## ­­­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