## ­­­Secured Transactions – Hornbook Notes Overview

* Creditor Remedies under State law for *Judgment creditors* – have grant of jdgmnt for claims **1**
	+ Sec cred – status created via contract/statute
		- Foreclosure –typically mandatory; limit on strict foreclosure in **§9-620**
			* SC Possession Pending Foreclosure
		- Judicial Sale and Deficiency
			* Strict Foreclosure- typically not allowed
			* Foreclosure Sale Procedure
		- Art 9 Sale and Deficiency
			* Basically the same purpose as judicial method
			* Strict Foreclosure limtis- **§9-620, -621** [notice req] **, -622** [effectvnss of consent], **-623** [redemption]
			* Procedures for sale - **§9-610**
	+ Unsec cred –
		- Self-help is barred, must get cop to levy on the property - ***Vitale v. Hotel California 1***
		- Stats usu prevent foreclose on burial, bus/farm prop, consumr good, car, net income, deposits accnt
		- Fraudulent transfers –
			* 1. “w/ actual intent to hinder, delay, or defraud any creditor”
			* 2. “w/o receiving a reasonably equivalent value in exchange for the transfer”
* Creditor’s Remedies in Bankruptcy **3**
	+ Varieties of filing - Ch 7 , Ch 11, Ch 13
	+ Automatic Stay - **Code § 362(a), 541 (a)(1)**
		- Lifting the Stay - **Code § 362(d)(1), (2)**
	+ Claims Process
	+ Selling Property under **Ch 7** - Under some conditions may sell free & clear of liens - **§363(f)**
	+ **Ch 11 and 13** Reorgs
		- Confirmation of plan dischrg old debt and subst new ones - **Code § 1141(d)(1)(A)**
		- *Cramdowns*
			* **§ 1325(a)(5)(B)** entitles creditor to eq val of collateral but doesn’t have to match terms
* Formalities for Attaching Art 9 Security Interests **4**
	+ Three requirements – **§ 9-203(b)**
		- 1. SC possession (**§ 9-203(b)(3)(B)**) or the **δ** “authenticated a sec agmnt w/ description” **§ 9-203(b)(3)(A)**
		- 2. Value must have been given AND - Defined very broadly in **§ 1-204**
		- 3. Debtor must have rights in the collateral. **§2-403(1)**
	+ Descriptions of property
		- Should be liberally interpreted and must at a minimum “do the job assigned” - **§ 9-108.**
		- After acquired property **§9-204(b)–** ineffective under **Art 9** for two kinds of collateral
			* 1. Consumer goods acq >10d after SC gives value ; 2. Commercial tort claims
		- Real Estate Mortgages – controlled by separate law - Broad descript such as all grantor’s prop in county OK
		- Value Tracing for Proceeds, Products
	+ Limitations on What can be collateral.
		- Courts split on whether licenses can serve as collateral
		- Limit via st laws and contracts to restrict granting of sec interst in gen intagibles gen NOT effctv- **§9-408**
			* If state defines license NOT as property, then this exemption is not applicable - ***In re Chris-Don 40***
* Default Acceleration and Cure under St Law **5**
	+ Common law treats installments as separate obligations so contracts will have accel cls
	+ Right to cure – debtor can pay only arrears before acceleration - ***Old Republic Insurance Co v. Lee 43***
	+ Cntrct interp to incl. implied oblig of gd faith [refusl to adv funds w/o notice not OK]- ***KMC co v. Irving Trust 43***
* Default Acceleration and Cure under **the Code 5**
	+ Scope of items in the bankruptcy estate
	+ **§ 1322(b)(2)** allows δ to modify rights of SC and **(b)(3)** allows δ to cure their defaults – ***In re Moffett* 44**
	+ A. Stage 1: Protection of defaulting Debtor Pending Reorganization
		- δ gives adeq protection to SC can usu use colltrl pending case– **Code §§363(b)(2), (c)(2)**.
	+ B. State 2: Reinstatement and Cure
		- Ch 11 Payments can occur over a time that is “fair and equitable” **§ 1129(b)(1)**.
			* **§1124(2)**, which provides that a class of claims is **unimpaired** if debtor’s treatment of class under its plan complies w/ 4 requirements
			* If class is unimpaired, holder of claims is class is deemed to automatically vote for the plan **§1126(f)**.
		- Ch 13 payments can only extend over period of the plan – see **§1325(b)(4), §1322(c)(2)**.
* Perfection - By Filing **7**
	+ Personal Prop Filing system - **§9-308(a)** [need attachment, and all applcbl req of **§9-310 to -316**]
		- Filing systems are complicated – each county has real estate and Art 9 database - **UCC §9-501(a)(2)**
		- System components – Financing statmnts, Index  **§ 9-519(c)** mandates filing by name, search system
		- Correct name to use –
			* For an indiv or ptnrshp, fin stmnt MUST provide the “individual or org name of δ” - **§9-503(a)(4).**
				+ MUST use legal name - ***In re. Kinderknect* 57**
			* For Companies
				+ Should use legal name; **§ 9-504(b)**, **(c)** says trade name neither nec nor suff.
			* Errors
				+ in the δ’s name on fin stmnt - if fails **§9-503(a)**, then seriously misleading **§9-506(b)**
				+ if shows up in search logic even if fails **§9-503(a)**, it is not misleading - **§9-506(c)**
		- Req. for Effectv filing – Rs whether a fin stmnt has been filed - **§9-516, -520**
			* Authorization of SC by δ needed under **§9-509(a)(1)**; signing sec agmnt is auth **- §9-509(b)**
			* For effective filing need the following -  **§9-502(a)**
				+ 1. Debtor name 2. SC name 3. Indic collateral covered.
				+ Minor errors/omissions oK unless seriously misleading **§9-506(a).**
			* Clerk refuses to accept unless it has 1&2 AND items below - **§9-520(a)**
				+ 4. SC mailbox**-516(b)(4)** 5. Δ mailbox **-516(b)(5)(A)** 6. Indic of δ as indiv or corp. **-516(b)(5)(B)**
			* If debtor is an org, **§9-516(b)(5)(C)** also req rejection unless also contains:
				+ 7. Type of organization. 8. Δ jurisdiction of org 9. Δ org identification #
		- in filing office Acceptance or Rejection
			* + Wrongly accepted filings it is still effective. - **§9-338**.
			* Wrongly rejected filings, underlying sec interest suff to defeat lien creditors but NOT against purchasers giving val and acting in reas reliance on missing info - **§9-516(d)**.
* Alt Methods to Perfect **8**
	+ Possession as perfection for “neg doc, goods, instrmts, $ or tangible chattel paper.” **§9-310(b)(6)** and **9-313(a)** [can possess thru an agent as well **§9-313(c)**]; applies & contin only while SC has possn - **§9-313 (d)**
		- If Cash is collateral, possession is ONLY way to perfct interst - **9-312(b), 9-313**
		- Superior mode for instrmnt , tangible chattel paper, neg doc and cert sec possession **9-314(a), 9-313(a)**
	+ Contrl as perfection for “deposit accnt, e-chattel paper, invstmnt prop, letter of credit” - **§9-310(b)(8)**.
		- Superior mode of perfectn for invest prop, e-chattel paper - **§ 9-314, -328, -330**
		- Exclusive method for deposit accnt, letter-of-credit rights - **§ 9-312(b), -314**.
		- control sec account by taking control of all securities in the account - **§9-106(c)**
	+ Automatic Perfection – List of elig transactions set forth in **§9-309;**
		- PMSI ONLY for consumer goods- **UCC §9-103(b)(1), §9-102(a)(23)**
		- Accounts & Payment intangibles - **§9-309(2)**
			* Can NOT be signfcnt portion of accnt/paymnt intangible in one SC.
	+ EXCLUSIONS from ART 9
* The Land and Fixtures Recording systems **9**
	+ Real Prop Record Sys- Each county maintains a real estate recording system
	+ To create need: 1. Mortg doc 2. Δ signature and maybe 3. descript of the debt secured and the collateral
	+ Fixtures - Permanent part of buildings so UCC filing basically useless - **§9-109(d)(11)**.
		- Perfection
			* Can be done under real est law of state - **§9-334(b)**. EXCPTN – Perf In fixtures of a Transmitting Utility
				+ Split of auth as to whether lessee’s grant of sec interst in rights under lease is under Art 9 – **§9-109(d)(11)**, ***In re Assoc Air Services*** **68** (UCC applies) , versus ***In re Hodge Forest Industries*** **68** (UCC does not apply b/c excluded by **§9-109(a)(1)**).

mortgage- **UCC §9-203(g)**

* + - Process for assessing perfection - ***In re Cliff’s Ridge Skiing Corp* 65**
			* 1st use st law to assess whether prop is fixture
			* 2nd. Check if can use real estate sys or UCC sys. For UCC
			* 3rd see if Finc stment filed where mortgage recorded **§9-501(a)(1)(B)**.
			* UCC has priorities resolving conflicts between real estate law and UCC
* Maintain Perfctn thru change name, ident, use - **§9-507** gen r that fin stmnt still effctiv even tho srsly misleading **11**
	+ - If perfctn impossible due to δ axn, intrst may be deemed perfected. - ***Nat’l Bank of AK v. Erickson 75***
	+ Changes in δ Name- **§9-507(c)**
	+ C. Chng affecting descript of collatrl
	+ D. Exchange of the collateral
		- 1. Barter transactions (NONCASH) –
		- 2. Collateral to Cash Proceeds to Noncash proceeds
		- 3. Collateral to Cash Proceeds
* Maintaining Perfection through relocation of debtor or collateral **11**
	+ Rs.to file and search in **§§9-301 to -307 –** governs perfection by possesn and cntrl & filing.
	+ Initial Perfection
		- At location of collateral
			* Possessory sec interest - **§9-301(2)** overrides and law of jurisd which collateral is located applies.
			* Neg doc, goods, instrmnt, $, tangible chattle paper, then law of location govrns - **§9-301(3),**
		- At the Location of the debtor
			* nonpossesory sec intrst general rule via **§9-301(1)** - while δ located in a state, local law gov perf
				+ If law of state applies, **§9-501(a)(2)** req filie w/ st wide filling office for non-real estate colltrl
		- At the location of the collateral
			* MUST file fixture filng in “office design for filing or recording of a mortg on the real prop” to which fixture attached **§9-501(a)(1)**.
		- No filing location suitable
	+ Continuing Perfection thru Relocation of the Debtor
		- When indiv δ chg principal res, SC has 4 mo to file in destination state - **§9-316(a)(2)**. For principal resdnce, δ MUST phys be in state sometimes; if sometimes phys in mult states, intentions determ
		- For regtsr org , SC has 1 yr to discover the merger and perfect in destin st- **§9-316(a)(3)**
	+ Transfer of the Collateral
		- former filing remains effctv under **§9-507?(a)** plus 1 yr grace period to discover transfer and perfect via filing in destination state - **§9-316(a)(3)**
* The Concept of Priority: State Law **12**
	+ A. Priority in Foreclosure – 2 principles
		- 1. Absent contrary agmnt, any lien holder may foreclose while the debtor is in default to him.
		- 2. No lien holder is compelled to foreclose. But Sr lienholder can’t refuse to forcls and prevent jr lienholder from exercising their forecls rights- ***Frierson v. United Farm Agency 84***
	+ Reconciling Inconsistent Priorities
		- Rules above are NOT universal; Mortgages typically have priority over judgment liens
	+ The Right to Possession between lien holders
		- Some cts req jr lien holders to surrender possession to senior lien holders pending foreclosure- ***Grocers Supply Co v. Intercity Investment Properties*** **83**; comment 5 to **§9-609**.
	+ UCC Notice of Sale
		- Foreclsng SC MUST give notice to other lienholders who are easy to find (those who properly filed) **§9-611**

Chapter 9 - Competitions for Collateral

* LC Against SC – The Basics **13**
	+ “Lien Creditors” - **§9-102(a)(52)** “creditor who has acq a lien on prop involved by attachment, levy or the like.”
	+ Priority Among LCs - Rules gen found in state statutes (CHECK STATUTE)– use a first come first served basis
	+ C. Priority Between LC and SC
		- Priority btwn LC and NON-purch money Art 9 SC dep on whether LC “becomes a LC” before the SC either
			* 1) perfects its SC or 2) files a financing stmnt and complies w/ **§ 9-203(b)(3)**.
		- Art 9 def perfectn only after attchmnt & the “applcbl steps req for perfection” have been taken- **§9-308(a)**
	+ Priority between LC and mortgage Creditors
		- Governed by real estate law.
	+ Purchase-Money Priority - Fundamental principle is that liens rank in order which they become public.
* LC against SC – Future Advances **14**
	+ Priority of Future Advances: Personal Prop
		- Future adv priority over the LC provided creditor making the adv NOT know of the lien. **UCC §9-323(b)**
		- All future adv w/in 45 d after lien’s creation is entitled to priority regardless of SC’s knowledge.
		- advance made “pursuant to commitment entered into w/o knwldg of the lien” is protected - **§9-323(b)(2)**
	+ B. Priority of Nonadvances [collection costs. attorneys fees, etc]: Personal Prop
		- * undertaking in orig fin agmnt to reimburse fees gives ref back to orig agrmnt when value is extended so restrctn imposed by **§9-323(b)(2)** INapplicable**- *Uni Imports v. Exch Nat’l Bank of Chicago 88***
	+ C. Priority of Future Advances and Nonadvances: Real Property
		- Even more tolerant of future adv made after a LC perfects an interest so long as w/in eq credit line -***Shutze v. Credithrift of America* 481 –** someCts go against this case and only allow priority for mandatory loans
* Trustees in Bankruptcy Against SC **14**
	+ What Security Interest Can be Avoided as Preferential? – Gen. must meet each element of the **Code §547(b)**
		- Exceptions:Can NOT avoid transfer intended to be a contemp exchng for new val and in fact a subst contemp exchng - **§547(c)(1)**
	+ When does the “transfer” of a sec interest occur? Highly technical – precise time is important b/c:
		- **EXCPTN to avoidance :** A/R and Inv - **§547(c)(5);** problemrooted in **§547(e)(3)** b/c of attchmnt timing
			* **§547(c)(5)** creates a safe harbor for sec interest in A/R and inventory for inventory SC.
		- Relation Back Rules - Complicated by mix of state and fed law.
* Assignment 32: Secured Creditors Against Secured Creditors: The Basics **15**
	+ Non- PMSI
		- The Basic Rule: first to File or Perfect - **§9-322(a)(1)**
			* EXCEPTN: sec intrst perfctd angst transferee subord to that perf against transferor - **§9-325(a)(1)/(2)**
		- Priority of Future Advances
			* if fin stmnt “covers the collateral” all adv have priority as of the filing of the fin stment –**§9-322(a)(1)**; **§9-502** validates filing of sec interest before attachment.
		- Priority in After-Acq Property
			* After-acq lender’s priority dates from the time of orig fin smnt filing - **§9-322(a)(1)**
	+ PMSI’s
		- PMSI’s Genrl (NOT invntry) - priority over cnflict SC if perfected ≤20 d aftr δ obtain - **§9-324(a)**
			* More than one creditor may have a valid PMSI in the same collateral
				+ **§9-324(g)(1)** seller’s PMSI priority over $-lender PMSI( $ used to buy equip from another party).
				+ If both lenders, **§9-314(g)(2)** reverts to the “race” scheme of **§9-322(a)**
		- PMSI in inventory - \*20 d grace period of **§9-324(a)** does NOT apply
			* Special rules which allow PMSI priority only in the conditions below: **§9-324(b)**
				+ 1. Purchase money financer MUST perfect no later than the time δ gets possession AND
				+ 2. Must give adv notice to the inv lender that it expects to acq a PMSI in the inventory.
		- PMSI in proceeds
			* Genrly have purch-money priorty over compete sec intrst perf by an earlier filing against δ **§9-324(a)**
			* IMPNT EXCPTN purch-money status in inv flows ONLY to chattel paper, instruments and cash proceeds. **§9-324(b)**<-this is itself limited by **§§9-327, -330(a) & (d)**.
		- Priority in Comingled Inventory - sec interest continues in product or mass - **§9-335(c)**
			* If more than one sec interest attaches interest rank equally and share in proportion to total cost.
* Assignment 33: Priority in Land and Fixtures **16**
	+ Mortgage against Mortgage – These are merely DEFAULT rules
		- Recording Statute – Rules of Priority - *Pure race statute* , *Pure notice* or *Notice-race statute*
		- Most recording stat protect ONLY good faith purchasers for value
		- Purch-Money Mortgage - Most states recognize some kind of priority for purchase-money mortgagees
	+ Judgment Liens against Mortgages - similar to those gov priority between mortgages.
	+ Mech Lien against Construction Mortgages – statutory in all 50 states
		- Priority of Mech Liens - Dstgh btwn construct (priority date of commncmt of construction) from casual alteration or repair of a building (priority on recording the claim of lien) - ***In re Skyline Properties Inc*** **95**
		- Priority date of mech lien is date of visibl work on land, not just surveying - ***Ketchum. Konkel, Barrett, Nickel & Austin v. Heritage Mountain Development*** **96**
	+ Priority of Art 9 Fixture Filings - **§9-334**.
		- 1. Priority of Fixtures incorporated during construction
		- 2. Priority in Fixture incorporation w/o construction
	+ Priority in Real Prop Based on Personal Prop filing – auth by **§9-501(a)(2)**
		- NOT effect against later mortgagee or fixture filer filing in the real estate recording system **§9-334(e)(1)**
* Sellers Against SC **17**
	+ Limits of After-Acq Property Cl -> **§9-203(b)(2)** does NOT req debtor be the owner of collateral in order to grant a valid sec interst in it. Debtor only needs to have “rights in collateral”
		- 1. Rs. governing title to personal prop
			* *Void title rule* – outright thief obtains no title to the property and can convey none.
			* If tru owner entrusts to person who then sells as his own, can pass good title to buyer in ord course of bus -**§2-403(2); *voidable title r*.**
			* True owner who loses car in transaction of purchase loses to 3rd party buyer, even if defrauded.
				+ The intermediate buyer has a voidable title but can pass off a good title to a good faith purchaser for value. - **§2-403(1)**; ***see* *In re Samuels*** **98**
		- Rs. governing sec intrst in personal prop
			* Remember SC are purchasers, even for after-acq property
			* Also “value” is loosely defined as “any consideration sufficient to support a simple contract - **§1-204**
			* Rights of good faith purchaser covered by **§2-403**.
		- Filing system as an exception to *Nemo Dat*
	+ Suppliers Against Inventory-Secured Lenders
		- Suppliers typically extend credit in the form of a *float*. typically unsecured creditors if δ defaults.
		- Sellers’ weapons against the After-acquired property cl
			* 1. PMSI – but many lenders prevent debtors from granting PMSIs
			* 2. Retention of Title
				+ \*Must NOT get tripped on a transaction that **§2-401(1)** creates a sec trxn
			* 3. Consignment
				+ UCC recognizes 3 types of consignments

1. Group excluded from Art 9 coverage ; **§9-109(a)(4)** excepts them from the definition of

2. Consignment that is a disguised security interest - **§9-102(a)(20)(D)**

3. “consignments” under **§9-102(a)(20)**

* + - * 4. Sellers’ Right of Reclamation
			* 5. Express or implied Agreement w/ SC
			* 6. Equitable Subordination
		- 7.Unjust enrichment
* Assignment 36: Buyers Against SC **18**
	+ Buyers of Personal property
		- General rule - buyers take subject to pre-existing sec interests **§9-201** & **9-315(a) “**a sec itnerst continues in collateral notwithstanding sale.”
		- EXCEPTIONS
		- 1. *Buyer-in-the-Ordinary-Course Exception* – **UCC §9-320(a)**
			* **§1-201(b)(9)** - buying is in the ordinary course only if “from persn in bus of selling goods of that kind”
			* Buyer takes item free only of “ a sec interest created by [its] seller” **§9-320(a)**
				+ Can’t go two levels up to a previous SC.
			* *When does a buyer become a buyer (for future goods not yet produced)?*
				+ For retail purchasers, as of date goods identified ***- Daniel v. Bank of Hayward*** **103**
			* *Sale of goods in the possession of the sec party -* **§9-320(e)** says **(a)** and **(b)** do not affect a sec interst in goods which SC possess under **§9-313**.
		- 2. The Buyer-Not-in the-ordinary-course exception - **§9-323(d) and (e)** and **§9-317(b)**
		- 3. Authorized Disposition Exception **- §9-315(a)(1)**
		- 4. Consumer-to-Consumer Sale Exception : **§9-320(b)**
			* Goods MUST be consumer goods in hands of seller before sale **(b)** and consumer goods in hands of buyer after the sale **(b)(3)**; Exception also applies against PMSIs.
	+ Buyers of Real Property
		- General rule is first in time but Recording statutes may reverse results though.
* Assignment 37: Statutory LC Against SC **19**
	+ A. Variety of Statutory Liens in Personal Property
		- 1. Artisans’ Liens – people skilled in some kind of trade, craft, or art requiring manual dexterity
		- 2. Garage Keepers’ Liens – commonly referred to as “mechanics’ liens”
		- 3. Attorneys’ Charging and Retaining Lines
		- 4. Hospital lien – hospital treats on credit has lien agnst the recovery in the negl action of the patient.
		- 5. Landlord’s Lien –most state recognize a landlord’s lien in some landlord-tenant contexts
		- 6. Dry Cleaners’ and Launderers’ lines – usually under general artisans’ lien law
		- 7. Agriculture Liens
			* Most numerous and chaotic – just an absolute mess.
			* Revised Art 9 applies to agricultural liens - **§9-109(a)(2)**
	+ B. Statutory liens in Bankruptcy
		- In general, bankruptcy law gives effect to statutory liens
			* Three exceptions – **Code** **§545**
				+ 1) lien that becomes effective only after δ is in financial difficulty – **Code §545(1)**
				+ 2) lien that was at the time of the filing of the bankruptcy case, not sufficiently perfected to be effective in the abscnce of bankr against a hypothetical bona fide purchaser. - **Code §545(2)**
				+ 3) statutory liens for rent and distress for rent - **Code §545(3)**
			* When trustee avoid a stat lien in bankr, lien is “preserv for the benfit of estate” – **Code §551**.
				+ Trustee gets the rights of the holder of the avoided lien, including priority.
	+ C. Priority of Statutory Liens
		- Has the priority specified in the law that creates it.
	+ D. Statutory Liens as a Challenge to the First-in-time rule
	+ E. Secured Creditor Responses to Statutory Lien priority
		- 1. Covenants – pretty much just adds alternative of unsecured debt
		- 2. Payment
		- 3. Waiver
		- 4. Monitoring