



Chapter 4B: Consignments

Commercial Law I, Section 101A
Fall 2003
Professor Widen

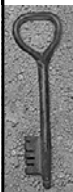
1



Chapter 4B: Consignments

- ◆ A consignment is a delivery of goods with a value over \$1000 to a merchant for the purpose of sale.
- ◆ The merchant must be one who is not generally known to be engaged in the sale of goods by others.
- ◆ The goods must not be consumer goods immediately prior to delivery.
- ◆ See UCC Section 9-102(a)(20).

2



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- ◆ Review Problem 3, Text 388.
- ◆ Is the delivery of the components by Ace to Sight a consignment or another form of bailment?
- ◆ Can you argue that the delivery of the components by Ace to Sight was a secured sale?
- ◆ What is the result if (a) consignment, (b) secured sale and (c) other bailment?

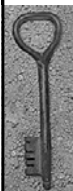
3



Chapter 4B: Consignments

- ◆ The transfer of components by Ace to Sight is not likely a consignment for two reasons.
- ◆ First, Ace did not deliver the components to Sight in order for Sight to sell them but instead for Sight to assemble them into televisions.
- ◆ Second, Sight isn't selling the components to others but is re-selling the components in completed televisions back to Ace.
- ◆ Another way of looking at the problem is that what Ace delivered to Sight differs from what Sight is selling back to Ace, so we do not need to worry about whether a re-sale is a sale.

4



Chapter 4B: Consignments

- ◆ Problem 1, Text 387.
- ◆ Under the Revised UCC, what kind of transaction is the transfer of the gold charm bracelet from Knight to the Alamo?


5



Chapter 4B: Consignments

- ◆ Problem 1, Text 387.
- ◆ The text of the revised UCC is drafted to exclude the consumer consignment from the scope of Article 9.
- ◆ In the Knight case, how does current UCC Section 2-326 apply? Are the Knight facts a sale on approval or a sale on return? See Comment 4 to Section 2-326.


6



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- ◆ Problem 2, Text 387.
- ◆ Analyze the problem on two sets of assumptions: what if Maude is a collector and what if Maude is the artist.

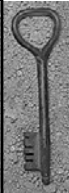
7



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- ◆ Problem 2, Text 387.
- ◆ If Maude is a collector, then the painting is a consumer good and thus excluded from the scope of Article 9 relating to consignments
- ◆ If Maude is the artist, then the painting is inventory in her hands and the delivery to the art gallery would be a consignment.


8



Chapter 4B: Consignments

- ◆ Problem 2, Text 387.
- ◆ To protect the interest in inventory, Maude would have a purchase money security interest in inventory under 9-103(d).
- ◆ To get a super priority over other creditors of the art gallery, Maude would need to satisfy the filing and notice requirements of Section 9-324(b)
- ◆ To enjoy ordinary priority, Maude would need to satisfy the basic first to file rule of Section 9-322.
- ◆ States might have non-UCC law that gives special protections to artists. Think about how likely artists are to comply with the UCC.

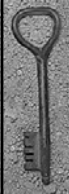
9



Chapter 4B: Consignments

- ◆ Review Section 9-103(d).
- ◆ The security interest of a consignor in goods that are subject to a consignment is a purchase money security interest in inventory.
- ◆ This means that the filing of a consignor, if properly made and coupled with appropriate notice, should defeat the prior filing of another secured creditor. See Section 9-319, Official Comments, particularly Comment 3, Example 3.


10



Chapter 4B: Consignments

- ◆ With respect to consignments, the combined effect of Article 2-326 and Old Article 9-114 would, in most instances, require that the consignor file in order to protect itself.
- ◆ Revised Article 9 brings most consignments (except for goods below the aggregate amount of \$1,000 and goods that were consumer goods immediately before the delivery) directly within Revised Article 9.
- ◆ Therefore, all of the rules pertaining to attachment of a security interest, perfection, and priority apply to such transactions.

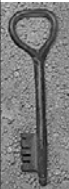
11



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- ◆ Inclusion of most consignments within Revised Article 9 protects most other secured creditors who must be given notice of consignments.
- ◆ Consignments are now included within the scope of Article 9 by Section 9-109(a)(4).
- ◆ Consignment is defined in Section 9-102(20).
- ◆ Goods that are the subject of a consignment are included in the definition of “collateral” by Section 9-102(a)(12), “debtor” includes a consignee by Section 9-102(a)(28) and “secured party” includes a consignor by Section 9-102(a)(72).

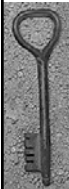
12



Chapter 4B: Consignments

- ◆ Revised Section 9-202 provides that Article 9 applies with regard to the rights and obligations of the parties to a security agreement regardless of whether title to collateral is in the secured party or the debtor.
- ◆ Revised Section 9-202 explicitly notes that special Article 9 rules may be applicable in the case of consignments.

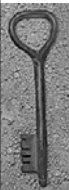
13



Chapter 4B: Consignments

- ◆ Revised Section 9-207(d) (limiting the secured party's duties in respect of collateral where the secured party is a consignor).
- ◆ Revised Section 9-210(b) (limiting a secured party's obligation to respond to requests for accounting where the secured party is a consignor).
- ◆ 9-601(g) (limiting the Part Six duties of a secured party that is a consignor).

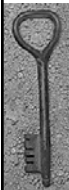
14



Chapter 4B: Consignments

- ◆ Consider UCC Section 9-319.
- ◆ For purposes of determining the rights of creditors and purchasers for value from the consignee, subsection (a) deems a consignee to have rights and title to consigned goods identical to those of the consignor while the goods are in the possession of the consignee.

15



Chapter 4B: Consignments

- ◆ Consider UCC Section 9-319.
- ◆ Subsection (b) contains a special rule for consignments perfected by the consignor. It states that where a consignor has perfected its security interest in the consigned goods and consequently has priority over the rights of a consignee's creditor, other law determines the rights of the consignee in the consigned goods in its possession.

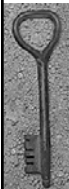
16



Chapter 4B: Consignments

- ◆ Consider UCC Section 9-505.
- ◆ As in the cases of leases, a financing statement may be filed that identifies a party as a consignor or a consignee, just as a party may be identified as a lessor or a lessee, without creating any presumption as to the status of the transaction by virtue of the filing.

17



Chapter 4B: Consignments

- ◆ Consider UCC Section 9-513.
- ◆ Non-consumer transaction general rule: the Secured Party must file a termination within twenty days of an authenticated demand from the Debtor if there is no obligation or possibility of an obligation remaining.
- ◆ Exception: if the financing statement covers goods that are the subject of a consignment, a termination need only be filed if the goods on consignment are no longer in the Debtor's possession.

18



Chapter 4B: Consignments

- ◆ In a default scenario, however, the rights of the consignor and consignee are not governed by Article 9.
- ◆ See UCC Section 9-601(g).