Assignment 4

Attachment of the Security Interest: Legal Limitations on the Use of Consumer Goods as Collateral (Under Article 9 or Other Law)

Problem 1: Scope Exclusions

- Article 9 does not apply to:
  - An assignment of a claim for wages, salary, or other compensation of an employee [§ 9-109(d)(3)]
  - Thus, NF’s security agreement doesn’t create an security interest in Peters’s salary that is enforceable under Article 9

Problem 1: Scope Exclusion

- § 9-109(d) does not mean that Article 9 makes NF’s agreement with Peters invalid
- Instead, it means Article 9 is irrelevant to the question whether NF has a valid lien in Peters’s salary
  - Whether NF has a valid lien on Peters’s salary is thus governed by law other than UCC Article 9

Problem 1

- Peters borrowed $50,000 from Neighborly Finance to pay school tuition for his kids
  - Peters authenticated a security agreement that covered: (a) his car; (b) his checking account; (c) his MU Law salary
- NF has already repossessed and sold Peters’s car after default
- Can it now proceed against his salary or his checking account?
Problem 1: Peters’s Salary

- RSMo. § 408.560: an “assignment of wages” is void when included in “any note or credit contract” in consumer credit transactions
  - Thus, NF cannot direct MU to turn over Peters’s salary check to NF
- Instead, NF would have to reduce its claim against Peters to judgment and can reach a portion of his wages through garnishment (subject to limits noted in Problem Set 1)

Problem 1: Scope Exclusions

- Article 9 does not apply to:
  - An assignment of a deposit account in a consumer transaction [§ 9-109(d)(13)]
- Thus, NF’s security agreement doesn’t create an interest in Peters’s checking account that is enforceable under Article 9

§ 9-102(a)(26). “Consumer transaction” means a transaction in which (i) an individual incurs an obligation primarily for personal, family, or household purposes, (ii) a security interest secures the obligation, and (iii) the collateral is held or acquired primarily for personal, family, or household purposes.

(i) Peters incurred debt for personal/family purpose (kids)
(ii) Debt would be secured by interest in personal property (car, checking account) [“SI” under §1-201(b)(35)]
(iii) He owns collateral for personal/household purposes

Problem 1: Deposit Account

- In most states, other law allows a depositor to assign rights in a deposit account to creditors
  - This would be done via a three-party “control” agreement between Neighborly Finance, Peters, and depositary bank
  - But, in many states, the agreement would have to give Neighborly Finance “exclusive” control over the account (impractical if this is Peters’s personal checking account!)
Scope Exclusion: Deposit Account

- Also, even though Article 9 does not apply to NF’s attempt to create a direct SI in the deposit account, NF could have an indirect SI in funds in the deposit account, if those funds are proceeds of other collateral
  - E.g., if Peters had sold his car and put the sale proceeds in his checking account, NF would’ve had a SI in the funds as proceeds of the car [Assignment 3]

Problem 2

- 1/2015: Neighborly Finance loaned $30,000 to Crouch; security agreement covered “all of Debtor’s consumer goods, incl. after-acquired”
- After Crouch defaulted, NF repossessed:
  - (1) His TV (bought in 2013)
  - (2) His laptop (bought in 2015)
  - (3) His Rolex (inherited 2015)
  - (4) His car
- Did NF have a valid Article 9 SI in each item?

A. Yes
B. No