



Secured Transactions

Law School Legends

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Introduction

What Article 9 is **NOT**: 99.99% of all sales.

E.g., I sell you my tie for \$1 down and \$1 a month for 9 months. You stop making payments. I have no rights in the tie. If I take it, I'm a tortfeasor and a criminal.

Except: Sales of: (i) accounts, (ii) chattel paper, (iii) payment intangibles, and (iv) promissory notes. A debtor who sells these four does not retain a legal or equitable interest in the collateral sold. However, these sales are treated as security interests and are covered by Article 9. [§9-109(a)(3)] Article 9 also covers commercial consignments. [§9-102(a)(20)]

E.g., West "sells" (actually "on consignment") 1,000 casebooks to your law school bookstore. The school is going to sell them to enrollees. The law school will have the right to return perfect unsold books. Article 9 treats the consignment as a PMSI.

What Article 9 **IS**: Security for performance of an obligation. It is a consensual, contractual, second remedy. It covers all three types of financing: (i) consumer, (ii) business, and (iii) agricultural.

Except:

- i. Real estate liens (except for fixtures). These are governed by real estate law.
- ii. Non-consensual liens. These are for services or materials, *e.g.*, mechanics' liens, warehousemen's liens, etc. They are dependent upon possession. In general, they take priority over security interests. [§9-333]

Overview of Problems:

I. Mechanics

II. Priorities

III. Rights Upon Default

I. Mechanics

A. Security Interest. The right to keep or sell the collateral if the debtor defaults on his obligation to the creditor. (PMSI where creditor sells the goods to the debtor on credit, retaining a security interest in the goods, or creditor advances funds used to purchase the goods.)

B. Collateral. Property subject to the security interest. [§9-102(a)(12)] The first fifteen categories are mutually exclusive. In the same person's possession, with one exception, the type of collateral does not change.

1. **Consumer Goods.** Goods used or bought for family purposes. [§9-102(a)(23)]

E.g., _____ for _____.

2. **Farm Products.** Crops, livestock, products of livestock (eggs), etc. in the hands of a farmer. [§9-102(a)(34)]

E.g., _____

3. **Inventory.** Goods held for sale or lease – or used short term. [§9-102(a)(48)]

a. Business use “short term,” *e.g.*, _____

b. Held by business for sale, *e.g.*, _____

c. Held by business for lease, *e.g.*, _____

4. **Equipment.** Goods used in business – long term. [§9-102(a)(48)]

Business use. If it's not inventory, it's _____

Therefore, “catchall.”

a. Problems (concerning goods)

1) A television set is purchased by you, a newly-licensed

attorney. Planned usage:

Home for weekdays (_____);

Office for weekends (_____)

Test: _____

Therefore: _____

2) You purchase a TV. Planned usage:

Exclusively house (_____)

Then you permanently move it to your office

(_____)

Test: _____

Therefore: _____

3) Software

Is the software “embedded” in the goods?

Test: Embedded means so firmly affixed thereto as to be considered part thereof. If so, the software is part of the goods for all purposes. If not, the software is a general intangible (*e.g.*, separately licensed).

4) Farmer Brown’s nuts: (_____)

He processes them: (_____)

Uniquely, this is the only category that can change in the same person’s hands.

5. **Instruments.** Article 3, U.C.C. or a “promissory note” (even if nonnegotiable, if it is of a type used in the regular course of business), which is transferred by indorsement plus delivery. [§9-102(a)(47)]

6. Documents (Article 7, U.C.C.). [§9-102(a)(30)]

- a. Warehouse receipts (_____)
- b. Bills of lading (_____)
- c. Delivery order (_____)

7. Accounts. [§9-102(a)(2)]

Right to payment – with no writing or insufficient writing to be an instrument or chattel paper. It excludes deposit accounts, health care insurance receivables, and investment property. It includes credit card debts.

8. Deposit Accounts [§9-102(a)(29)]

Accounts maintained with a bank. (It excludes instruments and consumer transactions.)

9. Health Care Insurance Receivables [§9-102(a)(46)]

Right to payment, under insurance, for health care goods or services provided.

10. Chattel Paper [§9-102(a)(11)]

Writing(s) evidencing: (i) obligation, and (ii) security interest.

Problem: You purchase something at Sears. You do not pay cash. Instead, you sign a piece of paper. What category is the paper?

11. Electronic Chattel Paper [§9-102(a)(31)]

Chattel paper evidenced by information stored in an electronic medium.

12. Letter of Credit Right [§9-102(a)(51)]

Right to payment under a letter of credit (Article 5, U.C.C.). It excludes the right to draw on a letter or credit.

13. Commercial Tort Claims [§9-102(a)(13)]

Tort claims filed by a business that arose out of business (excluding personal injuries). Requires specificity, and there can be no “after-acquired tort clauses.”

14. General Intangibles [§9-102(a)(42)]

Anything else. “Catchall” category for non-goods.

Problems: “Documents” is a term of art; it is not “a piece of paper.”

- a. Lawyers collection of signatures? (_____)
- b. Blueprints and inventions? (_____)

15. Investment Property [§9-102(a)(49)]

- a. Certificated securities (held by you _____)
- b. Uncertificated securities (held by you _____)
- c. Securities account (intermediary holding _____)

16. Proceeds [§9-102(a)(64)]

Whatever is acquired under disposition of collateral. (It is collateral that has changed in form.)

- a. Usually one of four things:
 - 1) _____

2) _____

3) _____

4) _____

- b. Proceeds includes multigenerational proceeds.
- c. Security interests generally continue in proceeds. [§9-315]

E.g., If C has a security interest in some property of D, and D sells it for an instrument, C would have a security interest in the instrument – as proceeds.

C. Between Debtor and Creditor (Secured Party)

Debtor: A person having an interest in the collateral. [§9-102(a)(28)]

Secured Party: The party to which the interest is transferred (includes cosignor).

STEP ONE – CREATION

1. **Possession** [§9-203(b)(3)(B)]; OR
2. **Security Agreement** [§9-102(a)(73)]
 - a. **Authenticated Record** (written or electronically stored)
 - b. **Signed by Debtor** (or marked electronically)
 - c. **Describing Collateral.** The agreement must reasonably identify the collateral. It can be by category of collateral, so long as objectively determinable. A super-generic description (*e.g.*, “all of my assets” or “all of my personal property,”) is not effective. [§9-108]
 - d. **Control.** If collateral is deposit account, electronic chattel paper, letter of credit right, or investment property, the security agreement may be evidenced by control.

STEP TWO - ATTACHMENT

1. **Secured party must give value.** [§9-203(b)(1)]
 - a. Attachment will not occur by gift.
 - b. Preexisting debt is value. [§1-201(44)]
2. **Debtor must have rights in the collateral.** [§9-203(b)(2)]

Note:

- a. After-acquired property clause OK. [§9-204]. This is future collateral for a present loan. There will be no attachment until the debtor acquired an interest in the property.
- b. Exceptions:
 - 1) Ten-day rule for additional security for consumer goods. [§9-204(b)]

Assume on February 1, Charlie Consumer purchases a stereo on credit from Friendly Sam, the stereo man. Charlie gives a security agreement including “all after-acquired property” to secure the purchase of the stereo. On February 2, Charlie buys a refrigerator for cash. On February 12, he buys a stove. On March 1, he defaults on the stereo.

Can Friendly claim the refrigerator? _____

The stove? _____

- 2) Commercial tort claims
- c. Future-advances clause [§9-204(c)]

This is present collateral for a future loan. There will be no attachment until the secured party gives value.

D. Between Creditor and Others

(Subsequent purchasers, (un)secured creditors, lien creditors, etc.)

STEP THREE - PERFECTION

There are five methods of perfection. They are not mutually exclusive.

1. **Filing.** [§9-312] (Effective as to all kinds of collateral except deposit accounts and money (except as to proceeds).) [§9-310]

a. What is filed? THE FINANCING STATEMENT [§9-502]

This must be authorized by the debtor in writing, or by authenticated record. This authority is kept by the secured party. (An authenticated security agreement would suffice.)

1) It contains the names, addresses, and description of the collateral.

a) Names

- i) The name of the debtor is required.
- ii) The signature of the debtor is not required.
- iii) The trade name of the debtor is insufficient.

b) Addresses. If the financing statement is accepted by the filing office without addresses, it is still effective. [§§9-516(B); 9-520(a)]

c) Description of the collateral. A super-generic description (e.g., "all assets") is effective. [§9-504(2)] (Note: Not for a security agreement.) [§9-108] Problems: (Test: "Seriously Misleading?")

- i) Yes (major problem) - filing ineffective.
- ii) No (minor problem) - filing effective.
- iii) The name is sufficient if it would be found using FILING OFFICE'S SEARCH LOGIC.

Note: Why important: Statements are indexed under the debtor's name. Thus, lending decisions are made based upon this search.

- b. Where is filing? The LOCATION OF THE DEBTOR (as opposed to the collateral) determines “where” and “whose law governs.” [§9-301(1) and §9-501]
- 1) The general rule is CENTRAL FILING with the secretary of state.
 - 2) There is LOCAL FILING for real estate related collateral (e.g., timber to be cut, minerals, and fixtures.)

Problems:

- a) Registered organizations – state where organized.
 - b) If individual – state of individual’s principal residence.
 - c) If organization with one place of business – that state.
 - d) If organization with more than one place of business – state where chief executive office is located.
- c. How long? [§9-515]
- 1) Five years.
 - 2) All post-initial filings are called “amendments” (e.g., continuation statements within 6 months of termination date). [§9-510(c)]

2. Possession [§9-313]

- a. Accounts, deposit accounts, electronic chattel paper, letter of credit rights, and general intangibles cannot be perfected by possession. (Filing or control is necessary, e.g., possession of bank book is not perfection.)
- b. The secured party owes a duty of reasonable care. The debtor must reimburse the secured party for any reasonable expenses.

3. Control [§9-314]

- a. Deposit Accounts. Deposit bank agrees that it will act on secured party's instructions without any further debtor action. Control is the exclusive method of perfection for deposit accounts.
- b. Letter of Credit Rights. Control occurs when issuer or letter consents in writing to assignment of the proceeds.
- c. Investment Property
 - 1) Certificated Security. Bearer: secured party needs possession. Registered: needs possession plus indorsement.
 - 2) Uncertificated Security. Secured party must be registered as owner; or owner acknowledges he is holding for secured party; or issuer agrees he will comply with the secured party's instructions.
 - 3) Security Accounts. Secured party must be entitlement holder, or intermediary agrees it will comply with his orders.

4. Automatic

The following security interests are perfected when they attach. No additional steps are necessary. [§9-309]

- a. PMSI in consumer goods.
- b. Assignment of accounts, health care insurance receivables, or payment intangibles (*e.g.*, your hospital will prevail over the trustee if you go bankrupt).
- c. Sale of payment intangibles or promissory notes (*e.g.*, buyer need do nothing to prevail over the trustee, but if you only borrow (not sell) then perfection would be required).
- d. Security interests in investment property:
 - 1) If debtor is broker or intermediary;

- 2) Debtor purchased through intermediary and has not yet paid;
- 3) Broker-to-broker transactions.

5. Temporary (grace periods)

a. Four Months

- 1) Goods and debtor move to different state.
- 2) Organization changes its name (not a new legal entity).

b. Twenty Days

- 1) Twenty-day period for proceeds

A security interest in proceeds from original collateral is continuously perfected for 20 days from the debtor's receipt of the proceeds. [U.C.C. §9-315(d)]. This security interest becomes unperfected on the 21st day after the debtor's receipt of the proceeds unless the statutory requirements are complied with.

The security interest in proceeds will continue to be perfected *beyond* the 20 days if:

- a) The security interest in the original collateral was *perfected by filing* a financing statement, a security interest in the type of collateral constituting the proceeds would be *filed in the same place* as the financing statement for the original collateral, and the proceeds were not purchased with cash proceeds of the collateral (this is sometimes called the "same office" rule);
- b) The *proceeds are identifiable cash proceeds* (this is sometimes called the "cash proceeds" rule); or
- c) The security interest in the proceeds is *perfected within the 20-day period*.
[U.C.C. §9-315]

2) Twenty-day period for instruments, negotiable documents, and certificated securities.

a) New value given

As to instruments, negotiable documents, or certificated securities, a secured party who advances new value under an authenticated security agreement obtains a 20-day perfection period from the time of attachment, even though the secured party does not file a financing statement or take possession of the collateral. [U.C.C. §9-312(e)]

Example: Debtor has a promissory note (a negotiable instrument). He grants Bank a security interest in it, and Bank loans him \$2,000. If there is an authenticated security agreement, Bank's security interest is perfected for 20 days. If, by the end of the 20 days, Bank has not filed or taken possession, its security interest becomes unperfected.

b) Delivery of collateral to debtor for disposition

Where the creditor has a possessory security interest in an instrument, negotiable document, certificated security, or goods not covered by a negotiable document in possession of a bailee, and makes any of the above available to the debtor on a temporary basis (e.g., for sale, exchange, or presentation), perfection continues for **20 days**, after which time the creditor must reperfect by filing or taking possession or lose his perfection. [U.C.C. §9-312(f), (g)]

Example: George makes a loan to Chuck, and Chuck gives his promissory note to George in exchange for the loan. George pledges the note to Bank to secure a loan made to him by Bank. When it is time for Chuck to pay on the note, Bank redelivers the note to George so that he may present it to Chuck for payment. Bank's security interest remains perfected for 20 days.

II. Priorities

A. Secured Party vs. Lien Creditor – Key is perfection (20-day grace for PMSI)

(Bankruptcy note: Secured party does not take priority over trustee in bankruptcy when security interest was given for antecedent debt within 90 days of declaration of bankruptcy.)

Assume Friendly Sam sells a stereo to Charlie Consumer on an installment plan. Friendly retains a security interest in the stereo. Charlie defaults. Friendly wants the stereo returned. However, Charlie Consumer's dentist asserts a claim.

Who prevails? _____

Any difference if the other claimant is the court-appointed trustee? _____

B. Perfected Secured Party vs. Purchaser (Buyer of goods.) [§9-320] (Buyer will prevail – takes free of claim of unperfected secured party.) [§9-317(b)]

Assume Friendly Sam sells a stereo to Charlie Consumer on an installment plan. Friendly retains a security interest in the stereo. Charlie defaults. Friendly wants the stereo returned. However, this time there is a different claimant – Nellie Neighbor.

Who prevails? _____

1. Consumer Purchaser to Consumer Purchaser – Purchaser prevails (*i.e.*, takes free of claim of secured party) unless filing (automatic perfection is ineffective). [§9-320(b)]

Any difference if the other claimant is the Hadassah Resale Shop?

2. Business Purchaser – Secured party prevails (automatic perfection is effective).
3. (BIOC) Purchaser From a Business – Purchaser wins even if filing by secured party.

Assume General Electric sells 1,000 refrigerators and stoves to Korvet Department Stores. General Electric retains a security interest in them to secure full payment. You purchase one of them from Korvet. Korvet goes bankrupt. General Electric seeks to recover “your” refrigerator.

Who prevails? _____

Any difference with the purchase of software? (Same rule: You take free of claim of secured party of licensor.)

4. HDC Rule. HDC takes free of personal defenses and claims (even over earlier perfected security interest). [§9-331]
5. Future Advances

Generally, if a creditor makes a future advance (*i.e.*, advances value secured by an earlier security agreement under which there was advance of value), the time of perfection of the future advance relates back to the time of perfection of the *original advance*. However, a buyer (or lessee) *not in the ordinary course of business* can gain priority over a secured party who makes a future advance on collateral after the buyer purchases the collateral. Such a buyer has priority over a future advance made (i) after the secured party *learned* of the purchase, or (ii) more than *45 days* after the purchase. [U.C.C. §9-323]

Example: On August 12, Alex sells a valuable oil painting that adorns his law office wall to Becky, a client who admires it. Unbeknownst to Becky, all of Alex’s equipment (including the oil painting) is covered by a perfected security interest in favor of CindiCo Finance. On August 15 and October 15, CindiCo loans Alex \$5,000 pursuant to a future advance clause. Becky takes free of the security interest in the painting to the extent of the October 15 loan (because it was made more than 45 days after Alex sold the painting to Becky.) Whether Becky takes free of the security interest of the August 15 loan depends on whether CindiCo knew of the sale when it made the loan.

Exception: Even if a secured party makes an advance after it learned of the purchase or more than 45 days after the purchase, if the future advance was made *pursuant to a commitment* made without knowledge of the purchase and before expiration of the 45-day period, the future advance has priority. [U.C.C. §9-323]

C. Secured Party vs. Secured Party – First to file or perfect. [§9-322]

Filing may be made before attachment. First to file has priority even though later party made advances first and first party knew it.

Assume you decide to go into the hot dog business. Spak loans you \$1 million. You open January 1, 2000. Spak correctly previously filed a financing statement showing his security interest in your: (i) inventory, proceeds, and after-acquired inventory; (ii) equipment (tables, chairs), proceeds, and after-acquired equipment; and (iii) goodwill, the blueprints, and all other intangibles.

On June 1, 2000, Mr. Tomalado sells you \$10,000 of tamales on credit, retaining a security interest in the tamales, properly filing, and sending Spak proper notice. On June 1, 2000, Mr. Steamtable sells you a \$10,000 steamtable on credit, retaining a security interest in your table, properly filing, but not sending Spak a notice. On September 1, 2000, you file for bankruptcy, and a trustee is appointed.

List all assets, all proper claimants, and the disposition thereof:

Asset	Collateral	Claimaint#1	Status	Claimaint#2	Status	Top Priority	Why
1.Hot Dogs	_____	_____	_____	_____	_____	_____	_____
2.Chairs	_____	_____	_____	_____	_____	_____	_____
3.Blueprints	_____	_____	_____	_____	_____	_____	_____

1. EXCEPTIONS (Super Priority) (Second in time prevails) [§9-324]

a. PMSI – Inventory (and chattel paper or instruments proceeds) (no super priority for accounts – unless he gives new value). [§9-330(e)]

- 1) Notice (given by creditor to earlier perfected secured party)
- 2) No Grace (must be perfected before debtor gets possession)

b. PMSI – Equipment (and proceeds). [§9-324(a)]

- 1) Grace (can be perfected before or within 20 days after debtor gets possession).

2) No Notice

Note: Conflicting PMSI's: A secured party who has a PMSI in collateral as a seller has priority over a secured party who has a PMSI in the same collateral as a lender.

- c. Purchaser of chattel paper (with possession) takes priority over non-possessory secured party as proceeds of inventory. [§9-330]

On July 15, 2000, you sold some inventory on credit, retaining a security interest therein. There were two documents signed by the purchaser: (i) an acknowledgment of the debt, and (ii) a security agreement security payment. On July 20, 2000, you sell these "documents" to a lender. On September 1, 2000, who are the proper claimants?

1) _____

2) _____

3) _____

4) _____

Who prevails? _____

2. With investment property, secured party with control (or alternatively, with possession) prevails over secured party who filed – even if the control was later and the secured party knew of the prior perfected (by filing) security interest. [§§90328(1), 9-329(1)]

3. Priority in Proceeds

For purposes of determining the priority of security interests in proceeds, the U.C.C. divides collateral into "filing collateral" and "non-filing collateral."

Filing collateral is collateral in which a secured party would normally achieve priority by filing a financing statement (*i.e.*, goods, accounts, commercial tort claims, general intangibles, and nonnegotiable documents).

Non-filing collateral is collateral in which a secured party would normally achieve priority by possession or control, rather than filing (e.g., chattel paper, deposit accounts, negotiable documents, instruments, and investment property).

- a. Generally, under the “first to file or perfect” rule, a perfected security interest in proceeds will have the same date of priority as the perfected security interest in the original collateral, as long as the perfection of the security interest in the proceeds extends beyond the 20-day temporary perfection period.
- b. Because the rules governing priority in non-filing collateral contain many exceptions to the “first to file or perfect” rule (e.g., a party with control over a deposit account has priority over a party without control, regardless or when control was obtained), the U.C.C. contains a special priority rule for certain proceeds of that collateral. A secured party has priority in the proceeds of non-filing collateral if:
 - (i) she has priority in the original collateral,
 - (ii) her security interest in the proceeds is perfected, and
 - (iii) the proceeds are cash proceeds or proceeds of the same type as the original collateral.

If the proceeds are proceeds of proceeds, all intervening proceeds must be cash proceeds, proceeds of the same type as the original collateral, or accounts relating to the collateral. [§9-322(c)]

4. Fixtures and Accessions

a. Fixtures

What are they? _____

- 1) Generally, first to file or record prevails.

Exception: PMSI secured party who makes fixture filing within 20 days will prevail over prior real estate filing.

Exception to exception: A construction mortgagee prevails so long as recorded before the goods became fixtures, and

goods became fixtures before the completion of construction. [§9-334(h)]

2) Accessions

What are they? _____

The general rules of first to file or perfect, with PMSI super-priority, apply.

Exception: If accession (e.g., motor) became part of whole asset subject to certificate of title law (automobiles), the security interest in the whole (car) has priority over the security interest in the accession. [§9-335(d)].

III. Rights Upon Default

A. Collection and Enforcement by Secured Party [§§9-607 to 9-608]

1. Generally, secured party gets rights as against the debtor, and any other person obligated to make payment (e.g., guarantor).
2. Collection Rights of Secured Party. With non-goods collateral (e.g., accounts), where agreed, the secured party is entitled to notify the account debtor to make payment to her rather than the debtor in default.

B. Possession and Disposition by Secured Party (NONJUDICIAL FORECLOSURE) [§§9-609 to 9-619]

1. Possession [§9-609]
 - a. Self-help (without breach of peace)
 - b. Replevin (sequestration) (_____)
2. Disposition [§9-610]
 - a. Commercial reasonableness
 - b. Form of notification (safe harbor form) [§9-611]

- 1) To Whom? Unless the collateral is perishable or threatens to decline rapidly in value or is of a kind ordinarily sold in a recognized market, the secured party must give an authenticated notice to the debtor and secondary obligor and other persons from which the secured party has received notice of a claim.
- 2) Contents:
 - a) Nonconsumer Goods
 - i) Describe debtor and secured party
 - ii) Collateral
 - iii) Method of disposition
 - iv) Time and place of disposition
 - b) Consumer Goods (mandatory for consumer goods; no good faith exception; statutory damages for noncompliance)
 - i) Liability for deficiency judgment
 - ii) Telephone number for redemption
 - iii) Telephone number for additional information

C. Noncompliance

1. Liability for damages for loss caused by failure to comply (plus \$500 for each case of noncompliance).
2. If consumer goods: [§9-625]
 - a. 10% of purchase price, and
 - b. All interest charges to be paid over the life of the loan (credit service charge).

D. Acceptance of Collateral in Full (or partial) Satisfaction (strict foreclosure)
[§9-620]

1. In nonconsumer goods cases, parties can agree to voluntary turnover in return for an agreed credit against debt with the debtor acknowledging remaining deficiency.
2. In consumer goods cases, parties can agree to voluntary turnover in return for full satisfaction only.

E. Application of Proceeds of Sale [§9-615]

1. Expenses of retaking, holding, preparing, and disposing of collateral (including attorney fees).
2. Satisfaction of obligation secured by security interest
3. Satisfaction of obligation secured by subordinate security interest if secured party received demand
4. Debtor or trustee

In 1993, Debtor, a retail seller of power boats, established a line of credit with Bank. In order to secure the loan, Debtor signed a security agreement granting Bank a security interest in its “inventory of boats, now existing and hereafter acquired.” Bank promptly and properly filed a financing statement, which described the collateral as “inventory.” Bank made periodic advances to Debtor in an amount up to 75% of the value of Debtor’s inventory.

Recently, Debtor’s business slackened, and it needed an additional source of financing. Debtor approached Finance Company and asked for a loan. Finance loaned money to Debtor on January 2, 1995. As collateral for the loan, Debtor transferred to Finance all of Debtor’s then-existing chattel paper, all of which had been generated by sales of Debtor’s inventory prior to January 2. Debtor has not transferred to Finance any chattel paper generated from several boat sales that occurred after January 2, 1995.

In mid-January, Debtor sold a large boat to Purchaser for recreational use by Purchaser’s family. Purchaser signed a contract (chattel paper) promising to pay the purchase price in monthly installments over the next three years and granting Debtor a security interest in the boat.

On March 1, 1995, Debtor defaulted on its loans to Bank and Finance.

1. After Debtor’s default, what rights do Bank and Finance have with respect to chattel paper generated from the sale of Debtor’s inventory? Explain.
2. After Debtor’s default, what rights do Bank and Finance have with respect to Purchaser’s boat? Explain.

SUMMARY

Secured Transactions (Article 9, U.C.C.)

(MUST MEMORIZE)

I. Mechanics

A. Security Interest

B. Collateral

1. Consumer Goods
2. Farm Products
3. Inventory
4. Equipment
5. Instruments
6. Documents
7. Accounts
8. Deposit Accounts
9. Health Care Insurance Receivables
10. Chattel Paper
11. Electronic Chattel Paper
12. Letter of Credit Right
13. Commercial Tort Claims
14. General Intangibles
15. Investment Property
16. Proceeds
 - Security interests generally continue in proceeds

C. Between Debtor and Creditor

STEP ONE - CREATION

1. Possession, or
2. Security Agreement
 - a. Authenticated Record
 - b. Signed by Debtor
 - c. Describing Collateral
 - d. Control

STEP TWO - ATTACHMENT

1. Secured party must give value
2. Debtor must have rights in collateral

Note:

- a. After-acquired property clause
- b. Exceptions

- 1) 10-day rule for additional security for consumer goods
- 2) Commercial tort claims
- c. Future-advances clause

D. Between Creditors and Others

STEP THREE - PERFECTION

1. Filing
 - a. What?
 - b. Where?
 - c. How long?
2. Possession
3. Control
 - a. Deposit Accounts
 - b. Letter of Credit Rights
 - c. Investment Property
4. Automatic
 - a. PMSI in consumer goods
 - b. Assignment of Accounts
 - c. Sale of payment intangibles or promissory notes
 - d. Security interests in investment property
5. Temporary
 - a. Four Months
 - b. Twenty Days

II. Priorities

A. Secured Party vs. Lien Creditor - Key is perfection (20-day grace for PMSI)

B. Perfected Secured Party vs. Purchaser

1. Consumer Purchaser to Consumer Purchaser - Purchaser prevails (*i.e.*, takes free of claim of secured party) unless filing (automatic perfection is ineffective).
2. Business Purchaser - Secured party prevails (automatic perfection is effective).
3. (BIOC) Purchaser From a Business - Purchaser wins even if filing by secured party.
4. HDC Rule

C. Secured Party vs. Secured Party - First to file or perfect

1. EXCEPTIONS:
 - a. PMSI - Inventory (and chattel paper or instruments proceeds)
 - 1) Notice
 - 2) No grace
 - b. PMSI - Equipment (and proceeds)

- 1) Grace
- 2) No notice
- c. Purchaser of chattel paper (with possession) takes priority over non-possessory secured party as proceeds of inventory.
2. With investment property, secured party with control prevails over secured party who filed.
3. Priority in Proceeds
4. Fixtures and Accessions
 - a. Fixtures
 - b. Accessions

III. Rights Upon Default

A. Collection and Enforcement by Secured Party

1. Secured party gets rights as against debtor
2. Collection right of secured party

B. Possession and Disposition by Secured Party

1. Possession
 - a. Self-help
 - b. Replevin
2. Disposition
 - a. Commercial reasonableness
 - b. Form of notification
 - 1) To Whom
 - 2) Contents
 - a) Nonconsumer Goods
 - b) Consumer Goods

C. Noncompliance

1. Liability for damages
2. If consumer goods

D. Acceptance of Collateral in Full (or partial) Satisfaction (strict foreclosure)

1. In nonconsumer goods cases
2. In consumer goods cases

E. Application of Proceeds of Sale

1. Expenses
2. Satisfaction of obligation secured by security interest
3. Satisfaction of obligation secured by subordinate security interest
4. Debtor or trustee