1. (25 minutes)

On January 15, 2012, Cann Finance Co. (“Cann”) entered into an Inventory Lending and Security Agreement (the “Cann Agreement”) with Akhator Distribution Co., a distributor of electronics. Akhator buys electronics from manufacturers and resells them to retailers. Under the agreement, Cann would lend up to 80% of the value of Akhator’s inventory, but all loans would be at Cann’s discretion. The Cann Agreement described the collateral as “now existing and hereafter acquired inventory” and included a future advance clause. Cann filed a properly completed financing statement in the correct location on January 17, 2012. Cann immediately loaned several hundred thousand dollars. Akhator ordered inventory and began selling to its customers.

Epps Bank (“Epps”) entered into an Accounts Lending and Security Agreement (the “Epps Agreement”) with Akhator on July 1, 2013. The Epps Agreement describes the collateral as “now existing and hereafter acquired accounts and proceeds thereof.” Having assured itself that Akhator’s accounts had significant value, Epps advanced funds to Akhator and filed a properly completed financing statement in the correct location on July 2, 2013.

Unable to continue making loan payments or to meet its other obligations, Akhator filed a chapter 7 bankruptcy petition on December 1, 2016. As of the date of the petition, Akhator had inventory with a value of $3 million, and accounts with a value of $2 million, all of which reflect amounts owed by retailers for the purchase price of electronics sold to them by Akhator.

Among Cann, Epps, and the bankruptcy trustee, who has priority in the accounts and why?

2. (10 minutes)

Adding to the facts of problem 1: Assume that Akhator’s bankruptcy proceeding is still pending as of February 1, 2017, and no additional UCC filings have been made by either Cann or Epps.

Does that change your answer to problem 1, and why? If so, please re-specify the priorities and explain what changed and why; and also explain what could/should have been done to ensure no change in result.

3. (15 minutes)

Adding to the facts of problem 1: On September 12, 2016, an unpaid supplier of Akhator obtained a judgment lien on $500,000 worth of inventory (which is now located in the sheriff’s impound facility). That same day, the supplier checked the UCC records under Akhator’s name, saw Cann’s filing, and sent a letter by certified mail (a) informing Cann about its levy on Akhator’s inventory and (b) demanding that Cann cease lending funds to Akhator immediately. Cann received the letter but made no response. On November 20, 2016, Cann made an advance to Akhator in the amount of $100,000.

To what extent does Cann have priority over the supplier with respect to this $100,000 advance, and why?

4. (15 minutes)

Stevie Jobs (“Jobs”) missed some car payments, in default of her agreement with her car lender, Macintosh Finance (“Mac”). As it was entitled to do, Mac peacefully repossessed her car. It sold the car at a private auction attended by fifty car dealers from around the state. The balance on her car loan was $33,000 when she stopped making payments, and she accumulated an additional $7,000 in unpaid interest while unemployed. Mac gave Jobs proper notice of the sale. The car sold for $30,000 even though it was likely worth
$42,000. Mac incurred $1,000 in expenses ($800 in repo and storage costs; $200 in sale fees). Jobs’ contract says nothing about which party will pay sale expenses/fees.

Do either Mac or Jobs owe the other party any money at this point, and why? If so, how much?

5. (30 minutes)

Higgs Beverages, Inc. (“Higgs”) is a seller of containers (called “growlers”) used to hold beer. The growlers are high-end and are paid for by the customers over time. Each contract between Higgs and its customer consists of a promissory note and security agreement giving Higgs a lien on the newly purchased growler.

In late 2015, Higgs began having financial difficulties and sought out loans from several lenders.

In January 2016, Higgs successfully applied for financing from Boson Bank (“Boson”), which (via a valid security agreement) took a security interest in Higgs’ growlers and customer contracts. On January 2, 2016, Boson disbursed the funds and filed a financing statement covering the growlers and stating the debtor’s name as “Higginson Beverages, Inc.” That same day, Boson took possession of the customer contracts but did not file a financing statement with respect to them.

In February, Higgs successfully applied to Electron Bank (“Electron”) for a loan secured (via a valid security agreement) by the growlers as well as the customer contracts. On February 2, 2016, Electron disbursed the funds and filed a financing statement covering the growlers and the contracts. The financing statement stated the debtor’s name as “Higgs Beverages Co.” Electron inadvertently failed to enter any information in the spot on the UCC form where the secured creditor’s mailing address is supposed to go. But the filing officer accepted the filing anyway. That same day, Electron disbursed the funds to Higgs.

On April 1, Higgs filed for chapter 7 bankruptcy.

As between Boson, Electron, and the trustee: What priority (if any) do the parties have (a) in the growlers and (b) in the customer contracts, and why?

6. (40 minutes)

Wildcat Mini-Golf (“Wildcat”) runs a mini-golf course that features wildcat and other animal statues. The statues decorate the golf course and serve as obstacles that the mini-golfers have to work around.

In order to purchase the land for the course, Wildcat obtained a mortgage loan from Commonwealth Bank (“Commonwealth”). The mortgage includes the real property, “all improvements thereto, and all fixtures thereon, whether presently existing or coming to exist hereinafter.” The mortgage was duly recorded in the county real property records as of January 1, 2015.

Several months after the original purchase of the course, and advised by several lawyers, Stoops Bank (“Stoops”) loaned funds to Wildcat and obtained a security interest in Wildcat’s “deposit accounts as they currently exist or may come to exist in the future” on March 1, 2015.

At the end of the day on April 15, manager Benny Snell (“Snell”) deposited that day’s revenues of $1,500 in Wildcat’s bank account at Stoops, which before that deposit had a balance of $0.

A couple of days later on his way to work, Snell stopped by a yard sale and saw a large statue called “Sad Cardinal” that would be a perfect addition to Wildcat’s mini-golf course. Snell withdrew $800 from Wildcat’s account with Stoops and used it to buy the Sad Cardinal. Excitedly, Snell and his employees installed the statue on the grounds of the golf course. They affixed the statue to a small concrete platform with series of bolts and permanent attachment devices; they also hollowed it out and installed plumbing inside it such that Sad Cardinal would sprout tears when golfers failed to properly putt.

Several months later, when he noticed that Sad Cardinal’s plumbing wasn’t working properly, Snell hired an excellent plumber he knew, Boom Williams (“Williams”) to repair the system (no other construction was ongoing at Wildcat’s facility at that time). Wildcat failed to pay him promptly for his work. Shortly thereafter, Williams properly filed a mechanic’s lien, on June 15, 2015.
As it happens, Sad Cardinal was so sad that it made all the children cry, which added to Wildcat’s financial problems. About six months later, Wildcat filed for chapter 7 bankruptcy.

(a) Among Commonwealth, Stoops, Williams, and the bankruptcy trustee: What priority (if any) do the parties have in the Sad Cardinal, and with what priority, and why?

(b) Would your answer to (a) change if Williams had also entered into a security agreement with Wildcat at the time he did his repair work, with Sad Cardinal as collateral to secure his repair costs, and made a proper fixture filing at that time? Why or why not?

7. (30 minutes)

Blue Grass Flowers, Inc. (“Flowers”) recently upgraded its shops, purchasing new display cases and a supply of the vases that customers can purchase with their flower arrangements. Flowers bought these items from Blossoms Supply, Corp. (“Supply”), which is in the business of selling such equipment and inventory. Flowers obtained the money for the purchase by approaching Goldenrod Bank (“Goldenrod”) for a loan. Goldenrod sent the funds directly to Supply on June 5, and that same day, Goldenrod obtained a signed promissory note from Flowers. Supply delivered the items to Flowers on June 10, and that same day, Goldenrod filed its financing statement covering Flowers’ “equipment and vases.” In addition, Flowers and Goldenrod signed a security agreement on July 5.

Back on January 1, Sally Shopper (“Shopper”) slipped on some water in a Flowers store and collided into a shelf of glass vases. Shopper sustained major injuries, sued, and won a judgment. Shopper obtained a writ of execution, and the sheriff levied on Flowers’ new display cases and vases on June 15.

Around this same time, Flowers also incurred a debt to Poplar Bank (“Poplar”). On June 1, Poplar filed a financing statement, obtained a security agreement, and obtained a promissory note. Poplar disbursed the loan funds to Flowers on June 20, after its financing statement appeared in the filing office’s system. Both the financing statement and security agreement described the collateral as “inventory and equipment, whenever acquired.”

Please rank Goldenrod, Shopper, and Poplar in order of their priority and explain.

8. (15 minutes)

Barbara Buyer (“Buyer”), plans to purchase certain goods (the “Assets”) being offered at a foreclosure sale initiated by Middle Inc. (“Middle”), which is owed $100,000 secured by the Assets. In addition to Middle’s valid interest, Buyer’s investigation of the Assets has revealed the following liens: A security interest held by Senior Enterprises (“Senior”) in the amount of $100,000, which is senior to Middle’s, and a security interest held by Junior Corporation (“Junior”) in the amount of $150,000, which is junior to Middle’s.

Buyer is willing to pay $300,000 to own the Assets—free of any of the above liens.

Assume the sale is going forward as planned. The expenses with respect to the sale will be $200.

(a) What is the most Buyer should pay at this foreclosure sale, and why?

(b) If she wins at the auction and pays that amount, what will each creditor receive from the auction proceeds? Please explain your answer.