**Maintenance-of-Perfection Problems**  
under  
The UCC Article 9 System & the Certificate-of-Title System

**No. 1**  
Change of Name of Debtor

**Problem:**

On Feb. 1, 2006, Acadian Bank (AB) perfected a security interest in “all equipment, present and after-acquired” of T’s Butcher Block, a sole proprietorship owned and operated by Jean-Théophile Thibodeaux. AB perfected this interest by properly filing an appropriate financing statement under the name “Jean-Théophile Thibodeaux”. On Mar. 1, 2006, Thibodeaux properly set up a corporation with the official (registered) name of Cochon de Lait, Inc., to which Thibodeaux then validly transferred all of the rights and obligations of T’s Butcher Block. Thereafter Cochon de Lait, Inc., as was its right, continued to do business as “T’s Butcher Block”. On Apr. 1, 2006, Cochon de Lait, Inc., through its president Thibodeaux, validly acquired a second “meat slicer” for T’s Butcher Block (T’s Butcher Block already had one). On May 1, 2006, Bayou Bank (BB) perfected a security interest in “all equipment, present and after-acquired” of T’s Butcher Block by properly filing an appropriate financing statement under the name “Cochon de Lait, Inc.” Then, on Aug. 1, 2006, Cochon de Lait, Inc., through its president Thibodeaux, validly acquired a third meat slicer for T’s Butcher Block. Finally, on Sept. 1, 2006, Cajun Bank (CB) perfected a security interest in “all equipment, present and after-acquired” of T’s Butcher Block by properly filing an appropriate financing statement under the name “Cochon de Lait, Inc.” As for AB, it took no further action. And nobody – not AB, not BB, and not CB – has yet been paid off.

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<thead>
<tr>
<th></th>
<th>AB Change</th>
<th>Slicer 2</th>
<th>BB Loss</th>
<th>Slicer 3</th>
<th>CB</th>
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<tr>
<td>Feb. 1, 2006</td>
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<td>July 1, 2006</td>
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<td>Apr. 1, 2006</td>
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<td>May 1, 2006</td>
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<td>2006</td>
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Does AB still have a perfected security interest in any or all of T’s Butcher Block’s meat slicers? Why or why not? Don’t forget that T’s Butcher Block still has its “Slicer 1”, which it has had from the beginning.

**Solution:**

**Answer:** Whereas AB still has a perfected SI in Slicer 1 and Slicer 2, AB does not have a perfected SI in Slicer 3.

**Rationale:** The “change of name” of the “debtor” from “Jean-Théophile Thibodeaux” to “Cochon de Lait, Inc.” creates a “maintenance of perfection” problem for AB’s SI in (some of) T’s Butcher Block’s equipment. That’s because the name change is so profound as to render the original FS “seriously misleading”. See §9-507(c), introductory clause. Despite the name change, AB’s SI remains perfected in (a) T’s Butcher Block’s “original” equipment, including Slicer 1, and (b) its “after-acquired” equipment acquired up to four months after the name change, including Slicer 2. See §9-507(c)(1). But AB’s SI has ceased to be perfected vis-à-vis equipment acquired after that four-month deadline, such as Slicer 3. See §9-507(c)(2).
No. 2

Change of “Use” of Collateral

Problem:

Having decided to diversify his business activities, Thibodeaux, sole proprietor of T’s Butcher Block, opened a “used car” lot, called “T’s Pre-Owned Cars”, just behind the butcher shop. This new business, too, was organized as a sole proprietorship. To raise funds to finance the venture, he borrowed money from Acadian Bank (AB), which took a security interest in the “inventory” of T’s Pre-Owned Cars. AB perfected this interest by properly filing an appropriate financing statement on Feb. 1, 2006. On Mar. 1, 2006, the Chevy van that Thibodeaux had been using in connection with his work for T’s Butcher Block (he’d used it to haul raw meat from suppliers to the shop and to haul finished meat from the shop to customers) broke down. Convinced that the broken van was beyond hope, Thibodeaux decided to replace it. For this purpose, Thibodeaux commandeered one of the vehicles that had been on sale at T’s Pre-Owned Cars, a Ram van. On Apr. 1, 2006, Cajun Bank (CB) perfected a security interest in T’s Butcher Block’s “equipment” by properly filing an appropriate financing statement. As for AB, it took no further action. And nobody – not AB and not CB – has yet been paid off.

Does AB still have a perfected security interest in the Ram van? Why or why not?

Solution:

Answer: AB probably does not have a perfected SI in the Ram van.

Rationale: The “change of use” of the “collateral” – the Ram van – from “inventory” to “equipment” creates a “maintenance of perfection” problem for AB’s SI in that collateral. Per Article 9, the only way to perfect security rights in a motor vehicle that’s not part of an inventory is to file an appropriate FS into the certificate-of-title system maintained by the Office of Motor Vehicles. This, of course, has not yet been done. Even if this were to be done now, perfection of the original SI probably would be considered lost. You see, there’s no provision in either Article 9 or any other legislation that addresses how to make the “transition” from the perfection of an Article 9 SI in an “inventory” motor vehicle to the perfection of certificate-of-title security rights in a “non-inventory” motor vehicle, in particular, no provision that gives the secured party any “grace period” within which to manage this transition. It would seem, then, that AB lost perfection of its SI in the Ram van the very moment at which Thibodeaux changed its use from inventory to equipment. To have avoided that result, AB would have had to have “re-perfected” its SI by filing the appropriate documents into the certificate-of-title system before that change of use had occurred.

No. 3

Change of “Form” of Collateral - I

Problem:

On Feb. 1, 2006, Acadian Bank (AB) perfected a security interest in “all equipment, present and after-acquired” of T’s Butcher Block, a sole proprietorship owned and operated by Jean-Théophile Thibodeaux. AB perfected this interest by properly filing an appropriate financing statement. On Mar. 1, 2006, Thibodeaux, first, sold his meat slicer (one of the pieces of his original equipment) for $25,000 and, then, used that money to buy several shares of certificated common stock in Evangeline Enterprises, Inc. On Apr. 1, Cajun Bank (CB) perfected a security interest in Thibodeaux’s new stock by taking “control” of them (after endorsing the stock certificates on the
back, Thibodeaux handed them over to CB’s loan officer). As for AB, it took no further action. And nobody – not AB and not CB – has yet been paid off.

Does AB still have a perfected security interest in the stock? Why or why not?

Solution:

Answer: No, AB does not have a perfected SI in the stock.

Rationale: The transformation of the original collateral – the meat slicer – into cash proceeds – the $25,000 – followed by the transformation of those cash proceeds into non-cash proceeds – the stock – creates a “maintenance of perfection” problem for AB’s SI in the stock. To be sure, when the first transformation occurred – the meat slicer into the cash –, AB’s SI attached to and remained perfected in the cash. See §9-315(d)(2). And even after the cash was transformed into the stock, the SI attached to and remained perfected in the stock, but only for a season, to be precise, for 20 days. See §9-315(d)(1). But, because the stock was “acquired with cash proceeds” – see §9-315(d)(1)(C) –, this “extension” of perfection ended on the 21st day, i.e., on Mar. 22, 2006.

No. 4
Change of “Form” of Collateral – II

Problem:

On Feb. 1, 2006, Acadian Bank (AB) perfected a security interest in “all the accounts, present and after-acquired” of T’s Butcher Block, a sole proprietorship owned and operated by Jean-Théophile Thibodeaux. AB perfected this interest by properly filing an appropriate financing statement. On Mar. 1, 2006, Melançon, one of the customers of T’s Butcher Block, paid off its account, whereupon Thibodeaux, using the cash proceeds of this payoff, bought himself a desk for his business office. On Mar. 16, 2006, Cajun Bank (CB) perfected a security interest in T’s Butcher Block’s “equipment” by properly filing an appropriate financing statement. On Sept. 1, 2006, Evangeline Bank (EB) perfected a security interest in T’s Butcher Block’s “equipment” by properly filing an appropriate financing statement. As for AB, it took no further action. And nobody – not AB, not CB, and not EB – has yet been paid off.

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<th>AB</th>
<th>Change</th>
<th>CB</th>
<th>Loss</th>
<th>EB</th>
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Does AB have a perfected security interest in the desk? Why or why not?

Solution:

Answer: Whereas AB’s SI is “perfected” as to CB’s SI, AB’s SI is “unperfected” as to EB’s SI.

Rationale: The transformation of the original collateral – the Melançon account – into cash proceeds followed by the transformation of those cash proceeds into non-cash proceeds – the desk – creates a “maintenance of perfection” problem for AB’s SI in the desk. The “loss of perfection” provided for in §9-315(d) is “prospective only”. See Official Comment 4. What that means is (1) that with respect to competing SIs that are perfected before the expiration of the 20-day period within which the perfection of the original SI continues, the original SI keeps its perfection, but (2)
that which respect to competing SIs that are perfected after the expiration of that 20-day period, the original SI loses its perfection. Here, the 20-day period during which AB enjoyed continuing perfection ended on Mar. 22, 2006. Whereas CB perfected its SI before that period ended (Mar. 16, 2006), EB perfected its SI after that period ended (Apr. 1, 2006). Thus, AB’s SI retains its perfection vis-à-vis CB’s SI but has lost its perfection vis-à-vis EB’s SI.

No. 5
Change of “Location” of Debtor

Problem:
On Feb. 1, 2006, Acadian Bank (AB) perfected a security interest in the “equipment” of T’s Butcher Block, a sole proprietorship owned and operated by Baton Rouge resident Jean-Théophile Thibodeaux. AB perfected this interest by filing an appropriate financing statement with the Clerk of Court in East Baton Rouge Parish. On Mar. 1, 2006, Thibodeaux moved his residence (but not his business) to McComb, Mississippi. On Apr. 1, 2006, the Sheriff of Baton Rouge, acting pursuant to a court order obtained by Boudreaux (unsecured creditor of Thibodeaux), levied on (i.e., seized) T’s Butcher Block’s meat slicer. On May 1, 2006, Cajun Bank (CB) perfected a security interest in T’s Butcher Block’s “equipment” by filing an appropriate financing statement with the Secretary of State of Mississippi. On Aug. 1, the Sheriff of Baton Rouge, acting pursuant to a court order obtained by Delacroix (unsecured creditor of Thibodeaux), levied on (i.e., re-seized) T’s Butcher Block’s meat slicer. On Sept. 1, 2006, Evangeline Bank (EB) perfected a security interest in T’s Butcher Block’s “equipment” by filing an appropriate financing statement with the Secretary of State of Mississippi. As for AB, it took no further action. And nobody – not AB, not Boudreaux, not CB, not Delacroix – has yet been paid off.

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<th>AB</th>
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<th>Boudr.</th>
<th>CB</th>
<th>Loss</th>
<th>Delacr.</th>
<th>EB</th>
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Does AB still have a perfected security interest in T’s Butcher Block’s meat slicer? Why or why not? Assume that Louisiana law and Mississippi law are identical on all relevant points.

Solution:

Answer: Whereas AB’s SI is still perfected vis-a-vis Boudreaux’s lien, AB’s SI is not perfected vis-a-vis CB’s SI, Delacroix’s lien, or EB’s SI.

Rationale: When Thibodeaux moved his “residence” from Louisiana to Mississippi, he changed his “location”, see §9-307(b)(1), thereby creating a “maintenance of perfection” problem for AB’s SI in the meat slicer, see §9-316(a). Per §9-316(a)(2) & §9-316(b), if AB does not “reperfect” this SI by filing an appropriate FS in the new location (Mississippi) within four (4) months following the change of location, then AB’s SI will lose perfection (1) not only prospectively, but also even retroactively as to all purchasers for value, including other Article 9 secured parties, and (2) prospectively only as to all lien creditors, including any trustee in bankruptcy. Here, the 4-month period ran out on July 1, 2006.

Consider, first, the situation of AB vis-à-vis the other “Article 9 secured parties”, CB and EB. At the end of the 4-month period, AB’s SI lost perfection as to EB’s SI. This was a “prospective”
loss, inasmuch as EB had perfected on Sept. 1, 2006, after the 4-month period had ended. At the same moment, but more extraordinarily, AB’s SI also lost perfection as to CB’s SI. This was a “retroactive” loss of perfection, inasmuch as CB had perfected on May 1, 2006, before the 4-month period had ended. As to Article 9 secured parties, such a “retroactive” loss of perfection not only is possible, but also is required.

Next, consider the situation of AB vis-à-vis the lien creditors, Boudreaux and Delacroix. AB’s SI lost perfection as to Delacroix’s lien. This was a “prospective” loss, inasmuch as that lien had not incepted until Aug. 1, 2006, after the 4-month period had ended. By contrast, AB’s SI did not lose perfection as to Boudreaux’s lien. That lien had incepted on Apr. 1, 2006, before the 4-month period had ended. For that reason, it would not have been possible, without according “retroactive” effect to the loss of perfection of AB’s SI, for this SI to have become “unperfected” as to that lien. But, as to lien creditors, loss of perfection takes place “prospectively only”, in other words, can’t take place “retroactively”.

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No. 6

Change of “Location” of Debtor Plus Change of Debtor

**Problem:**

On Feb. 1, 2006, Acadian Bank (AB) perfected a security interest in the “equipment” of T’s Butcher Block, a sole proprietorship owned and operated by Baton Rouge resident Jean-Théophile Thibodeaux. AB perfected this interest by filing an appropriate financing statement, under the name “Jean-Théophile Thibodeaux”, with the Clerk of Court in East Baton Rouge Parish. On Mar. 1, 2006, Thibodeaux set up a corporation officially named Cochon de Lait, Inc., duly registered with the Secretary of State of Delaware, to which Thibodeaux then transferred all of the rights and obligations of T’s Butcher Block. This transfer was valid. Thereafter Cochon de Lait, Inc., as was its right, continued to do business in Baton Rouge as “T’s Butcher Block”. On Jan. 1, 2007, the Sheriff of Baton Rouge, acting pursuant to a court order obtained by Boudreaux (unsecured creditor of Thibodeaux), levied on (i.e., seized) T’s Butcher Block’s meat slicer. On Feb. 1, 2007, Cajun Bank (CB) perfected a security interest in T’s Butcher Block’s “equipment” by filing an appropriate financing statement, under the name “Cochon de Lait, Inc.”, with the Secretary of State of Delaware. On Apr. 1, 2007, the Sheriff of Baton Rouge, acting pursuant to a court order obtained by Delacroix (unsecured creditor of Thibodeaux), levied on (i.e., re-seized) T’s Butcher Block’s meat slicer. On May 1, 2007, Evangeline Bank (EB) perfected a security interest in T’s Butcher Block’s “equipment” by filing an appropriate financing statement, under the name “Cochon de Lait, Inc.”, with the Secretary of State of Delaware. As for AB, it took no further action. And nobody – not AB, not Boudreaux, not CB, not Delacroix – has yet been paid off.

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<tr>
<th>AB</th>
<th>Change</th>
<th>Boudr.</th>
<th>CB</th>
<th>Loss</th>
<th>Delacr.</th>
<th>EB</th>
</tr>
</thead>
<tbody>
<tr>
<td>Feb. 1</td>
<td>Mar. 1</td>
<td>Jan. 1</td>
<td>Feb. 1</td>
<td>Mar. 1</td>
<td>Apr. 1</td>
<td>May 1</td>
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</table>

Does AB still have a perfected security interest in T’s Butcher Block’s meat slicer? Why or why not? Assume that Louisiana law and Delaware law are identical on all relevant points.
Solution:

Answer: Whereas AB’s SI is still perfected vis-a-vis Boudreaux’s lien, AB’s SI is not perfected vis-a-vis CB’s SI, Delacroix’s lien, or EB’s SI.

Rationale: When Thibodeaux changed his form of business organization from a Louisiana sole proprietorship to a Delaware corporation, he, at once, changed both the location and the identity of the “debtor,” thereby creating a “maintenance of perfection” problem for AB’s SI in the meat slicer. See §9-316(a). Per §9-316(a)(3) & §9-316(b), if AB does not “re-perfect” this SI by filing an appropriate FS in the new location (Delaware) within one (1) year following the change of location / identity of the debtor, then AB’s SI will lose perfection (1) not only prospectively, but also even retroactively as to all purchasers for value, including other Article 9 secured parties, and (2) prospectively only as to all lien creditors, including any trustee in bankruptcy. Here, the 1-year period ran out on Mar. 1, 2007.

Consider, first, the situation of AB vis-à-vis the other “Article 9 secured parties”, CB and EB. At the end of the 1-year period, AB’s SI lost perfection as to EB’s SI. This was a “prospective” loss, inasmuch as EB had perfected on May 1, 2007, after the 1-year period had ended. At the same moment, but more extraordinarily, AB’s SI also lost perfection as to CB’s SI. This was a “retroactive” loss of perfection, inasmuch as CB had perfected on Feb. 1, 2007, before the 1-year period had ended. As to Article 9 secured parties, such a “retroactive” loss of perfection not only is possible, but also is required.

Next, consider the situation of AB vis-à-vis the lien creditors, Boudreaux and Delcroix. AB’s SI lost perfection as to Delacroix’s lien. This was a “prospective” loss, inasmuch as that lien had not incepted until Apr. 1, 2007, after the 1-year period had ended. By contrast, AB’s SI did not lose perfection as to Boudreaux’s lien. That lien had incepted on Jan. 1, 2007, before the 1-year period had ended. For that reason, it would not have been possible, without according “retroactive” effect to the loss of perfection of AB’s SI, for this SI to have become “unperfected” as to that lien. But, as to lien creditors, loss of perfection takes place “prospectively only”, in other words, can’t take place “retroactively”.

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