

Secured Transactions
Prof. Payne

- Chapter 1. Goods: all things that are movable when a security interest attaches
1. consumer goods: goods that are used or bought for use primarily for *personal, family or household purposes*
 2. farm products: goods, other than standing timber, where debtor is engaged in a *farming operation* (ie. crops, livestock- born or unborn, products of crops)
 3. inventory: goods, other than farm products, that meet 1 of the following:
 - a. *leased* by a person as a lessor
 - b. held by a person *for sale or lease* or to be furnished under a contract of service
 - c. *furnished* by a person under a contract of service
 - d. consist of *raw materials, work in process, or materials used or consumed* in business
 4. equipment: “catch all”; goods other than inventory, farm products, and consumer goods; used or bought for use *primarily in business*
 5. fixtures: goods that have become *so related to particular real property* that an interest in them arises under real property law (ie. chandelier, furnace)
 - a. if goods are fixtures depends on:
 - i. annexation to the real property
 - ii. intention of the parties and
 - iii. removal w/o substantial injury to the realty
 - b. look to the real property law of the jurisdiction
 6. accessions: goods that are physically united with other goods in such a manner that the identity of the original goods is not lost (ie. engine, propeller)
 7. instrument: a *negotiable instrument* or any other writing that evidences a right to payment of a monetary obligation (ie. NPN)
 8. document: (ie. Bill of Lading; Warehouse Receipt; DOT)
 9. chattel paper: a *record or records* that evidence both a *monetary obligation and a security interest* in specific goods (ie. instrument plus a security agreement or a lease)
 10. investment property: a security, whether certificated or not, security entitlement, securities account, commodity contract or commodity account (ie. stocks and bonds w/ or w/o certificates)
 11. letter of credit rights (not on the exam)

12. account: not a deposit account but rather a credit card account or an open account
13. general intangibles: “catch all” (ie. patent, copyright)
 - a. payment intangible: a general intangible under which the account debtor’s principal obligation is a monetary obligation (never use this)
 - b. software: a computer program and any supporting information provided in connection with a transaction relating to the program
14. deposit account: bank account; allows banks to have a perfected interest in case where before only way to perfect cash is by possession
15. commercial tort claim: (ie. defamation, trade infringement, interference with contractual relationship- no personal injury)- once claim has been settled and becomes a contractual obligation to pay, the right to payment is a payment intangible
16. proceeds: whatever is received in *exchange* for the original collateral; 1 or more of the following:
 - a. whatever is acquired upon the *sale, lease, license, exchange, or other disposition* of collateral
 - b. whatever is *collected on, or distributed on account of*, collateral
 - c. *rights arising out of* collateral
 - d. *claims arising out of the loss, nonconformity, or interference with the use of, defects of, infringement of, rights in, or damage to*, the collateral
 1. Cash proceeds: (ie. money, checks deposit accounts)
 2. Noncash proceeds: other than cash proceeds
17. as-extracted collateral (ie. minerals, oils)

CANNOT POSSESS INTANGIBLES

- different filing requirements according to label
- courts treat collateral as mutually exclusive categories
- cannot be more than one category legally
- can treat it as more than one category and file as required under each way in order to protect client
- as long as debtor is paying on the debt obligation, then there is no issue- issue arises when debtor stops making payments
- focus on debtor’s relationship or use of the collateral when determining the label (ie. refrigerator- McDonalds uses it as equipment to store food; Sears uses it as inventory)
- burden is on the secured party to prove they are perfected; bankruptcy trustee will always argue that the secured party is unperfected

Chapter 2 Purchase Money Security Interest: 9-103 (a) (2)

- A. Ways to have purchase money security interest
- (1) purchase money seller: obligation incurred is for all or part of the purchase price
ie. car dealer
 - (2) purchase money lender: lender gives value (loan money) to enable the debtor to acquire rights in or use of the collateral- money must be used to acquire the collateral, if not are still a secured party but NOT a purchase money secured party
ie. bank
- burden of proof is on the secured party to prove it is a purchase money and the extent of the purchase money- assumption is that it is NOT purchase money
-purchase money has a higher priority than other secured parties- even if purchase money are 2nd in time to other secured parties
- B. “Dual Status” transactions: 9-103 (f)- may be partial purchase money and partial non-purchase money- Rev. Art. 9 allows dual status for NON-CONSUMER GOODS transactions (consumer goods are left to the state court)

Chapter 3 Scope of Art. 9

- A. Within the scope:
1. a transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;
 2. an agricultural lien (non-possessory, statutory);
 3. a sale of accounts, chattel paper, payment intangibles, or promissory notes;
 4. a consignment;
- B. NOT apply to the extent that:
1. a statute, regulation, or treaty of the US preempts this article;
 2. another statute of this state expressly governs
 3. a statute of another state, a foreign country or a governmental unit of another state or foreign country expressly governs
- C. NOT within the scope:
1. a landlord’s lien, other than an agricultural lien;
 2. a lien, other than an agricultural lien, given by statute or other rule of law for services or materials;
 3. an assignment of a claim for wages, salary, or other compensation of an employee;
 4. a sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;
 5. an assignment of accounts, chattel paper, payment intangibles, or promissory notes which is for the purpose of collection only;

6. an assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;
7. an assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;
8. a transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health-care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment; (insurance policy is expressly excluded)
9. an assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;
10. a right of recoupment or set-off;
11. the creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:
 - a. liens on real property
 - b. fixtures
 - c. fixture filings
 - d. security agreements covering personal and real property;
12. an assignment of a claim arising in tort, other than a commercial tort claim;
13. an assignment of a deposit account (a bank account) in a consumer transaction

(insurance proceeds are within the scope- ie. have security interest in warehouse of goods, warehouse burns down, secured party now has a security interest in insurance proceeds- if are perfected security interest in the collateral are also perfected for the insurance proceeds)

- D. 2 tests to determine if it is a significant amount requiring file in order to perfect: (if not a significant amount, then are automatically perfected upon attachment w/o filing or taking any other action)
1. casual and isolated transactions- not regularly in business so not aware that you have to file in order to perfect
 2. % test- what was % of accounts actually transferred?- (16% or less is NOT significant- some cts.; other courts say 40% or less is NOT significant)

Chapter 4

- A. Agricultural Lien: an interest, other than a security interest, in farm products:
1. which secures payment or performances of an obligation for:
 - a. goods or services furnished in connection with a debtor's farming operation; or
 - b. rent on real property leased by a debtor in connection with its farming operation
 2. which is created by statute in favor of a person that:
 - a. in the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or
 - b. leased real property to a debtor in connection with the debtor's farming operation; and

3. whose effectiveness does not depend on the person's possession of the personal property.
 - have lien on farm products, crops, etc... (ie. local grainery who provides seed, fertilizer, and other materials to local farmer)
 - file within UCC filing system
 - can have non-consensual agricultural liens competing with Art. 9 security interests in farm products- so race to filing office- first to record, wins

B. Consignment: a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and;

1. the merchant:
 - a. deals in goods of that kind under a name other than the name of the person making delivery;
 - b. is not an auctioneer; and
 - c. is not generally known by its creditors to be substantially engaged in selling the goods of others;
2. with respect to each delivery, the aggregate value of the goods is \$1,000 or more at the time of delivery;
3. the goods are NOT consumer goods immediately before delivery; and (ie. jewelry in Star jewelry case was inventory to the consignor; mother taking baby clothes to resale store were consumer goods to the consignor- if consumer goods before delivery then are governed by the common law)
4. the transaction does not create a security interest that secures an obligation -a bailment coupled with right to re-sell (ie. art gallery); if just for storage then is only a bailment
 - consignee- one who receives goods in a consignment- merchant who deals in goods of that kind; consignor- one that delivers goods to a consignee in a consignment
 - not a security interest cause consignee is NOT under an obligation to buy-
 - PROBLEM: any creditor of consignee can attach to those goods unless consignor has filed a financing statement claiming an interest in their goods first
 - “sale or return” transaction- have obligation to pay so could have a security interest if within Art. 9
 - consignment is treated as a purchase money security interest in inventory for the consignor

C. Lease of Goods

- if it is a “true lease” NOT within Art. 9- in a true lease, lessor retains title and lessee never gets interest in property which lessee's creditors can attach (ie. rent a yellow moving truck- sheriff can seize personal property but not the rental truck to execute against a judgment against you)
 - if it is a lease disguised as a security agreement is within Art. 9- if not a true lease but a disguised sale or security interest, all lessee's creditors can attach unless file a financing statement
1. Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest if

the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and

- a. the original term of the lease is equal to or greater than the remaining economic life of the goods, or
- b. the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods, or
- c. the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement, or
- d. the lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

2. Economic compulsion test- if the only sensible thing to do at the end of the lease is to purchase it- (ie. leasing a car- car worth \$15,000, option to buy for \$10,000 so compelled to buy it for less than it is worth and sell it to make a profit)- leads you to believe it is nominal and this is a disguised security agreement and NOT a true lease

-if the lease is for the useful life of the goods then it is a sale

- D. The Security Agreement: must reasonably describe (sufficient to use Art. 9 types) the collateral and must be authenticated by the debtor- but, commercial tort claim or consumer goods in a consumer transaction, using Art. 9 type is inadequate for just these types

-once the security interest has attached, the general creditor becomes a secured party under Art. 9

-language in the security agreement gives secured status; if collateral not fit in language then are unsecured- ie. office equip. in sec. ag., table saw—not fit so unsecured

1. Requirements for attachment:
 - a. value has been given- anything that constitutes consideration includes a promise to pay- given by the secured party, debtor giving an exchange in that promise to pay (promise to re-pay and giving of security interest)
 - b. debtor has rights in collateral
 - c. debtor has authenticated a security agreement which reasonably identifies the collateral- possession/control is an alternative to a security agreement- authenticated writing serves a Statute of Frauds purpose
2. Rights and duties of secured party having possession or control
 - a. secured party has the advantage
 - b. debtors have all the duties and obligations
 - i. risk of loss on debtor if collateral is destroyed to the extent of insurance deficiencies

- ii. secured party has right to reasonable expenses incurred in order to protect, preserve the collateral- right to recover from debtor
- iii. “over collateralized”- secured party will only be made whole to extent of debt and expenses incurred- just has more to sell to be made whole; except, if money produced by collateral (ie. stocks paying dividend) that money needs to be either subtracted from the debt or given to the debtor
- iv. secured party may use the collateral a) for the purpose of preserving collateral or its value, b) as permitted by order of court, c) manner agreed to by debtor, except with consumer goods
- v. secured party may re-pledge the collateral and create a security interest in the collateral

Chapter 5

-“authenticate”/sign a security agreement that identifies the collateral is usually required but some courts have been willing to use other writings to determine the intent of the parties

-can use Parol Evidence to determine the intent of the parties- will interpret the Parol Evidence in favor of the non-drafter since the drafter had an opportunity to include everything

-a financing statement cannot expand the security provided for in the security agreement- if not in security agreement but in the financing statement, are unperfected as to that item

- 1. is party secured or unsecured? (determined by the security agreement)
- 2. if secured, is party perfected or unperfected? (determined by the financing statement)

-language in financing statement gives perfection if sec. ag. already creates a security interest in identified collateral—ie. all equip. in sec. ag.--- table saw so are secured, \ office equip. in fin. st.---table saw so are unperfected

-CANNOT be perfected, unsecured ever!!!

- A. After-acquired property: ways to have an interest in collateral that changes over time or collateral gained by debtor after- “now owned and hereinafter acquired”
 - 1. an after acquired clause is only good for 10 days regarding consumer goods and is NOT good for a commercial tort claim
 - 2. accessions become part of collateral so after acquired clause is NOT limited by the 10 day rule- is good as long as the interest is good for
 - 3. ONLY appears in the security agreement NOT in the financing statement
- B. Future advance clauses: secures loans made today and all loans made in the future w/ or w/o a commitment to loan debtor more money
 - 1. if fail to include a future advance clause, may still be able to get priority over subsequent loans if able to “tie” subsequent loans to the original agreement
 - 2. Examples:

- a. this security interest secures the present obligation and all of debtor's other present and future obligations owed to secured party;
- b. the security interest shall secure all indebtedness owed to the secured party, now existing and hereafter arising; and
- c. the identified collateral secures this loan and any future loan made by the secured party to the debtor.

Chapter 6 Perfection- Methods of perfecting: still have to have attachment along with perfection in order for interest to be "perfected"

- A. Filing a financing statement: (9-310) file under Rev. Art. 9 at central location- with Secretary of State except for collateral which has real property ties- need to file in office where mortgage to real property is filed:
 1. fixtures
 2. timber to be cut
 3. as-extracted collateral

-money requires possession; deposit accounts and letter of credit rights require control; goods covered by certificate of title require notation on the title

- B. Notation on the certificate of title: (9-311) (ie. motor vehicles) transfer of ownership occurs with transfer of title; secured party fills out form, gives the form to the Secretary of State and they note the secured party on the title- when loan is paid off, get a new title with the secured party removed
 1. motor vehicles (mechanics lien- holder with possession gets priority)
 2. watercraft
 - a. MI- if watercraft is less than 20 feet long w/ no permanent engine, don't need a notation on the certificate of title
 - b. MI- re: off-road vehicles- covered by certificate of title provisions EXCEPT for registered snowmobiles and farm vehicles
 3. mobile homes (manufactured homes)—ALWAYS needs a notation
-if repossess, perfect by possession

- C. Automatic perfection: (9-309) perfection upon attachment- when interest attaches it is automatically perfected with secured party NOT taking any other action
 1. a purchase-money security interest in consumer goods;
 2. an assignment of accounts or payment intangibles which does NOT by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts or payment intangibles;
 - a. casual and isolated transaction test
 - b. % test
 3. a sale of a payment intangible;
 4. a sale of a promissory note;
 5. a security interest created by the assignment of a health-care-insurance

receivable to the provider of the health-care goods or services (Dr. is perfected but bank has to file);

6. a security interest of a collecting bank;
7. a security interest of an issuer or nominated person;
8. a security interest arising in the delivery of a financial asset;
9. a security interest in investment property created by a broker or security intermediary;
10. a security interest in a commodity contract or a commodity account created by a commodity intermediary;
11. an assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee thereunder; and
12. a security interest created by an assignment of a beneficial interest in a decedent's estate.

D. Temporary perfection: (9-312) automatic perfection for limited period of time without the secured party NOT taking any other action (20 days under Rev. Art. 9)- can also file a financing statement to perfect these after the 20 day period

1. negotiable documents
2. instruments
3. certificated securities- type of investment property
4. proceeds- whatever is received in exchange for the original collateral- if perfected for the original collateral, are temporarily perfected for the proceeds for 20 days

ie. negotiable instrument or document- a negotiable instrument payable to debtor \$50,000 from GM, debtor wants to borrow on the note as collateral, note is payable in 15 days- does not make sense to file a financing statement for only 15 days and cannot keep possession since the note as to be presented in order to receive payment- if payable in 90 days can be perfected by possession but need some method of perfection when note is presented
same with documents- have to present DOT in order to get the goods
same with certificated securities- have to present them
with proceeds- have to take further action after the 20 days in order to continue perfection

E. Possession (or pledge): (9-313) oldest method

ie. give watch for money- "pawn shop theory": get goods back when pay off the debt

Does NOT work for things you cannot possess- things you need to control:

1. general intangibles
2. electronic chattel paper
3. letter of credit rights
4. accounts

ie. miss payments, secured party can repossess, if secured party was NOT perfected, when they repossess they become perfected since have taken possession of the goods

ie. landlord seized property by taking possession- became perfected

- F. Control: (9-314) related to possession
Only for 4 types:
1. deposit accounts- only method
-are types of bank accounts; ways to control is to have the account located in the bank that is the secured party
 2. letter of credit rights- only method
 3. investment property- can also file
 4. electronic chattel paper- can also file
- G. Special Category (9-312 (d)): non-negotiable document- the paper is NOT significant, K rights are involved, the collateral is the goods so perfect the interest as to the goods- file a financing statement

Chapter 7 Perfection by filing (9-501)

1. every type is covered by a central filing location- in MI that is with the Secretary of State EXCEPT
 - a. as-extracted collateral
 - b. timber to be cut
 - c. fixtures: is possible to be perfected by filing with Sec. of State but will lose out to land encumbrancers since they will only search the local office- most times secured party is not trying to be a land encumbrancer but a bankruptcy trustee
these three need to be filed in office where mortgages are filed- County Records Office
- A. Financial Statement Form (9-521)
1. Requirements (9-502)
 - a. name of secured party
 - b. name of debtor- filed alphabetically by the debtor's last name (d.b.a.- "doing business as"- if file under d/b/a, are unperfected- file under the individual's name or the corporations name)
 - c. description of the collateral- best way to identify the collateral is by Art. 9 types but can also say "all assets or personal property" and not have to use the types but ONLY if given an interest in it ALL (with a security agreement- have to use Art. 9 types- but types do not work for consumer goods or comm. tort claims)
 2. If make an error on the form (ie. spelling) and it is seriously misleading, will be unperfected
 3. Filing office MAY refuse to accept the financing statement if don't include additional information: (9-516)
 - a. mailing address of debtor
 - b. indicate if the debtor is an individual or an organization
 - c. if the financing statement indicates that the debtor is an organization, provide:
 - i. a type of organization for the debtor; or

- ii. a jurisdiction of organization for the debtor; or
- iii. an organizational identification number for the debtor or indicate that the debtor has none.

-if the financing officer accepts the form with this information missing, are perfected

4. Financing statement is valid for 5 years from the date of filing
 - a. Continuation Statement
 - i. must file within the last 6 months of the 5 year period
 - ii. not many financing statements are filed for consumer goods since have automatic perfection if are purchase money secured parties
 - b. Termination Statement
 - i. w/ consumer goods: secured party must file a termination statement w/in 1 month if the debtor does NOT make a demand for one or w/in 20 days of the demand for one made by the debtor
 - ii. w/ all others: debtor must demand that a termination statement be filed in order for one to be filed; after demand is made, the secured party must file a financing statement w/in 20 days from the demand- otherwise the debtor will continue the relationship with the secured party and can borrow more money with the secured party maintaining their original security interest in the collateral.
5. Corporations
 - a. file within the state of incorporation

B. Name Changes (9-507)

1. have 4 months to re-file or amend the statement from the time of the name change
2. if fail to re-file or amend within that 4 month period, then lose priority as to after-acquired collateral

Chapter 8

Priority: not the same as perfecting- just because a party is perfected, does NOT mean that they have priority; to get priority, party has to be perfected among other things

-priority means you have the 1st right to get paid from the proceeds of the collateral- if any surplus then it goes to the next in line

A. Priority Rules:

1. Secured Party v. Lien Creditor (usually a trustee in bankruptcy) (9-317a)
 - a. an unperfected secured party is subordinate to a lien creditor
 - b. 4 parties with the status as a lien creditor:
 - i. trustee in bankruptcy
 - ii. assignee for benefit of creditors
 - iii. receiver in equity
- (w/ ii. and iii.- as soon as a bankruptcy petition is filed, the state

law action is stayed and the fed. bankruptcy act preempts it)

- iv. judgment creditor from levy/execution/seizure- one who gets a judgment against the debtor- MI is an execution jurisdiction- has no status under Art. 9 until the judgment is levied, executed or seized- from the moment the sheriff executes the judgment, they gain the status of a lien creditor

-if seize something that is already perfected by another- have converted it

Exception: if an unperfected secured party filed a financing statement and had debtor sign a security agreement (party has taken action) but not promise to loan or loan money yet (no attachment), and then a LC comes along, and then the secured party actually promised to loan or does loan (attachment), the secured party becomes perfected and gains priority over the LC (**not on Payne's exam**)

- 2. an unperfected secured party is subordinate to buyers and lessees who give value and receives delivery w/o knowledge of the security interest (9-317b)
- 3. an unperfected secured party is subordinate to licensees and buyers of intangibles who give value w/o knowledge of the security interest (no delivery) (9-317c)

so, basically a "race" rule, 1st in time

- B. Exceptions for purchase money secured parties (2nd in time)- given special status
 - 1. purchase money secured party has a 20 day grace period from delivery to the debtor to file a financing statement and perfect- if within that 20 day period, able to cut off any intervening LC and buyers of goods (doesn't happen very often)
- C. Priority among conflicting security interests- NOT purchase money or purchase money who failed to comply with the requirements
 - 1. if both secured parties are unperfected, priority goes to the first to attach the security interest
 - 2. if one secured party is perfected and the other one is unperfected, priority goes to the perfected party
 - 3. if both secured parties are perfected, priority goes to the **first to file OR perfect** (ie. Sweets Problem)

Sweets Problem

May 14

Bank A

files fin. st.

May 17

Bank B

sec. ag. signed

fin. st. filed

\$25,000 loaned

May 22

Bank A

sec. ag. signed

\$25,000 loaned

both banks are perfected and are now competing, who has priority? – Bank A, even though Bank B did all of the requirements, Bank A did the important action (filing) first (in equity it should be Bank B)

On May 14, Bank A was an unsecured party- cannot be secured until have attachment
On May 23, both banks are perfected

If Bank B did not file fin. st. on May 17 but filed it on May 18, on May 17 Bank B is an unperfected secured party- not perfected until file a financing statement

If May 22 did not occur, then priority goes to Bank B- this rule assumes that both are perfected parties

- D. In order for a 2nd in time purchase money party to have priority, they must:
1. re: inventory (9-324b)
 - a. give “authenticated” notice to the holder of any competing interest
 - b. holder must have received the notice w/in 5 years before the debtor comes into possession
 - c. party must be perfected when the debtor receives possession
 2. re: livestock (9-324d)
 - a. give “authenticated” notice to the holder of any competing interest
 - b. holder must have received the notice w/in 6 months before the debtor comes into possession
 - c. party must be perfected when the debtor receives possession
 3. re: other than inventory or livestock (usually is equipment) (9-324a)
 - a. has priority if purchase money secured party is perfected when the debtor comes into possession of collateral or w/in 20 days of the debtor coming into possession

-it is possible to perfect by possession (and not file) and still compete w/ another party who has filed

-in order to avoid 2nd in time getting priority over you, have in the security agreement that debtor will not enter into any purchase money agreements with other parties included in security agreement

- E. When both parties are perfected purchase money secured parties (9-324g)
1. if one party is purchase money seller and the other is purchase money lender, priority goes to the purchase money seller
 2. if both are purchase money sellers or lenders, priority goes to the first to file OR perfect

Chapter 9 Priority with Fixtures: more exceptions to the race rule (9-334)

A. Fixtures are perfected by:

1. file centrally with the Secretary of State- gives priority over all subsequent except land encumbrancers); or
2. file a fixture filing in real property recording office where the mortgage would be filed- beat out land encumbrancers (if land encumbrancer is

already filed on the land, will be a 2nd in time so only worth filing a fixture filing if are a purchase money fixture filer so can be 2nd in time but 1st in right)

- B. Purchase Money: (9-334 d)
 - 1. purchase money security interest has priority if are perfected by a fixture filing before the goods become fixtures or w/in 20 days of the goods becoming fixtures

- C. Under Rev. Art. 9, can receive the value for the fixtures rather than removing them so, can either remove them or proceed in accordance w/ real property interest (9-604)- if remove, not worth as much, plus have to pay for any damage done by the removal (not including any reduction in value) and got through the time and expense to remove the fixtures

- D. Construction Mortgage: (9-334 h)
 - 1. a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before the goods become fixtures and the goods become fixtures before the completion of the construction- so purchase money sellers of fixtures in new construction need to be paid cash or get a release or subordination agreement from the construction mortgagee

- E. Equipment and Trade Fixtures:
 - 1. a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the interest is perfected by any methods permitted before the goods become fixtures and the fixtures are readily removable-
 - a. factory or office machines;
 - b. equipment that is not primarily used or leased for use in the operation of the real property; or
 - c. replacements of domestic appliances that are consumer goods.
 - 2. if not readily removable, a security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if
 - a. the encumbrancer or owner has, in an authenticated record, consented to the security interest or disclaimed an interest in the goods as fixtures; or
 - b. the debtor has a right to remove the goods as against the encumbrancer or owner.

-if there are no facts about a mortgage, then don't have to deal with these rules-

- F. Manufactured Homes: (9-334 e 4)
 - 1. a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the security interest is:

- a. created in a manufactured home in a manufactured-home transaction; and
- b. is perfected by a notation on the certification of title

G. Priority in Accessions: (9-335)

- 1. a security interest may be perfected in an accession, and that if a security interest is perfected when the collateral becomes an accession, the security interest remains perfected in the collateral.
- 2. if a secured party has a perfected security interest in the whole, the only second in time secured party who could acquire priority is a purchase money secured party if the second in time
 - a. has perfected their security interest when the debtor receives possession of the accession; or
 - b. w/in 20 days thereafter.
- 3. a security interest in an accession is subordinate to a security interest in the whole which is perfected by notation on the certificate of title
 - a. ie. the automobile repair shop that installs a new transmission or engine in a vehicle will take subject to the secured party with a perfected security interest in the vehicle
- 4. Possessory Lien: (9-333) an interest, other than a security interest or an agricultural lien:
 - a. which secures payment or performance of an obligation for services or materials furnished with respect to goods by a person in the ordinary course of the person's business;
 - b. which is created by statute or rule of law in favor of the person; and
 - c. whose effectiveness depends on the person's possession of the goods.

-have priority over a security interest in the goods unless the lien is created by a statute that expressly provides otherwise

-as soon as possession is given up, then lose their priority/status

-MI- has priority over a perfected security interest to a certain amount of money

H. Commingled Goods: (9-336) goods physically untied with other goods in such a manner that their identity is lost in a product or mass

- 1. no security interest may exist in the commingled goods, instead, if a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that attaches to the product or mass is perfected- once become commingled goods, the security interest is transferred from the original collateral to the product or mass.
- 2. general priority rules:
 - a. if a secured party has a perfected security interest in the product, a second in time party with a security interest in commingled goods

would be subordinate to the first secured party under the first to file or perfect rule.

- b. a second in time purchase money security interest should receive priority by giving notice to the secured party of record and perfecting the purchase money security interest before debtor receives possession of the commingled goods.
- c. 2 or more security interests attach to the product or mass: the security interests rank equally in proportion to the value of the collateral at the time it became commingled goods
 - i. ie. SP-1 has interest in eggs (value of \$300 and debt of \$400), SP-2 has interest in flour (value of \$500 and debt of \$600); debtor makes cakes with the eggs and flour with a value of \$1000. So, SP-1 entitled to \$375 ($3/8 \times \1000) and SP-2 entitled to \$625 ($5/8 \times \1000)
 - ii. would apply regardless of whether either SP-1 or SP-2 has a purchase money security interest

Chapter 10 Priority of Buyers

A. Definitions:

- 1. BIOCOP: purchases goods from a merchant/dealer who deals in goods of that kind (GF, value, w/o knowledge)
 - 2. BNIOCOP: buyer NOT in the ordinary course of business since doesn't buy from a merchant/dealer who deals in goods of that kind
 - 3. Buyer of Consumer Goods: ie. garage sale- buyer buys consumer goods from a consumer who purchased the goods for personal use
 - 4. HDC: holder in due course
 - 5. HDN: holder by due negotiation
 - 6. Buyer of chattel paper
- 4, 5, 6 are BIOCOP's and get BIOCOP priority standard

B. BIOCOP Rule: a buyer in ordinary course of business takes free of a security interest created by the buyer's seller, even if the security interest is perfected and the buyer knows of its existence

A-----B-----C-----D D takes free from only C

C. Buyer of Consumer Goods Rule: a buyer of goods from a person who used or bought the goods for use primarily for personal, family, or household purposes takes free of security interest, even if perfected, if the buyer buys:

- 1. without knowledge of the security interest;
- 2. for value;
- 3. primarily for the buyer's personal, family, or household purposes; and
- 4. before the filing of a financing statement covering the goods.

C2. security interests are perfected when they attach in a purchase money security interest in consumer goods.

- D. Purchasers of Chattel Paper Rule: a purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed merely as proceeds of inventory subject to a security interest if:
1. in good faith and in the ordinary course of the purchaser's business, the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper
 2. the chattel paper does NOT indicate that it has been assigned to an identified assignee other than the purchaser.
- E. Priority of Security Interests in Deposit Accounts Rule: a security interest held by a secured party having control of the deposit account has priority over a conflicting security interest held by a secured party that does not have control
1. rank according to priority in time of obtaining control
 2. a security interest held by the bank with which the deposit account is maintained has priority over a conflicting security interest held by another secured party

Chapter 11 Proceeds

- A. if perfected as to the original collateral, are perfected as to the proceeds from that original collateral for at least 20 days
- mainly see proceeds when original collateral is inventory
 - do NOT have to mention proceeds in the financing statement OR in the security agreement if are perfected in the original collateral
 - perfection runs from time perfected as to the original collateral
- B. becomes unperfected on the 21st day unless:
1. the following conditions are satisfied:
 - a. a filed financing statement covers the original collateral;
 - b. the proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed; and
 - c. the proceeds are not acquired with cash proceeds.
 2. the proceeds are identifiable cash proceeds; or
 3. the security interest in the proceeds is perfected when the security interest attaches to the proceeds or within 20 days thereafter. (original collateral turns into cash proceeds and that cash proceeds is used to purchase other collateral)
- if not within one of these 3, then have to take further action to be perfected after 20 days
- C. 9-324 (b): Inventory Purchase Money Priority- a perfected purchase money security interest in inventory has priority over a conflicting security interest in:
1. the same inventory
 2. in chattel paper
 3. an instrument constituting proceeds of the inventory
 4. in proceeds of the chattel paper

5. in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to the buyer
-if one has control over the deposit account which proceeds are deposited, will beat out a 2nd in time

D. Problem: SP1- perfected with accounts; SP2- perfected with inventory and after acquired; SP3- perfected with inventory (purchase money)

-automobiles are exchanged for:

1. cash and check
2. promissory note
3. note plus a security agreement
4. account payable in 60 days

1. cash and check

a. how many perfected as to cash and checks?

Only 2- SP1 is NOT since perfected in accounts and an account was not exchanged for the cash or check

-it is possible for cash proceeds to come out of an account- pay for coat with a credit card, 25 days later get the bill and pay for it with cash or a check, the cash used to pay off is a proceed from an account receivable

b. who has priority then? SP2 or SP3?

SP3 since are a 2nd in time purchase money and are identifiable cash proceeds (9-324(b))

-SP3 only had to give notice of their 2nd in time to SP2 since they were listed with the same collateral, NOT have to give notice to SP1

2. promissory note (instrument)

a. how many perfected as to the instrument?

Only 2- SP2 and SP3 (same as with 1)

b. who has priority then?

SP3 (same as 1)

3. note plus a security interest in the car (chattel paper)

a. how many perfected as to the instrument?

Only 2- SP2 and SP3 (same as with 1)

b. who has priority then?

SP3 (same as 1)

4. account payable in 60 days (account)

a. how many perfected as to the account?

All 3- SP1 as to the original collateral and SP2 and SP3 as a proceed from the original collateral

b. who gets priority?

First- SP1 (1st to file or perfect)

Second- SP2 (1st to file or perfect as between SP2 and SP3)

Third- SP3- not include an account in 9-324 (b)

5. What if SP1 filed on 02/01 and SP2 filed on 01/01- what happens in regard to the account situation? SP2 gets priority- makes no difference that SP1's original collateral is an account and SP2's original collateral is inventory- 1st to file or perfect gets priority
6. What if bank purchases the chattel paper?
-BIOCOB, HDC (instruments), HDN (document of title), Buyer of Chattel Paper get priority over perfected parties to protect the market place
-So, bank gets priority UNLESS SP2 or SP3 had paper stamped with their security interest

Chapter 12 Default

A. What triggers default?

1. a breach of the K (security agreement) so default is whatever the parties have agreed to as a breach of the K and is indicated in the security agreement
 - a. most common is lack of payment or untimely payment
2. can use self-help to seize collateral and sell it to pay off debt
 - a. 2 ways to wrongfully repossess (conversion)
 - i. repossess the wrong car or debtor not in default
 - ii. breach of the peace (sheriff can breach the peace so can get a writ of replevin and send the sheriff out)

B. Disposition of collateral after default

1. after default, a secured party may sell, lease, license or otherwise dispose of any or all of the collateral- can be disposed of privately or publicly- no specific period of time listed in the code
2. secured party may purchase the collateral at a public disposition or at a private disposition only if the collateral is of a kind that is customarily sold on a recognized market
3. secured party shall send an authenticated notification of disposition to the debtor, any secondary obligor, any other secured party or lienholder of record 10 days before the notification date- except in consumer goods, the contents of the notice is sufficient if it describes the debtor, secured party and the collateral; states the method of intended disposition; states the debtor is entitled to an accounting and the charge for an accounting; and states the time and place of a public disposition or the time after which any other disposition is to be made
4. a secured party shall apply or pay over the cash proceeds in the following order:
 - a. reasonable expenses of retaking, holding, preparing for disposition, processing and disposing, and to the extent provided by agreement and not prohibited by law; reasonable attorney's fees and legal expenses incurred

- b. satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made
- c. the satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:
 - i. the secured party receives from the holder of the subordinate security interest or other lien an authenticated demand for proceeds before distribution of the proceeds is completed; and
 - ii. in a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and
- d. a secured party that is a consignor of the collateral if the secured party received from the consignor an authenticated demand for proceeds before distribution of the proceeds is completed.

-the secured party shall pay a debtor for any surplus; the obligor is liable for any deficiency

- 5. a secured party's disposition after default transfers to a transferee for value all of the debtor's rights in the collateral, discharges the security interest under which the disposition is made and discharges any subordinated security interest or other subordinate lien
- 6. strict foreclosure is a procedure where the secured party accepts collateral in full or partial satisfaction of the underlying debt obligation- for non-consumer goods collateral, the secured party may accept collateral in full satisfaction of the debt if the debtor does not object to the secured party's proposal to accept the collateral in full satisfaction within 20 days after the proposal is sent- if debtor objects, secured party may not proceed- if secured party wishes to accept the collateral in partial satisfaction, the debtor must agree to the terms of the acceptance in a record authenticated after default
- 7. redemption is the right of the debtor to pay off the underlying indebtedness to prevent disposition of the collateral- under art. 9, a debtor, any secondary obligor, or any other secured party or lienholder may redeem- redemption may occur before the secured party has disposed of the collateral- to redeem, a person shall pay all obligations secured by the collateral and reasonable expenses and atty's fees
- 8. an aggrieved party may seek injunctive relief and may recover damages for losses caused by the secured party's noncompliance with art. 9- art. 9 adopts a rebuttable presumption rule for secured transactions involving business debtors- may recover for loss of surplus
- 9. disposition is made in a commercially reasonable manner if the disposition is made in the usual manner on any recognized market, at the current price or otherwise in conformity with reasonable commercial practices among dealers in the type of property subject to the disposition- a low price suggests that a court should scrutinize carefully all aspects of a disposition to ensure each aspect was commercially reasonable.