Assignment 18
Perfection
Article 9 Financing Statements:
Other Information

Reference: Understanding Secured Transactions §§ 5.02, 5.03

UCC-1: Info for Sufficiency

- § 9-502(a): to be sufficient to perfect a security interest, UCC-1 must contain:
  - The debtor’s name
  - The secured party’s name (or the name of a representative of the secured party), and
  - A description of the collateral covered by the financing statement

Other Information in UCC-1s

- Filing officer can (and must) reject UCC-1 tendered to be filed, if it does not include the following information [§§ 9-520(a), 9-516(b)]
  - Debtor’s mailing address
  - Secured party’s mailing address
  - Debtor’s status (i.e., individual or organization)
- Properly rejected filing is not considered to have been “filed” [§ 9-516(b)]
• Why permit filing officer to reject a filing based on omission of debtor’s address, if that isn’t necessary for sufficiency under § 9-502(a)?
  – Idea: § 9-516(b) information “assists searchers in weeding out ‘false positives,’ i.e., records that a search reveals but which do not pertain to the debtor in question” [§ 9-520 comment 3]

Problem 18.1. It’s 4:50pm on Friday. You have to file UCC-1 by 5:00 pm. You realize you don’t have the debtor’s mailing address. You should:

A. Try to file it w/out an address
B. Wait to file until you get the correct address
C. Enter an incorrect address and correct it on Monday

Problem 18.1(a)

Filing officer can (and must) reject the filing if the number is left blank [§ 9-520(a)]

But, if filing party includes incorrect information, filing officer can’t reject it b/c it is incorrect!
  – § 9-516, cmt 3: “Neither [§ 9-516] nor § 9-520 requires or authorizes the filing office to determine, or even consider, the accuracy of information” in a UCC-1

Thus, you can enter a wrong address, file it with the wrong address

Problem 18.1(c). You went ahead and entered a wrong address for the debtor and filed the UCC-1, which was accepted. Which statement is correct?

A. Your client’s SI is perfected, and you have nothing to worry about
B. Your client’s SI is perfected, but that perfection may be at risk
C. Your client’s SI is unperfected
Problem 18.1(c)

- Your client’s SI would be perfected
  - The filing contains the info needed for minimum sufficiency (name of debtor, name of secured party, description of collateral) [§ 9-502(a)]
- But: a searcher may mistakenly “exclude” this filed UCC-1 as a “false positive,” based on the incorrect address (i.e., “it’s the same name, but this isn’t ‘my’ debtor because ‘my’ debtor doesn’t live at that address, and never did”)

Problem 18.1(b). You entered a wrong address and filed the UCC-1. Later, the filing office sent it back rejected (saying the Postal Service didn’t recognize that address). Which statement is correct?

A. Your client’s SI is perfected, and you have nothing to worry about
B. Your client’s SI is perfected, but that perfection may be at risk
C. Your client’s SI is unperfected

- A wrongly refused UCC-1 filing is nevertheless “effective as a filed record” [§ 9-516(d)]
- Exception: it is not effective vs. a “purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files” [§ 9-516(d)]
  - Thus, your client’s SI is perfected and would take priority against a lien creditor (or the bankruptcy trustee)
  - But, it would be considered unperfected if the debtor later sold the collateral to a buyer, or granted a SI in the collateral to another lender, if that 3d party had searched the record and found no filings [§ 1-201(b)(29), (30)]
Problem 18.2: Trustee’s “Strong-Arm” Avoiding Power

- Trustee in bankruptcy has the power to avoid any interest that could have been avoided by a lien creditor [BC § 544(a)(1)]
  - Under UCC § 9-317(a)(2)(A), lien creditor has priority over unperfected SI
  - Thus, if debtor files bankruptcy, trustee can avoid (set aside) any unperfected SI (turning that secured creditor into an unsecured creditor!)

Problem 18.2(a). Debtor is in bankruptcy. A UCC-1 filed last year by secured party Roger Fisk omitted Fisk’s mailing address. Which statement is correct?

A. Fisk’s security interest is perfected; trustee cannot invalidate it
B. Trustee can avoid Fisk’s unperfected SI
C. Need more information

Problem 18.2(c). A UCC-1 filed by Wardcorp used its trade name, “Will’s Furniture and Appliances.” Which statement is correct?

A. Wardcorp’s SI is perfected anyway; trustee cannot invalidate it
B. Wardcorp’s SI is unperfected, trustee can avoid it
• Use of the secured party’s trade name (rather than its legal name) doesn’t render UCC-1 seriously misleading [§ 9-506(a), § 9-506 comment 2]
  – Rationale: an error in secured party’s name doesn’t compromise the filing system’s operation, because filings are indexed and searched by the debtor’s name, not the secured party’s name
  – 3rd parties will find the filed statement, and could discover the secured party’s legal name through inquiry
• SI in Problem 18.2(c) is thus perfected

Problem 18.2(c). UCC-1 filed by Bank lists the collateral as “Pizza ovens, equipment, and fixtures at 621 State St., Madison” [The actual collateral was ovens, equipment, and fixtures at Debtor’s location at 514 E. Washington Ave., Madison.] Which is correct?

A. Bank’s SI is perfected
B. Bank’s SI is unperfected
C. Need more information to answer the question

Problem 18.2(e): Bank’s SI is unperfected
  – Although Bank’s UCC-1 does contain a collateral description, it describes the collateral erroneously, and the error is “seriously misleading” [§§ 9-502(a), 9-506(a)]
  – A third party searcher, looking at the UCC-1, would probably conclude Bank only claimed a SI in the ovens/equipment/fixtures at State St. location, not the Washington Ave. location
  – Contrast: “all of Debtor’s ovens, equipment and fixtures, presently owned or after-acquired”

Problem 18.2(f)

• Bank’s filed UCC-1 does not contain any collateral description at all (it’s entirely blank)
• By mistake, filing officer accepted it anyway
• Is Bank’s SI in the actual collateral perfected?
Does this omission prevent the UCC-1 from giving effective notice?
• Complete omission of collateral description is a fatal error [§ 9-502(a)]
• Some doubt this result is sound, doctrinally
  – Argument: Even a filing with no description still alerts the searcher that a SI might exist against any of the debtor’s assets
  – Note: a UCC-1 description with a supergeneric description (i.e., “all of the debtor’s assets”) would be a sufficient description [§ 9-504(2)]
  – A UCC-1 with no description at all impliedly should send the same message!
• Thus, in Problem 18.2(f), Bank’s UCC-1 is not sufficient to perfect its SI in the collateral

Problem 18.3

- Glacier Bank made a loan to SCI
  – Glacier Bank has 5 filed UCC-1s, covering the equipment and fixtures at 5 specific SCI locations, but not SCI’s Trimble Ave. store
- You are attorney for Smith (who has $26K judgment vs. SCI); Smith wants to levy on Trimble Ave. equipment, but is afraid of getting “bogged down in litigation” if that equipment is encumbered

Problem 18.3. You should …

A. Have the sheriff levy on the equipment and fixtures in the Trimble Ave. store now
B. Check with Global Bank first, to see if equipment in the Trimble Ave. store is covered by its security agreement

• If you ask Global Bank for more information, it may discover its mistake — and fix it before sheriff can levy on the assets!
  – If Bank has or takes a SI in the Trimble Ave. assets, and files a UCC-1 before the sheriff can levy upon them, Bank’s perfected SI will take priority over Smith’s judgment lien! [§ 9-317(a)(2)]
PMSIs in Consumer Goods

- A purchase money security interest (PMSI) in consumer goods is automatically perfected upon attachment [§ 9-309(1)]
  - Exception: for vehicles covered by certificate of title statute [§ 9-311(a)]
- Thus, if Walter’s (Problem 18.5) sells a mower to Fred (and takes PMSI to secure sale price), Walter’s is automatically perfected (need not file a UCC-1)

“Garage Sale” Rule [§ 9-320(b)]

- Someone who buys a good from a seller in whose hands the good is a consumer good takes free of a security interest in the good, if
  - Buyer takes the good w/out knowledge of a SI
  - Buyer buys good for personal/family/household use
  - Buyer pays value, and
  - No filed UCC-1 covers the goods

The Interaction of §§ 9-309(1) and 9-320(b)

- In Problem 18.5, if Walter’s takes a PMSI in a riding mower it sells to Fred, it does not have to file a UCC-1 to perfect its PMSI [§ 9-309(1)]
- But, if its doesn’t file, it runs risk of “garage sale” scenario (e.g., Fred sells the mower to another unknowing consumer who takes free of that SI)

Problem 18.5. After getting burned by this “garage sale” scenario, Walter’s Dept. Store now wants to go back and file UCC-1s for all transactions where it took a PMSI in consumer goods. Which statement is correct?

A. Walter’s can file now, w/out going back to each debtor to get approval
B. Walter’s can file, but only after going back to each debtors to get approval
C. Walter’s can’t file at this point
Problem 18.5(a): Walter’s doesn’t need “new” permissions in order to file now.
- A secured party can file a UCC-1 if it is authorized to do so by the debtor, either in an authenticated record or as provided in § 9-509(b) [§ 9-509(a)]
  - When debtor authenticates a security agreement, it is deemed to have authorized filing of UCC-1 covering collateral described in that agreement [§ 9-509(b)]
  - This facilitates electronic filing [under pre-2000 Article 9, debtor had to sign the financing statement]

Problem 18.5(b). How should Walter’s Dept. Store describe the collateral in these after-the-fact UCC-1 filings?
A. “All of debtor’s assets”
B. “Consumer goods purchased using a Walter’s Department Store credit card”
C. Walter’s has to describe each item using a specific description of each individual item of collateral

Authorization and Filing
- A person can file a UCC-1 only if debtor authorizes the filing. Authorization may occur:
  - In an “authenticated record” [§ 9-509(a)(1)], or
  - Impliedly
    • A security agreement authorizes filing of UCC-1 that covers the collateral [§ 9-509(b)], or
    • Debtor’s acquisition of used collateral that is already subject to a SI authorizes filing of UCC-1 that covers that collateral [§ 9-509(c)]

- Use of a supergeneric description (e.g., “All of Debtor’s assets”) is permissible when used in a financing statement [§ 9-504(2)]
  - Note: this would not be sufficient for attachment if used in a security agreement [§ 9-108(c)]
- But description would be overbroad, b/c Walter’s security agreement didn’t cover all Debtor’s assets
  - Security agreement didn’t authorize UCC-1 w/that description [§ 9-509(b)(1)], so a filing with that description wouldn’t be effective unless each Debtor specifically authorized it! [§ 9-510(a)]
Overbroad Descriptions in UCC-1

- Concern: “overbroad” UCC-1 collateral description may burden debtor’s future ability to obtain credit
  - Even if Debtor’s tractor is unencumbered, the “all assets” filing would “stake out” Walter’s potential priority vs. the tractor, and no other lender may be willing to lend vs. the tractor
  - This should only happen if Debtor specifically authorized overbroad collateral description

Problem 18.5(b)

- A specific description [option (c)] would work, but it would be the most burdensome (each filing would have to have a separate description)
- “All consumer goods purchased with a Walter’s credit card” [option (b)] is less burdensome
  - It is sufficient (description by collateral type)
  - It is consistent with description in security agreement, so its use is clearly authorized

- What happens if Walter’s Dept. Store uses the overbroad “all of the Debtor’s assets” without valid authorization to do so?
  - The financing statement is still sufficient to perfect Walter’s SI (it is considered effective to the extent it covered the actual collateral)
  - However, by filing a record that it was not authorized to file, Walter’s is liable for any actual loss caused by its action, plus a $500 statutory penalty [§ 9-625(e)(3)]