1. The point of Secured Transactions is to allow a lender to create a security interest in personal property.
   a. Secured has nothing to do with real property except fixtures.
   b. Also generally excluded are planes and trains, which are governed by their own law
   c. Most states have specific rules for cars. Discussed below.
   d. Secured is a state subject so it will not be on the MBE.
   e. In recent years either Secured Transactions or Negotiable Instruments have appeared as an essay topic on a regular basis.
   f. What to look for--multiple lenders who may or may not have a security interest in personal property, who may or may not have perfected that interest and therefore may or may not have priority in that property.
   g. Also, Purchase Money Security Interest (PMSI).
   h. Priority order is, from bottom to top: unsecured creditors, judicial lien creditor (bankruptcy trustee stands in the shoes of a judicial lien creditor), secured creditor, secured and perfected creditor (generally in order of perfection), statutory lien (mechanics lien, attorneys, IRS), buyer in ordinary course of business.

2. CLASSIFICATION (IDENTIFICATION) OF COLLATERAL
   a. Classification of the collateral is important because the security interest cannot attach if the collateral is not correctly identified.
   b. In addition, methods of perfection sometimes differ depending on type of collateral.
   c. Problems in essays often turn on incorrect or ambiguous classification of collateral.
   d. Goods--similar to Article 2. Movables or fixtures, including planted crops and unborn young of animals.
      i. Consumer goods, used by debtor for personal, family or household purposes.

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ii. farm products, used or produced in farming, including livestock and their products in unmanufactured state
iii. inventory, held for sale or consumed in the ordinary course of business
iv. equipment, all other goods
e. Instruments, negotiable or nonnegotiable written promises to pay money, including promissory notes, checks, stocks, bonds.
f. Documents, bills of lading and warehouse receipts.
g. Chattel Paper, writing that evidences an obligation to pay and a security interest.
h. Account, any right to payment not evidenced by a writing.
i. General Intangibles, a catchall category.

3. CREATION OF A SECURITY INTEREST--ATTACHMENT
a. A security interest is created by a contract between the debtor and the creditor, called a security agreement. Generally it must be in writing, describe the collateral and be signed by the debtor.
b. Security interest attaches when there is
   i. a security agreement
   ii. creditor gives value (loans money or delivers equipment or inventory)
   iii. debtor has rights in the property that is the collateral

4. PERFECTION
a. Perfection establishes priorities.
b. NOTE--JUST BECAUSE A SECURITY INTEREST IS NOT PERFECTED DOES NOT MEAN THE CREDITOR DOES NOT HAVE AN INTEREST IN THE COLLATERAL--PERFECTION ONLY AFFECTS PRIORITIES.
c. Usually done by filing a Financing Statement. Usually the same document is used to create a security agreement, attach and perfect. The Financing statement must give the name of the debtor, the name of the creditor and indicate the collateral. If the collateral is attached to land the real property must be described.
d. The old Article 9 required signature of the debtor; as we move to electronic filing the new Article 9 does not require a signature.
e. A minor error, e.g., wrong name, does not make the financing statement ineffective, if a new creditor can reasonably find the filing.

f. A misfiled financing statement is effective if subsequent creditors have actual knowledge.

g. If a debtor changes name creditor has four months to change the name on the financing statement in order to maintain his priority perfection date.

h. Trade name insufficient unless it is similar enough that it will be found by using normal search methods of SOS office.

i. Perfection by Control
   i. The creditor can also usually perfect by control or possession. Example--pawnshop.
   ii. Deposit account, letter of credit or money can only be perfected by control.
   iii. Possession is sufficient for perfection when the collateral is negotiable documents, instruments, chattel paper or goods

j. Automatic Perfection

k. Financing Statement filed with Secretary of State unless attached to land then in that county.

5. PURCHASE MONEY SECURITY INTEREST--NOT CONSUMER GOODS
   a. This situation is where a debtor acquires new inventory or equipment that is financed either by a new lender or the seller. This PMSI is different than the PMSI in consumer goods. It takes priority over earlier perfected security interests.

   b. If the PMSI is in equipment it takes priority if perfected within 20 days after delivery.

   c. If the PMSI is in inventory it takes priority if it is perfected when the inventory is delivered, i.e., a financing statement has already been filed and notice is given to affected creditors before delivery.

6. AFTER-ACQUIRED COLLATERAL--SUBSEQUENT ADVANCES
   a. A financing statement may describe after-acquired property as
collateral. This is sufficient to create a security interest in the after-acquired property in the present loan. Usually inventory or equipment.

b. A financing statement may provide that the described collateral will secure loans made later.

7. PROCEEDS
   a. The security interest in inventory attaches to the proceeds from the sale of the inventory. This makes sense--both the creditor and the debtor want the goods to be sold so the creditor gets repaid. The security agreement does not have to describe proceeds in order for security interest to attach to proceeds.
   b. But a purchaser of chattel paper that is proceeds has priority over original lender.

8. DOES THE SECURITY INTEREST FOLLOW THE SOLD INVENTORY?
   a. Purchase by buyer in the ordinary course of business cuts off the security interest. Again this makes sense because both the lender and the borrower want the goods to go out the door. A buyer will be hesitant to buy if the security interest follows the goods.
   b. In addition, the lender is said to give permission to the sale.
   c. But if the sale is not in the ordinary course of business the security interest will follow.
   d. And we evaluate ordinary course of business by the seller’s business.

9. FIXTURES
   a. Hypo: Mortgage executed creating security interest in land and chattels. Then debtor buys personal property (chattels) on credit and attaches chattels to the land. The mortgage attaches to the chattels which become fixtures and the mortgage lender has priority in the chattels. Mortgage lender does not have priority in chattels which do not become fixtures. Mortgage that describes is the equivalent of an Article 9 security agreement.
1. PERFECTION BY TITLE ENDORSEMENT

Debtor’s fleet of delivery trucks is “equipment” for purposes of Article 9. Bank has a security interest in that equipment. However, the facts tell us that the delivery trucks are subject to a certificate-of-title statute that provides for perfection by notation of a security interest on the certificate of title. Filing a financing statement is “not . . . effective to perfect a security interest in property subject to” such a statute. **THIS IS A TYPICAL STATUTE FOR PERFECTING SECURITY INTEREST FOR CARS.** Thus, Bank did not perfect its interest in Debtor’s delivery trucks by filing a financing statement.

Finance Company, on the other hand, did perfect its interest in the 25 trucks by complying with the applicable certificate-of-title statute and noting its interest on the certificates of title. Thus, Finance Company’s perfected security interest in the 25 trucks is superior to Bank’s unperfected interest.

2. ACCESSIONS

Where, as here, “goods . . . are physically united with other goods in such a manner that the identity of the original goods is not lost,” the goods become accessions. A security interest in goods that is created and perfected before the goods become accessions continues after the goods become accessions. Thus, Global’s perfected security interest in the GPS units continued despite the fact that the units were attached to Debtor’s trucks.

When the collateral of one creditor becomes united with the collateral of another, each creditor’s collateral is an “accession” to the other creditor’s collateral, and the two items of collateral together are regarded as “the whole.” Whether either creditor’s security interest applies to “the whole,” or applies only to its original collateral, “turns on the description of the collateral in [that creditor's] security agreement.”

In this case, Global’s security interest in the GPS units certainly does not cover “the whole” (i.e., delivery trucks with GPS units installed).

On the other hand, Finance Company’s described security interest in the specifically identified delivery trucks expressly includes all installed accessories and therefore covers the GPS units.

3. DEBTOR’S SIGNING OF FINANCING STATEMENT

It makes no difference that PC did not sign or expressly authorize the filing of the financing statement. Under the old version of Article 9, financing statements were required to be signed by the debtor. Under new Article 9, the debtor’s signature is not necessary. Although filings must still be authorized by the debtor, the debtor’s authentication of a security agreement covering particular collateral is ipso facto an authorization for the secured party to file a financing statement covering that collateral. Because PC authenticated a security agreement granting First Bank a security interest in equipment, First
Bank was entitled to file a financing statement covering equipment, which was effective to perfect First Bank's interest.

4. FINANCING STATEMENT

If no security interest has attached, it cannot be perfected no matter what the creditor does. Here, no security interest ever attached to the accounts. Because First Bank has no security interest in the accounts and no other basis for claiming a property interest in the accounts, Luke's interest prevails.

The financing statement does not help First Bank in this regard because it is not a security agreement and, also, because it was overbroad. First Bank did not have the right to file a financing statement covering additional collateral unless PC authorized such a filing, which PC did not. A financing statement is effective only to the extent that it was filed by a person that may file it. Because First Bank was not entitled to file a financing statement covering PC's accounts receivable, the financing statement is not effective to cover those accounts. Thus, Luke has a superior claim to the accounts receivable.

5. FIXTURES

The oven in which Sal's has a purchase-money security interest is a fixture under Article 9 and applicable state law because it is so related to particular real property that an interest in [it] arises under real property law.

The general rule under Article 9 for priority in fixtures is that a security interest in the fixture will be subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor. Here the related real property is the restaurant building, and Finance Company's mortgage in that building qualifies as an encumbrance on it. Thus, Finance Company is as an encumbrancer . . . of the related real property.

UCC ' 9-334 includes a number of exceptions to the general rule that security interests in fixtures are subordinate to a conflicting interest of an owner or encumbrancer of the related real property. The only exceptions that might have been available to Sal's in UCC ' 9-334(d) (purchase-money priority exception) and (e)(1) (where the debtor had a record interest in the realty) would require, among other things, that Sal's had effected a proper fixture filing. A fixture filing must be recorded in the local real estate records office. In this case, Sal's failed to file in the local real estate records office.

Because Finance Company is an encumbrancer of the related real property and because Sal's fails to qualify for any of the exceptions listed in UCC ' 9-334, Finance Company has priority as to the oven even though Finance Company's security interest was created after Sal's perfected its interest in the oven by filing in the Secretary of State's office.

6. CONSIGNMENT GOODS

Bank had a security interest in Giant's inventory. Ordinarily, Bank's security
interest would only attach to property in which the debtor (Giant) had rights, and it would only be effective to the extent of Giant’s rights. Under the terms of the consignment arrangement, the Specialty speakers are not owned by Giant (Specialty retains title), and accordingly, Giant would not ordinarily have ownership rights in them for purposes of attachment. However, UCC § 9-319(a) provides that, for purposes of determining the rights of a creditor of a consignee (e.g., the rights of Bank in this case), the consignee of goods under a consignment governed by Article 9 is “deemed to have rights and title to the goods identical to those [of] the consignor.” Thus, if this consignment is governed by Article 9, Giant will be treated as having had the full ownership interest that Specialty had in the speakers, and Bank’s security interest will attach to the speakers.

On these facts, the Giant-Specialty transaction created an Article 9 consignment. Under UCC § 9-102(a)(20), an Article 9 consignment exists where goods are delivered to a merchant (other than an auctioneer) for the purpose of sale, the merchant deals in those goods under a name other than the name of the consignor, the goods are not consumer goods immediately before their delivery to the merchant, the value of the goods exceeds $1,000, and the transaction does not otherwise create a security interest. Here, goods valued over $1,000 were delivered to Giant (a merchant dealing in goods of that kind under its own name). Although destined to be sold to consumers, the goods were not consumer goods before delivery; they were part of Specialty’s inventory. (consumer goods are goods used or bought for “personal, family, or household purposes”) (inventory means goods held for sale). There is no indication that the Specialty-Giant transaction otherwise created a security interest. In short, the transaction is a consignment governed by Article 9, and Giant will be treated as having right and title to the speakers for Article 9 purposes.

As a result, Bank’s security interest attaches to the Specialty speakers. Now that Giant has defaulted on its debt, Bank has the right to repossess the speakers, sell them within the guidelines of Article 9, and be repaid on its debt from the proceeds. Specialty would have no cause of action against Bank for doing so unless Bank conducted its sale in a commercially unreasonable manner or otherwise violated the dictates of Article 9’s foreclosure provisions.

7. PERFECTION OF ACCOUNTS
In addition to providing for perfection of a security interest in accounts by filing, the UCC provides for perfection upon attachment (known as automatic perfection) for assignments of accounts that do not “transfer a significant part of the assignor’s outstanding accounts” to the secured party. Under the facts given, National Bank received an assignment of only one of Feagle’s several outstanding accounts. However, the single Hotel Corporation account was, at the time of default, worth more than all Feagle’s other accounts combined. The question, then, is whether this
assignment of a single account was a transfer of “a significant part” of Feagle’s outstanding accounts.

8. **PERFECTION OF DEPOSIT ACCOUNT**

Although First Bank filed a financing statement covering the deposit account, First Bank’s interest is not perfected. Under UCC § 9-312, “a security interest in a deposit account may be perfected only by control.” Under UCC § 9-104, a creditor only has control of a deposit account if: (1) “the secured party is the bank with which the deposit account is maintained” (the bank account is at State Bank, not First Bank), (2) the bank where the account is held has agreed in writing to follow the instructions of the secured party (no such agreement exists), or (3) the secured party becomes the bank’s customer with respect to the account (which was not done). Because none of the UCC § 9-104 requirements for control has been met by First Bank, First Bank’s security interest in the bank account is unperfected.

State Bank, on the other hand, does have a perfected security interest in the deposit account, even though it did not file a financing statement, because State Bank is “the bank with which the deposit account is maintained,” and therefore has control of the account. As between an unperfected secured creditor (First Bank) and a perfected secured creditor (State Bank), the perfected secured creditor has the superior claim to the collateral.

9. **REPOSSESSION OF COLLATERAL AFTER DEFAULT**

Section 9-609 of the Uniform Commercial Code provides that “after default, a secured party may take possession of the collateral,” and may proceed without judicial process if this can be done “without breach of the peace.” This “self-help repossession” is a significant right accruing to the secured party under Article 9’s default provisions, and it may be exercised without giving prior notice to Debtor. Because Debtor was in default in its monthly payments in the amount of $1,600, Bank was within its rights in repossessing the kitchen equipment, so long as Bank did so without a breach of the peace.

“Breach of the peace” is not defined in Article 9. White and Summers suggest that claims of breach of the peace be analyzed with a “crude two-factor formula of creditor entry and debtor response . . . refined by a consideration of third-party response, the type of premises entered and possible creditor deceit in procuring consent.”

10. **REDEMPTION**

Section 9-623 of the UCC provides that a debtor may redeem collateral “at any time before a secured party has disposed of collateral or entered into a contract for its disposition under Section 9-610.” To redeem the collateral, debtor must tender “fulfillment of all obligations secured by the collateral” as well as the expenses reasonably incurred by the secured party in retaking, holding and preparing the collateral for disposition.

The right to redeem collateral is a mandatory right that may not be waived in the security agreement. As a result, the clause in the security agreement purporting to waive Debtor’s right of redemption is ineffective. A waiver of Debtor’s right to redeem is effective only if it is done “by an agreement to that effect entered into and authenticated after default.” There was no such agreement here. Thus, Debtor was entitled to redeem the collateral at the time he attempted to do so, because it was “before [the] secured party had disposed of the collateral . . . under Section 9-610.”
To redeem the collateral, a debtor must “tender fulfillment of all obligations secured by the collateral.” UCC § 9-623. (emphasis added). Where, as here, the security agreement contains an acceleration clause, this would include the entire balance due on the loan. In addition, the redemption amount must include “the expenses reasonably incurred by the secured party in retaking, holding and preparing the collateral for disposition, in arranging for the sale, and to the extent provided in the agreement and not prohibited by law, [the secured party’s] reasonable attorneys’ fees and legal expenses.”

11. DAMAGES FOR FAILURE TO REDEEM
Sections 9-625(a) and (b) of the UCC provide: “If it is established that a secured party is not proceeding in accordance with this article, a court may order or restrain . . . disposition of collateral. . . . A person is liable for damages in the amount of any loss caused by a failure to comply with this article.”

A commercially reasonable sale under § 9-610 has already taken place. Thus, Debtor now must seek to recover from Bank for “any loss caused by a failure to comply” with Article 9. Presumably, this would include any loss attributable to the failure of Bank to allow Debtor to redeem and may include any loss attributable to improper repossession (assuming that Debtor can prove a breach of the peace was committed).

12. ASSIGNMENT OF RIGHT TO PROCEEDS
As a result of the security agreement signed by Seller, Finance Co. had a security interest in all of Seller’s accounts and chattel paper. Moreover, the security agreement expressly provided that payments arising from Seller’s “accounts and chattel paper” had been assigned to Finance Co. Under Article 9 of the Uniform Commercial Code, a security interest in “accounts” covers any “right to payment of a monetary obligation, whether or not earned by performance, . . . for property that has been or is to be sold.” Consequently, Finance Co.’s security interest covered the amount owed by Buyer to Seller pursuant to Buyer’s agreement to purchase the excavator.

Article 9 gives a secured party or assignee of an account (i.e., Finance Co.) the right to collect directly from the account debtor (i.e., Buyer) in the event of a default by the debtor (i.e., Seller). To exercise that right effectively, Finance Co. must send an authenticated notification to the account debtor informing the account debtor that the amount due has been assigned and that payment is to be made to the assignee. The facts state that Finance Co. properly notified Buyer of the assignment of Seller’s right to receive payment and directed Buyer to make future payments to Finance Co.

Once an account debtor receives proper notification to make future payments directly to an assignee, the account debtor may discharge its payment obligation only by payment to the assignee. Payments made to the assignor do not result in discharge.

13. DISPOSITION OF COLLATERAL
Under the UCC, every aspect of a disposition must be commercially reasonable. In addition, the UCC sets out some specific standards governing the disposition of collateral. One of these standards is the rule that a secured party may purchase the collateral only if
the secured party buys it
   (1) at a public disposition; or
   (2) at a private disposition only if the collateral is of a kind that is customarily sold
       on a recognized market or the subject of widely distributed standard price
       quotations.

Dealer's disposition was also improper because Dealer did not inform Joe of the disposition
until after it had occurred. The UCC requires a secured party to provide notice to the debtor
before disposing of collateral. A proper notice must describe the intended disposition and
must be sent within a reasonable time before the disposition. Under the facts, Joe was
never informed of the impending disposition. The only notice he received was after the fact.
This failure to notify was also a violation of the UCC.

Dealer is liable for actual damages in the amount of any loss caused by failing to comply
with the UCC rules for notice of disposition and a commercially reasonable disposition.
Damages are those reasonably calculated to put an eligible claimant in the position that it
would have occupied had no violation occurred. The most likely measure of Joe's actual
loss is the difference between the amount credited to Joe by Dealer and the amount that
would have been obtained in a sale that complied with UCC requirements.

Where the collateral is consumer goods, as here, the debtor is guaranteed a mini-
mum recovery of statutory damages in an amount not less than the credit service charge (the
interest payable on the loan) plus 10 percent ($1,000) of the principal amount of the loan.
The purpose of this remedy is to ensure that every noncompliance [with UCC requirements
relating to the disposition of collateral] in a consumer goods transaction results in liability,
regardless of any injury that may have resulted.

Although ordinarily the secured party may recover a deficiency remaining after disposition,
Joe has several arguments to reduce or eliminate the claimed deficiency of $2,500.

Under UCC ' 9-626(b), the impact of noncompliance with Article 9 on recovery of a
deficiency in a consumer goods transaction is left to the court to determine. Courts tend to
follow two approaches in consumer transactions. Under the so-called absolute bar rule, the
creditor's noncompliance bars recovery of any deficiency. Under the rebuttable
presumption rule, the creditor's noncompliance results in a presumption that a complying
disposition would have realized an amount of proceeds sufficient to cover the entire debt
and expenses (and hence that there is no deficiency), but the creditor is given the
opportunity to rebut this presumption by proving that even a complying sale would have
realized less than the full amount due.