

This outline was created for the July 2006 Oregon bar exam. The law changes over time, so use with caution. If you would like an editable version of this outline, go to www.barexammind.com/outlines.

Secured Trans

Analytical Steps:

1. Scope of Article 9
2. Attachment
 - a. Pledge
 - b. PMSI
 - c. Class of collateral
3. Perfection
4. Priority
 - a. ID basis of each claim
 - b. Select and apply appropriate rule
5. Sale of collateral?
 - a. Buyer's status
 - b. Proceeds
6. Default and Enforcement

I. ATTACHMENT

- a. Makes the SA enforceable against the Debtor, and occurs when *the third* of these occurs:
 - i. Secured party gives value;
 - ii. Bettor has rights in the collateral; AND
 - iii. Debtor either:
 1. signs a SA identifying collateral; or
 2. gives possession of collateral to secured party under oral SA ("pledge")
- b. Security Agreement
 - i. Any writing that creates a SI, including a writing in which the debtor grants to the creditor a SI in identified collateral to secure a debt
 - ii. Must meet 4 requirements:
 1. written;
 2. signed by debtor;
 3. must say that it grants a SI; AND
 4. must identify the collateral (either by type or item; specific enough to permit collateral to be identified)
 - a. NB: saying "consumer goods" in a consumer transaction will NOT satisfy this req

- c. Class of Collateral
 - i. Generally, collateral are goods (tangible, movable objects)
 - ii. Are defined by HOW the debtor uses the goods
 - iii. 4 categories:
 - 1. **farm products:** crops, livestock, or supplies used or produced in farming operations; products of crops or livestock in their *un-manufactured* states if they are in the possession of a debtor engaged in raising, fattening, grazing, or aquaculture
 - 2. **inventory:** goods held for sale or lease, raw materials, and supplies used up in business, but not farm products
 - 3. **consumer goods:** goods used primarily for personal, household, or family purposes
 - 4. **equipment:** catchall; every other good
- d. After-acquired property Clause
 - i. Article 9 validates AAPC, but with consumer goods, must be acquired within 10 days after secured party gives value
 - ii. Must be expressly provided for in the SA
- e. PMSI
 - i. A PMSI secures repayment of credit that enabled the debtor to acquire the collateral
 - ii. Two types:
 - 1. seller PMSI
 - a. given to permit debtor to purchase collateral on credit
 - 2. lender PMSI
 - a. lender must have made the loan to permit debtor to acquire collateral; AND
 - b. loan must have been so used

II. PERFECTION

- a. Makes the SI enforceable against third parties
- b. Requires attachment PLUS some form of *notice* to the rest of the world
- c. There are 3 ways that an SI can perfect:
 - i. **Automatic perfection:** PMSI in consumer goods
 - ii. **Perfection by possession of collateral:** ie, pledge
 - iii. **Perfection by endorsement on motor vehicle title:** a SI in non-inventory motor vehicle may be perfected ONLY by an endorsement on the certificate of title
 - iv. **Perfection by filing:**
 - 1. financing statement must be
 - a. signed/authorized (eg, signed the SA) by debtor;
 - b. give names and addresses of the secured party and debtor; AND
 - i. name: individual vs. corporation
 - ii. trade name is insufficient

- c. identify the collateral (supergeneric permitted)
 - 2. must be filed in correct place
 - a. file with secretary of state
 - b. EXCEPTIONS:
 - i. File in county real estate records where collateral is:
 - 1. standing timber; fixtures; or unextracted oil, gas, or minerals
- d. Post-Perfection Events
 - i. Debtor changes name:
 - 1. FS/perfection remains effective
 - 2. FS continues to extend to AAP for 4 months
 - ii. Debtor changes use of collateral
 - 1. FS/perfection remains effective
 - iii. Maximum time
 - 1. FS will lapse after 5 years, UNLESS continuation statement is filed within 6 months prior to lapse

III. PRIORITY

- a. Unperfected v. Unperfected
 - i. First to attach has priority
- b. Perfected v. Unperfected
 - i. Perfected has priority
- c. Perfected v. Perfected
 - i. The first to file or perfect has priority, UNLESS the second is a PMSI
- d. Perfected v. PMSI
 - i. Non-inventory collateral
 - 1. PMSI will have priority over earlier-filed interests if perfects before or within 20 days after debtor receives *possession* of the collateral.
 - ii. Inventory collateral (ie, vs. *floating lien SI*)
 - 1. PMSI will have priority if, *before* debtor receives possession of collateral, the secured party both:
 - a. Gives notice to prior secured parties (NB: notice effective for 5 years); AND
 - b. Files
 - 2. Failure to follow will still perfect the interest, but not give superpriority
- e. Consignments
 - i. Consignor gives possession of goods he owns to a consignee in order to sell them
 - ii. Consignor treated as if he has a PMSI in the consigned goods; and PMSI formalities and priority rules apply

IV. BUYERS OF COLLATERAL

- a. RULE: Unless an exception applies, if collateral is sold without secured party's (express or implied) consent, then
 - i. BFP takes free from an Unperfected SI; and
 - ii. BFP takes subject to a perfected SI
- b. EXCEPTIONS
 - i. PMSI relation back and "gap BFP"
 - 1. if PMSI files within 20 days of original debtor acquiring collateral, then BFP subject to PMSI, even if unperfected at moment of purchase from debtor
 - ii. Buyer in Ordinary Course of Business (BIOCB)
 - 1. applies to perfected interest in *inventory* only; BIOCB takes free of floating lien SI
 - 2. a BIOCB is one who buys
 - a. in good faith without knowledge that the sale violates a SA;
 - b. in ordinary course of seller's (debtor's) business;
 - c. from a seller (debtor) in the business of selling collateral of that kind; AND
 - d. SI created by buyer's seller
 - 3. NOT BIOCB:
 - a. Sale of equipment or consumer goods
 - b. Extraordinary sales of inventory
 - 4. NB: farm products
 - a. Don't take free under Art 9, but can take free under Federal Law
 - iii. Consumer-to-Consumer
 - 1. if goods are consumer in both BFP buyer's and seller's hands, then buyer takes free of any unfiled SI
 - 2. NB: if SI was perfected by filing, then SI reaches buyer

V. PROCEEDS

- a. SI that had attached to collateral
 - i. automatically attaches to proceeds; and
 - ii. will have the same priority
- b. SI will remain perfect in cash proceeds for as long as
 - i. They remain identifiable
- c. SI in non-cash remains perfected after 20 days if:
 - i. Filing; OR
 - ii. Could have been filed in same office as where filing for original collateral made

VI. DEFAULT & ENFORCEMENT

- a. Upon default, the secured party may
 - i. Repossess collateral if can be done without breach of the peace; or
 - ii. Use judicial repossession (replevin)
- b. Default
 - i. Should be defined in SA; prereq to repossession
- c. Breach of Peace
 - i. Violence by either party; or
 - ii. Act of repossession is apt to provoke violence
- d. Sale of Collateral
 - i. Sale may be private or public, so long as
 - 1. secured party gives notice of sale to debtor and any secured party of record; AND
 - a. notice: time and place of public sale OR date after which private sale will occur [10 days presumed reasonable]
 - 2. if every aspect of the sale is *commercially reasonable*, including method, manner, time, place, and terms
 - ii. Redemption
 - 1. prior to sale, debtor may redeem, by paying all obligations, as well as expenses incurred by foreclosing party
- e. Failure to observe Art 9 rules:
 - i. Secured party liable to debtor for any harm caused by failure to observe rules
- f. Allocation of proceeds:
 - i. Costs of sale
 - ii. Unpaid debt owed to foreclosing party
 - iii. Debt to junior secured parties
 - iv. Extra to debtor
- g. Deficiency judgment
 - i. Debtor liable for any deficiency
 - ii. However, if violation of Art 9 rules, **presumption** that secured party should have raised enough money during sale; therefore, can only recover deficiency if secured party can prove correct sale would have produced a deficiency anyway

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