
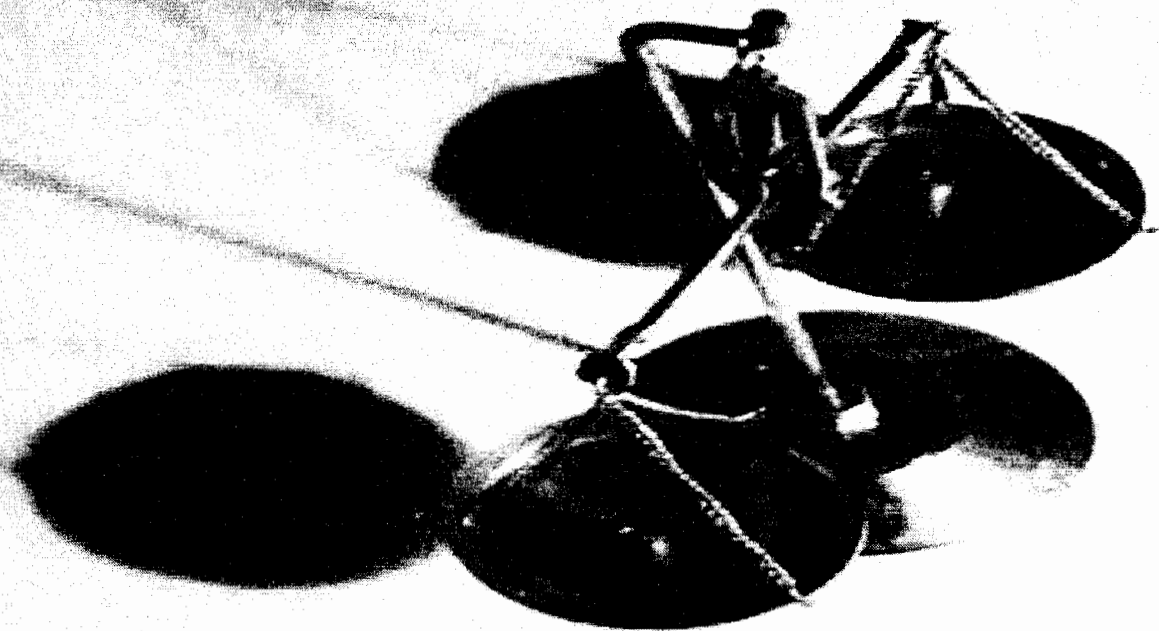


STUMP THE CHUMPS -2006


**Association of
Commercial Finance Attorneys**





CAST OF CHUMPS

- Bob Zadek
- Ed Smith
- And You the Audience

STUMP NO. 1

- D enters into negotiations with SP1. SP 1 files a financing statement without D's authorization on 1/1/06. D ultimately borrows money from SP2, authenticates a security agreement and SP2 files on 2/1/06, and tells SP2 there is no deal with SP1. Later D goes back and borrows money from SP1 and authenticates a security agreement. D can't repay. In priority contest between SP1 and SP2 who wins?

STUMP NO. 2

- Assume that SP1 commences negotiations to buy D's accounts and properly pre-files an authorized financing statement covering accounts. D, however, then consummates a sale of the same accounts to SP2 which properly files its own financing statement covering the same accounts.

STUMP NO. 2 CONTINUED

- D then completes its negotiations with SP1, without telling SP1 of the sale to SP2, and consummates the sale of the same accounts to SP1. Who has priority to the accounts as between SP1 and SP2?

STUMP NO. 3

- The revised definition of "good faith" now requires everyone, not just a merchant, to have not only "honesty in fact" but also to observe "reasonable commercial standards of fair dealing".

STUMP NO. 3 CONTINUED

- Explain what the new standard means in the context of a sale of a good by a person who is not a merchant in goods of that kind, and illustrate the explanation with a concrete example of a situation in which such a nonmerchant seller has "honesty in fact" but has not observed "reasonable commercial standards of fair dealing".

STUMP NO. 4

- Assume the current standard of good faith as meaning only "honesty in fact" for a nonmerchant. Suppose that a nonmerchant seller sells a computer to another nonmerchant knowing of a hidden defect in the computer; the seller doesn't make any misstatement but doesn't disclose the defect.

STUMP NO. 4 CONTINUED

- Comment 3 to 2-314 (which deals with merchantability) says that the seller can be liable for the nondisclosure, as follows: "A person making an isolated sale of goods is not a "merchant" within the meaning of the full scope of this section and, thus, no warranty of merchantability would apply."

STUMP NO. 4 CONTINUED

- His knowledge of any defects not apparent on inspection would, however, without need for express agreement and in keeping with the underlying reason of the present section and the provisions on good faith, impose an obligation that known material but hidden defects be fully disclosed." Is this comment correct?

STUMP NO. 5

- Since a participation interest is a payment intangible, would a notice by the holder of the participation ("Participant") to the lender of record ("Lender") of the Participant's intent to pledge its participation interest be effective under Sections 9-406 (a) and (b),

STUMP NO. 5 CONTINUED

- assuming that the relevant Participation Agreement limits the Lender's duty to pay a person other than the Participant. Note that Section 9-406(b)(2) refers only to a "seller" and not to any assignee.

STUMP NO. 6

- Would the limitations expressed in Section 9-408(c) apply in the event the pledge of the participation was enforced by the relevant secured party?

STUMP NO. 7

- If the secured party, exercising its rights under section 9-610(a) of the UCC, leases the collateral, by what amount is the secured indebtedness reduced? Does the secured creditor present-value the rental stream and apply the present value to the debt?

STUMP NO. 7 CONTINUED

- If so, what discount rate should be used? Does the secured creditor apply only rental payments actually received? Is there some other rule?

STUMP NO. 8

- If the secured party, exercising its rights under section 9-610(a) of the UCC, leases the collateral but does not foreclose the residual interest, and the debtor thereafter redeems the collateral (or at least the residual interest) by paying the secured indebtedness in full, does the debtor succeed to the secured party's rights and remedies under the lease?

STUMP NO. 8 CONTINUED

- Does the debtor become personally liable for the lessor's obligations under the lease? Is the secured party relieved of the lessor's obligations under the lease? If debtor becomes liable and the secured party remains liable for the debtor's obligations under the lease, does the secured party become a surety?

STUMP NO. 9

- With July 1, 2006 right around the corner, are there any traps for the unwary with regard to continuation, lapse and transition?

STUMP NO. 10

- After July 1, 2006, can we stop searching in the state of the Chief Executive Office or state where the goods are located?

PROBLEM CASES 2005-2006

- *MP Star Financial v. Cleveland State University*, 58 UCC Rep Serv 2d 191, 837 N.E.2d 758 (Ohio 2005)
- 9-109(d)(14) and transfers by governmental units

PROBLEM CASES 2005-2006

- *In re Georgetown Steel Co., LLC*, 55 UCC Rep Serv 2d 475, 318 B.R. 352 (Bankr. D.S.C. 2004),
- What is a consignment?

PROBLEM CASES 2005-2006

- *Kipperman v. Netbank, FSB*, 556 UCC Rep Serv 2d 54, 2005 WL 1365055 (Bankr. S.D. Cal. 2005)
- Payment steams and chattel paper

PROBLEM CASES 2005-2006

- *Planned Furniture Promotions, Inc. v. Benjamin S. Youngblood, Inc.*, 57 UCC Rep Serv 2d 678, 374 F.Supp. 2d 1227 (M.D. Ga. 2005)
- Change of name from individual to corporation

PROBLEM CASES 2005-2006

- *Tucker v. Par Wholesale Auto, Inc.*, 329 B.R. 291 (Bankr. D. Ariz. 2005)
- Unperfected security interest in inventory v. reclamation rights of Seller
- Definition of Good Faith Purchaser

OTHER CASES OF INTEREST

2005-2006

- *In re Spearing Tool and Manufacturing*, 56 UCC Rep. Serv 2d 807, 412 F.3d 653 (6th Cir. 2005)

OTHER CASES OF INTEREST

2005-2006

- *Robinson Helicopter Co., Inc. v. Dana Corp.*, 34 Cal. 4th 979 (2004)
- Economic loss rule

OTHER CASES OF INTEREST

2005-2006

- *Union Planters Bank, N.A. v. Peninsula Bank*, 56 UCC Rep Serv 356, 897 So.2d 499 (Fla. Dist. Ct. of App. 2005)
- Car rental companies

STUMP THE CHUMPS 2006

- Audience Participation
- Bob's Pet Peeves
- Ed's Pet Peeves
- Thank You