Commercial Law I—Law 101A

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New Debtors and such

- Problem on page 78
- Which assets does Secured Party have an enforceable security interest in?
- Which assets does Secured Party have a perfected security interest in?
- Analyze the assets sold by Debtor to Buyer separately from the assets later acquired by Buyer

New Debtors and such

- Problem on page 78
- From the facts of the problem, how do you know that value was given by the Secured Party?
- Can you infer this fact or must you assume this fact?
- Read s. 9-308 (a)

New Debtors

- Problem on page 78
- Can we even consider whether a security interest is perfected if the security interest is not enforceable?
- When the facts say that a SI was perfected by filing, we can infer that the security interest had "attached" because, absent attachment, there can be no perfection.

New Debtors

- Problem on page 78
- If attachment is the logical pre-requisite for perfection, is it also the temporal pre-requisite?
- Can I take the steps needed for perfection prior to taking the steps needed for attachment?
- See the last sentence of s. 9-308 (a) and s. 9-502 (d). Also s. 9-509 (a) (1)

New Debtors

- Problem on page 78
- When Buyer signed the new security agreement with Secured Party, could Secured Party file a financing statement that named Buyer as "debtor"?
- See s. 9-509(b)
- If Buyer had not signed a new security agreement, would the result be different? See 9-508, Comment 3

New Debtors

- Problem on page 78
- Do you need to assume an additional fact to decide whether Buyer would be a new debtor?
- See s. 9-203 (d) (2)
- Does the analysis differ, depending on whether Buyer is a new debtor or simply a Buyer?
- First, give the analysis if Buyer is a new debtor?

New Debtors

- Start with s. 9-508 (a) if Buyer is a new debtor
  - We see that the old financing statement may be effective
- However, when we look at s. 9-508 (b), we see that the effectiveness of the financing statement is limited
  - Thus, in such a case, our answer to the p.78 problem may depend on when Buyer acquired the new inventory

New Debtors

- Now, assume Buyer is not a new debtor within the meaning of the UCC
  - We have the notion that the security interest continues in the goods sold, see s. 9-315 (a) (1)
  - We have the notion that the security interest also attaches to the identifiable proceeds of collateral received by the Debtor/Seller
- If Buyer did not sign a new security agreement, what about newly acquired inventory?

New Debtors

- In the case of newly acquired inventory in the absence of a new debtor or a new security agreement, can the security interest in the newly acquired inventory attach?
- In the case of newly acquired inventory with the new security agreement, can the security interest in the newly acquired inventory attach?

New Debtors

- Assuming attachment of the security interest in the newly acquired inventory, is there any section we can rely upon to find that the security interest in the newly acquired inventory may be perfected?
- Can we use s. 9-508 to have the financing statement filed by Secured Party against Debtor work, at least, for inventory acquired by Buyer within 4 months of the transfer?

New Debtors

- Assume you want to file a new financing statement against Buyer
- How do you decide where to file that new financing statement?
- See s. 9-301 (1)
- What is the difference in scope between s. 9-301 (1) and s. 9-301 (2)?
- Provide a fact pattern in which Secured Party has a perfected SI w/out filing a new FS

New Debtors

- So, big deal, you file where the Buyer is located.
- How do we know where the Buyer is located?
  - See s. 9-307
  - Remember the registered organization trick, s. 9-307 (f)
  - Definition of "State"

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Debtor Moves

- Suppose the facts of p. 78, but instead of Debtor selling inventory to Buyer, Debtor moves its chief executive office from City A to City B, keeping the inventory all the time, and acquiring more inventory after the move
  - What questions do you want to have answered in order to analyze the problem?

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Debtor Moves

- Take a look at s. 9-316
- Suppose that City A is in State A and that City B is in State B
- What must be true for this fact to make a difference?
- Assuming it does make a difference, how does the move by Debtor from State A to State B differ from the sale of inventory by Debtor in State A to Buyer in State B?

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Debtor Moves

- Under s. 9-316 (a), does it matter whether Buyer is a "new debtor"?

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Filing Follies

- Perfect Tommy files a perfect financing statement with the Utopia filing office
- The filing office clerk dumps a malted milk on the filing package
- Embarrassed at the mess, the filing clerk tossing the filing package in a dumpster behind a Taco Bell
- What result? See s. 9-516

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Filing Follies

- Assume that the filing fee was paid by check and that the check is never cashed
- Should Perfect Tommy have performed a post-filing search of the UCC records to see is the filing showed up?
- What if Careless Carl pays a fee for a termination statement and improperly terminates Perfect Tommy's filing?
  - See s. 9-512

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Filing Follies

- What if Careless Carl takes the filing from Perfect Tommy in the name of ABC Co. and indexes it under the name of BC Co.?
- See s. 9-517
- What if Careless Carl rejects Perfect Tommy's filing even though the filing is "perfect"?
- What if Adequate Andy files a financing statement without an address and the filing officer accepts it?
- See 9-520

Perfection by possession

- Problem page 93-94
- Part 1: See s. 9-313(c)
- Part 2: Can Bank refuse to acknowledge? See s. 9-313 (f)
- What if Bank acknowledges that it holds for Lender and then, when Bank is repaid its loan, redelivers the instrument to Debtor?
- What if Debtor says it will hold collateral in trust for the SP?

Consumer Goods

- Problem 1on p. 96
- Can you tell whether a good is a consumer good or equipment without applying a purpose test?
- What difference does it make?
- See s. 9-309
- Problem 2 on p. 96
- Suppose goods are home video games not furniture