

February 2010 Exam—Essay 1

**Very nice long, detailed answer! I also like your headings.**

1. First ton of copper:

At issue is whether the security interest Bank had attached to the copper when Kitchenware has not yet paid for it.

Under the UCC Article 9 **good job stating the relevant law.**, a security interest is an interest in property of the debtor by the creditor that serves as collateral for a loan given by creditor to debtor. The security interest attaches to property if the debtor owns the property and agrees to give a security interest in a security agreement. **Good job using the legal word “attach”! The third “step” that you missed is that the secured party must give value but you got the first two!**

**If you want to sum it up in once sentence you can say: To “attach” (1) the secured party must give value, (2) the debtor must have rights in the inventory, and (3) a binding security agreement must be formed – and this requires an authentication, intent, and description.**

**This is a nice summary of attachment, but you would get full credit for your rule statements too, especially since attachment was not a primary issue.**

A security agreement must sufficiently describe property in order to be valid. **Good.** Using an Article 9 classification of property is sufficiently descriptive, and inventory is a valid classification. Inventory is property used or used up in the short term by a business. **Excellent.**

An after acquired property clause in a security agreement is valid. It allows the creditor to attach **here that term is again! Good!** to new property acquired by the debtor after the security agreement is made and filed (perfected) without having to make a new agreement or re-perfect on that property. **Good, this point was not made by the model answer but is accurate nonetheless!**

Perfection gives rights by a creditor against other creditors in the same property that attach after the perfected interest. One method of perfection is filing a financing statement with the state. **Good rule statements.**

Here, Kitchenware gave Bank a valid security interest in its inventory, now owned or that it manufactures or acquires in the future. By filing a properly completed financing statement reflecting the security interest in the appropriate office, Bank perfected that security agreement, which gives it superior rights in any inventory that is manufactured or acquired by Kitchenware after the security agreement was made. **Excellent statement of the law and application of the rule to the facts. You make very good use of the facts which is part of what makes your answer lengthy and detailed (which the grader will like!).**

A contract for the sale of goods is not governed by Article 9, which only covers security interests. A sale of goods is governed by the UCC, which allows the parties to dictate the terms of the contracts between the two parties, with certain default rules.

In the contract between Copperco and Kitchenware, Copperco retained title in the copper sheets until Kitchenware paid the full contract price. Because of this clause in the contract, Kitchenware did not fully acquire the copper sheet, even though it was delivered to Kitchenware and was at the factory. Because it was not “acquired” the security interest by Bank did not attach to first ton of copper sheets. This makes sense, because Kitchenware has not paid for the property, and it would not exist as inventory of Kitchenware without Copperco giving it to them. It would not do so without first being paid for it. Copperco does not have an inferior security interest in the copper, but rather still owns the copper outright, until Kitchenware pays for it.

**Careful! This point has been tested quite a bit in Secured Transactions. I am actually glad you got it wrong because you will not get it wrong if you see it on the exam!**

**A security interest attaches to any “retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer.” Basically, even though the seller said that title was *not transferred*, in effect, Kitchenware *owns* the copper sheet and Copperco merely has a *security interest* in it!**

**So even though the contract provided that Copperco retained title, Kitchenware “had rights” in the inventory (the copper sheets) that was delivered. So for article nine purposes, what Copperco really has is a security interest.**

**And here, the main issue was, that the security interest was unperfected because they did not file a financing statement or otherwise perfect the interest!**

**A perfected interest beats an unperfected interest, so the bank would have priority with respect to the first ton of copper.**

2. Second ton of cooper:

Copperco properly withheld the shipment of the second copper sheet under the terms of its contract with Kitchenware. It has not become property of Kitchenware, and is thus not inventory. **Good!!** Because Bank’s security interest only attaches to “inventory” of Kitchenware acquired after the security agreement was entered into, the Bank has no interest in non-inventory. Here, Copperco still has title to the coppersheets, and still has them in their possession. **Good!** Thus, Bank’s security

interest has not attached to it in any way, and Copperco has superior rights in the second ton of copper sheets. **This is exactly right!**

**The model answer broke it down by saying:**

- 1) Copperco had a security interest in the copper sheets.
- 2) The copper sheets were also “inventory”
- 3) The bank had a security interest which attached to the inventory and which was perfected (by filing a financing statement)
- 4) A perfected security interest beats an unperfected one. So the bank “wins” with respect to the first delivery.
- 5) The bank's interest did not attach to the second interest because (as you mention in your answer) one of the requirements of attachment is that the debtor “has rights in” the inventory, and here they had no rights in the second sheet as they were not even delivered!

**I think overall:**

- You *definitely* have a good understanding of secured transactions!
- You use key words like attachment, perfection, and seem to be very comfortable with the concepts. Good job! A lot of people do not study attachment and perfection (or secured transactions at all) so you will be at an advantage if it is tested!
- You have *great rule statements* on the whole and you use *legal terminology* which is what they are looking for. This will also put you at an advantage!
- Your downfall was that you *missed* the fact that what Copperco had was truly a security interest! As I mentioned, this has been tested before!

**Good ways to get better at issue-spotting are:**

- Practice. (And this can even be bullet-pointing essays. I do not recommend merely reading the question and answer. I recommend reading the question, bullet pointing the answer, then looking at the model closely, at a minimum, if you want to expose yourself to new material without spending 30 minutes per question.)
- Memorize the highly-tested rules/issues (These are in the one-sheets that you bought too!). The first “Key Principle” in the one-sheet is that “when the question requires examinees to know whether Article 9 applies, the answer has been yes – even if the parties do not call the transaction a ‘security interest’ or realize that it is covered by Article 9”. This was also tested in July 2011 and July 2009 if you are looking for other examples of it.
- If you see a question that has two different parts about basically the same thing, it should clue you in that there might be a difference in the answer. Here they were asking who had priority in two deliveries of copper. Look for *facts that might distinguish*

*those two deliveries of copper* – e.g., here one was delivered (the debtor had “rights” in it) the other one was not. It would be weird if the question turned out the exact same way for both. So being aware of the fact that if they ask basically the same question with respect to two different things that they usually turn out differently is something that might allow you to slow down and rethink your answer when you get to the fact pattern!

Overall, you would still get a decent score on this one, especially in comparison to what others may write in response to this question (and this is given the fact that many do not study secured transactions at all “hoping” that it won’t be tested!)

You seem to be very well-versed in the topic. However, I suggest you do what I stated above to maximize your points on this answer.