trailer Corp. (“Southland”) sold a mobile home on credit to W.T. and Hattie Jones, of Bountiful, Bliss. Southland filed a UCC-1 that was signed by the Joneses, named itself as the secured creditor, gave its address, named the Joneses as the debtor, and adequately described the collateral. The address given for the Joneses was “William T. & Hattie Jones, Bountiful, Bliss 00976.” On the security agreement, the Jones’s address was listed as “Route 4, Box 12, Bountiful, Bliss 00976.” Southland filed its financing statement in the Bliss Secretary of State’s office.

Assume for purposes of this question that the mobile home at issue is personal property not subject to a certificate of title.

A. Did Southland properly perfect its security interest? Please explain.

This question is based on *In re Estate of Smith*, 508 F.2d 1323 (5th Cir. 1975). The debtor’s address should be adequate. Bountiful is so sparsely populated as to have routes and boxes instead of street addresses, there probably won’t be any confusion about W.T. and Hattie’s identity. In any event, city plus zip code ought to suffice.

As for the proper place of filing, it depends on to what use the trailer is to be put. If the trailer is farm equipment, non-farm equipment, inventory, or consumer goods, then filing would be proper in the personal property records of the debtor’s state of residence. § 9-501(a). If the trailer was consumer goods, Southland would have an automatically perfected PMSI that would not have to be filed. § 9-309(1). If the trailer is a fixture, then filing would be proper in the real property records of the debtor’s county of residence. § 9-501(a)(1)(B).

B. Suppose that Southland assigns its interest in the collateral to Leisure Life Credit, Inc. (“LLC”). Would LLC have to do anything to (re-)perfect its security interest in the Jones’s mobile home? If Southland’s assignment to LLC includes the right to receive future payments from the Joneses, will LLC have to notify the Joneses before it can expect to receive payment? Please explain.

Southland is free to assign its interest in the collateral to LLC, who will take subject to any defenses or claims the Joneses have against Southland. § 9-404(a). The Joneses are not obligated to pay LLC until they receive notification that the amount due under their agreement with Southland has been assigned to LLC and payment is to be made to LLC. § 9-406(a). If the

Smiths ask, LLC must provide them with “reasonable proof” of the assignment. § 9-406(c). Until the Joneses have been notified and satisfied, they are not obligated to pay anyone other than Southland.

2.2 Your client, Smith, is a farm equipment dealer in Ruth County. On March 15, 2002, Smith sold a \$3,000 professional lawn tractor to Davis, who planned to use it to mow the one-half-acre lawn around her house. Davis paid Smith \$500 cash and signed a security agreement granting Smith a security interest in the lawn tractor to secure payment of the balance of the purchase price.

On March 8, 2002, Baker won a judgment against Davis on an unrelated tort claim. Baker properly recorded the judgment with the court clerk, obtained a writ of attachment, and delivered the writ to the sheriff before the close of business on March 14, 2002. On March 16, 2002, the sheriff showed up at Davis’s house and seized the lawn tractor.

As of March 19, 2002, who had priority with respect to the lawn tractor, Baker or Smith? Please explain.

This appears to be a purchase money security interest (“PMSI”) in a consumer good. Davis planned to use the tractor at home, and Smith took a security interest in the tractor to secure the balance of its purchase price. As such, Smith’s interest perfected automatically on March 15, 2002. § 9-309(1).

§ 9-317(a)(2) provides that, as between a secured creditor (Smith) and a judgment lien creditor (Baker), priority will depend on which happened first: Baker becoming a JLC or Smith perfecting her interest. Depending on the rule in Georgia governing when a judgment lienor becomes a JLC, Baker became a JLC on either March 14th, when he delivered the writ of attachment to the sheriff, or on March 16th, when the sheriff levied. The latter is the “majority rule,” the former is the “minority rule.” If Georgia is a “majority” state, Smith will have priority over Baker as of March 19th. If Georgia is a “minority” state, Baker will have priority over Smith as of March 19th.

Does § 9-317(e) help Smith? § 9-317(e) provides that Smith’s PMSI takes priority over Baker’s judgment lien as long as (a) Baker was not yet a JLC when Smith’s PMSI attached and (b) Smith perfected the PMSI by filing within 20 days of attachment. As long as Smith files a FS on or before April 4, 2002, Smith would satisfy the second requirement. However, the analysis of the first requirement leaves us exactly where we were under § 9-317(a)(2). If Baker was already a JLC when Smith’s PMSI attached, Baker has priority; if Baker was not yet a JLC when Smith’s PMSI attached, Smith has priority. So, again, the answer depends on whether Georgia is a “majority” (Smith wins) or “minority” (Baker wins) state.

N.B.: § 9-324(e), which allows a later-arising PMSI to trump an earlier-perfected SI, does not apply here because Baker is not an SC, he is a JLC.

2.3. Jefferson National Bank (“Jefferson”), made two loans to Toby Susman in late 2001, totaling over \$250,000.00. The loans were made to enable Susman to purchase cattle so he could go into the dairy business. As security for each loan, Susman signed a security agreement and a financing statement granting a security interest to Jefferson in “all currently owned and after-acquired cattle.” Jefferson timely and filed both of the financing statements with the Texas Secretary of State.

On January 2, 2002, Susman acquired an additional sixty head of cattle from Richard Dozier (“Dozier”) for \$60,500.00. Susman and Dozier used a financing statement, which they called a lease purchase agreement, to transfer the cattle. The agreement provided for Susman to pay for the cattle according to an amortization schedule providing for periodic payments of principal and interest. Assuming that Susman made all of the payments to Dozier, he would own the cattle with no further obligation. Dozier filed his financing statement with the County Clerk of Jefferson County, Texas. (In filing with the County Clerk, Dozier relied on advice he received from the County Clerk’s office and on the fact that financing statements are filed with the County Clerk in his home state.)

Brad Hunt, the Jefferson officer who serviced Susman’s loans, routinely inspected the cattle. On April 17, 2002, Hunt discussed Susman’s loans with the Bank’s directors’ loan committee. The minutes of that meeting show that Hunt discussed issues relating to Susman’s loans, including “comingling (sic) of mortgaged or leased cows in the pledged herd....” Hunt inspected the cattle on April 18, 2002, and found 177 head of cattle present. He noted on his appraisal report that he had asked about a lien that existed on cattle outside of Jefferson’s loan, and confirmed it. After this inspection, Hunt updated Jefferson’s loan committee on April 24, 2002, as to Susman’s loans, and the minutes show that “comingled (sic) cattle” were a concern of Hunt as of that date.

Susman told Hunt and Bill Clark, another loan officer, that he was going to quit the dairy business. Inspections of the cattle revealed that there were approximately 177 head of dairy cattle on the property, when there should have been more than 200. Jefferson’s officers ran a lien search in the Texas Secretary of State’s office and found no financing statement other than those Jefferson filed in 2001. Jefferson repossessed all of the cattle and sold them either at public auction or, if the cows were rejected at auction, to the slaughterhouse.

After the cattle were sold, Dozier contacted Jefferson and claimed an interest in the proceeds. Jefferson denied that claim, and Dozier filed a declaratory judgment action seeking, *inter alia*, compensation from Jefferson for conversion, and a declaratory judgment determining the priority of his lien over Jefferson’s lien.

Answer the following questions, and please explain your answers:

- A. Did Jefferson have a valid security interest in Susman’s cattle as of December 31, 2001?**

This question is based on *Franklin National Bank v. Boser*, 972 S.W.2d 98 (Tex. App.—Texarkana 1998, pet. denied). We start by testing the sufficiency of the agreement between Jefferson and Susman. That is, did the creditor (Jefferson) and its debtor (Susman) have a valid contract that gave Jefferson an interest in collateral in which Susman had rights? Jefferson's security agreements appear to be valid — *i.e.*, they are in writing and supported by consideration, and the debtor had rights in the collateral — and purport to give Jefferson a security interest in Susman's then-current and after-acquired cattle. § 9-203(b). So, as between Jefferson and Susman, Jefferson was secured.

B. If so, was Jefferson's security interest properly perfected as of December 31, 2001?

If Jefferson's loan can be characterized as a "purchase-money" loan, then Jefferson has a PMSI in the cattle. However, PMSIs in farm products — here, the cattle (*see* § 9-102(34)(B)) — do not automatically perfect as does a PMSI in consumer goods. § 9-309(1). Rather, Jefferson was required to either possess the cattle, § 9-313(a), or file a financing statement covering the cattle and reflecting Jefferson's security interest with sufficient specificity to give rise to inquiry notice, § 9-310(a). Likewise, if Jefferson's interest was not a PMSI, Jefferson was required to either possess or file. Here Jefferson elected to file. But, did Jefferson file in the right place(s)? Jefferson should have filed in the Texas Secretary of State's office. § 9-501(a). It did.

C. If not, does Jefferson have a valid excuse for not doing so?

No excuse is required.

D. Assuming that Jefferson had a valid, properly-perfected security interest as of December 31, 2001, when Susman purchased the additional cattle from Dozier, did Jefferson's prior-perfected security interest encompass the additional 60 cows?

Yes. The financing statement explicitly includes "after-acquired cattle," which is exactly what the 60 additional cows are. Under § 9-204(a), Jefferson would not have to amend its financing statement or refile to obtain perfection as to the after-acquired cows. Note, however, Jefferson would not have purchase-money status as to the after-acquired cattle.

E. Did Dozier have a valid security interest in the 60 cows he sold to Susman in January 2002?

Again, we start by testing the sufficiency of the agreement between Dozier and Susman. That is, did the creditor (Dozier) and its debtor (Susman) have a valid contract that gave Jefferson an interest in collateral in which Susman had rights? The January 2002 "lease purchase agreement" is in writing, is supported by consideration, and Susman had rights in the 60 head of cattle he bought from Dozier. § 9-203(b). So, as between Dozier and Susman, the security interest appears to have attached. The only question is: Was the "lease purchase agreement" a "true lease" or a "disguised sale"? This appears to be a "disguised" sale, as

opposed to a “true” lease, because the debtor gets to keep the cattle at the end of the term without any additional consideration. *See* § 1-201(37). As such, it may give rise to a security interest.

F. If so, did Dozier properly perfect his security interest in those cows?

If the “lease purchase agreement” can be characterized as a “purchase-money” loan, then Dozier has a PMSI in the cattle. As noted above, PMSIs in farm products do not automatically perfect. Therefore, Dozier was required to either possess the cattle, § 9-313(a), or file a financing statement covering the cattle and reflecting Dozier’s security interest with sufficient specificity to give rise to inquiry notice, § 9-310(a). Likewise, if Dozier’s interest was not a PMSI, Dozier was required to either possess or file. Dozier, like Jefferson before it, elected to file. But, did Dozier file in the right place(s)? Dozier filed in the county clerk’s office. Dozier should have filed in the Texas Secretary of State’s office. § 9-501(a). It did not do so.

G. If not, does Dozier have a valid excuse for not doing so?

Under old § 9-401(2), Dozier may have been able to afford himself of the “good faith” filing exception if Jefferson knew of the contents of Dozier’s financing statement. However, § 9-501 recognizes no such exception under Revised Article 9.

H. As between Jefferson and Dozier, whose security interest had priority as of July 1, 2002?

If Jefferson was properly perfected as of December 31, 2001, then the only way Dozier could have priority over Jefferson is if Dozier properly perfected a PMSI in the cattle by filing within 10 days in the proper office. Dozier did have a PMSI in the cattle. Did he file it in the proper place? Jefferson and Dozier should have filed in the Secretary of State’s office. Jefferson did; Dozier did not. Therefore, Dozier’s PMSI would not “trump” Jefferson prior-perfected SI.

If both Jefferson and Dozier properly perfected (which they did not), the issue of commingled collateral could arise under § 9-336. Collateral isn’t commingled for purposes of Article 9 just because Jefferson’s agent describes it as “commingled.” It may be that the bills of sale for the cattle identify which cattle were bought when. If so, they are not technically commingled even though they graze together. If there is no good way to distinguish between cows bought with the money from Jefferson and cows bought with the money from Dozier, and if both Jefferson and Dozier are perfected, then each has an equally “senior” interest in the pro rata share of the entire herd based on their relative “contributions,” based on the dollar amounts lent to finance the purchase of the herd \$250,000 vs. \$60,500. § 9-336(f)(2).

2.4. On February 28, 2002, W.T. King (“King”), a resident of Miami (Dade County), Florida, borrowed \$150,000 from MegaBank of Miami, N.A. (“MegaBank”). That same day, King signed a note in which he promised to repay MegaBank \$150,000, plus interest at 8% per year, in forty-eight equal installments due on or before the last day of each month commencing March 31, 2002, and a security agreement, granting MegaBank a security interest in “all accounts, deposit accounts, chattel paper, instruments, and general

intangibles now or hereafter belonging to W.T. King.” On March 1, 2002, MegaBank filed a financing statement with the Florida Secretary of State properly naming King as the debtor and MegaBank as the secured creditor and describing MegaBank’s collateral as “all accounts, deposit accounts, chattel paper, instruments, and general intangibles now or hereafter belonging to W.T. King.”

On March 4, 2004, King borrowed \$200,000 from Onyx Credit Alliance, Inc. (“Onyx”), a Delaware corporation, with its sole place of business in Atlanta, Georgia. That same day, King signed a note in which he promised to repay Onyx the \$200,000, plus interest at 10% per year, in sixty equal installments due on or before the 15th day of each month commencing March 15, 2004, and a security agreement in which he granted Onyx a security interest in three specific pieces of equipment and:

all other goods, chattels, machinery, equipment, inventory, accounts, chattel paper, notes receivable, accounts receivable, furniture, fixtures and property of every kind and nature, wherever located, now or hereafter belonging to W.T. King.

On March 14, 2004, Onyx filed copies of the security agreement with both the Florida Secretary of State’s office and Georgia Secretary of State’s office. The Onyx security agreement named King and Onyx in such a way as to satisfy § 9-502.

At all relevant times prior to August 18, 2005, King was the chief executive officer and sole shareholder of W.T. King Contracting, Inc. (“WTKI”), a Delaware corporation in the asbestos abatement business. At all relevant times, WTKI had its principal place of business in Atlanta, Georgia. On August 18, 2005, King sold 100% of the stock of WTKI to BFI Special Services, Inc. (“BFIS”), a subsidiary of Brownwall Ferrity Industries, Inc. (“BFII”), for \$500,000. BFIS and BFII are both Delaware corporations with offices in numerous states. As a condition of the sale, King entered into a separate written covenant with BFIS, in which King agreed not to compete with BFIS in the asbestos abatement business for five years. In consideration for this covenant not to compete, BFIS agreed to pay King an amount equal to one-half of one percent of the gross revenues of all national and international asbestos abatement operations of BFIS and its affiliates. BFIS promised to pay this percentage to King for five years, with each payment made annually on or before October 31st.

On February 28, 2006, King made the final payment due to MegaBank under the February 28, 2002 note. On May 1, 2006, King borrowed \$300,000 from MegaBank on precisely the same terms as the February 28, 2002 note. King signed a new security agreement giving MegaBank as collateral precisely the same types of collateral identified in the February 28, 2002 security agreement. On May 1, 2006, MegaBank filed a new financing statement in the Florida Secretary of State’s office that identified the collateral as “all accounts, deposit accounts, chattel paper, instruments, and general intangibles now or hereafter belonging to W.T. King.” On May 15, 2006, MegaBank filed a continuation statement in the Florida Secretary of State’s office that identified the March 1, 2002

financing statement by its file number and declared that the effective period of said financing statement was thereby extended until March 1, 2012.

King made payments to Onyx under the March 4, 2004 note until some time after the sale of BFIS, but defaulted before paying it off. Rather than foreclosing, Onyx agreed to refinance. On March 27, 2008, King executed a second note and security agreement in favor of Onyx for approximately \$325,000, plus interest. The second note included the unpaid principal and interest from the first note, as well as additional funds. The description of collateral in the second security agreement was identical to that in the March 4, 2004 security agreement except that the three specific pieces of equipment were not listed in the second agreement because they now belonged to BFIS. The March 27, 2008 note was to be repaid in monthly installments until the entire unpaid balance became due on December 31, 2009. King paid the monthly installments, but failed to pay the “balloon” payment when it became due. On March 1, 2009, Onyx filed a continuation statement in the Florida Secretary of State’s office that identified the March 14, 2004 filing by its file number and declared that its effective period was thereby extended until March 14, 2014.

On January 15, 2010, King filed a bankruptcy petition in the U.S. Bankruptcy Court for the Southern District of Florida. Both Onyx and MegaBank claim a security interest in the monies payable to King under the BFIS agreement.

King’s bankruptcy trustee has asked you to determine who had priority between Onyx or MegaBank as of the date King filed his bankruptcy petition. Please explain.

(1) Identifying the Debtor

Both MegaBank and Onyx lent money to King, not WTKI, and took security interests in King’s property, not WTKI’s. While, as the sole shareholder of WTKI, King might be liable for WTKI’s debts (assuming that a successful claimant could pierce the corporate veil) and King’s assets might be attached to secure WTKI’s debts, the obverse is not true: WTKI is not liable for King’s debts and, unless the King-MegaBank or King-Onyx SA expressly so provides, WTKI’s assets may not be attached to secure King’s debts.

(2) Establishing and Maintaining Priority

In order to test Onyx’s and MegaBank’s claims to priority, we must first determine whether and when they obtained and perfected valid security interests that would encompass King’s right to receive payments from BFI under the covenant not to compete and whether the interest remained perfected at the time King filed bankruptcy.

(a) Attachment

For each claimant to prove the existence of a valid SA, it must show that (1) the claimant gave King value in exchange for rights in King’s collateral; (2) King had rights in said collateral; and (3) King signed a security agreement which contains a description of the collateral.

On 2/28/02, King borrowed \$150,000 from MegaBank and executed a written security agreement granting MegaBank a security interest in “all accounts, deposit accounts, chattel paper, instruments, and general intangibles now or hereafter belonging to W.T. King.” Thus, MegaBank gave value and King signed an agreement satisfying § 9-203(b)(3). The only question remaining is whether King had rights in the collateral pledged. While the BFIS agreement – and, hence, King’s right to payment under the agreement – was not yet in existence as of 2/28/02, King had rights in other collateral identified in the SA, and the SA included an after-acquired property clause (“now or hereafter belonging to”). Therefore, MegaBank had an attached SI in then-existing collateral as of 2/28/02, and an attached SI in any after-acquired collateral of the types identified in the SA at the moment when King had rights in said after-acquired collateral. § 9-203(a).

On 3/4/04, King borrowed \$200,000 from Onyx and executed a written security agreement granting Onyx a security interest in three pieces of equipment and numerous types of presently-owned and after-acquired personal property. Thus, Onyx gave value and King signed an agreement satisfying § 9-203(b)(3). The only question, again, is whether King had rights in the collateral pledged. The analysis is the same as for MegaBank. Therefore, Onyx had an attached SI in then-existing collateral as of 3/4/04, and an attached SI in any after-acquired collateral of the types identified in the SA (“now or hereafter belonging to”), at the moment when King had rights in said after-acquired collateral.

On 5/1/06, King borrowed another \$300,000 from MegaBank and executed a written security agreement granting MegaBank a security interest in the same collateral identified in the 2/28/02 SA. Again, MegaBank gave value and King signed an agreement satisfying § 9-203(b)(3). And, because King’s right to payment under the BFIS agreement came into existence on 8/15/05, King clearly had rights in the collateral pledged.

On 3/27/08, King borrowed approximately \$325,000 from Onyx, representing the unpaid principal and interest from the 3/4/04 loan, as well as additional funds, and executed a written security agreement granting Onyx a security interest in the same collateral identified in the 3/4/04 SA excluding the three specific pieces of equipment. Again, Onyx gave value and King signed an agreement satisfying § 9-203(b)(3). And, because King’s right to payment under the BFIS agreement came into existence on 8/15/05, King clearly had rights in the collateral pledged.

(b) Perfection

For each claimant to prove that its attached security interest was properly perfected, it must show that it filed against, possessed, or controlled the collateral, as appropriate, and that, if it filed, it filed in the right place. Here both claimants only filed; therefore, they must prove that (1) filing was an appropriate means of perfecting against the collateral; and (2) they filed in the correct office.

MegaBank perfected its 2/28/02 SI by filing a FS satisfying § 9-502 in the secretary of state’s office of the state of King’s residence (Florida) on 3/1/02. §§ 9-307(b)(1) & 9-501(1).

Filing is not a permissible means to perfect an interest in deposit accounts, which may be perfected against only by control, § 9-312(b)(1); otherwise, MegaBank's 3/1/02 filing perfected its interest in all other types of collateral reasonably identified in its FS. Thus, as long as MegaBank's perfection did not lapse or terminate before King filed bankruptcy, MegaBank's priority date would be 3/1/02.

Onyx perfected its SI by filing the SA with the Florida secretary of state's office on 4/14/04. Filing with the Secretary of State is not a permissible means to perfect an interest in fixtures, which must be perfected against by filing in the real property records of the county in which the real property is located; otherwise, Onyx's 3/14/04 filing perfected its interest in all other types of collateral reasonably identified in its SA – as long as its SA could double as an FS. Could Onyx satisfy §§ 9-501 and 9-502 by filing a copy of the security agreement, as opposed to a financing statement? Yes. As long as the security agreement satisfied § 9-502(a), it may be filed in lieu of a financing statement. Thus, as long as Onyx's perfection did not lapse or terminate before King filed bankruptcy, Onyx's priority date would be 4/14/04.

MegaBank perfected its 5/1/06 SI by filing a FS satisfying § 9-502 in the Florida secretary of state's office on 5/1/06. Again, filing is not a permissible means to perfect an interest in deposit accounts. Otherwise, MegaBank was perfected as of 5/1/06 (if not earlier) in the collateral identified in its 5/1/06 FS.

Onyx took no additional action to perfect its 3/27/08 interest, apparently relying, instead, on its 3/14/04 filing. Therefore, Onyx perfected its interest in the collateral supporting the 3/27/08 loan, if at all, as of 3/14/04.

(c) Maintaining Perfection

For each claimant to prove that its previously perfected interest remained perfected at the time King filed bankruptcy (otherwise, the trustee could avoid the interest), it must prove that (1) some debt underlying the perfected security interest was still outstanding; (2) if more than five years elapsed from the date of perfection to the date King filed bankruptcy, the claimant timely filed a proper continuation statement.

In the absence of a timely continuation statement, MegaBank's 3/1/02 filing would have lapsed at the close of business on 3/1/07. § 9-515(a). MegaBank filed a CS with the Florida secretary of state on 5/15/06, purporting to continue the 3/1/02 filing until 3/1/12. This continuation statement failed to maintain MegaBank's 3/1/02 priority date. A filed SI may be continued beyond its initial five-year span if the creditor files a continuation statement during the last 6 months of the five-year period. § 9-515(c). Continuation may not be accomplished by filing before (or after) the 6-month continuation window. § 9-510(c). In order to properly continue its 3/1/02 FS, MegaBank was required to file its CS no earlier than 9/1/06 and no later than 3/1/07. MegaBank filed on 5/15/06 – more than three months too early. Instead, MegaBank's priority date was 5/1/06 – the date on which it filed the second FS (the second FS would not be able to serve as a continuation statement unless it satisfied the requirements of § 9-102(a)(27), which it almost certainly did not). King filed bankruptcy less than five years after

MegaBank's 5/1/06 filing; therefore, MegaBank was not required to file a CS, and the interest remains perfected.

In the absence of a timely continuation statement, Onyx's 3/14/04 filing would have lapsed at the close of business on 3/14/09. Onyx filed a continuation statement with the Florida secretary of state on 3/1/09, purporting to continue the 3/14/04 filing until 3/14/14. Because King had not fully satisfied the debt that gave rise to the 3/14/04 filing and because Onyx properly filed its CS within the final six months of the 3/14/04 filing's effective date, Onyx preserved its priority date of 3/14/04.

(3) Scope of Each Claimant's Security Agreement

As long as the description of collateral in the 3/4/04 SA could be fairly read to cover King's right to payment from BFIS, Onyx would have priority over MegaBank with respect to monies payable to King under the BFIS agreement. If, on the other hand, King's right to payment falls outside the scope of Onyx's SA, then MegaBank has priority.

(a) Characterizing the Collateral

King's right to payment under the BFIS would appear to be either an account or a general intangible. Assuming that the right to payment arose from King's agreement not to compete with BFIS, it is not proceeds, because it did not arise from the disposition of collateral. If you wanted to argue that it was "proceeds" of King's sale of stock to BFIS, King's stock would be investment property. § 9-102(49).

(i) Account

§ 9-102(2) defines an "account" as a "right to payment ..., whether or not earned by performance, ... for services rendered or to be rendered" King's right to payment arises because he sold his business to BFIS and agreed not to compete for five years. The agreement not to compete might be deemed a "service" for which King was being paid. Filing is the only proper means of perfecting an interest in accounts. § 9-310(a).

(ii) General Intangible

If King's right to payment is not an account, it would be a general intangible. § 9-102(42). Filing is the only proper means to perfect against a general intangible. § 9-310(a).

(iii) Proceeds of Investment Property

In addition to being an account or general intangible, King's right to payment might also be proceeds from the sale of his WTKI stock to BFIS. King's stock was investment property. § 9-102(49). A SI in investment property may be perfected by filing. § 9-312(a). And, if either claimant was properly perfected with respect to the investment property at the time King sold it, they would be properly perfected in the proceeds of that investment property

(b) Scope of Onyx's 3/4/04 Security Agreement

The Onyx SA explicitly includes accounts. Therefore, if King's right to payment is an account, then Onyx properly perfected by filing in the Secretary of State's office on 3/14/04. The Onyx SA does not explicitly include general intangibles or investment property. Onyx will argue that "property of every kind and nature" includes general intangibles and investment property. "[P]roperty of every kind and nature" is probably too broad to attach, *see* § 9-108 – though not to perfect, *see* § 9-504(2) (permitting the use of super-generic descriptions of collateral in financing statements). Therefore, Onyx's interest would have attached to the three pieces of equipment and to those types of collateral specifically identified (goods, chattels, machinery, equipment, inventory, accounts, chattel paper, notes, accounts, furniture, and fixtures) as of 3/4/04, but not to any non-specified property, including the right to payment – whether it is a general intangible or proceeds of investment property.

(c) Scope of MegaBank's 5/1/06 Security Agreement

MegaBank's 5/1/06 SA clearly encompasses King's right to payment from BFIS because it explicitly covers both accounts and general intangibles. (It does not, however, include investment property; therefore, MegaBank cannot claim the right to payment as proceeds of its collateral – but it doesn't need to.) Therefore, if the bankruptcy judge finds that Onyx's SA did not encompass the right to payment, then MegaBank would have priority with respect to monies payable to King under the BFIS agreement, even though Onyx has an earlier priority date.

* * *

This question is based on *Orix Credit Alliance, Inc. v. Omnibank, N.A.*, 858 S.W.2d 586 (Tex. App.–Houston [14th Dist.] 1993, writ denied). The *Orix Credit Alliance* court held that the right to payment was not an account, as that term was defined in former Article 9, and that, while it might be a general intangible, the description of collateral in Onyx's security agreement – "property of every kind and nature wherever located" – did not cover general intangibles because only tangible collateral can be "located" anywhere. The court did not address the proceeds of investment property argument. I didn't care what you concluded, as long as your reasoning was sound.