Commercial Law

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Problem Set 3

Unless otherwise specified, all event take place in the order in which they are described. In order to avoid lengthy description of irrelevant facts, you may assume that no issues are raised by facts which are not mentioned. For example, if a problem states that "a financing statement is registered" without specifying the collateral description or the names of the parties, you may assume that the parties are accurately identified and that description of the collateral in the financing statement encompasses the collateral as described in the security agreement. Unless otherwise stated, the loan is advanced when the security agreement is entered into. If there are different parts to a questions, the facts described in the parts are independent: that is, if Part A says that the debtor went out of business, do *not* assume that the debtor has gone out of business in Part B unless it is specifically so stated in Part B.

In all cases, as well as providing the answer to the question, explain your answer with reference to the relevant section(s) of the PPSA.

Note that while these questions generally focus on the result as a matter of law, in an examination you will often be required to comment on the policy underlying the rule.

Problem 1

D is a farmer. SP1 enters into a security agreement with D taking all D's present and after-acquired property as collateral. SP1 registers a financing statement describing the collateral as "all D's present and after-acquired property". D subsequently purchases a tractor for farm use. D enters into a security agreement with SP2 in which the tractor is collateral. SP2 registers a financing statement describing the tractor by serial number. D defaults. As between SP1 and SP2, who has priority with respect to the tractor?

Problem 2

Alice wanted a house in the country near her parents, Ethel and Sam. Ethel and Same decided to sell 2 acres of their 100 acre farm to Alice so she could build a house. The price for the lot was to be $15,000. Alice couldn't afford to pay cash for the property, so Ethel and Sam agreed that she wouldn't have to pay right away. The parties made out a deed which was duly registered and the land was conveyed to Alice. Even though it was 'in the family', for the sake of formality they drew up and signed a mortgage agreement acknowledging the debt and pledging the 2 acres of land as security. However, they did not register the mortgage. Alice then went to the Bank of Fredericton to borrow money to build a house. Alice told the loan officer about the mortgage to her parents and the loan officer said "We'll see what can be done about it." The Bank agreed to lend Alice $100,000, which would be secured by a mortgage on the property. No one made any further mention of the prior mortgage. The mortgage to the Bank was duly entered into and registered. Alice built her house, but 2 years later she lost her job and could no longer make her house payments. The Bank advised Alice that it intended to realize on its security. Alice owes the Bank $90,000 and the property is worth $80,000. Alice has no other significant assets. Alice realizes that she will lose the property, but she comes to see you with Ethel and Sam to find out whether Ethel and Sam are entitled to get their $15,000, which is still owing in full, out of the proceeds of the sale.

Part A
Assume that the applicable law is the New Brunswick Registry Act.

Part B
Assume the applicable law is the New Brunswick Land Titles Act.

<u>Problem 3A</u>
D opens a secured line of credit with the Bank of Fredericton using all its present and after-acquired personal property as collateral. The Bank registers a financing statement to that effect in the PPR. D writes cheques on the line of credit to the extent of $20,000. D then enters into a security agreement with the Miramichi Trustco for a loan of $10,000, to be secured by all D's present and after-acquired property. The Trustco registers a financing statement to that effect, notifies the Bank in writing of its security interest in D's property, and advances the $10,000 in full. D then writes further cheques on its line of credit with the Bank of Fredericton for an additional $5,000. D then defaults. What are the priorities as between the Trustco and the Bank?

<u>Problem 3B</u>
D opens a secured line of credit with the Bank of Fredericton using its land as collateral. The Bank registers its mortgage against D's land under the Land Titles Act. D writes cheques on the line of credit to the extent of $20,000. D then enters into a security agreement with the Miramichi Trustco for a loan of $10,000, to be secured by D's land. The Trustco registers its mortgage against D's land under the Land Titles Act, notifies the Bank in writing of its security interest in D's property, and advances the $10,000 in full. D then writes further cheques on its line of credit with the Bank of Fredericton for an additional $5,000. D then defaults. What are the priorities as between the Trustco and the Bank?

<u>Problem 3C</u>
D opens a secured line of credit with the Bank of Fredericton using its land as collateral. The Bank registers its mortgage against D's land under the Land Titles Act. D writes cheques on the line of credit to the extent of $20,000. D then enters into a security agreement with the Miramichi Trustco for a loan of $10,000, to be secured by D's land. The Trustco registers its mortgage against D's land under the Land Titles Act and advances the $10,000 in full. D then writes further cheques on its line of credit with the Bank of Fredericton for an additional $5,000. D then defaults. What are the priorities as between the Trustco and the Bank?

Problem 3D

D opens a secured line of credit with the Bank of Fredericton using its land as collateral. The Bank registers its mortgage against D's land under the Land Titles Act. D writes cheques on the line of credit to the extent of $20,000. D has substantial renovations to the buildings on the mortgaged land done by M&L Construction Inc. The value of the work is $10,000. D is slow in paying and M&L registers a claim of lien in the Land Titles office. D then writes further cheques on its line of credit with the Bank of Fredericton for an additional $5,000. D then defaults on its loan from the Bank without having paid M&L. What are the priorities as between the M&L and the Bank?

Problem 3E

D opens a secured line of credit with the Bank of Fredericton using all its present and after-acquired personal property as collateral. The Bank registers a financing statement to that effect in the PPR. D writes cheques on the line of credit to the extent of $20,000. D then becomes involved in a contractual dispute with one its suppliers, JC Enterprises. The matter goes to trial and JC wins a judgment for damages in the amount of $10,000. JC registers a notice of judgment in the PPR. D then writes further cheques on its line of credit with the Bank of Fredericton for an additional $5,000. D then defaults. What are the priorities as between the JC and the Bank?

Problem 3F

D opens a secured line of credit with the Bank of Fredericton using all its present and after-acquired personal property as collateral. The Bank registers a financing statement to that effect in the PPR. D writes cheques on the line of credit to the extent of $20,000. D then becomes involved in a contractual dispute with one its suppliers, JC Enterprises. The matter goes to trial and JC wins a judgment for damages in the amount of $10,000. JC registers a notice of judgment in the PPR and notifies the Bank in writing of the registration of its notice of judgment . D then writes further cheques on its line of credit with the Bank of Fredericton for an additional $5,000. D then defaults. What are the priorities as between the JC and the Bank?

Problem 4

JC1 registers a notice of judgment against D for $10,000 in the PPR. SP1 subsequently takes and security interest in all D's present and after-acquired property to secure a $20,000 loan and registers a financing statement accordingly. JC2 and JC3 then register notices of judgment in the PPR, in the amount of $6,000 and $7,000 respectively, prior to any enforcement. The assets of D are only $32,000. How much will each party receive on enforcement by the sheriff and SP1 (ignoring costs of enforcement) if:

(a) D's assets are $28,000?

(b) D's assets are $38,000?

Problem 5 (From a prior exam – 25 minutes)
D is a retailer of home electronics (televisions, stereos etc.). D borrowed $50,000 from the Bank of Fredericton to purchase its inventory. The loan was advanced in full immediately and was to be repaid over five years. It was secured by a security interest in all of D's inventory and accounts receivable. The Bank registered a financing statement in respect of this collateral in the PPR in February 1994. In March of that year D obtained a line of credit from the Miramichi Trust Co. The line of credit entitled D to borrow up to $60,000 and was secured by all of D's inventory and accounts receivable. In March 1994 the Trust Co. filed a financing statement in the PPR in respect of that collateral. In April of 1995 D borrowed a further lump sum of $15,000 from the Bank. The loan agreement specified that it was secured by D's inventory and accounts receivable. In the Christmas rush in 1996 a television fell from a high shelf onto S, a customer, injuring S seriously. S sued D and obtained a judgment for $32,000. In May 1997 January S filed a notice of judgment in the PPR. At that time D owed $45,000 to the Bank and $30,000 to the Trust Co. S searched the PPR and discovered that both the Bank and the Trust Co. had registered financing statements against D and on June 15 1997 S notified both the Bank and the Trust Co. of the registration of its notice of judgment. At that time D still owed $45,000 to the Bank, but it had drawn on its line of credit and owed $35,000 to the Trust Co. In August of 1997 D drew a further $15,000 on its line of credit with the Trust Co., so that its total debt was $50,000. While D's business is doing well, the Trust Co. is worried that its position may become precarious if business takes a turn for the worse. Advise the Trust Co. of the priorities as between S, the Bank and the Trust Co..

Problem 6
On January 1 SP1 agrees to lend D $400,000 in four equal installments of $100,000, which are to be advanced on January 1, April 1, June 1 and September 1. The loan is to be secured by all of D's personal property. The parties enter into a security agreement to that effect, and SP1 immediately files a financing statement in the PPR. On May 1 JC obtains a judgment for $250,000 against D and immediately files a notice of judgment in the PPR. On July 1 JC informs SP1 of the judgment and the fact that a notice of judgement has been filed, but takes no further action. SP1 makes all four advances as scheduled. On October 1 D defaults on the loan. D's personal property can be sold for $500,000.

Part A
How much will JC and SP1 respectively receive if the property is sold in satisfaction of the debts?

Part B
Would the result be different if the loan was secured by real property which D owned on January 1 and the relevant documents were filed in the land registry?