

Commercial Law

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Problems: PPSA Enforcement

Unless otherwise specified, all events take place in the order in which they are described. In order to avoid lengthy descriptions 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 (“f.s.”) 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 question, 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.

Problem 1

Bob's Bicycle Shop goes to the Bank of Fredericton for a loan. The B of F agrees orally to lend \$10,000 to Bob's, taking as collateral Bob's inventory of bicycles. The B of F advances the \$10,000. Bob defaults on debt. Can B of F take possession of the inventory and sell it?

Problem 2

Bob's Bicycle Shop enters into a security agreement with the Bank of Fredericton in which Bob's inventory of bicycles is collateral for a loan. The B of F registers a f.s. in respect of that loan and advances money. Bob then goes to the Miramichi Trustco for a second loan, also using the bicycles as collateral. The Trustco registers an f.s. in respect of its loan and advances money.

Part I

Bob owes \$10,000 to the B of F and \$5,000 to the Trustco. Bob defaults on both loans and the B of F seizes and sells the collateral. The expenses of the sale are \$500.

- I.A The bicycles are sold for \$8,000. How is the money distributed? How much does Bob owe to the B of F and the Trustco?
- I.B The bicycles are sold for \$12,000. How is the money distributed? How much does Bob owe to the B of F and the Trustco?
- I.C The bicycles are sold for \$17,000. How is the money distributed? How much does Bob owe to the B of F and the Trustco?

Part II

Bob's owes \$10,000 to the B of F and \$5,000 to the Trustco. Bob's defaults on its loan from the Trustco and the Trustco seizes and sells the collateral. The expenses of the sale are \$500.

II.A The bicycles are sold for \$3,000 to Pete's Bicycle Heaven, another local firm.

1. How is the money distributed? How much does Bob's owe to the B of F and the Trustco?

2. After the bicycles have been sold to Pete's by the Trustco, Bob's defaults on its debt to the B of F. Can the B of F seize the bicycles from Pete's and sell them to help satisfy the debt owing by Bob's? Can the Trustco seize the bicycles from Pete's and sell them to help satisfy any remaining debt owing by Bob's?

II.B The bicycles are sold for \$7,000. How is the money distributed? How much does Bob's owe to the B of F and the Trustco?

Part III

Bob's owes \$10,000 to the B of F and \$5,000 to the Trustco. Bob's defaults on its loan from the B of F and the B of F seizes the collateral. Three days later, without having given notice to either the Trustco or Bob's, the B of F sells the bicycles to Pete's Bicycle Heaven for \$7,000.

III.A Can Bob's recover the bicycles from Pete's? If Bob's defaults on its loan from the Trustco, can the Trustco seize the bicycles from Pete's and sell them to satisfy the debt?

III.B It can be proven that the bicycles were in fact worth approximately \$7,000 at wholesale. Can the Trustco sue the B of F for failure to give notice? Can Bob's raise the failure to give notice as a defence to the B of F's deficiency action?

Problem 3

Bob's Bicycle Shop enters into a security agreement with the Bank of Fredericton in which Bob's inventory of bicycles is collateral for a loan. Bob's defaults on the loan with \$10,000 owing. The Bank seizes the bicycles, and, by private sale and without any advertising, sells the bicycles to Pete's Bicycles Heaven, another local bicycle store, for \$5,000. The B of F brings a deficiency action against Bob's for the remaining \$5,000. You are acting for Bob's. The owner, Bob, tells you that even at wholesale, the bicycles should have been worth at least \$9,000. Can this be raised in the deficiency action?

Problem 4

Bob's Bicycle Shop enters into a security agreement with the Bank of Fredericton in which Bob's inventory of bicycles is collateral for a loan. Bob defaults on the loan with \$10,000 owing. The Bank seizes the bicycles. It advertising the bicycles widely in trade magazines as well as contacting the 10 largest bicycle retailers in the province. The highest offer made on the bicycles is \$5,000. The B of F sells for that price and brings a deficiency action against Bob's for the remaining \$5,000. You are acting for Bob's. The owner, Bob, tells you that even at wholesale, the bicycles should have been worth at least \$9,000. Can this be raised in the deficiency action?

Problem 5

Bob's Bicycle Shop enters into a security agreement with the Bank of Fredericton in which Bob's inventory of bicycles is collateral for a loan. Bob defaults on the loan with \$10,000 owing. The Bank seizes the bicycles. The B of F then sends Bob's a notice that it intends to retain the collateral in satisfaction of the debt. Three weeks later the B of F sells the bicycles to Pete's Bicycle Heaven for \$7,000. Can the B of F sue Bob's for the \$3,000 deficiency?

Problem 6

Bob's Bicycle Shop enters into a security agreement with the Bank of Fredericton in which Bob's inventory of bicycles is collateral for a loan. Bob defaults on the loan with \$10,000 owing. The Bank seizes the bicycles. The B of F then sends Bob's a notice that it intends to retain the collateral in satisfaction of the debt. The day Bob's receives the notice, Bob, the owner, comes to you for advice. He believes that the bicycles are worth at least \$15,000. What will happen if he does nothing? What should he do?

Problem 7

Bob's Bicycle Shop enters into a security agreement with the Bank of Fredericton in which Bob's inventory of bicycles is collateral for a loan. The B of F registers a f.s in respect of that loan and advances money. Bob's then goes to the Miramichi Trustco for a second loan, also using the bicycles as collateral. The Trustco registers an f.s. in respect of its loan and advances money. Bob's defaults on its loan from the B of F when \$5,000 is owing on that loan and \$10,000 is owing on the loan from the Trustco. The B of F seizes the bicycles and gives notice to the Trustco and Bob's that it intends to sell the bicycles.

Part A

The Trustco exercises its right of redemption by paying \$5,000 to the B of F to satisfy the debt plus \$300 for the expenses that the B of F incurred in seizing the bicycles. How much would Bob's have to pay to the Trustco to redeem the bicycles from it? How much does Bob's owe to the Trustco in total? How much of that debt is secured? How much does Bobs owe to the B of F? If the Trustco sells the bicycles for \$12,000, and incurs \$500 for the expenses of sale, how will the money be distributed and how much will Bob's owe the Trustco? How much will Bob's owe the B of F?

Part B

Neither Bob's nor the Trustco exercises its right of redemption. The B of F sells the bicycles for \$12,000, with \$500 in expenses of sale and \$300 in expenses of seizing the bicycles. How much does the Trustco receive from the sale? How much remains owing from Bob to the Trustco?

Part C

In these circumstances, and in view of your answers to Parts A and B, would you advise the Trustco to exercise its right of redemption?

Part D

If the value of the bicycles was only \$3,000, would you advise the Trustco to exercise its right of redemption?

