

### Definitions

**Secured Transaction** involves a loan or purchase that is secured by collateral. The relationship typically involves two parties, a debtor and a creditor. The debtor gives the creditor a security interest in the debtor's specific property (collateral) to assure that the debtor will perform (repay the loan, pay the purchase price).

**Security Interest** A security interest is an interest in personal property or fixtures that secures payment or performance of an obligation.

### Parties

**Secured Party** secured party is the person in whose favor a security interest is created under the security agreement

**Obligor** obligor is a person who must pay (or otherwise perform) with respect to the obligation that is secured by a security interest in the collateral

**Debtor** debtor is a person who has an interest, other than a security interest or other lien, in the collateral, such as the sole owner of the collateral

### Collateral

**Tangible "Goods"** anything that is "moveable at the time that a security interest attaches."

**Consumer Goods** goods acquired primarily for personal, family, or household purposes.

**Farm Products** goods that are crops or livestock and include supplies that are used or produced in farming.

**Inventory** goods, other than farm products, that are held for sale or lease; are furnished under a service contract; or consist of raw materials, works in process, or materials used or consumed in a business. This term usually refers to goods that are consumed in a business

**Equipment** catchall class, consists of goods that are not consumer goods, farm products, or inventory. It usually refers to goods that are used or bought for use primarily in a business, such as employees' desks or machinery used in manufacturing.

**Intangible Collateral** Nine classes of personal property

### Collateral (cont)

**Accounts** the right to payment for goods sold, property licensed, or services rendered. Also included is a right to payment for the issuance of an insurance policy, the use of a credit or charge card, or winning a lottery

**Deposit Accounts** a savings, passbook, time, or demand account maintained with a bank.

**Instruments** Promissory notes, checks, and drafts governed by Article 3

**Chattel Paper** A record with a monetary obligation and a security interest or lease

**Payment Intangibles** "catch all" of rights to payment

**Documents** Documents of title

**Investment Property** Certificated and uncertificated securities, such as stocks and bonds

**Commercial Tort Claims** Claims possessed by an organization or an individual that arose in the course of the organization or individual's business

**Letter of Credit Rights** A right to payment or performance under a letter of credit

**General Intangibles** residual category



### Eligible Transactions

**General Rule** governs a transaction that creates, by agreement, a security interest in personal property or a fixture; lease, consignment, agricultural lien, and even a purchase of personal property may be subject to Article 9.

**Leases** Leases are covered under Article 9 when the transaction, although in the form of a lease, is in economic reality or substance a secured transaction. rule is: "A transaction in the form of a lease creates a security interest if lease payments must be made for the full term of the lease and are not subject to termination and the lessee has an option to become the owner of the goods for nominal (a small amount of money) consideration at the conclusion of the lease agreement."

### Attachment

**Attachment** a security interest that is enforceable against the debtor with respect to the collateral is said to have "attached" to the collateral

Value has been given by the secured party

The debtor has rights in the collateral

### Attachment (cont)

The debtor has authenticated a security agreement that describes the collateral, or the secured party has possession or control of the collateral pursuant to a security agreement.

### Perfection of Security Interest

**Perfection** security interest is "perfected" upon attachment of that interest and compliance with one of the methods of perfection. Only needed for determining a secured party's rights against third parties

**Methods of Perfection** Filing a statement

Possession of the collateral

Control over the collateral

Automatic Perfection

Statute

**Filing a financing statement** must contain debtor's name, name of secured party, collateral covered by the financing statement

### Perfection of Security Interest (cont)

--Error in the debtor's name When a standard search of the filing office records under the debtor's correct name would disclose the financing statement, the erroneous name does not make the financing statement seriously misleading and it will be valid.

**Control over collateral** The security interest remains perfected only while the secured party retains control. (tested)—A security interest in a deposit account can be perfected only by control.

**Automatic Perfection** PMSI in consumer goods

**Proceeds of Sale Collateral** If a security interest in collateral is perfected, and then the collateral is sold for cash proceeds (or checks or deposit account), the secured party will have a perfected security interest in the proceeds.

**Timing of Perfection** A security interest is perfected upon (i) attachment of that interest and (ii) compliance with one of the methods of perfection (such as filing a financing statement).



### Priorities

**General Creditor (unsecured)** A secured party will always prevail over a general creditor with respect to the debtor's collateral.

**Judicial Lien Creditor** A perfected security interest has priority over a judicial lien creditor, but the judicial lien creditor had priority over an unperfected security interest.

**Transferee (persons who obtain full title to the goods as a result of a transfer of the collateral from the debtor.)** the security interest continues in the collateral unless the secured party authorized the transfer free of the security interest

buyer, other than a secured party, of collateral that is goods, tangible chattel paper, tangible documents or a security certificate takes free of an unperfected security interest in collateral if the buyer gives value, receives delivery of collateral, without knowledge of the existing security interest

### Priorities (cont)

A buyer of collateral subject to a perfected security interest generally takes the collateral subject to that interest, unless the secured party has authorized its sale free of the security interest.

A buyer in the ordinary course of business (BOCB) takes the goods free of a security interest that the seller gave to the creditor in the goods, even if the security interest is perfected and the buyer knows of its existence.

**Buyers in the Ordinary Course of Business** Buys goods in the ordinary course of business from a merchant who is in the business of selling goods of that kind in good faith and without knowledge that the sale violates the rights of another in the same goods.

### Priorities (cont)

**Consumer Buyers** A consumer buyer of consumer goods takes free of a security interest, even if perfected, unless prior to the purchase, the secured party filed a financing statement covering the goods.

Buys consumer goods for value for his own personal, family, or household use from a consumer seller and without knowledge of the security interest

If the party holding the PMSI in consumer goods does in fact file, then his security interest will be good even against a consumer buyer.

### Priority Among Secured Parties

**Perfected security interest versus perfected security interest** the first to party to either file a financial statement or perfect has priority.

**Perfected security interest versus unperfected security interest** the perfected interest takes over the unperfected one

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By **parkeraz**  
[cheatography.com/parkeraz/](http://cheatography.com/parkeraz/)

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### Priority Among Secured Parties (cont)

PMSI (Purchase Money Security Interest) Rules	Preference is generally given to a PMSI over a non-PMSI security interest
PMSI in inventory or livestock	prevails over all other security interests in the same collateral, even if they were previously perfected, if (i) the PMSI is perfected by the time the debtor receives possession of the collateral, and (ii) the purchase-money secured party sends an authenticated notification of the PMSI to the holder of any conflicting security interest before the debtor receives possession of the collateral.
PMSI v. PMSI	the first to party to either file a financial statement or perfect has priority

### Priority Among Secured Parties (cont)

Proceeds from a PMSI in goods	priority of a PMSI in goods generally extends to the identifiable proceeds of the original collateral, but only as to proceeds in which the security interest is perfected when the debtor receives possession of the collateral or within 20 days thereafter
Construction Mortgage	has priority over a subsequent security interest in a fixture, including a PMSI in a fixture. The construction mortgage must be recorded before the goods become fixtures, and it covers only goods that become fixtures before completion of the construction.
Proceeds of Sale Collateral	the basic rules (e.g., first-to-file-or-perfect) govern priority if there are conflicting security interests and at least one of those interests is claimed as proceeds

### Default

Default	the failure of the obligor to make timely payments to the secured party
Secured party may	Seek possession of the collateral and sell it or retain it; initiate judicial action; pursue another Courts of action that debtor and obligor have agreed
Security Agreement Covering Fixtures	When a secured party's security interest has priority over owners and individuals who encumber real property, that secured party may remove the fixture from the real property. With respect to an owner or encumbrancer who is not the debtor, the secured party is liable for the cost of repairing any physical object damaged by the removal but not for any reduction in the value of the real property due to the removal.



### Default (cont)

**Possession of Collateral** secured party is not required to give notice of default, nor is he required to give notice of his intent to take possession of the collateral

**Disposition of Collateral** a secured party may sell, lease, license, or otherwise dispose of all or any of the collateral. Within limits, the secured party may keep the collateral (strict foreclosure) in full or partial satisfaction of the obligation.

**Commercially Reasonable Standard for Disposition** In the usual manner on a recognized market, At the price current in any recognized market at the time of the disposition, Otherwise in conformity with reasonable commercial practices

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### Default (cont)

**Price** mere fact that a higher price could have been obtained by disposing of the collateral in a different manner or at a different time does not establish that the disposition was not commercially reasonable

**Types of Disposition** public or private

**Notice of Disposition** A secured party is generally required to send an authenticated notification of disposition. The notification is required to be reasonable as to its content, the manner in which it is sent, and its timeliness (at least 10 days).

**Cash proceeds** A secured party must apply, or pay over for application, cash proceeds of a disposition in the following order: reasonable expenses for collection, satisfaction of security interest, satisfaction of subordinate interests, remainder to debtor

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### Default (cont)

**Surplus** If, after the required payments and applications of proceeds have been made, there is a surplus, the secured party generally must pay the surplus to the debtor.

**Deficiency** If, after the required payments and applications of proceeds have been made, there is a deficiency, then the obligor generally is liable for the deficiency.

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By **parkeraz**

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