Three Amigos, Inc. (TAI), a closely held Louisiana corporation whose stock is owned by three childhood pals Mark, Dan, and Randy, whose principal place of business is in Beauregard Parish, and business offices are located in Calcasieu Parish, is now and for several years has been in the “gasohol” production business. TAI makes its ethanol (one of the two ingredients for gasohol) itself out of corn grown on land, located in Beauregard Parish, that TAI leases (as lessee) from Curtis (as lessor). (This lease was duly recorded in the mortgage and conveyance records of Beauregard Parish.)

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1 Gasohol is a fuel made by combining gasoline with ethanol.
Parish.) TAI, at least in a roundabout way, also makes its own gasoline (the other ingredient for gasohol): first, TAI pumps crude oil from a tract of land, located in Jeff Davis Parish, on which TAI holds the mineral rights; then, TAI ships the crude oil from the oil well to a Lake Charles refinery, which, after breaking the crude oil down into gasoline and various by-products, ships the gasoline over to TAI’s work site in Beauregard Parish. The blending of this ethanol and this gasoline is done in some above-ground blending tanks that TAI built, with Curtis’ permission, on the land that TAI leases from Curtis. TAI sells its gasohol, on credit, on the open wholesale market.

Acting for TAI, Mark, its CEO, has applied to Cameron Bank (Cameron), headquartered in Cameron Parish, Louisiana, for a “revolving line of credit” in the amount of $1,000,000. On TAI’s application form, Mark listed as “assets of the applicant” (i.e., TAI) the following:

1. TAI’s “lease” of the land in Beauregard Parish from Curtis, the land’s owner;
2. the above-ground blending tanks that TAI built (with Curtis’ permission) on that land;
3. corn growing on that land;
4. a tractor, a combine, a sprayer, etc. used to tend that corn;
5. the crude oil that TAI produces from the tract of land in Jeff Davis Parish on which TAI holds the mineral rights;
6. stocks of gasohol ready to be sold to TAI’s customers;
7. sums owed to TAI by its customers who have purchased TAI’s gasohol on credit;
8. a corporate checking account at Louisiana Bank.

You are an associate at the Lake Charles law firm of Landry & Vaughn, which Cameron has hired to represent it in this matter. The first of the named partners, Bob Landry, has asked you to “get as much security for Cameron as you can”. What should you do? (Assume that the promissory note will be signed only by Mark and then only in his capacity as CEO of TAI.)

A (48 of the 55 minutes for Part I)

i (6 minutes per asset, on average) Consider, first, the assets of TAI that Mark listed on the application form. As to each one, tell me (i) whether Cameron can get security in it; (ii) if Cameron can get such security, what, if anything, it has to do to get it; and (iii) what else (beyond what Cameron has to do to get it), if anything, Cameron has to do to make that security effective against the world.

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B
(7 minutes of the 55 minutes for Part I)

ii (7 minutes) Is there any “non-asset” security that Cameron might be able to obtain? If so, what is it; what, if anything, does Cameron have to do to get it; and what else (beyond what Cameron has to do to get it), if anything, does Cameron have to do to make it effective against the world.

II (54 minutes)

Having just received a big raise from her employer, Alice has decided it’s time to indulge herself. The first step: to “spruce up her place” (a New Orleans apartment that she subleases from Bernice who, in turn, leases it from Carla) by trading in her 12-inch black and white television for a new wide-screen television. The television Alice buys, on credit, from Dee’s Appliance Depot (Dee’s). Alice grants no special security for the repayment of this loan. The second-step: to “upgrade” her “mode of transportation” by trading in her delapidated Hyundai Accent for a slightly-used Mercedes Benz. The car Alice buys, on credit, from European Motors (EM). The purchase of the car is financed by E-Z Credit (E-Z), which takes an Article 9 security interest, via a proper security agreement, in the car and, having done that, files a proper UCC-1 financing statement for the car with the Orleans Parish Clerk of Court. After purchasing the television and the car, Alice proudly takes them home and installs each in its proper place, the television on a table in her living room and the car under the apartment complex’s carport.

Soon, however, Alice’s pride gives way to frustration, as both the television and the car break down. To get these things repaired, Alice (using an old truck she borrowed from her father) hauls the television to Finnius and tows the car to Garth. Both repairmen work quickly: each finishes his respective repairs in less than a week. When Alice goes to pick up the television from Finnius, Finnius presents Alice with a bill for $300 – $200 in replacement parts and $100 in labor. Promising to pay the bill in thirty days, Alice, with Finnius’ approval, picks up the television and takes it back to her apartment. When Alice goes to pick up the car from Garth, Garth presents her with a bill of $5,000 – $3,000 in replacement parts and $2,000 in labor. Finding the charges “too high”, Alice refuses to pay and so, Garth refuses to turn over the car.

Two weeks later (that would be three weeks after Alice had taken her television and her car out for repairs), Alice, having suddenly taken ill, is hospitalized at Jefferson Memorial Hospital (JMH). A week later, Alice is dead. By that time, Alice has amassed uninsured medical charges, some $50,000 of which (representing what she owes the doctors and nurses who attended her as well the costs of pharmaceuticals) remain unpaid. Alice is then buried at her father’s expense, an expense for which he does not seek reimbursement.
As it turns out, Alice, at the time of her death, owed money not only to Dee’s, to E-Z, to Finnius, to Garth, and to JMH, but also to Bernice, her sub-lessor, for unpaid sub-rent in the amount of $1,000. Bernice, in turn, owed Carla, her lessor, unpaid rent in the amount of $2,000.

A
(6 of the 54 minutes for Part II)

1 (6 minutes) Does Carla have security in either (or both) Alice’s television or (and) Alice’s car? Why or why not?

a no, Carla has no security in either: the only kind of security that Carla might even possibly have gotten in Alice’s things would have been a conventional Article 9 security interest; and to have gotten that, Carla would have had to have entered into an appropriate security agreement with Alice, something that did not happen
b no, Carla has no security in either: though, as a lessor, Carla is, in principle, entitled to a legal privilege on certain movables on the leased premises, those movables do not include movables that belong to a sub-lessee, such as Alice
c no, Carla has no security in either: though, as a lessor, Carla is, in principle, entitled to a legal privilege on certain movables on the leased premises and though these movables, in general, include movables that belong to a sub-lessee, such as Alice, this privilege was lost when Alice removed the television and the car from the leased premises for repairs
d yes, Carla has security in both, namely, a lessor’s privilege
e yes, as to the television, but no as to the car: though, as a lessor, Carla is, in principle, entitled to a legal privilege on certain movables on the leased premises and though these movables, in general, include movables that belong to a sub-lessee, such as Alice, this privilege was lost as to the car once it been away from the leased premises for 15 days

For purposes of the rest of this Part II, assume that the correct answer to this Question 1 is “e”.

B
(20 of the 54 minutes for Part II)

2 (4 minutes) Is Carla’s security in the television effective against third persons? If not, what “else” must Carla do to make it so effective?

a yes, it’s already effective against third persons; her security, a legal privilege, is “perfected”, automatically by operation of law, the moment at which it “attaches”
b no, it’s not yet effective against third persons; to make it so effective, Carla must file an appropriate Article 9-type financing statement with the clerk of court of her choice
c no, it’s not yet effective against third persons; to make it so effective, Carla must file an appropriate extract of her lease with Bernice into the mortgage records of Orleans Parish
d none of the above

For purposes of the rest of this Part II, assume that the correct answer to this Question 2 is “a”.

iii (6 minutes) Who else (aside from Carla) has security in the television? What kind of security is it and how was it acquired?
iv  (3 minutes) Is any of these other securities (aside from Carla’s) in the television effective against third persons? If not, what “else” must the secured creditor do to make it so effective?

v  (7 minutes) In what order do the securities of those who have security in the television (including Carla) rank against one another? Why?

C  
(27 of the 54 minutes for Part II)

3  (5 minutes) Does E-Z have security in Alice’s car? Why or why not?

a  yes: as the financier of the purchase of the car, E-Z has a vendor’s privilege in the car
b  yes: thanks to its security agreement with Alice, E-Z has a valid Article 9 security interest in the car
c  no: inasmuch as E-Z was not the seller of the car, it has no vendor’s privilege at all; and though E-Z tried to get an Article 9 security interest in the car, that attempt failed, for E-Z filed its UCC-1 financing statement in the “wrong place” (E-Z should have filed the financing statement with the Office of Motor Vehicles)
d  no: inasmuch as E-Z was not the seller of the car, it has no vendor’s privilege at all; and though E-Z tried to get an Article 9 security interest in the car, that attempt failed, for E-Z filed the “wrong form” (E-Z should have filed a new title with the Office of Motor Vehicles, a title that reflected the existence of E-Z’s security interest)
e  “c” and “d”

For purposes of the rest of this question, assume that the correct answer to this Question 3 is “b”.

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vi (6 minutes) Aside from E-Z, who else has security in the car? What kind of security is it and how was it acquired?

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4 (5 minutes) Is E-Z’s security interest in Alice’s car effective against third persons? If not, what “else” must E-Z do to make it so effective?

a no: though E-Z tried to perfect its Article 9 security interest in the car, that attempt failed, for E-Z filed its UCC-1 financing statement in the “wrong place” (E-Z should have filed the financing statement with the Office of Motor Vehicles)
b no: though E-Z tried to perfect its Article 9 security interest in the car, that attempt failed, for E-Z filed the “wrong form” (E-Z should have filed a new title with the Office of Motor Vehicles, a title that reflected the existence of E-Z’s security interest)
c a and b
d yes: E-Z’s Article 9 security interest is a special kind of Article 9 security interest, one that is automatically perfected by operation of law as soon as it attaches
e none of the above

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For purposes of the rest of this Part II, **assume** that the correct answer to this Question 4 is “a”, “b”, or “c”, it matters not which.

vii (3 minutes) Of the securities described in your answer to Question vi, is any of them effective against third persons? If not, what “else” must the secured creditor do to make it so effective?

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viii (7 minutes) In what order do the securities of those who have security in the car (including E-Z) rank against one another? Why?

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Until this past autumn, Paul Plombier (Paul) used to operate a small plumbing and heating business (a sole proprietorship) in Lafayette. Paul made a small amount of money repairing existing plumbing and heating systems, but his main revenue source was reselling heating units to customers. In January 2005, Paul borrowed $50,000 from Big Bank for renovation and expansion of his shop and advertising for his business. To secure his repayment of this loan, Paul signed a security agreement granting an interest to Big Bank in “all current and after-acquired inventory and accounts” associated with his business. Big Bank filed a financing statement describing the collateral exactly as the security agreement had described it. Big Bank properly filed this UCC-1 on January 15, 2005, with the Clerk of Court for Lafayette Parish.

Four months later, Paul arranged a purchase of several high-efficiency (and high-price) heating units from Home & Office Temperature Control, LLC (“HOTCo.”). Paul planned to mark up and resell these units to customers for a tidy profit. HOTCo. sent a written notice to Big Bank dated May 30, 2005, informing it that HOTCo. planned to sell Paul three heating units—for $15,000 each—on credit, and that Paul would grant a security interest in the units to HOTCo. as collateral for the credit sale. After Big Bank had received the notice, on June 10, 2005, Paul signed a security agreement granting HOTCo. an interest in the heating units to secure his repayment of the $45,000 credit sale. The next day, HOTCo. filed a complete and accurate financing statement with the Clerk of Court of Rapides Parish.

On June 12, 2005, HOTCo. delivered the heating units to Paul. Francis Froide (Francis) had previously ordered one of the units, so Paul immediately sent one of the units to Francis along with an invoice requesting payment within 30 days. On July 14, 2005, Paul received a check for $20,000 from Francis. One week later, on July 21, 2005, Paul deposited the check in the bank account which Paul maintained for his store at Local Bank.

It is now May 4, 2006, and both Big Bank’s loan to Paul and Paul’s obligation to HOTCo. are in default. Big Bank comes to your office with a copy of HOTCo.’s written notice and explains the foregoing scenario. Big Bank further explains that Paul’s financial situation deteriorated rapidly in late 2005, so that he stopped paying Big Bank (and presumably HOTCo.), packed up his family, and left the state some time in November of that year (2005). After Paul was two months in default (i.e., in January of 2006), Big Bank tracked him down and, upon doing so, filed an appropriate UCC-1 financing statement (a virtual duplicate of the UCC-1 financing statement it had filed with the Clerk of Court for Lafayette Parish) with the Texas Secretary of State. To Big Bank’s knowledge, HOTCo. never did the same. As it turns out, Paul left behind his business-related property in Louisiana, including, amazingly enough, the $20,000 from Francis that he had deposited into his business bank account. Big Bank’s and HOTCo.’s only sources of recovery on their claims against Paul are (1) this bank account, (2) the two remaining heating units that Paul purchased from HOTCo., and (3) about $5000 of unpaid obligations by Paul’s former customers for plumbing and heating repair work performed in mid 2005.

A

5 (5 minutes) As of June 12, 2005, which creditor, Big Bank or HOTCo., had the first-priority security interest affecting the two remaining heating units?

a Big Bank: as between competing Article 9 secured parties, the first to file or perfect wins; here, that’s Big Bank, which filed and perfected its security interest on January 15, 2005, several months before HOTCo. filed or perfected its security interest

b HOTCo.: the principle stated in the rationale for alternative “a” admits of various exceptions, one of which is for purchase money security interests (PMSIs); this kind of security interest, which is automatically perfected the moment it attaches, always outranks other Article 9 security interests; HOTCo.’s security interest is a PMSI

c HOTCo.: the principle stated in the rationale for alternative “a” admits of various exceptions, one of which is for certain purchase money security interests (PMSIs) under
certain circumstances; here, HOTCo.’s security interest is a PMSI; but to outrank Big Bank’s security interest, given the kind of security interest Big Bank had, it was necessary for HOTCo. to perfect its PMSI by filing an appropriate UCC financing statement within 20 days of the delivery of the thing (the heating units) to the debtor (Paul); this HOTCo. did

d HOTCo.: the principle stated in the rationale for alternative “a” admits of various exceptions, one of which is for certain purchase money security interests (PMSIs) under certain circumstances; here, HOTCo.’s security interest is a PMSI; but to outrank Big Bank’s security interest, given the kind of security interest Big Bank had, it was necessary for HOTCo. to perfect its PMSI by filing an appropriate UCC financing statement at or before delivery of the thing (the heating units) to the debtor (Paul); this HOTCo. did

e HOTCo.: the principle stated in the rationale for alternative “a” admits of various exceptions, one of which is for certain purchase money security interests (PMSIs) under certain circumstances; here, HOTCo.’s security interest is a PMSI; but to outrank Big Bank’s security interest, given the kind of security interest Big Bank had, it was necessary for HOTCo. (1) to perfect its PMSI by filing an appropriate UCC financing statement at or before delivery of the thing (the heating units) to the debtor (Paul) and (2) before that, to give notice to Big Bank of its (HOTCo.’s) intent to take that PMSI; this HOTCo. did

For purposes of the rest of this Part III, assume that the correct answer to this Question 5 is “b”, “c”, “d”, or “e”, it matters not which.

6 (6 minutes) Would your answer to the immediately preceding question be the same or different if I were to ask you to give the answer as of today, May 4, 2006? If your answer would be different, explain exactly how and why.

a different: now, Big Bank would win: by filing the new UCC-1 with the Texas Secretary of State within four months of Paul’s relocation to Texas, Big Bank succeeded in “maintaining” the perfection of its security interest in the heating units; by failing to do the same, HOTCo. lost the perfection of its security interest in the heating units; as between a perfected and an unperfected Article 9 security interest, the former prevails

b the same: HOTCo. would still win: Big Bank’s attempt to “maintain perfection” (see the rationale in “a”) failed, for Big Bank filed its financing statement in the “wrong place”: Big Bank should have filed with a Texas Clerk of Court, not the Texas Secretary of State; thus, both security interests became unperfected; as between two unperfected Article 9 security interests, the first to attach prevails; here, that was HOTCo.’s security interest

c different: now, Big Bank would win: Big Bank’s attempt to “maintain perfection” (see the rationale in “a”) failed, for Big Bank filed its financing statement in the “wrong place”: Big Bank should have filed with a Texas Clerk of Court, not the Texas Secretary of State; thus, both security interests became unperfected; nevertheless, as between two unperfected Article 9 security interests, the first to attach prevails; and here, that was Big Bank’s security interest

d the same: HOTCo. would still win: Big Bank’s attempt to “maintain perfection” (see the rationale in “a”) failed, for Big Bank filed its financing statement “too late”: Big Bank should have filed within 20 days after Paul relocated, something Big Bank did not do; thus, both security interests became unperfected; as between two unperfected Article 9 security interests, the first to attach prevails; here, that was HOTCo.’s security interest

e different: now, Big Bank would win; Big Bank’s attempt to “maintain perfection” (see the rationale in “a”) failed, for Big Bank filed its financing statement “too late”: Big Bank should have filed within 20 days after Paul relocated, something Big Bank did not do; thus, both security interests became unperfected; nevertheless, as between two unperfected Article 9 security interests, the first to attach prevails, and, here, that was Big Bank’s security interest
For purposes of the rest of this Part III, assume that the correct answer to this Question 6 is “c”.

ix (18 minutes) As of August 31, 2005, which creditor, out of Big Bank and HOTCo., had a perfected Article 9 security interest in the $20,000 that Paul had received from Francis and had then deposited into his bank account? Just Big Bank? Just HOTCo.? Both? Neither? Why?

For purposes of the rest of this Part III, assume that the correct answer to this Question ix is “both Big Bank and HOTCo. have perfected security interests in the $20,000 that Paul had received from Francis and had then deposited into his bank account.”

7 (5 minutes) Still as of August 31, 2005, which secured party, Big Bank or HOTCo., had priority in the $20,000 that Paul had received from Francis and had then deposited into his bank account? Why?

a HOTCo.: though, as between two perfected Article 9 secured parties, the first to file or perfect generally prevails, this rule admits of exceptions; one of these exceptions is this – that a purchase money security interest (PMSI) outranks all others, even those that were previously perfected; here, HOTCo’s security interest was a PMSI

b Big Bank: as between two perfected Article 9 secured parties, the first to file or perfect generally prevails; though there are exceptions to this rule, none of them applies here; true, a PMSI will, for some purposes and to some extent, “beat” other prior-perfected Article 9 security interests; further, that priority “flows through” to proceeds of the
original collateral, such as we have here, namely, “receivables”; but that priority ends 20 days after the original collateral is converted into those proceeds; as of August 31, 2005, more than 20 days had passed since this conversion had occurred

c  Big Bank: as between two perfected secured creditors, the first to file or perfect generally prevails; though there are exceptions to this rule, none of them applies here; true, a PMSI will, for some purposes and to some extent, “beat” other prior-perfected Article 9 security interests; but that priority does not “flow through” to “proceeds” of the original collateral such as we have here, namely, “receivables”

d  Big Bank: as between two perfected Article 9 secured parties, the first to file or perfect generally prevails; though there are exceptions to this rule, none of them applies here; true, a PMSI will, for some purposes and to some extent, “beat” other prior-perfected Article 9 security interests; further, that priority “flows through” to proceeds of the original collateral, such as we have here, namely, “receivables”; but that priority ends 20 days after the original collateral is converted into those proceeds, unless the secured party re-perfects, by filing a financing statement that indicates the new form of the collateral, within those 20 days; HOTCo. did not so “re-file” within the 20-day deadline

e  none of the above

For purposes of the rest of this Part III, assume that the correct answer to this Question 7 is “a”.

B
(10 of the 51 minutes for Part III)

Suppose Paul, by means of an appropriate security agreement, had granted Local Bank a security interest in his bank account at Local Bank on March 15, 2005, to secure a $25,000 loan that Local Bank had given him that same day. Suppose further that Local Bank took no other action with respect to the security interest or the bank account.

x  (6 minutes) Does Local Bank, as of August 1, 2005, have a perfected security interest in the $20,000 that Paul had received from Francis and had then deposited into that account? Why or why not?

For purposes of the rest of this Part III, assume that the correct answer to this Question x is “Local Bank has a perfected security interest in the $20,000 that Paul had received from Francis and had then deposited into that account.”

8  (4 minutes) Which security interest would have had priority as of August 1, 2005, in the $20,000 in the bank account—Local Bank’s or HOTCo.’s? (Recall that, per the assumption set forth immediately after Question 7, you are to assume that, as between HOTCo.’s security interest and Big Bank’s security interest, HOTCo.’s had priority.) Why?

a  Local Bank: an Article 9 security interest in a bank account, perfected in the manner in which local Bank’s was perfected, outranks every other kind of Article 9 security interest, regardless of the time of filing or perfection of the other interest
b HOTCo.: as between two perfected Article 9 security interests, the first to file or perfect generally prevails; though there are exceptions to this rule, none of them applies here; and here, HOTCo. was the first to perfect

c HOTCo.: though, as between two perfected Article 9 secured parties, the first to file or perfect generally prevails, this rule admits of exceptions; one of these exceptions is this – that a purchase money security interest (PMSI) outranks all others, even those that were previously perfected; here, HOTCo’s security interest was a PMSI

d none of the above

For purposes of the rest of this Part III, assume that the correct answer to this Question 8 is “b” or “c”, it matters not which.

C

(7 of the 51 minutes for Part III)

xi (2 minutes) As of October 1, 2005, did Big Bank have a perfected security interest in the $5000 that Paul’s former customers owe for repairs? Why or why not?

9 (5 minutes) Would Big Bank have to involve the sheriff in executing on this type of collateral, or could Big Bank use self-help? Explain.

a judicial execution (with the involvement of the sheriff) is the only possibility: as a general rule, Louisiana law does not permit a secured creditor to resort to self-help; though this rule admits of exceptions, with regard to certain types of collateral (e.g., cars), none of them applies here, for the collateral here does not fall into any of the “excepted” categories

b judicial execution (with the involvement of the sheriff) is the only possibility: though, as a general rule, Louisiana law does not permit a secured creditor to resort to self-help, this rule admits of exceptions, with regard to certain types of collateral (e.g., cars); but the secured party can avail himself of self-help only where he has satisfied the requisites for “executory process”, which include (1) putting the security agreement in authentic form and (2) having the debtor sign a “confession of judgment”; here, neither of these prerequisites for self-help was met

c self-help is a possibility: though, as a general rule, Louisiana law does not permit a secured creditor to resort to self-help, this rule admits of exceptions, with regard to certain types of collateral (e.g., cars); the kind of collateral in question here fits one of these exceptions; to engage in self-help for this kind of collateral, all Big Bank needs to do is to notify Paul’s customers that it (Big Bank) has a security interest in their debts to Paul and that they should now pay it (Big Bank) instead of Paul

d self-help is a possibility: though, as a general rule, Louisiana law does not permit a secured creditor to resort to self-help, this rule admits of exceptions, with regard to certain types of collateral (e.g., cars); the kind of collateral in question here fits one of these exceptions; to engage in self-help for this kind of collateral, all Big Bank needs to do is to wait until Paul’s customers pay Paul and, once that happens, either (1) go and get the cash, checks, or other forms of payment, as the case may be, out of Paul’s hands or (2) if he has already deposited the payments into a bank account, make demand for payment from the bank that created that account

e none of the above
Darlene Dalrymple, a single woman, used to run a construction company that found itself periodically in need of cash. In mid-2005, Dalrymple approached Builders’ Industrial Guaranty Bank (“BIG Bank”) to request a line of credit. When asked about security, Dalrymple offered a mortgage on her construction yard (with improvements) in Ascension Parish.

While investigating the status of this land, BIG Bank found the following document in the mortgage records of Ascension Parish: an “Act of Mortgage” dated and recorded on March 1, 1994, signed by Dalrymple, granting a mortgage in Dalrymple’s construction yard (with improvements) to Contractors’ and Suppliers’ Hypothèque Bank (“CASH Bank”) to secure an $80,000 loan. CASH Bank’s mortgage states that the loan is repayable in equal monthly installments over 11 years, ending March 1, 2005. BIG Bank did not, however, find any other documents in the mortgage records that pertained in any way to the CASH Bank mortgage. BIG Bank’s investigation was thorough and accurate.

BIG Bank approved Dalrymple’s line of credit up to $100,000, secured by a mortgage on her construction yard. On May 15, 2005, BIG Bank presented Dalrymple with a signed Line of Credit Agreement, in which BIG Bank promised to lend Dalrymple up to a maximum of $100,000. BIG Bank also promised to grant Dalrymple’s applications for loans from time to time (up to the max) on only five days’ notice, provided that BIG Bank’s review of Dalrymple’s financial situation within these five days proved satisfactory to BIG Bank, in the bank’s sole discretion. Also on May 15, 2005, BIG Bank had Dalrymple sign an act of mortgage properly describing Dalrymple’s construction yard and its improvements. The act of mortgage stated that it secured repayment of “any and all present or future indebtedness of any kind or nature owing by Dalrymple to BIG Bank, up to a maximum amount outstanding at any given time of $100,000.” Later that day, BIG Bank had the act of mortgage filed for recordation in the Ascension Parish mortgage records.

Then a spring heat wave revealed that the air conditioning (AC) unit in her construction yard shop was broken. To finance the purchase of a new unit, Dalrymple turned to Contractor’s Credit Union (“CCU”), which loaned her $10,000 for this purpose. Dalrymple signed a security agreement granting a security interest to CCU in the new AC unit as security. On July 15, 2005, CCU filed a complete and accurate financing statement (describing the AC unit and Dalrymple’s construction yard and shop and containing all other required statements) in the UCC records in the East Baton Rouge Parish Clerk of Court’s office. The following day, Dalrymple connected the AC unit to her shop, permanently bolting the AC unit to cement slabs just outside her shop, hardwiring it to the shop’s electrical system, and connecting it by copper and rubber tubes to the Freon and water feeds and the air handling systems in the shop.

On August 15, 2005, Dalrymple took her first $25,000 draw on the BIG Bank line of credit when a new construction project rolled into her office. The project went well, and Dalrymple applied for and received another $25,000 installment on September 15, 2005, to continue her progress. On February 15, 2006, Dalrymple borrowed another $25,000 on the line of credit to begin another project, and she received a final $25,000 under the BIG Bank line of credit on April 15, 2006.

In early May 2006, Dalrymple got some bad news: (1) that her biggest client had declared bankruptcy and (2) that her office manager had embezzled all of her liquid assets. Dalrymple was unable to service her debts, so BIG Bank, CASH Bank, and CCU properly placed Dalrymple’s loans in default. BIG Bank initiated foreclosure proceedings, The sheriff informed BIG Bank that the statutory appraisal process revealed that Dalrymple’s construction yard was worth $130,000.

In addition, the sheriff informed BIG Bank of several other outstanding claims against Dalrymple’s property. Unbeknownst to Dalrymple or any of her other creditors, the U.S. Internal Revenue Service had mailed a notice of tax deficiency to Dalrymple on October 10, 2004, informing

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2 You may assume that the shop was a “building” for purposes of CC arts. 463 & 464 and, as such, an immovable.
her that she owed $10,000 more income tax than she had declared for tax year 2003. Dalrymple’s embezzling office manager had evidently discarded the notice, and the IRS had filed a Notice of Tax Lien in the mortgage records of Ascension Parish on September 5, 2005. Neither Dalrymple nor any of her creditors knew anything about this tax problem or the Notice of Tax Lien. In addition, a district court in Shreveport had entered a $50,000 judgment against Dalrymple on September 10, 2005, for damages arising from a traffic accident in which she had been involved. The plaintiff, Patrick P. Destrehan, had filed a certified copy of that judgment in the Ascension Parish mortgage records on October 10, 2005.

On April 30, 2006, the sheriff ruled all of Dalrymple’s creditors into court to establish the rank of their respective rights, if any, in the value of Dalrymple’s construction yard. As of that date, Dalrymple’s liability to Destrehan stood at $60,000, Dalrymple’s liability to the IRS stood at $20,000, and Dalrymple’s outstanding balances on her loans were as follows: BIG Bank: $100,000; CASH Bank: $40,000; CCU: $7,000.

A
(19 of the 44 minutes for Part IV)

10 (7 minutes) Does CCU have security in the AC unit that’s effective against third persons? Why or why not?

a CCU does not have security in the AC unit at all: true, it did have such security – an Article 9 security interest – before the AC unit was installed, for then the AC unit was still a movable and all the requisites for creating an Article 9 security interest in it had been satisfied; but when the AC unit was installed, it became a “component part” of the shop per CC art. 466 and, as such, became immovable; at that point, CCU’s security in the AC unit was extinguished

b CCU has security in the AC unit – an Article 9 security interest – and this security has been properly perfected; in perfecting that interest, CCU both used the “right form” and filed it both in the “right place” and at the “right time”

c though CCU had security in the AC unit – an Article 9 security interest –, that security was not properly perfected; where, as here, the movable in question is destined to become a component part of an immovable per CC art. 466, a special form for the financing statement is required and, here, the requisites for that form were not satisfied

d though CCU had security in the AC unit – an Article 9 security interest –, that security was not properly perfected; where, as here, the movable in question is destined to become a component part of an immovable per CC art. 466, a special place-of-filing requirement for the financing statement applies, namely, that the financing statement must be filed with the Clerk of Court in the parish in which the immovable is located; here, that was not done

e though CCU had security in the AC unit – an Article 9 security interest –, that security was not properly perfected; where, as here, the movable in question is destined to become a component part of an immovable per CC art. 466, a special time-of-filing requirement for the financing statement applies, namely, that the financing statement must be filed within 20 days of the date on which the movable becomes a component part of the immovable; here, that was not done

For purposes of the rest of the Part IV, assume that the correct answer to this Question 10 is “b”.

11 (5 minutes) Does BIG Bank have security in the AC unit that’s effective against third persons? Why or why not?

a yes: the mortgage of an immovable extends to that immovable’s component parts; here, BIG bank took a valid mortgage, effective against third persons, on the construction yard; inasmuch as the shop was a component part of the construction yard, the mortgage extended to the shop; and, when the AC unit became a component part of the shop, the
mortgage extended to it, too

b no: though the mortgage of an immovable extends to those things that are already, as of the time of the creation of the mortgage, its component parts, the mortgage does not extend to “after added” component parts of the immovable; here, the AC unit did not become a component part of the shop until after the mortgage had been created

c no: though the mortgage of an immovable may extend to that immovable’s component parts, including even those that are “added” to the immovable “after” the mortgage has been created, this happens if and only if the act of mortgage expressly so provides; here, the mortgage referred only to “the construction yard”; that act said nothing about “component parts”, “appurtenances”, or the like

d no: because CCU perfected a valid Article 9 security interest in the AC unit before it was installed in the shop, the AC unit remained a movable, notwithstanding its installation in the shop; a mortgage may burden only immovable property

e none of the above

For purposes of the rest of this Part IV, assume that the correct answer to this Question 11 is “a”.

12 (7 minutes) As between CCU’s security and BIG Bank’s security in the AC unit, which has priority? Why?

a BIG Bank: in a competition for priority with respect to a thing that has become a component part of an immovable as between, on the one hand, an Article 9 secured party who’s got the kind of security interest CCU has and, on the other, a prior perfected mortgagee, the mortgagee generally prevails; though this rule admits of exceptions, none of them applies here

b CCU: in a competition for priority with respect to a thing that has become a component part of an immovable as between, on the one hand, an Article 9 secured party who’s got the kind of security interest CCU has and, on the other, a prior perfected mortgagee, the Article 9 secured party generally prevails; though this rule admits of exceptions, none of them applies here

c CCU: yes, in a competition for priority with respect to a thing that has become a component part of an immovable as between, on the one hand, an Article 9 secured party who’s got the kind of security interest CCU has and, on the other, a prior perfected mortgagee, the mortgagee generally prevails; but this rule admits of exceptions, and one of those exceptions applies here: where the Article 9 security interest is a purchase money security interest (PMSI), it “beats” a prior perfected mortgage; here, CCU has a PMSI

d CCU: yes, in a competition for priority with respect to a thing that has become a component part of an immovable as between, on the one hand, an Article 9 secured party who’s got the kind of security interest CCU has and, on the other, a prior perfected mortgagee, the mortgagee generally prevails; but this rule admits of exceptions, and one of those exceptions applies here: where the Article 9 security interest is a purchase money security interest (PMSI) and that interest is perfected within 20 days of the date on the collateral becomes a component part of the immovable, that interest “beats” a prior recorded mortgage; here, CCU has a PMSI and it was perfected before the 20-day deadline

e CCU: yes, in a competition for priority with respect to a thing that has become a component part of an immovable as between, on the one hand, an Article 9 secured party who’s got the kind of security interest CCU has and, on the other, a prior perfected mortgagee, the mortgagee generally prevails; but this rule admits of exceptions, and one of those exceptions applies here: where the Article 9 security interest is a purchase money security interest (PMSI) and that interest is perfected before the collateral becomes a component part of the immovable, that interest “beats” a prior recorded mortgage; here CCU has a PMSI and it was perfected before the collateral became a component part of the immovable
For purposes of the rest of this Part IV, assume that the correct answer to this Question 12 is “a”.

B
(25 of the 44 minutes for Part IV)

13 (7 minutes) Does CASH Bank have a mortgage on Darlene’s construction yard that’s effective against third persons? Why or why not?

a no: CASH Bank never had a valid mortgage on Darlene’s construction yard; under Louisiana law, a “standard” (as opposed to a “collateral”) mortgage can’t be used to secure a revolving line of credit; for that purpose, a collateral mortgage is required; here, CASH’s mortgage was standard, not collateral

b no: though CASH Bank once had a valid, perfected mortgage on Darlene’s construction yard, the perfection of that mortgage was lost when CASH Bank failed to timely reinscribe the mortgage; here, reinscription was required no later than March 1, 2004, the tenth anniversary of the date of the mortgage document

c no: though CASH Bank once had a valid, perfected mortgage on Darlene’s construction yard, the perfection of that mortgage was lost when CASH Bank failed to timely reinscribe the mortgage; here, reinscription was required no later than March 1, 2005, the date on which the last installment of the loan secured by the mortgage matured

d yes: CASH Bank took a valid mortgage in the construction yard and perfected that mortgage back on March 1, 1994; that mortgage remains effective today, notwithstanding CASH Bank’s failure to reinscribe it, for the date on which reinscription is required has not yet arrived

e yes: CASH Bank took a valid mortgage in the construction yard and perfected that mortgage back on March 1, 1994; that mortgage remains effective today, notwithstanding CASH Bank’s failure to reinscribe it, for this kind of mortgage (to secure a revolving line of credit), need not be reinscribed

For purposes of the rest of this Part IV, assume that the correct answer to this Question 13 is “d” or “e”, it matters not which.

xii (18 minutes) As among BIG Bank, CASH Bank, Destrehan, and the IRS, explain exactly how much of the $130,000 value of the construction yard each creditor is entitled to as against the other creditors in rank order and why.
On January 5, 2001, Harper purchased a lot in Redneck Acres, a residential subdivision that had just been opened in Livingston Parish. To finance the purchase, Harper borrowed $50,000 from Florida Parishes Bank (FPB). To secure repayment of the loan, Harper granted FPB a mortgage on “the land and all future improvements thereto” in the amount of $75,000. FPB filed the act of mortgage, which was in proper form in all respects, into the Livingston Parish mortgage records that same day (January 5, 2001).

In early 2005, Harper, who until then had put off building his dream home (a split-level log cabin with an indoor firing range) while he saved his money, decided he’d finally saved “enough”. Even with his savings, however, he still needed an additional $100,000 to fund the construction. For this purpose, he turned to Walker Building & Loan (Walker). And, since Harper “didn’t know nuttin’ about no construction”, he needed a general contractor to oversee the project. For this purpose, he turned to Costonis Builders, a sole proprietorship run by Juan Costonis (Juan). The “price” of the project, according to the contract signed by Harper and Juan, was $200,000.

Before it would extend the $100,000 loan to Harper, Walker sent a certified building inspector, Tipsy Trahan (Tipsy), out to the site. After his inspection (conducted on February 1, 2005), Tipsy drew up an affidavit, dated February 1, 2005, certifying that work had not yet begun. A week later (February 8, 2005), Tipsy, an inveterate procrastinator, finally got round to delivering the affidavit to Walker and filing it into the Livingston Parish mortgage records. A week later (February 15, 2005), Walker had Harper sign a loan agreement, a promissory note in the amount of $100,000 plus interest, and an accompanying act of mortgage in the amount of $125,000, both in impeccable form in all respects. The loan agreement provided that the borrowed funds were to be disbursed in four (4) “tranches” of $25,000 each, the first immediately and the next three in weekly intervals thereafter. According to the act of mortgage, the mortgage was to extend to not only the land, but also “any buildings that should be raised upon it”. Walker filed the mortgage into the Livingston Parish mortgage records the same day.

Meanwhile, unbeknownst to Harper, Tipsy, or Walker, a company named L’Enfant’s Logs, whom Juan had hired for the Harper project, delivered its first load of logs to the site (worth $2,000) on February 5, 2005. On February 20, 2005, CC (short for “Concrete”) Joseph, a professional “foundation man” whom Juan had hired for the Harper project, began to lay the concrete foundation for the house, using concrete supplied by Harper. And on February 25, 2005, the log walls started to go up.

On March 1, 2005, Juan filed a “notice of contract” into the Livingston Parish mortgage records. This notice was accompanied by a bond, issued to Juan by Bockrath Bonding Company, in the amount of $50,000.
On March 15, 2005, after the plumbing, electrical, sheetrocking, fine carpentry, and interior painting work had been completed, but before the flooring – a special-ordered puke-green shag carpet – had been installed, Harper filed a “notice of termination”, in proper form, into the Livingston Parish mortgage records. It was not until April 1, 2005, however, that Harper told Juan that he (Harper) considered the house “finished” and “acceptable” and then moved into it.

On April 7, 2005, Harper received some bad news. First L’Enfant’s Logs and then CC (collectively hereinafter “the constructors”) notified Harper that it and he, respectively, still had not been paid. This news came as a complete surprise to Harper, for he had always promptly turned over to Juan each new “tranche” of the proceeds of the Walker loan as soon he (Harper) had received it from Walker. When Harper did a little digging, he learned, to his chagrin, that Juan had absconded with the loaned funds to Litvinovia, a remote region of Argentina.

A
(27 of the 41 minutes for Part V)

xiii (5 minutes) If the “notice of contract” that Juan filed was to have any legal effect at all, what must it have contained?

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

For the purposes of the rest of this Part V, assume that the notice of contract contained this information.

xiv (5 minutes) If CC was to preserve his rights against Harper, then he, of course, would have been required to have filed certain documentation into some records somewhere. But what documentation, which records, and where? (Don’t talk about “when”; that’s the point of the next question.)

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
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14 (6 minutes) By what date would CC have had to have filed the documentation that you described in your answer to Question xiv if he was to keep his rights against Harper alive? Why?

a April 15, 2005: CC had 30 days to file, reckoning from the date on which the notice of termination was filed
b May 15, 2005: CC had 60 days to file, reckoning from the date on which the notice of termination was filed
c May 1, 2005: CC had 30 days to file, reckoning from the date on which the work on the Harper project was substantially complete
d June 1, 2005: CC had 60 days to file, reckoning from the date on which the work on the Harper project was substantially complete
e June 10, 2005: CC had 70 days to file, reckoning from the date on which the work on the Harper project was substantially complete
If you choose alternative “e”, then you must enter, in the space provided, the letters of the alternative answers that you consider to be correct.

For purposes of the rest of this Part V, assume that not only CC, but also L’Enfant’s Logs filed the required documentation in the right form, in the right records, in the right place, at the right time and, further, assume that the “right time” was June 10, 2005 (alternative “e”).

(5 minutes) Is there anything else that CC must do, aside from filing the required documentation just referred to, if he wants to keep his rights against Harper alive? If so, what must he do? And is there still time within which to do it? Explain.

For purposes of the rest of this Part V, assume that not only CC, but also L’Enfant’s Logs did this “something else” that was necessary to preserve his rights and did so in a timely fashion.

(6 minutes) Can Harper now (as of May 4, 2006) “avoid” the various constructor’s claims against him and their rights against his house by provoking a concursus proceeding, ruling them into court, and forcing them to seek recourse solely from the surety, Bockrath’s Bonding Company? Why or why not?

a yes: the only prerequisites that must be met if the owner is to avail himself to this “avoidance” procedure are (1) a notice of contract in proper form, accompanied by a bond in the proper amount, must have been filed in the right place, in the right records, and at the right time and (2) the period for the filing of documentation for claims and / or privileges must have expired; here, these prerequisites have been satisfied

b no: though the statement of prerequisites set out in the rationale in “a” is correct, at least one of those prerequisites has not been satisfied here, namely, the notice of contract was not timely filed

c no: though the statement of prerequisites set out in the rationale in “a” is correct, at least one of those prerequisites has not been satisfied here, namely, the bond was not in the proper amount

d no: though the statement of prerequisites set out in the rationale in “a” is correct, at least one of those prerequisites has not been satisfied here, namely, the period for the filing of documentation for claims and / or privileges has not yet expired

e more than one of the above: ____________

For purposes of the rest of this Part V, assume that the correct answer to this Question 15 is “b”, “c”, or “d”, it matters not which.

If you choose alternative “e”, then you must enter, in the space provided, the letters of the alternative answers that you consider to be correct.
(14 of the 41 minutes for Part V)

16 (6 minutes) Should Walker’s mortgage be deemed to have priority over the constructors’ liens in the house? Why or why not?

a yes: the constructors’ liens incepted only when Juan filed the notice of contract; that didn’t happen until March 1, 2005; Walker’s mortgage attached and was perfected on February 15, 2005; thus, the mortgage was first in time

b yes: the constructors’ liens incepted when work began; that happened on February 5, 2005, when the first delivery of logs arrived; Walker’s mortgage did not attach and was not perfected until February 15, 2005; thus, the constructors were, in fact, first in time; nevertheless, Walker issued its mortgage in reliance on Tipsy’s “no work” affidavit, which represented that no work had yet begun; on such an affidavit, a mortgagee may conclusively rely, even if, as here, the affidavit proves to be in error

c no: the rationale stated in “b” is correct, save in one respect: Walker does not get the benefit of the “no work affidavit rule” here because the affidavit was not promptly filed; thus, the constructors’ liens, because they were, in fact, first in time, have priority

d no: the rationale stated in “b” is correct, save in one respect: Walker does not get the benefit of the “no work affidavit rule” here because the mortgage was not promptly filed; thus, the constructors’ liens, because they were, in fact, first in time, have priority

e more than one of the above: ____________

For purposes of the rest of this Part V, assume that the correct answer to this Question 16 is “c” or “d”, it matters not which.

xvi (8 minutes) FPB, Walker, L’Enfant’s Logs, and CC, none of whom has yet been paid, all claim various kinds of rights in Harper’s land house. These claims, it may be assumed, are sound. But in what order do these rights rank? Why?

Finis