

Sales & Secured Transactions Outline

Professor Ruskola

SALES (1-275)

I. Introduction

History:

British Commercial law:

Commercial wasn't common law in the old days.

Common law was the king's.

Commercial law was too boring for the king, so merchants created their own courts and used own customary laws.

These courts were speedy and flexible with procedure.

Merchant Law (a.k.a. *lex mercatoria*)- law for the sale, transaction, etc- then the king took in this law also by the late 18C.

US History:

Each state took own version which created problems. Needed one law so that could reduce the problems and maximize trade.

1906- Uniform Sales Act- (Current Art II) and many other acts.

This would still be state law, but it would be uniform.

This was never adopted by all 50 states.

ALI's UCC: Many articles- each in own area.

Karl Llewellyn- major codifier.

Legal Realist: reaction to the late 19C formalism of abstract. Application to specifics.

Says that law should pay attention to facts and real world

(look at policy and not just coherence)

He added the "consciability" idea- "*good faith*"

1960- Was relatively uniform everywhere- but have to look at the local use of the UCC.

II. Scope of Article

The rules are trying to have both a commercial law and common law meaning.

A. "Transaction of Goods"

§2-102: Scope

If it is a security transaction- then article II does not apply.

Even if it is a transaction in goods- then the state law applies over the Art II law.

The code doesn't define transaction- **§2-106(1)**

- **§2-105**- defines “goods” (generally is tangible personal property)
All things *movable* at the time of sale.
(ex. home- not covered// mobile home- covered).
The money paid for a good is not a good (unless paying for in currency).

Article 2 applies when one sells a personal possession, but not with the sale of services.

I. Predominant purpose of the K: (often find a sale of services)

Anthony Pools

The court challenged the predominant purpose test. The question is whether the diving board was movable.

2. Gravament of the action:

reject all or nothing- so said will look at whether gravament was from sale of goods- the UCC or service from the sale of a service contract. With this, look at the actual good.

Look at situations like the selling of teeth- look at the drugs – *whether the hospital billed separately.*

Food in restaurants-

UCC says that covered- **§2-314(1)**

Implied warrantee of Merchantability.

On premises or elsewhere (fast food too)

Article talks a lot about “unborn young and ex. farming.” If the crops are sold separately (not wholesale) then goods fit under art II.

B. “Merchants”

- If one is a merchant- then the law is more sensitive.

§2-314: Implied Warrantee of Merchantability

warrantee attaches if the seller is a merchant with goods of that kind.

§2-104- defines Merchant (s.47)

(a) deals in goods of kind

(b) otherwise holds self out in occupation as one who has knowledge in area

- Some courts are sympathetic to new merchants- some are not
- Selling produce as wholesaler- courts are totally inconsistent: some wholly exclude and some partially. Is farming a business? Smaller farmers?- look at specific small farmers.

III. Scope of Article 2A

Art IIA- the UCC for leases (mainly personal property).

“True Lease” vs. “Disguised Sale”—look at *economically meaningful terms.*

Most courts say that if have paid the whole value and worth little at the end. Slower economic good at the end- more likely for the court to say that it is a disguised sale.

Ex. Roses- 2 week rental- worth nothing at end

2 hour rental- still worth a lot at end

IV. International Sales

If dealing with foreign parties:

UN International Convention for the Sale of Goods (s. 1638)

Prob 5:

- a. This statute applies between different states
- b. Parties may chose to contract around this convention
- c. This statute is not applicable for goods for personal consumer use
But if buying large quantities of toys for retail (inventory) then this statute does apply.

Chapter 2. Contract Formation

A. Statute of Frauds §2-201

Most provisions of the UCC are to reflect voluntary practices,
BUT the SoF is an exception b/c it *is a mandatory rule* and therefore parties cannot contract around it.

Rule: that certain contracts must be in writing.

Makes easier to prove- this is an evidentiary rule- otherwise very onerous to prove.

Common law:

1. K more than 1 year to perform
2. More than \$500.

The common law on this is very strict: said that needed all the terms in writing.

The UCC kept the SoF but in a very diluted form: it is very pro-market: wants to see k formed and doesn't want k failed over silly rule. If parties "intended" to k- tries to enforce it.

§2-201: General Rule:

- (1) Enough writing to show a sale- do not need all the terms.
- (2) Signature

Includes any symbol executed or adopted by a party with present intention to authenticate a writing. (Letter head could be enough)

- (3) Quantity indicated

Exceptions:

- Merchant- Karl wants merchants at a higher level b/c know more.
B/w merchants- don't need writing at the time of the k- subsequent writing (party receiving has reasons to know its contents) w/in a reasonable time and so long as subsequent doesn't object in writing w/in 10 days.
Do still have to show the minimum requirements that there was an intention of forming a contract.

* *Merchant should read his mail rule*

Bazak Case: (35) The burden is on the merchant to read his mail and respond if there is not a contract.

If one modifies the k # then that is a denial of k by defining term.

- some would not see as objection of k
- should have made more clear if don't want the k at all though (to be safe)

- Other exceptions: (these are evidentiary showings of k)
 - Specially manufactured goods
 - Party admits k- even if not in writing
 - Partially paid or already shipped

Checks: Can use a check to show that had a k: signature, and writing, and just need the quantity. Unless can infer that only buying one b/c of the sort of item sold. Could argue that is indivisible item, so a down payment is partial payment.

If isn't written, can still use promissory or equitable estoppel if can convince the court. (because SoF is just evidentiary showing of k)

Quantity: could argue that not absolute requirement: the reason why this is important is because it is used to give damages. If it is clear that the contract is for just one, then the courts should not invalidate the k.

B. Parole Evidence Rule §2-202

Contract doesn't have to be written.

This is about parties' understanding of k.

What intended and meant at the time

- what said
- course of trade, etc
- if decide to put in writing – then that writing has privileges over the evidence.

If the contract is “fully integrated” (final expression of parties' agreement) then can't include any “parole evidence”.

- oral
- prior drafts, etc

Rule:

- writing can always be interpreted, explained, supplemented- but can't contradict the k.

What can be used as arguments:

1. usage of trade: whole community is doing

2. course of dealing: b/w these 2 parties

3. course of performance- what doing in this specific k

Can't bring in more info if the court finds that the k was fully integrated (complete and final).

Some courts say that if want the uses of trade out, have to contract very specifically to have certain practices disregarded. Otherwise they are always there.

Info cannot be introduced if it is info that would have been introduced if the k had been fully integrated (not the sort of point that would have been left out).

Also- can have a "merger clause"- stating that is the full and final k.

But the court decides whether the k is final. So judges can decide what the jury can hear.

Colombia Nitrogen

(47)

2 companies did business and said that would order a certain amt ___ at a certain price.

Then the product sold below k price.

Said that couldn't show PER: course of dealing. The terms of the k could have shown that they could have gotten out.

In this industry the k's aren't worth the paper that they are printed on.

Courts are reluctant to throw the courses of trade out, have to write specifically which courses of trade want out.

C. Offer & Acceptance

Common law: was very formalistic

UCC: wants to just see whether there was an agreement with the parties, and if there was, what was that agreement?

§1-201: The Definitions-

The parties' agreement in fact and the resulting k don't have to be identical.

§2-204 Formation of k in general

(1) Can have k implied in fact.

Can deduce from conduct as well- exists as soon as conduct shows conduct.

(2) Don't have to know the moment of the k's formation.

(no such thing as the common law mailbox rule)

(3) If some terms are out, then there can still be a contract as long as there was intent to have a k.

There are two conditions:

1. Intended to have k,

2. Reasonable certainty for providing remedy.

§2-205 “Firm offer”-

Common law rule: always revocable till accepted- would need consideration to keep open.

Merchant’s written offer that is irrevocable for time stated (if not time is stated then for a reasonable time), but not more than 3 months without consideration.

- This must be signed, but that can be defined liberally.

§2-206: Offer and Acceptance in Formation of K

(1)(a)- may accept in any medium reasonable.

(b) so can accept by promptly shipping conforming or non-conforming goods or promising to ship them.

Bilateral contract is the most typical- exchange of one promise for another.

Unilateral contract one makes a promise that can be accepted by an action. – promise to walk across the bridge for \$100.

Exception- If the seller ships non-conforming goods, and notifies the buyer that the shipment is offered only as accommodation, then that is not inviting acceptance.

2. Reasonable time of acceptance: an offeror who has not been notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance even if the beginning of the offerees performance was a reasonable mode of acceptance.

Prob 11 (53):

- a. The k was formed 2-2061b- this was an order for shipment, and did send shipment. So the k was formed when the goods were shipped. BUT here says that “by return mail”- but cts say that have to be very specific when requesting this. Could make this more binding by stating “only” way to accept.
- b. No- this is an acceptance and a breach at the same time. To avoid this, would have to have sent a letter saying this was an accommodation. 2-206 (1)(b) then that would be a counter offer. If give the reservation (with the chance to send back- then that is a counter offer and not an acceptance). The buyer may reject or accept these goods then.

Prob 12:

Do they have a cause of action- §2-205

Don’t have a firm offer b/c was not written. There may be some estoppel justification **§1-103**. States that the UCC doesn’t replace common law, so can try to argue *promissory estoppel*. (when have justifiably relied on a promise- and can replace the consideration in some instances).

§2-207: Additional Terms in Acceptance or Consideration- “*The Battle of the Forms*”

Under common law- if one person sends a form with one set of terms, and the other person accepted with diff terms- then the mirror image rule saw that as a counter

offer- therefore denial. The person who sent the last form before shipping was the one that got the contract. so that would be a one-sided contract.

(1) says that even though the acceptance has diff rules, it still operates as an acceptance.

---- unless acceptance is expressly conditional to the additional or diff terms. Go to (3) to figure out the terms.

(2) additional terms become proposals for additions to the k - the practical effect is that they drop out.

--- if merchants- then the terms become part of the k-

There are three exceptions:

1. acceptance, expressly limited to terms of offer- then that makes them counteroffer.
2. if the new terms materially alter the offer.
3. reasonable notice of objection is given.

(3)Proviso part (1): There can still be a contract by performance if the forms never add up-

- Then what they acted
- And the UCC art II gap fillers.

Prob 13:

(a) Was there a k? there were diff terms – but that may not be a problem- all about how courts construe the boilerplate of the k. Have to indicate to the other party that this was a counteroffer.

(b) The disclaimer is a new term- and with merchants rule- they are additional terms and they do become part of the k- unless one of three exceptions- and then this warrantee may be a material alteration. So see the comments...

Prob 14:

General rule applies, therefore there is a k even though there are diff terms. They are merchants, so the new terms conflict with the original offer, then there are diff ways to deal with this.

- some courts say that *no k*
- some say that there is a *knock-out rule*- that the conflicting terms cancel each other out and the UCC is used to fill in the gaps. §207(2)- knock out rule- when acceptance has additional terms, but when diff and conflicting terms- then the courts interpret differently. Knock out- and fill in with default terms from the UCC. Go to subsection 2 when have a k

Only to the subsection 3 when don't have a valid written k- but a k in practice

With this section both additional and different terms are not accepted. Only get what agreed upon.

Diamond Fruit Growers v. Krack

(55)

Issue: Whether Krack expressly assented to terms on the back of k. whether under the Battle of the forms some terms were entered?

Standard- Have to expressly assent.

Two things have to be unambiguous-

1. If want terms requirement then have to state clearly
2. For other side's assent to work must also be unequivocal.

If hardship or surprise then fact may be material. Depends on industry standard and what is going on in one situation. If a fact is on the k and the issue is industry standard, then it may not be a surprise or hardship. If though not, then it may be.

Horning co. v. Falconer

(63)

Look at whether disclaimer enters k with battle of forms.

Whether is material alteration?

- *Surprise*: objectively – should have known
Subjectively- didn't know- but should have..
The standard is objective.
- *Hardship*: would impose

Shouldn't rely on the boilerplate to shift important parts of the k. should negotiate.

Leonard:

Oral, written or by conduct are all good ways of making k's.

The only way to make sure that the seller never has to deal with warrantees is to not ship till get an assent from the other side.

Chapter 3: Warrantees

This is borderline b/w tort and k.

Consideration can be passed for warrantee.

Duty – underlying duty to have a certain quality.

- Express- k sided more
- Implied- tort more

A. Warrantees of Title §2-312

(1) in a contract of sale, the seller makes the following warranties

a. Good title:

1. the title conveyed shall be good
2. the transfer is rightful

b. Goods free of liens: the goods are delivered free from security interests of other liens which the buyer had no knowledge of at the time the contract was created.

(2) Modification or Exclusion: A warrantee of title may only be modified or excluded by:

- a. Specific language in a k
- b. Circumstances which give the Buyer reason to know that

1. The seller does not claim title in himself (or)
2. The seller is only purporting to sell the rights which he may have in the goods.

(3) Goods do not infringe 3rd party rights (merchant rule)

the seller warrants that the goods do not infringe a third party's rights and will be delivered free from the rightful claim of any 3rd person.

- a. the seller is a merchant regularly dealing in goods of the kind sold (and)
- b. the infringement does not arise out of the seller's compliance with the buyer's instructions.

§2-312- (2) is the exclusion of part (1).

Lease (2A) v. sale

Exchange in cash is in both- but with a sale- the title exchanges hands. Before the UCC, title was used in many aspects of commercial law. UCC got rid of title in many different categories.

Most of the time do not care, as long as there is a k.

But do care with the timing when the issue of warranty steps in.

Tend to assume that possession is title.

§2-403- Dealing with Stolen Property

Terminology- UCC will take about

- "Good title" to goods being sold- this is redundant.
 - "Bad title" to goods being sold- this is an oxymoron.
- Should just think about whether the person has title at all.

(1) Can only sell the title that have, thieves have no title. So if one buys from a thief, then that is at their own risk. So the original owner under the UCC would get it back.

Exception: (need all three)

1. "voidable title"- not defined in §- but gives a list of where can get it.

These are all a case of deceit. The original owner has *voluntarily relinquished control* (bad check). So if swindler, then gets voidable title which may be transferable.

2. There is a qualification: has to be transferred to a good faith purchaser for value.

§1-201 (19) good faith- honest in fact in the conduct of transaction

§2-103 (2)

So the good faith purchaser has no knowledge of fact that something shady is going on. This is not an objective standard.

3. Has to be for value: (s.32) if acquire for binding commitment of credit, if get something in return...

- Generally, it has to be the consideration to support a simple contract.
- Cannot be a gift- so if a swindler gives as gift- not enough consideration to support the sale.
- (courts tend to not look at the adequacy of the consideration- if the diff is crazy – then will look to make sure that not peppercorn).

§2-403 **Entrustment provisions**- if take TV to dealer to have fixed, and they sell it, then the buyer of TV actually has good title, b/c you voluntarily left TV there, you should have seen that they were trustworthy.

Prob 17:

- (a) Buying in good faith from a thief does not give the buyer title. The buy must fit into the exception, and here it was not voidable title that was purchased.
- (b) He did not have good title
- (c) If the car was bought with a bad check then the purchaser would have had voidable title and the subsequent purchaser was a good faith purchaser for value.
- (d) **§2-607**: When the buyer is sued for breach of warranty and he believes that the seller is liable, then can “*Vouching in*.” gives written notice to the seller, finding of facts binding against the other party to blame, unless the dealer objects.

Prob 18:

§2-312: The real test of whether the warranty of title is breached, whether has a *colorable claim*? If no such claim then there is no breach. Warranting the title against anyone with a colorable claim, but not any crazy on the street that can claim to have title.

Prob 19:

- (a) When can a party disclaim warranties?
Warranty of title is not under §2-316(3a)- if want to disclaim all warranties, then are not making any implied warranties.
Comment 6 §3-312- warranty is not an implied warranty as excluded.
- (b) **Comment 5**: If the seller of the goods is not in the ordinary course of business, then the warranty of title can be disregarded. They are only selling unknown or limited right.
(but if just stuck the car back in the middle of all the regular inventory and people didn't know, then could argue that get a warranty of value).
- (c) To tell whether one has good title can look at **§1-205(2)** Usage of Trade: look at time, location, and have good reason to know that the seller doesn't have good title. (gold watches bought in the bathroom).

B. Warranty of Quality

When buy something, definitely want to get title. But not enough that looks like car- has to also function.

There are two types of warranties: express and implied.

CAN have both at the same time!!!

Express- only become part of the sale if the seller does something to put them into the k.

Implied- they are always there by law unless the seller does something to take them out of the k.

Caveat emptor- buyer beware.

A. Express Warranties

§2-313: Express Warranties by Affirmation, Promise, Description, Sample.

- (1)- all the representations of warrantee have to be *part of the basis of the bargain*. (otherwise the express warrantee does not arise). **Comment 3**- part of the reason why bought was b/c of the statements. Just have to be statements that would induce one to buy. Don't have to actually rely on the statements.
- (2)-don't have to be express that is a warrantee to make the warrantee- BUT an affirmation of opinion is not a warrantee.

Prob 20:

- (a) Saying that a good is in "A-1" shape is just puffing and under **Comment 3**, just puffing. It does not create a warrantee.
- (b) Saying that chickens look sick b/c they are half fed, and then selling them to a buyer, where they die: if they were not half fed, this is a question of industry standards, what the terms of puffing out meant. If saying that putting on full feed would make them fine, and did not, then that is a warrantee.
- (c) Saying that one would "love" a product is not creating an express warrantee.

Prob 21:

Which of these are express warrantees:

- 1- Saying that something is the finest: NO- (2) is just seller's opinion
- 2- Wallpaper goes up easily: this is a warrantee b/c they buyers never did it before and was part of the *basis of the sale*
- 3- Can be put up with any paste- express warrantee- b/c needed certain paste.
- 4- Dries immediately: (a) affirmation of fact or promise & (b) have to rely on that. (have to have both) So this was probably not a basis of the bargain. Probably did not care how quickly it dried.
- 5- Would look wonderful: this is not an affirmation of fact
- 6- Mary Magic uses it (said after the purchase): did not rely on it. BUT then there is no strict reliance so if just a factor of whether would buy-is enough. Is additional, post transactional modification of the contract. **Comment 7: the sole question is whether the language or samples or models are fairly to be regarded as part of the contract.**

B. Implied Warranties

Automatically part of the k unless the seller does something to disclaims them.

1. Merchantability §2-314

(This is the more important one)

This is a general warrantee. Fit for general purpose.

1. Have to be seller of the good of that kind.
2.
 - a. Must be at least of average quality
 - b. Fair quality within description
 - c. *Fit for ordinary purposes for which such goods are used.*

Shaffer v. Victoria Station, Inc. (89)

Man drinking wine at a restaurant when glass broke.

UCC: “the serving for value of food or drink to be consumed either on the premises or elsewhere in a sale” and that such food and drink must be “adequately contained, packaged, and labeled as the agreement may require”.

The container cannot logically be separated from the contents when the two are sold as a unit.

Prob 23:

Are Cigs used over many years that cause lung cancer merchantable? ???

Cop selling car: not covered under §2-314 b/c not a merchant.

Comment 3- isolated sale not enough to make a merchant. Must though disclose any known and hidden defects.

Daniell v. Ford Motor Co. (94)

Woman was trying to kill herself and locked herself in the trunk for 10 days.

No express warranty b/c no express promise saying that trunk could open.

No implied merchantability b/c didn't say could get into & out of trunk & didn't rely on that when bought it.

Hate this case. What if it were a child? OBVIOUSLY a trunk should open.

2. Fitness for a Particular Purpose §2-315

This is a specific warranty. Fit for specific purpose.

Three elements:

1. Seller must have reason to know of buyer's particular purpose
2. Seller must have reason to know that the buyer is relying on the seller's skill or judgment.
3. The buyer must in fact rely on the skill/judgment.

There is no merchant requirement.

Prob 25:

Merchantability: can't use §2-314 b/c is fit for the ordinary purposes and is at least minimum standard.

Fitness- §2-315:**Comment 5**: didn't rely on the judgment of the pro b/c wanted a brand name.

Prob 27:

Harmful substance in foods.

Two camps of thought:

1. Those that deny liability because they see the pit in the olive as a natural substance and not a foreign substance.

2. Those that look at Reasonable expectations:
Would you expect there to be a pit in the olive?

Webster v. Blue Ship Tea Room, Inc. (99)

A woman choked on a bone in New England chowder restaurant.
The court went on the subjective standard reasonable expectations test.

She was from New England and should have been prepared. (may have been diff result if from S.D.)

Prob 28:

Bought hair dye with alcohol and burnt scalp. Only 5% of the population was allergic. It was used for ordinary purposes, and this person was very sensitive. If more of the population were allergic to alcohol, then would be different % allergic and then not fit for ordinary purposes. This would be better as strict product

C. Warrantee Disclaimers and Limitations §2-316

This was so that couldn't make an express warrantee and then try to disclaim it.

(1) Express warrantee disclaimers

An express warrantee cannot be warranteed out.

Don't have to make an express warrantee, but if want to make one, then can't disclaim it.

(PER governs when can bring in extrinsic evidence of the K.)

Unless the PER serves to keep the express warrantee out.

Implied Warranties are much more easily disclaimed:

(2) Implied Disclaim warrantee of merchantability

1. the language must mention "merchantability" (does not have to be written, if it is though...then:

2. also the writing must be conspicuous.

Disclaim warrantee of fitness

i. must be in writing

ii. must be conspicuous.

conspicuous- §1-201(10): whether attention can reasonably be expected to be called to it.

(3) Additional way to disclaim implied warranties

(cts strict in interpreting this section)

a. Pretty much have to say "as is" don't get too vague.

b. Do an examination and say that will take it. Or if the seller offers the inspection and the buyer denies.. then okay.

c. Or if is in the business of trade that don't get any implied warranties.

(4) Contractual modification of Remedy:

This is how to make a warranty and limit the remedies.

So modify the remedies with this section.

Prob 29:

Cannot have a written merger clause that states that does not accept oral warranties. Must look at the PER.

Can't disclaim express warranties. The only way around is whether the PER would allow the disclaiming of the express warranty, and that is why are considering the weight of the merger clause.

Cate v. Dover Corp. (105)

An inconspicuous disclaimer is enough as long as the person is aware of it. Actual knowledge that something is being disclaimed is enough, do not have to show that the disclaimer is conspicuous.

Look at k's of adhesion- even if want to get rid of the disclaimer- may not be able to. If you do that, then you break the deal. Is an issue of adhesion.

Prob 30:

Buried in the car sales k is a clause that states that there are no warranties on this sale. This is not legitimate b/c it is not conspicuous.

Can redraft by writing much larger and bold, and write in the word merchantability.

Would have to be labeled "warranty disclaimer" not just "warranty" can't conspicuously mislabel.

The used car dealer can't say that everyone does this (usage of trade) can't be used to overrule established law.

"As is" on the front windshield: is enough for implied warranties, but not enough for express warranties. (this doesn't have to be conspicuous to apply). Some courts say that this is a drafting mistake.

In order to argue that they *inspected the product* and accepted it must put the buyer on notice that is assuming the risk of the defects.

Usage of trade: if you buy something expensive for nothing, then do not get a warranty.

Prob 31:

If one buys a product and upon receiving it receives also the terms of the warranty, then didn't know of the warranty when purchased, then wasn't a part of the bargain. He didn't bargain for the terms here.

Can't modify unilaterally.

Dowdoin v. Showell Growers, Inc. (115)

Has to be conspicuous warrantee pre-sale, otherwise not a basis of the bargain.

§2-719

Specific info on how can modify the remedy.

1) Can modify the remedies

If K provides for any remedy and there are also default remedies.

Unless k says that own k remedies are the only remedies.

- There is no need to have these as conspicuous.

Two limitations:

2) In situation where say that only remedy is k and that is purpose is bad then have default remedies regardless of what k says

3) Can't limit consequential damages if unconscionable

Ex. Limits for personal injury – prima facia unconscionable – in the case of consumer goods

Limits for commercial loss- not prima facia unconscionable.

(way hard to show prima facia when have commercial transaction)

Wilson Trading Corp v. David Ferguson (121)

Can limit the scope of liability that a breach creates, but there has to be some minimum equity available:

The buyer could not make claims till after yard would be processed. Once he processed, they where all uneven shades. There was no minimum equity available.

Prob 32:

A snow mobile that has a limiting warrantee for cost of repairs and no consequential damages explodes and hurts the rider.

The warrantee is **Unconscionable**: § 2-719, the snowmobile is a consumer good.

Consumer injury therefore *prima facia* unconscionable for medical expenses.

Failed of essential purpose: broke 4 times in 3 weeks.

The NJ Sup Ct found a couple of great cases about this:

“it appeals to us patently unconscionable for the manufacturer to be permitted to limit his damages for a breach of warrantee proximately resulting in a purchaser’s death to a price refund of replacement of the tire.”

Then NJ Sup Ct said that couldn't get out of replacing the car blown b/c of the tire b/c the warrantee was “overlapping, variant, misleading, and contradictory.”

Although §2-719 doesn't say so, most courts have required that any remedy limitation be conspicuous in order to be effective.

Goddard v. GM (128)

Had k with remedy that court found broke essential purposes. The question that cts are split on is whether if (2) is invalid [where failed essential purpose] then (3) should be too, or whether the court should provoke general warrantee in the code. Not obvious as to whether (2)(3) are independent of each other.

D. Defenses in Warrant Actions

There are two ways to reduce liabilities-

- Make disclaimers
- Make warrantees but limit liabilities

Default remedies:

- Monetary damages
 - Perfect tender rule- reject if not correct goods
- There are limits as to how much can limit remedies.

a. Notice

Notice requirement very draconian:

If haven't given notice ct will find against.

Very Literal Rule

§2-607(3a): where a tender has been accepted, the buyer must w/in a reasonable time after he discovers or should have discovered any breach, notify the seller of the breach or is barred from any remedy.

Comment 4: for merchant there is a commercial standard for time

The seller should get:

- Right to inspect goods (§2-525)
- Right to cure (§2-508)

Encourage early dispute **settlement** within the parties themselves.

Content of notice:

- Do not have to be in writing
- Cts differ in the interpretation as to proper standard: from some that state that have to use "breach" in notice to a letter that complains about the good.

Prob 33:

Giving notice 60 days later after goods have been sold is not reasonable notice.

Prob 34:

Suing much later for late delivery of commercial goods.

a. Just stating that disappointed is not enough for breach. Cts are not consistent:

Don't have to notify of obvious.

Comment 4: inconsistent: starts saying that notice that unhappy is enough. but later, uses the word breach.

b. One court held that filing suit is not sufficient notice.

Prob 35: (137)

Warranty extends to friend:

§2-318: 3rd Party Beneficiaries:

If can make claim as 3rd party beneficiary.

a.

b. can be any of the three.. States have all gone differently

c

Each is more extensive than the one before.

This establishes privity to sue.

§2-607 Comment 5- no way to notify (not some standard) b/c not the one that received goods anyway. But once injured, have to notify of injury.

Many courts have ignored this comment for policy reasons.

Many say that if advertiser ads right to consumer can bring complaint to producer.

b. Privity

Suits on warranties are contract actions, therefore must establish that there was *in fact* and *in law* contract b/w the parties.

The legal connection b/w parties is called “privity”

- Vertical- How far up the distribution chain to go with liability?

UCC doesn't talk about vertical privity.

Selected state common law deals with this.

Privity varies by injury was obtained:

- econ injury – insist on privity a lot
- if advertise to consumer – create privity some times

- Horizontal- to whom the retail seller is liable other than the immediate purchaser?

§2-318 Relaxes horizontal privity

1. a little (most states have this)

2. *Relax*

3. *A lot more*

Note on Strict Product Liability

A lot of warranty claims are potential tort actions.

Tort: s/l or negligent action

Warranty is hybrid b/w tort and k law.

S/l no merger needed – more like k claim.

Restatement (Second) or Torts

§402A: Special Restatement of Seller of Product for Physical Harm to User or Consumer

(141) Typically either a suit under §402A or a suit for breach of the implied warranty of merchantability can be a viable legal alternative under the same facts.

§402A	UCC
Does not require notice	Does require notice
Damages are limited to those for physical injury	Damages are not limited to those for physical injury
SoL imposed by state law for tort actions	UCC governed by §2-725- time periods differ
Not affected by disclaimers or remedy limitations	Remedies may be limited
Privity is not an issue	Privity may be an issue
Requires that product contain a defect	Warranty may be breached even if the product is not defective.

E. UCC Warranty & Magnuson- Moss Act

Federal Consumer Protection Act- regulates warranties
1975 Misleading and Deceptive warranties
1. Consumer products
2. Written Warranty

Disclosure Statute
If put writ warranty then have to disclose certain stated info.

Chapter 4: Terms of the Contract

A. Gap Filling

§2-201: Formation of Contract
Did the parties intend to have a legally binding K? If they did, then can have terms missing, as long as have a way of filling them in. This is where the UCC is diff than the common law.

§2-204: Formation in General-
Look at whether intended to make a k.
§2-305-311- these are the gap fillers.

§2-305: Open Price Term

§2-306: Output, Requirements and Exclusive Dealings

§2-307: Delivery in Single Lot or Several Lots

§2-308: Absence of Specified Place for Delivery

§2-309: Absence of Specific Time Provisions; Notice of Termination

§2-310: Open Time for Payment of Running of Credit; Authority to Ship Under Reservation

§2-311: Options and Cooperation Respecting Performance

Prob 42(170)

§1-305- Open Price Terms:

(1) the parties can conclude a contract even though there is no price.

(2) the price can be fixed by the parties in *good faith*

(4) if the k is conditional to some price fix, then there is no contract.

§2-311- A contract is not invalid if there are terms missing.

But any terms filled in must be made in *good faith* and with *commercial reasonableness*.

§1-205- course of dealing & usage of trade.

The seller is free to specify the quantity later as long as it is in *good faith*. Would probably have to be something like what it was in the past.

If someone repudiates anticipatory (has to be unambiguous) then there are two things that can do: (**§2-610** & **§2-611**)

- Suspend performance
- Ask for adequate assurances for performance. May not be thinking that breach, but at least can try to figure out what it is.

The company can call and see what meant by the ambiguous statement.

Landrum v. Devenfort (180)

Buyer wanted a Vet and said the price would be b/w 14 and 18k. (the price in the K was blank) The car arrived and was 22k.

The buyer purchased under protest. Didn't signify that was acceptance of the price, didn't have a choice. They never agreed on the term. So go to §2-305- courts fill in with *reasonable price at the time of delivery*.

B. Unconscionability

What is there is not acceptable.

The basic assumption is that everyone can enter into a k and can look out for their own self-interests, and not the court's prob to figure out who meant what.

(unless kids, retards, or with gun to head)

The courts would find bargains that weren't so extreme.

The UCC tried to avoid the traditional dodging- and created the doctrine of unconscionability.

This is in theory against the k law that the market should not police the k. This is more policing than usual.

§2-302: Unconscionable Contract or Clause

(1) When the court finds unconscionable:

- May refuse to enforce the k
 - May enforce the remainder of the k
 - May limit out the unconscionable clause
- This is based on severability: If can sever the unconscionable clause, then can do so, but if not, then will cancel the whole k.

- The court does the finding of unconscionable b/c the jury would apply this doctrine too broadly.
- This is determined at the time that the k was made.
Just b/c is harsh later on doesn't mean that it was unconsc at the time was made.

Standard: Comment 1: The basic test is whether, in the light of the general commercial background and the commercial needs of the particular trade or case, the clause involved are so one sided as to be unconscionable under the circumstances existing at the time of the k formation.

This is not a lot of guidance for determining what the rule means.

Walker Thomas Case: handout

This is not a UCC case officially. This was at the very first adoption of the case. Bought furniture and always had a balance on each piece of furniture, and the store had a right to reposes. So if she missed one payment, then she would loose everything.

Had bought \$1800 for merchandise and paid \$1400 for all. Missed one payment and lost all.

1. Absence of meaningful choice.
2. The terms were unreasonably favorable to one party at the time that the k was made.
 - was denied with cross collateralization, so every piece was collateral for everything else.

Law review article:

There are two types of unconscionability:

- *Procedural*- lack of meaningful choice
- *Substantive*- terms unreasonably favorable to one party .
Exorbitant price or interest rates.

Can also find a k b/w two merchants- but much less likely.
This was to be more explicit involvement of the court.

Prob 43:

Man buys a \$3150 boat (w/o shopping around) and then sees for much less everywhere.

Was not procedural: he didn't shop around- that was his own fault.

(ct's more sympathetic)

May be substantive: unreasonably favorable price to the seller.

Art II is not consumer protection legislature.

If everything else fails, then think of using this.

C. ID of Goods

How goods are identified if they are not identified in the k.

The UCC did away with title in this situation.

Risk of loss (if the goods are ruined b/4 the goods were delivered) is when the goods are identified.

If not specified in K (which should look to first)

Then look to **§2-501**: Insurable Interest in Goods; Manner of ID of Goods

1. Parties specific agreement or

- (a) Existing goods- when the k is made
- (b) Future goods- ID'd when they are shipped, marketed, or otherwise designated as matching to the k.
- (c) Unborn young & crops to be harvested- when they are conceived or planted. (as long as within the next 12 months)

2. When the seller gets to pick which one- then he may switch ones until the time shipped, unless default or ID is final.

Comment 2: the general policy is to *resolve all doubts in favor of identification.*

Prob 44:

- a. Next season's fish- is ID when they are designated- since is the entire catch- that means that is already marked as everything.
- b. Unborn calf that has 20 months more preggers. Not ID b/c more than 12 months in §2-501(1)(c). So this is a future good, and already marked. If though it were twins then the seller gets to chose which one. If he chooses later, then that is when it is marked, when he ships them.
- c. Half of the grain: this is fungible: perfectly interchangeable. Has undividable share. Rule (a) Ided when k made.
The earlier the identification the better.
- d. Identical widgets: they are fungible, but not identified for k b/c they are for a specific number. Not an undivided share.
Look at whether are buying a % of the total inventory
Or buying 5,000 widgets (out of what have).

D. Risk of Loss

A. General Rules

Who is responsible for the risk of loss?

The UCC: the risk of loss has nothing to do with who has technical title. §2-401(1).

The contract must still be followed: provide \$\$ or widgeit.

Neither party can have breached (if there is a breach then different rules apply)

* Whoever has control and is in a better position to protect from loss or theft and therefore is responsible. Risk of loss can be the negligence of one party- if so then responsible party liable.

Risk of loss provisions- more successful part of code.

“Risk of loss” does not equal actual loss.

So what party pays the insurance?

Who fills out all the forms and all the pain in the butt?

Many commercial sellers say they are not responsible but then pay anyone for good business practice.

§2-509: Risk of loss in the Absence of Breach (strict liability if breached)

(4)- parties may have own rules – then these are defaults

(1) *Shipment k*: risk of loss is transferred to the buyer when the goods arrive at the carrier

Destination k: risk of loss is transferred to the buyer when the goods are tendered (recvd)

(2) 3rd parties: (when delivered w/o being moved)-

Negotiable doc used: risk passes to buyer when receives the title

Non-negotiable doc used: risk of loss passes to the buyer when:

1. the buyer receives the title (or)
2. seller sends written directions to carrier that buyer is entitled to delivery of goods

(3) Where no 3rd party involved, then default rule...

- *Merchant Rule*- risk of loss passes on receipt of goods.
- *Not merchant*- risk on the buyer until the tender delivery

§2-503(1) (when make goods available to buyer)

This is the requirements as to when there is delivery:

1. Make goods available
2. At a reasonable hour and for reasonable time
3. Let buyer know available

Merchant has risk of loss longer than non-merchant.

Merchants usually have some insurance too- so easier to stick-em.

Prob 45: Was merchant therefore liable b/c not just tender offer- has to receive the car. **Comment 5:** the (4) contrary agreement can include the course of dealing and usage of trade.

Prob 46:

Garage sale and neighbor sells piano. Next day coming to get it. Fire that night.

Not 3rd party

Not merchant-

So need tender of delivery-

1. Offer to pass
2. Notice
3. Time

How long should keep piano for neighbor? Should be expected to keep for a while.

If 6 months later? **§2-709(1)(a)**

Commercially reasonable time- 6 months too long. Risk of loss has passed to the buyer.

B. Delivery Terms

- *Shipment K*: seller's obligation to get goods to shipper.
- *Destination K*: seller's responsibility to get to particular destination.
Default is shipment K.

Shipment by Independent Carrier

(a) Shipment k- **§2-504**

1. Goods to carrier
Make reasonable shipping k
2. Deliver any docs buyer needs
3. Let buyer know that shipped.

(b) Destination K **§2-509**

Risk transfers when "dully tendered to buyer"

§2-503 manor of seller's delivery.

§2-503 (when make goods available to buyer)

These are the requirements as to when there is delivery:

1. Make goods available
2. At a reasonable hour and for reasonable time
3. Let buyer know available

§2-319-§2-324 Terms defined... not very meaningful to us. Is both the Delivery and the price terms.

§2-319- FOB (Free on board: location)

Free to buyer at what location.

Seller responsible for getting to that location.

Could be either shipment or destination k.

SF > NY

FOB: SF then is a shipment k (buyer on ship)

FOB: NY then is a destination k (seller responsible)

More specific--- **FOB: Vessel**

Seller responsible for actually loading in train.

Most specific---

Free Along Side—the seller must deliver goods alongside the vessel.

(this could be either type of k)

Cost Insurance Fright (**CIF**) (this is always a shipment k)

- load
- insurance
- get receiver §320 (2)
additional obligations ... insurance.. shipping contract always.

The seller bears the risk.

Buyer is responsible once shipped.

Then why seller's obligation for insurance.

Seller supposed to buy insurance in favor of the buyer.

Bailee- someone who holds goods for hire. Like a warehouse.

This is not about storage in own warehouse.

Subsection 2- will look at with great detail later.

Risk of loss rests on who has control over the bailee.

Jason's Food case: Posner- looks at who is in charge of the bailee. Good case for statutory interpretation.

Prob 47:

Seller had a FAS: Ship, Destination city k and dropped off the goods along side a ship and got receipt of a k to ship. The dock collapsed b/4 loaded on ship.

§2-319(2)- the risk of loss is on the buyer b/c it has been delivered to the port and have been placed along side the boat and has receipt of the goods.

If the terms had been Ex-Ship: Ship, Delivery city and the boxes had been unloaded when the dock fell?

§2-322- the buyer would pay here also b/c has left the ship's tackle.. ex-ship: like free along side. This means that even if the goods are at the destination, the *seller has to unload the goods*. The risk of loss is on the buyer.

Prob 48:

Goods being sent from Detroit to Birmingham, lightning strikes after carrier receives them but before they are loaded on board?

- FOB Detroit: §319(1)(a)- the seller must at that time place the goods in possession of the carrier. –here the seller has done that so the buyer is responsible.
- FOB RR cars Detroit: Here the seller is responsible till is on the railroad- once is on the RR then is the risk of the buyer.
- CIF Birm: shipment k that the seller pays the insurance for the buyer. Probably enough that are in the possession of the carrier, don't necessarily have to load on the carrier.

Cook Speciality

The seller's k didn't have adequate insurance. This would only have been imp if the k were a CIF. Since this wasn't, then the insurance was not an issue.

Also when ship have to give prompt notice. This is so the buyer can know that the shift of loss has fallen to them.

Chapter 5: Performance of the Contract

The UCC and the Perfect Tender rule are very different.

§2-301: Seller's basic obligation is to transfer and deliver and the buyer's is to pay in accordance with the contract.

The seller must tender (offer and deliver) conforming goods, and the buyer must pay for them.

§2-507: Effect if Seller's Tender, Delivery on Condition

§2-511: Tender of Payment by Buyer; Payment by Check

These do not apply at the same time. If one is to act before another, then there are other arrangements.

A. Installment Sales

Installment k: §2-612- delivery can be in installment

Comment 2- not necessary that payment is each installment.. it is not a necessary requirement

Comment 3- can't k out of installment k.

Matters b/c installment k the standard of performance is lower than the perfect tender rule. If have substantial non-conformity then don't have to accept.

§2-612: Installment k Breaches:

- 1) Installment k: a k which recognizes or authorizes the delivery of goods in separate lots to be separately accepted. (the standard here is substantial performance)
- 2) Rejecting Installments:
 - a. The buyer may reject any installment that is non-conforming if:
 1. The non-conformity substantially impairs the value of the installment (and)
 2. Either

1. The defect cannot be cured (or)
 2. The defect is in the docs and not the goods themselves
- b. The buyer must accept the goods if the buyer gives adequate assurance that he will fix the defects.
- 3) Substantial non-conformity:
- a. A substantial non-conformity of one or more installments is considered to be a breach of the entire k.
 - b. The buyer may reinstate an Installment k if he:
 1. Accepts a non-conforming installment without seasonably notifying Seller of cancellation (or)
 2. Brings an action only against past installments (or)
 3. Demands performance as the future installments.

Prob 52:

If there is a contract for many shipments of 20 goods, the first shipment, all upside down, one broken. The second shipment upside down, half broken. Can reject for this reason? Have to look at whether the shipment can be cured. Here the curing can be so prompt that there is no need really to cancel the whole k.

What if in the next shipment send the wrong good entirely?

If the sending of the paintings is enough of a substantial damage, then can cancel. These are mistakes that are going from bad to worse. **Comment 6-** the defects are cumulative.

B. Perfect Tender Rule:

Main rule under UCC. (installment is the exception).

Very harsh rule: can reject for any non-conformity.

There is a lot of space for opportunistic behavior. This gives a lot of space to the buyer.

The reason for this higher standard in single delivery sales is that in such cases the buyer does not have the same bargaining position a buyer would have in installment sales.

This rule is in practice pretty much dead.

§2-601 Perfect Tender rule

If the goods fail in anyway, then the buyer can:

1. Reject the goods
2. Accept the goods
3. Can split and accept any commercial unit and reject the rest.

§2-105 defines “commercial unit”- such a unit that are perfect whole for use or sale-single whole for purposes of sale

This doesn't depend on the usage

Prob 53:

Stella orders 5 lux cars from the dealer. She drives all five and returns two b/c of the lighters and the carpet in the trunk is torn. Can she do that?

** Common law: *Minimus* rule: despite the perfect tender rule, the seller would have a right to fix. Seller should argue that with the usage of trade should get the chance to cure the prob. (can say that in our industry the usage of trade is)

C. Cure

Curing- under the common law the seller didn't have the right to cure.
Under the UCC there is a right to the seller to get the perfect tender.

§2-508 When the seller has a right to cure:

(1)- Where tender is rejected and timing is still w/in the limits of the k, then the seller has the rights to cure.

(2)- Where the buyer rejects the tender, and the seller reasonably believes that the non- conforming goods are acceptable and he seasonably notifies buyer, then may have reasonable time to cure.

(ex- when ship a better quality)

This is supposed to protect the seller from a surprise rejection. This applies after the time has expired.

Prob 45:

Couple bought a car. They recved the car two weeks early and on the way home, the car blew up. two offers to cure- do they have to accept the two offers?

It was within the time period of delivery. BUT

Shaken faith doctrine- that don't have much faith in the new one- so don't have to get the new one.

Wilson: Bought a TV that was red and never let the seller fix it.

The seller should be at least given the opportunity to try and cure what they sold.

The buyer rejected the goods and wouldn't return the goods. **§2-711**- can hold onto the goods until get the new good. So that if don't replace or fix, then can sell the good and get the money back. But here, could keep till fixed or cured.

D. Rejection and Acceptance

When the seller makes a tender of the goods, the buyer must choose between two possible legal responses:

1. Rejection **§2-602**
2. Acceptance **§2-606 & §2-607**

**** The Buyer is entitled to a reasonable trial-use period to see if the goods conform (reasonable opportunity to inspect) §2-513.

**** On acceptance, the burden of proof as to defects shifts to the buyer §2-607(4). (Prior to acceptance, the seller must prove that a perfect tender was made under §2-601.

Rejection of goods

When get product without tender:

- Accept

- Revoke for deformities if discovered later on
- Reject
 - Can a buyer reject tender goods?
Buyers don't have to accept even if is perfect tender, as a penalty of law though may be liable for breach- then have to pay for damages.

§2- 602 Manner and Effect of Rightful Rejection

What the Buyer must do if wants to send back the goods.

- (1) Must notify within a reasonable time.
- (2) Buyer must not exercise ownership with respect with the goods.
- (3) Hold the goods with reasonable care
- (4) The buyer has no further obligations

§2-603- Merchant Buyer may have some additional requirements.

- (1)- this is as long as the seller and buyer are in diff cities: affirm duty: when seller has no place of business, the merchant is required to follow directions as long as reasonable. Also affirm duty: if perishables, then have to make reasonable efforts to sell right away.

The law review article by Llewellyn – to show that can't just read statute and understand it b/c can be interpreted on either side. Although code tries to foreclose the ambiguities of the Common law, but no scheme is comprehensive, so there are always attempts both ways.

§2-604 is an exception to §602-

If the buyer is a merchant and the goods are perishable- and the seller doesn't give instructions after reasonable time after buyer's rejection- then the buyer can:

1. Store the rejected goods for the seller
2. Reship the goods back to the seller
3. Resell the goods on behalf of the seller and reimburse him.

Have a duty to hold with reasonable care unless have a security interest in the goods, then don't have to hold with reasonable care. See **§711(3)**

If have already made payments for that good, so are partial owner- can hold and/or sell.

Acceptance of Goods

§2- 606 Acceptance of Goods:

- a. After have had a reasonable opportunity to inspect, even if is non-conforming
- b. Fails to have made effective rejection
- c. Does any act inconsistent with the seller's ownership

Acceptance of a part of commercial unit is acceptance of all.

Prob 55: (220):

Shipment k for live lobsters from Maine to Iowa. Didn't inform that lobsters were on their way- so sat for a day and were ruined. Iowans do not want the lobsters any more.

- §2-504(c) – have to inform of mailing- but failure to notify the buyer is a ground for rejection only if material delay or material loss ensued.
- May reject b/c of the 20 dead ones b/c was selling defective goods. The seller was in breach-
- How quickly must act to reject- 2-602- w/in a reasonable time. Steps that have to take: have to hold with reasonable care and not them.
- Ordinarily the buyer just has to notify promptly and the seller must come and get the goods. There are some additional duties though- merchant must follow any reasonable directions. So asking to ship back is reasonable.
- §2-606(2)- depends on whether is part of commercial unit. Must tell that sending back and why.
- If send back without saying then waive the seller's right to cure. Can't do this.
- Should use reasonable care until sending back- whatever that may be put in tank??

Ramirez v. Autosport (221)

Bought a car and there were many defects. The dealership was to cure and notify the couple when the car was ready, but the last time the couple just left the dealership without the car.

Standard of performance- perfect tender rule- they notified and let the problems be known.

The seller had the right to cure but never did effectively.

Under §2-508(2) one year was too long to wait for the dealer to cure

This is expanding the right to cure.

Here give the second chance to try and cure....

This is the expansion b/c not either of first two.

Prob 56:

Rejected the tail and kept the horse- three months later sent the whole notification. 3 months later he sent the letter with the rest of the horse. But can't do partial rejections of commercial units: so can't reject the tail and not the letter.

He accepted the whole horse- has possession, painted it, put on a new tail. He exercised as ownership. Not just storing for the seller.

If the rejection came too late, then from silence, is acceptance.

If the tale didn't match the model, then he could have rejected the whole. Showed a model horse (which is express warranty) and then sent the wrong thing. So could have rejected.

To preserve legal rights should have to notify seller of the breach.

What was behind the notice requirement- if the seller isn't notified then how can they cure.

§515- the seller has the right to inspect the goods to see why not-conforming.

E. Revocation of Acceptance

(236)

No longer have to chose b/w revocation of acceptance and damages for breach.

This is a huge departure from the common law.

This is when one does not want the good anymore.

This is when the buyer wants to undo the deal, not just that get damages.

Rejection of offer v. revocation of acceptance?

The standard of revocation is higher- no longer perfect tender.

Don't want people to be able to unravel a contract much later.

- If have a consumer good and someone has been using for a good for a while, then revokes acceptance, that good has depreciated in value.
- If is outright rejection, then seller can probably reuse after a while.

§2-608: Revocation of Acceptance in Whole or in Part (at C/L was *rescission*)

(1) Can revoke if the non-conformity *substantially impairs the value to the buyer.*

There is a subjective element here. The term “substantial” or “reasonable” make more subjective.

- a. Can only revoke the acceptance if accept with the reasonable belief that the nonconformity will be cured.
 - b. Didn't see while inspecting b/c couldn't have discovered reasonably, or even if did, then the seller assured that would be fine or don't worry about it.
- (2) Timeliness. Reasonable time after discovered or should have discovered (objective test) and before substantial change in condition of goods b/c of what the buyer has done.
- (3) Once buyer revokes has same rights as if had rejected the goods.

Rester v. Morrow (237)

- Bought a car and drove it a lot. But the car had MANY odd problems, and the owner kept having to take the car to the shop. Ct held that could revoke the acceptance of the car.
- He had been driving around for a while, had been exercising ownership.
- Had to show that substantially impairs the value to him. The defects were not huge, but the court looked at the cumulative situation. Since he needed this car for his job (cab driver), then this was an impairment.

Did he have to return the car to the seller?

- **§2- 711** (3) Because he had made payments in the car he had security interests, so he could hold onto the car till get money's worth.

- If no security interest in the car, then can exercise ownership- reasonable care to hold onto till seller comes to get.

The seller gets some partial compensation.

The buyer has gotten some benefits of the car.

Many states have enacted LEMON LAWS to deal with similar car issues.

Prob 57:

Buyer bought a car and the next day the fender fell off. According to §2-608 the buyer has the right to revoke acceptance, and the dealer does not have the right to cure. §2-608 talks of all the rights to cure. It is in the context of rejection. But it does not talk about the right to cure after revocation of acceptance.

If you are an attorney for the seller, any language in the UCC that might help the seller? §2-608(1)(a)

If one of the duties of a rejection buyer is that you have to allow for cure and of the revoking buyer.

Use the Cannons that handed out to make arguments.
He's totally gonna use these on the exam.

Cannon 3- right to cure- but the common law doesn't allow for any- this was his smoke screen.

Cannon 12: right to cure or not to cure on revocation- part of the code (and not the common law) is the right to cure. So that deal with own differences instead of running to the court.

Issue- whether coverage (§712/§711) would also coverage?

The dealer repairs the car, and she is late all the time b/c always fixing the car, she is worried about the car and future damages and losing her job. This is clearly substantial in the cumulative §2-609. With the revocation- the dealer prob doesn't have the right to cure here. She can probably even get a rental car paid for (incidental or consequential damages).

Prob 58:

The dealer and buyer signed a k that stated that can only replace parts or repair. She cannot revoke acceptance. According to §2-719(2) this sort of limitation on exclusive remedy doesn't apply. The purpose of the car is for it to work, and this remedy limits the essential purpose.

Prob 59:

Bought a computer and the comp co upgraded with better comp. Buyer wrote a letter of acceptance and sent the check. Power was a hidden switch that brought back bad childhood memories. Can the buyer revoke the acceptance?

Comment 2- whether the non-conformity is such as will in fact cause a substantial impairment of value to the buyer though the seller had no advance knowledge as to the buyer's particular circumstances.

§508(2) relevant here? Ship non-conforming goods that expect the other party to find acceptable. If they were providing a more advanced model – but the person decides to revoke, this is all about whether the jury allows a surprise revocation.

F. Risk of Loss: Breach

(251)

If there is a breach- then look to §2-510. If there is NOT a breach, look to §2-509.

§1-106(1) Lays out that UCC policy is not to penalize. Goal is to provide compensatory damages.

§2-510- Effect of Breach on Risk of Loss

1) Breaching seller:

Risk of loss remains on the seller until cure or acceptance if:

- a. Tender or Delivery fails to conform to the k (and)
- b. The non-conformity gives rise to a right of rejection

2) Buyer's Revocation of Acceptance

The buyer may treat the risk of loss as the Seller's from the beginning of the k

- a. If the buyer rightfully revokes acceptance (and)
- b. To the extent of the buyer's insurance is deficient

3) Buyer's Breach

The Seller may treat the risk of loss as the Buyer's (to the extent that the seller's insurance was deficient) for a commercially reasonable time if:

- a. The goods were already identified to the k (and)
- b. The goods conformed to the k (and)
- c. The buyer repudiates/ breaches before risk of loss passes to him

Prob 63: (look at the facts, these are crazy)

Shipped FAS (Free Along Side) seller has to get the goods on the dock ready for loading, then the seller's risk of loss has passed.

Three items:

1. Centaur destroyed in London
2. Sphinx destroyed in transit
3. Gargoyle destroyed in NJ

Under art 2 was a modification of the K- just b/c waive the rights to one k doesn't mean that waive the rights to all.

The buyer is breach of the k- b/c he canceled the k, that is *anticipatory repudiation*.

With the breaching buyer- there is only one rule. Conforming? Identified? We don't know whether is identified-

Assuming that is identified and conforming- then the buyer would be responsible to the extent that the seller is not insured. So since the seller is insured, he is still responsible.

The Sphinx: is there a breach?- this is a nonconforming good that was shipped by the seller (where the standard is perfect tender) therefore the seller has breached. Preacceptance or post acceptance rule?

Pre – b/c the sphinx was never accepted.

§510(1)- the seller was running the breach of loss the liability is on the seller.

If it were conforming goods, then that would have passed to the buyer.

The Gargoyle: Non-conforming good- therefore by definition is breach by the seller.

This is post acceptance breach-

Then the buyer has the right to revoke their acceptance. Really effects the value to the museum.

§510 (2)- where the buyer rightfully revokes acceptance.

The buyer is fully insured, they remain responsible... even though non conforming good.. if didn't then would be the seller's liability.

If sent by air- could the museum reject the good for that reason.

§614- if there is reasonable substitute matter of delivery, then the buyer has the duty to accept.

Comment 3 §510- the risk of loss is meant to stay as it is stated in the code. The Insurance company can't contract around the way that stated in the code.

This problem sucks, get help from Araceli

G. Impossibility of Performance

(356) In the UCC this is the same as *commercially impracticable*. This is meant to broaden the definition of impossibility.

This is the idea of **EXCUSE**

The common law version of excuse is a total mess. The two biggest common law theories were:

- Impossibility
- Frustration of purpose

§2- 613- §2-616

The main one is **§2-615**: Excuse by Failure of Presupposed Condition.

a) Delay in Delivery/Non-Delivery

The seller is not considered to have breached its contract if he delays delivery or fails to deliver goods if:

1. The seller had complied with (b) and (c) below (and)
2. The agreed upon manner of performance has become impracticable, either by
 - a. The occurrence of a certain event, if the contract was made with the basic assumption that such an even would not occur (or)
 - b. Good Faith compliance with any foreign or domestic governmental order

b) Diminished Number in Goods:

1. Allocation of Goods: If the causes in (a) affect only part of the Seller's capacity to perform the seller must allocate production and delivery of the goods among all of his customers.
2. Guidelines for allocation: the seller must allocate the goods according to these guidelines:
 - a. The seller does not have to allocate the goods only to customers with outstanding orders
 - b. The seller may allocate goods to "regular customers: even thought they do not have outstanding orders for the goods
 - c. The seller may allocate goods for his own requirements or for future manufacture.

(c) Notice to the Buyer:

1. The Seller must seasonably notify the Buyer of a delay or non-delivery
2. If the Seller will be allocating goods, he must seasonably notify the buyer of the estimated quantity he will be shipping

(d) This § is subject to 2-614 and any "greater" obligation which the seller may assume.

§2-616 Procedure on Notice Claiming Excuse

(1) When the unhappy buyer gets this written notice that impairs the value of the whole k, his options are

- a. Terminate and discharge unexecuted part of k (or whole k).
- b. Modify k by agreeing to take the quota as substitution.

(2) The k will lapse if:

- a. The buyer receives such notice of delay or allocation (and)
- b. The buyer fails to modify the k within a reasonable time (no more than 30 days)

(3) The provisions of this section may not be negated by agreement unless the seller has assumed a greater obligation under §2-615.

These statutes were for the sellers, although many courts have applied this for the buyers also.

§2-613- Casualty to Identified Goods

(More literal situation- where the goods have actually been destroyed.)

1. The goods must have been identified at the time that that k was made
2. All the identified goods suffered the loss
3. The casualty is not the fault of either party
4. Either
 - a. The risk of loss did not pass to the buyer
 - b. The k was a “no arrival, no sale” k

Then:

(a) If the loss is total, then the k is voided,

(b) Loss is partial- buyer has the option to treated as voided, or accept the goods with due allowance.

§2-614- Substituted Performance

(1) W/o fault of either party:

- Berthing, loading, or unloading facilities fail
- Agreed type of carrier becomes unavailable
- Agreed manner of delivery otherwise becomes commercially impracticable

And there is a commercially reasonable substitute available- it must be tendered and accepted

(2) If manner of payment fails b/c of gov't reg

the seller may withhold or stop delivery unless

The buyer provides payment in commercial equivalent

If already delivered:

Then buyer discharged from payment unless reg is discriminatory.

Prob 64:

If buyer orders good from seller who has 12 goods, then earthquake and only 3 damaged goods survive, can the buyer inspect the goods to chose one at a discounted price?

§2-613 applies only to identified goods and here the seller did not know which good he was sending.

Therefore use §2-615- impracticability standards:

- 1) There was an occurrence of a disaster that was not presupposed in the k.
- 2) There was a diminishment in the # of goods.
- 3) There was adequate notice to the buyer.

All three qualifications were met.

If it were under §2-613 the buyer would be able to chose a damaged good.

Under §2-615 (b) the seller has to allocate the production. So the seller would get to decide, based on the regular customers, who gets what “in a fair and reasonable manner.”

Under (c) has to give notice to the buyer and tell which one is sending, but the buyer does not have to accept it.

Prob 65:

Facts of last prob, except that when the good was ordered, one was labeled and only that one good was destroyed, the other 11 were fine.

§613- Risk of loss had not passed yet. There were identified goods and there was a total loss.

This applies when the K requires the identifying at the time of the k. they could have IDed the sundial later. So the fact that there were 11 other sundials some of which were fine, just b/c this one that is destroyed was market doesn't matter.

These are fungible goods, therefore §613 doesn't apply.

The seller is required to perform and sell one of the other goods.

Arabian Score v. Lasma Arabian Ltd. (257)

- K for the sale of a horse for \$1 mill. 25% of which was to be spent by the seller to advertise the horse. Horse died. Seller only spent 52k promoting the horse, and then stopped. The buyer wanted the unspent money.
- Seller said that was impossible to perform b/c the horse was dead and can't promote a dead horse.
- But found that b/c these are breeding horses, then they can advertise for the future horse.

Prob 66:

Utility comp in the 1960's agreed to sell oil for 20 years at \$10/lb. Then the price shot up to \$40. Said that was a result of the oil embargo and therefore "commercially impracticable"

§2-615: Increased price does not mean nonperformance, unless it was impossible to foresee. **Comment 4:** Increased price alone doesn't excuse non-performance.

*** Not clear- tons of litigation for the oil prices.

Very rarely do they let merchants off the hook for such things.

These events were not that unforeseeable. .

Should have said *market prices*. So UCC allows to leave the price open- so if put a fixed term, then the parties intended to allocate those prices.

Louisiana Power & Light Co. v. Allegheny Ludlum Industries, Inc. (262)

Contract for production of tools.

Increase in cost and claimed that was loss and cost too much to make.

Courts said that wasn't a sever cost, would not have put in the red, would have just been cutting their profits.

Chapter 6: Remedies

Contract is a legally enforceable promise- therefore there is a remedy.

Two kinds of remedies:

- Buyers Right to reject goods

- Buyers Right to revoke acceptance

A. Special Remedies

1. Remedies on Insolvency §2-502 & §2-702 (275)

Monetary damages are the *default remedy*.

Expectation damages (what would have resulted if the k were complete) is the default in the civil law system.

If the buyer hears that the seller is insolvent, then he can

1. Wait and sue for damages (but then the seller would have to pay a lot of creditors, so may not get all of it.)
2. Has a right of *reclamation*- to come and get the goods.

Generally: The right to reclamation comes from the identification of the goods.

If the goods are not identified, then it is hard to go and claim them.

If the buyer has made some partial payment then it must have occurred within 10 days of the first installment.

§1-201 (23) “Insolvency”- A person is insolvent who either:

- a. Has ceased to pay his debts in the ordinary course of business (or)
- b. Cannot pay his debts as they become due (or)
- c. Is insolvent within the meaning of the federal bankruptcy law

§3-502- Seller Insolvent

(1) Seller’s insolvency

a. The buyer may recover identified goods from the seller if:

1. The seller becomes insolvent within 10 days after the seller receives the first installment on the price of the goods (and)
2. The buyer:
 - a. Has made good a tender of any unpaid portion of the price of the goods (and)
 - b. Has paid part of all of the price of the goods (and)
 - c. Has a special property interest

b. This section shall apply even though the goods have not been shipped

c. This section is subject to §2-502(2)

(2) Buyer Identifies Goods:

If the buyer has made the identification which creates the special property interest he acquires the right to recover the goods only if goods conform to the k.

§2-702 Buyer Insolvent

(1) Seller discovers Buyer’s Insolvency Before Delivery:

If the Seller discovers that the Buyer is insolvent, the Seller may:

- a. Refuse to continue delivering unless Buyer promises to (&
 1. Pay COD (and)
 2. Pay for all shipments already delivered on the k
- b. Stop Delivery

(2) Buyer Receives Goods on Credit while insolvent

If the seller discovers that the buyer has been receiving goods on credit while he was insolvent, the seller may reclaim the goods.

Reclamation Requirements:

1. A 10 day time limit- in order to reclaim the goods, the Seller must:
 - a. Demand payment or reclamation of the goods
 - b. Make the demand within 10 days after the buyer receives the goods
2. EXCEPTION- Written Misrepresentation of Insolvency:

10 day limit does not apply if the buyer made a Misrepresentation of Solvency:

 - a. In writing and
 - b. W/in 3 months before delivery
3. The seller may not base a right to reclaim the goods based on the Buyer's Fraudulent or innocent misrepresentation of solvency or intent to pay, except as provided in this subsection.

(3) Limitations on the Seller's rights to Reclaim:

- a. The Seller's rights to reclaim are subject to the rights of:
 1. A buyer in the ordinary course of business and
 2. Any other goods faith purchaser
- b. Exclusion of other remedies: successful reclamation of goods excludes all other remedies
 - Can refuse deliver- except for cash
 - Can reclaim goods

2. Liquidated Damages

(275)

Liquidated Damages Clause can be added to a k in an attempt to try to guess what the damages would be ahead of time.

- It is enforceable as long as it does not constitute a penalty. (This is not the easiest thing to ascertain.)
- As long as reasonable estimate of damages at the time of the k – than can be held.
- Would be more likely in entertainment k's.

§2-719- Contractual Modification or Limitation of Remedy

(1) Contractual Remedy Clauses: Subject to §2-719(2),(3) and §2-718, the contract may include other remedies:

- (a) These remedies include:
 1. Remedies in addition to Art 2 remedies (or)

2. Remedies in substitutions for Art 2 remedies (or)
3. Changes/limitations on the measure of damages recoverable under Art 2, such as limiting the Buyer's remedies to:
 - a. Return of the goods and repayment of the price
 - b. Repair and replacement of non-conforming goods or parts

(b) Effect on Other Remedies:

1. These types of remedy clauses are optional rather than exclusive.
2. If the parties intend a clause to be the sole contract remedy, this must be clearly expressed.

(2) *Failure of §2-719 Remedies- The general Art 2 remedies will apply where an exclusive or limited remedy clause either:*

- a. *Fails in its essential purpose b/c of the circumstances (or)*
- b. *Operates to deprive either party of the substantial value of the bargain*

(3) *Limitation of Consequential Damages:*

- a. *Consequential damages may be limited or excluded unless the limitation or exclusion is unconscionable.*
- b. Consumer Damages: Limitation of consequential damages for injury to the person in the case of consumer goods is considered prima facie unconscionable.
- c. Commercial Damages: Limitation of damages where the loss is commercial is not considered prima facie unconscionable.

3. The Breaching Buyer's Restitution

(277)

Generally: this is the situation where the buyer puts a deposit down on a good and then decides to buy something else. How much of the money can the breaching buyer get back? Under common law, the buyer gets nothing back b/c breached the k. Under the common law would give restitution damages and not want to allow unjust enrichment.

§2-718: Liquidation or Limitation of Damages; Restitution:

(1) Liquidated Damages Clauses:

- a. In an agreement, liquidated damage clauses for breach by either party are allowed.
- b. Requirement- the amount involved has to be reasonable in light of:
 1. The anticipated or actual harm caused by the breach (and)
 2. The difficulties of proof of loss (and)
 3. The inconvenience or non-feasibility of adequate compensation with another remedy.
- c. A term fixing unreasonably large liquidated damages is considered a "penalty" and is void.

(2) Restitution of Buyer's Payments: Where the seller justifiably withholds delivery of goods because of the buyer's breach, the Buyer may recover restitution in an amount equal to:

- (a) Liquidated Damages: (or)

Buyer's Payments

- What the Seller is entitled to (in accordance with subsec (1))
- (b) If there are no liquidated damages clauses in the agreement for the Seller's damages, the lower of
 1. \$500 or
 2. Buyer's Payments- 20% of the value of the total performance (for which the buyer is obligated under the k)
- (3) Reduction of Buyer's Restitution: The Buyer's right to recover under subsec (2) may be reduced by the amt the seller establishes:
 - (a) A right to recover damages under Art 2 other than §2-718(1) (or)
 - (b) The amount or value of any benefits or value of any benefits the Buyer received by reason of the k
- (4) "Buyers Payments": For the purposes of subsec (2), the Buyer's payments includes:
 - a. The reasonable value of goods received by the seller as payment (or)
 - b. The proceeds of their resale.

Ruskola general interpretation: When the buyer won't perform, the seller can hold goods, but the buyer gets money back if exceeds the lesser of:

- a. Seller can keep amt of liquidated damages (or)
- b. 20% k price or 500.

§b is the statutory liquidated damages clause.

Prob 67:

One zoo k'd to buy an elephant for \$300 down (in the form of a bear) and pay \$100/month for 20 months. Only paid for 15 then ran out of money, what can they recover?

Should be able to get back the restitution amount:

Can get the money back that paid.

20% of the total k (\$2300) : \$460

or

\$500

whatever is less= \$460 or \$500

Seller gets to keep the \$460 and has to return the rest- have paid 1800- 460: \$1340 returned. (am not sure- shouldn't the seller get to keep the 1340 not the buyer?)

B. Seller's Remedies

(277)

§1-106 This is the general guiding principles.

The general idea is that code trying to give expectation damages.

Not allowed to have consequential damages- unless specifically written in.

Generally no penal damages.

§2- 703 Lays out the seller's remedies

Five remedies available to buyer

- a. withhold delivery
- b. stop delivery
- c. proceed to next section
- d. resell and recover damages
- e. recover damages for price
- f. cancel

Don't have to stay with just one remedy. All about the specific facts.

Specific performance: is sometimes possible (rarely for the seller). The buyer refuses to buy, the seller cannot sue for the entire price. Usually supposed to try to cover and try to mitigate damages.

§2-709: Action for the price: can sit on butt and sue for the whole price. The seller is relieved of the need to mitigate.

However there are a couple of exceptional situations where can get specific performance

- (1) where goods have been accepted by the buyer. (can't really resell if don't have the actual product) then can sue for the full price.
- (2) Seller has the goods but they have been damaged, lost and risk of loss was still on the buyer.
- (3) The seller is unable to sell after reasonable effort.
Have to try, but don't have to make heroic efforts.

§2-703: menu of options for the seller

The seller has two options:

Resell- §2-706

Don't resell – §2-708:

1. Accepted Goods

(278)

§2-709- Action for the Price (like specific performance for the seller) if:

- the buyer has made a technical acceptance or
- the goods are destroyed within a commercially reasonable period of time after the risk of loss shifts to the buyer.

Prob 68:

Buys a car (on credit) and drives it for a month until the new garage color doesn't match. Notifies seller that doesn't want the car, stops making payments, and parks down the street (to not clash). Three days after notice to the seller that revoking the acceptance, the car is stolen.

Action for price:

§2-709(1)(a): The good has been accepted and (b) cannot be resold.

The letter is not valid revocation b/c it was not a substantial impairment of the value of the goods (§2-609).

The risk of loss passed to the buyer after acceptance .

The buyer is in breach for not making the payments.

This is §2-709(3) there is a sale from a merchant and the buyer receives the goods, there is a passing of the risk of loss. (what is the result of fitting under §2-709???)

If the buyer had revoked acceptance then it would not have fit under §2-709.

So in this situation, the car would still be on the lot. The seller would have the goods, but the risk of loss would be on the buyer.

Receipt of goods is not acceptance of goods.

Need to accept the good to transfer the risk of loss.

2. Unaccepted Goods

(278)

When the buyer repudiates before delivery or rejects the goods then:

- §2-706 applies if the seller sells the goods to someone else.
- §2-708 applies if there is no resale

§2-706: Seller's Resale Including Contract for Resale

(1) The seller has to be acting in good faith.

Have to be reselling in commercially reasonable manner.

Contract Price

- Resale Price

+ incidental damages allowed under art 2

- expenses saved in consequence of buyer's breach

Damages

(2) May be public or Private resale, just has to be commercially reasonable.

Comment 4-

Public is an auction

Private is thru solicitation and negotiation.

(3) Private sale: seller must give the buyer reasonable notification of his intention to sell.

(4) Public sale:

- a. only identified goods can be sold
- b. must be at a usual place or market or if perishable, then must notify the seller of time and place of sale
- c. if not in plane view sale- must notify where the goods are to potential buyers for inspection
- d. seller may buy
- e. buyer at resale gets goods free of rights of buyer
- f. the seller is not responsible to the buyer for any profit made by resale.

§2-708: Seller's Damages for Non-acceptance or Repudiation

(1) Damages are:

Market price at time and place for tender

- unpaid K price

() + incidental damages provided in art II
- expenses saved as a consequence of buyer's breach.

Damages

(2) Lost Volume Seller

Damages:

Profit (including reasonable overhead)

+ incidental damages provided by art II

- due allowances for costs reasonably incurred

- due credit for payments incurred and due credit for payments or proceeds of resale.

Damages

Prob 69:

FOB: seller's city K to sell goods for \$1500 on March 15 and the buyer repudiates the k. March 5.

Shipment k- (risk of loss passes at shipment).

The seller pulls goods from the warehouse and labels "for sale best offer" by the register. Regular buys them for \$1000.

- §2-704: the seller can choose goods to resell when the buyer breaches the k.
- For the resale to be proper, there needs to be proper notice and it must be done in a commercially reasonable manner, which this was not.
- §2-708 calculations:
Market price at the time and place for tender (seller's city Mar 15- \$900)
- unpaid k price (\$1500)
- incidental damages
+ expenses saved as a consequence of breach
Damages--- \$600
- §2-706 calculations
Resale price (\$1000)
- K price (\$1500)
- incidental
+ consequential
Damages--- \$500

Does the seller have a right to choose?

Generally speaking these are cumulative and can choose (§1-703- Comment 1)

But when one sells and is not commercially reasonable, then lose the right to choose b/w the two measures.

Price alone does not indicate whether was sold in a commercially reasonable manner or not. It is relative, but not imperative. So long as make reasonable efforts, it is not determinative alone.

Prob 70:

K to sell good for \$2000. Buyer repudiates the k. Products cost \$800, Manufacturing costs \$400. Can definitely resell the good for \$2000 market price.

§2-708(1) Seller would not be able to get anything from this b/c was market price (2k) – k price (2k) = 0. They mitigated damages to nothing.

(2) If (1) doesn't make whole, then use 2 (**lost volume seller**)

Measure of damages from the profit plus a reasonable overhead.

Labor + Components- \$1200

Profits – \$800

(284) – if the injured party could and would have entered into the subsequent contract, even if the contract had not been broken, and could have had the benefit of both, he can be said to have “*lost volume*” and the subsequent transaction is not a substitute for the broken k.

Teradyne, Inc. v. Teledyne Industries Inc. (280)

- Buyer cancelled order for system, then offered to buy something else, something cheaper.
- Seller sold to some other purchaser for the same price. This made them a lost-volume purchaser under §2-708(2) for lost profits.
- The issue is whether the “direct or variable costs” included the wages and benefits of the employees or are they “fixed costs.”
 - Labor may be under either category:
 - Fixed costs- they incurred these anyway
- Variable costs- they saved this amount b/c they didn't have the sale.
- *The variable costs are subtracted from the recovery.*

Prob 71:

Buyer repudiates on a k for goods that are half completed. K was for \$20,000, as scrap worth \$5,000, \$9,000 worth of labor to get to a point where MAY be able to resell b/w \$15,000 and \$20,000.

The seller can choose, as long as uses reasonable commercial disgression.

Here if tries to resell, but can't resell, then can get the full price (which is specific performance)

C. Buyer's Remedies

(289)

§1-106 the Goal of the code is to put the party where would have been if the k had been performed.

§2-711 –General list of the buyer’s remedies

Which § is appropriate is determined by whether the goods are accepted.

- (1) May cancel and get as much as has been paid.
 - a. Cover and get damages under §2-212
 - b. Recover damages for non delivery under §2-713
- (2) Where the seller fails to deliver or repudiate, the buyer may also:
 - a. If identified, may recover under §2-502
 - b. Specific performance under §2-716
- (3) If has security interests and has the possession, then may hold and resell them.

1. Accepted Goods

(289)

If there is a technical **§2-606** acceptance, then the buyer may sue for the breach of warranty and get the price back.

Have to give reasonable notice within reasonable time as defined in **§2-607(3)**

Damages are determined by § 2-714 or §2-715.

§ 2-714- Buyer’s Damages for Breach in Regard to Accepted Goods

(1)When have accepted and given notice –

(2) the damages are:

Diff b/w what were supposed to get and what got.

(3) can also get consequential and incidental from §2-714 also

(the code says that can only get consequential in specific situations, this is one).

§2-715- Buyer’s Incidental and Consequential Damages

(1) Incidental damages- expenses dealing with the transaction

(2) Consequential damages- look at whether the damages are foreseeable.

How do you know that are foreseeable:

- i. If they know what is for or
- ii. If is in the ordinary use of the event. Buy something for its purpose.

Consequential for personal injury does not require the foreseeability requirement.

Prob 73

Pianist bought a piano for \$3k, he makes \$50k per year. When found out that the piano was making him deaf, he chopped it up. So he wanted all these damages.

a. Warrantees:

Merchantability: §2-314

Has to be fit for ordinary purpose and sold by merchant.

This was not a breach b/c only has to be good for ordinary purposes. This man used for 3 months all the time. This may be an exception- may not be either.

Also not for particular purpose b/c didn't rely on the judgment of the seller and used way more than for ordinary purpose.

What is recoverable?

§2-714- diff b/w piano as warranted and piano as accepted.

The value of the piano to pianist is \$0. so \$3k- resale value.

The \$500 should be incidental damages. These were damages from ascertaining the prob from the piano. Was legit expense that incurred.

§2-715(a) to look at the consequential damages- this would include lost income and doc fees.

Can get the consequential damages under either (a) or (b).

Prob 74:

Needed a cord for the yoyo competition for \$1.50. The cord broke and she lost the championship. Prize of comp was \$10,000 and sued for \$50,000.

- a. Does she have to pay the bill? The buyer has to give notice (§2-717) and then can subtract the amount of damages. §3-311(b)- procedure- when she sends the check she should write that this is meant to discharge a part of the bill that weren't satisfied with.
- b. Consequential damages- they were too speculative. The amount that she asked for was 5x the first prize. In the common law the consequential damages had to be ascertainable. This is by definition speculative, but more and more courts are willing to award the value of the chance to profit in a situation like this.
- c. Knowledge of the possible consequential damages is not enough to impose liability on the seller. §2-715(2a)- anything that is reasonably foreseeable. It doesn't say anything about agreeing to the liability or not. **Comment 2**- was an old test that said that had to tacitly agree. Here the UCC rejects, that just enough that foreseeable, don't have to agree to the liability.
- d. The attorney fees can only be billed as consequential if they were written into the k. There may be some state or fed consumer law that allows this, but not in the UCC.

2. Unaccepted Goods

(289)

(1) can sue for specific performance (replevin) or (2) cover

Can get the entire price (specific performance) (this is not the favored remedy)

The buyer could go and cover. Should mitigate if possible.

The UCC is trying to limit the specic performance.

§2-716: Buyer's Right to Specific Performance or Replevin

(1) specific performance when the goods are unique or in other proper circumstances.

See comment 1- wants to make the "specific performance" more liberal.

** Can still get §2-715 damages for incidental and consequential damages

§2-712: "Cover" – Buyer's Procurement of Substitute Goods

- (1) when breach, buyer may cover when act in good faith and without reasonable delay.
- (2) K price – cover price + consequential damages (§2-715) and – anything saved from the breach.
- (3) This does not bar from any other recovery. If don't cover, may still get damages from 713

§2-711: Buyer may recover price and other damages

§2-715: Incidental and consequential damages

§2-716: Specific performance or replevin

§2-712: where the buyer is authorized to cover (purchase substitute goods)

The Buyer doesn't have to Cover- if a buyer fails to cover in an appropriate situation, the consequential damages that could have been avoided are denied. (§2-715(2)(a)).

Financial inability is an excuse for non-cover.

If the buyer doesn't cover, damages are calculated under §2-713

§2-713: Buyer's Damages for Non-delivery or Repudiation

(1) measure of damages is

Market price at the time when buyer learned of the breach

+ k price together

+ incidental & consequential damages

- expenses saved as a result of breach

(2) market price determined at the place of tender

or- where rejection after arrival (or) revocation of acceptance

-- then at the place of acceptance.

Prob 76:

Buying good for \$8,000 and would need \$500 installation. Price went up and the seller canceled the deal. Buyers super-sized to \$15,000 model that would not need the installation cost. What damages can the buyer collect for the breach?

Under **§2-712:**

original k price (\$8000)

– cover (\$15,000)

+ expenses saved (the foundation (\$500)

+ that got (\$2,000) more in the trailer, then that would also be subtracted to what due.

They could have waited less time and covered for \$5k less than what could have been. May cover as long as done in good faith and with only reasonable delay.

Tongish v. Thomas (292)

The price of sunflower seeds went up and did not sell when supposed to

- §713- where don't cover:
- k price
market price (where could have bought substitute prices on market).
- *So if don't cover under 712- then have to use 713..*

- The twist here is that the coop had a resale k. They had it at a very small profit. But since the market prices were really high, so they might have been overcompensated.
- The court said that don't want to encourage breach, they would have gotten too much. Want to deter breach.
- *Efficient breach*- that if get a better deal should be able to go with the better k and pay the damages. This is in contradiction to efficient breach.

D. Anticipatory Repudiation

(303)

Under the common law, if the deadline hasn't passed, then there is no breach. So if Monday sold a cart to be delivered on Friday, Wed calls to say that there is no way that going to make the delivery.

Under the common law, there is no breach till Friday.

Functions of k law:

1. Future interest: Facilitates long term planning. Should be able to know whether can get the cart or not. This is impaired by breach.
2. Also a current interest in the future certainty of performance- this is impaired even by the repudiation.

Repudiation: definite refusal to perform (mere equivocation is not enough).

(see §6-110- Comment 1)

Can treat the repudiation as a breach and can sue immediately. There are problems with timing though on these two provisions.

§2-610: Anticipatory Repudiation

When either party says that may not deliver, the other party *may*:

1. Wait for commercially reasonable time- are not required to cover.
2. Have the choice to go to any remedy for breach (§2-703- §2-711).
3. Suspend own performance and wait OR may proceed

§2-611: Retraction of Anticipatory Repudiation

Can retract that breach as long as the other side hasn't covered yet.

(1) Can retract repudiation unless

- a. repudiation cancelled or materially changed position
- b. considered repudiation final

(2) Retraction- any method explaining that the repudiating party intends to perform

(3) Retraction reinstates the rights of the k and allows the aggrieved party for any delay occasioned by the repudiation.

§2-609: Right to Adequate Assurance of Performance

The equivocating party can be forced into performance or repudiation by used of this procedure:

(The party that is worried about the other party's action, can ask for adequate assurance. Then may treat as breach)

(1) If believes that the other side will not perform, may request assurance in writing. But need adequate reason for insecurity, can't just ask for no reason

Until get this assurance, may if commercially reasonable, suspend performance until get this assurance.

(2) Between merchants, this is held at commercial standards

(3) Just b/c received one delivery does not adequately assure that will get future performance.

Prob 79:

What amount can they get back?

The army could have covered, but chose not to, they are allowed to not cover under §2-610 for a commercially reasonable time.

§2-713: market price when learned of breach- k price: damages.

610- says that can wait around and not cover. If though do nothing, then only get the amount of damages that is described in 713. this read literally, should cover right away, b/c only get that different. But 610 says that can wait for reasonable time.

SECURED TRANSACTIONS

Focus:

- Creation of sec interest
- Perfection of sec interest
- Q of priorities

Grant Gilmore-

Art 9- is the complete departure from the common law.

As long as there is a "security interest" then that is under art 9.

This article is adopted by all 50 states.

Last year passed the new art 9. There are some unresolved issues. This is not law yet anywhere. July 1, this will be law for the first time.

Art 2- all about how to make a sale.

Art 9- when want to buy something but don't have the money right then.

This is when buy on credit and how to finance a sale.

How the buyer can put up collateral for the payment of the loan.

How to become a lien creditor:

When someone owes you money- then sue and get a writ of execution.
Take this to the sheriff, who will go to the def and levy on the def's prop.
Then get interest in property.

- this is very time consuming and expensive
- the other party may be insolvent.

If allow the debtor to keep the collateral as the owner, then could appear to the owner.
Could use as collateral in different loans. Secret security interests with many lenders.
This is a personal property filing system.

Debtor- buyer

Creditor- seller

Enter into a security agreement with the collateral in the middle.

If don't pay then can reposes.

Art 9 usually arises in Bankruptcy b/c there are often many different creditors.
If most of the creditors get nothing of like 3cents on the dollar.

Perfected Secured Creditor- top of the creditor list

Lien Creditors- someone who has won a law suit and has a judicial lien.

Bankruptcy trustee often becomes the Lien Creditors. All the money goes to them except for the exempt assets or whatever have a perfected Security interest.

People represented by Bankruptcy Trustee:

- Unperfected sec interests creditors –
has some collateral, but has not done whatever needs to do to perfect that interests.
- Unsecured creditors- general creditors – no collateral.
Just relying on the other person to pay.

Perfection:

To perfect need two things:

attachment

The process whereby the creditor establishes a security interest in the collateral. Creates rights b/w the creditor and debtors. After have done.
Then the collateral has attached.

publicity or notice

the easiest way is by filing a financing statement.

Chapter 17: Introduction to Secured Transactions

Lien: interest in the debtor's property given by the law to protect a creditor

Consensual lien: if the debtor voluntarily grants the lien

Mortgage: a consensual lien to real property

Security Interest: A consensual lien in personal property or fixtures is called a security interest and is governed by Article 9 of the UCC.

Involuntary Liens:

- *Judicial lien*: judicial proceeding (the creditor sues, recovers judgment, and sends the sheriff out to seize the Δ 's property)
- *Statutory lien*: imposed by either a statute or the common law in favor of certain creditors the law deems worthy of protection.
- *Federal tax lien*: a statutory lien that reaches all of the taxpayer's property.

A. Bankruptcy

(781)

Bankruptcy Reform Act of 1978 -- 11 USC §101

Types of Bankruptcy:

Chapter 7- straight bank

Chapter 11- a reorganization proceeding for businesses

Chapter 12- a reorganization proceeding for farmers

Chapter 13- a debt repayment plan for individuals

Debtor goes into voluntary bank

Debtor's creditors go into involuntary bank.

1. File in Bankruptcy Court.
2. Have the first meeting (§341 meeting)
3. Trustee gathers all the property and sells it
4. Debtor asks judge for forgiveness so that

if Ruskola doesn't do these, then do these.. (785)

B. Pre-Code Security Devices

(786)

§1-201(37) defines "**security interest**": an interest in personal property or fixtures which secures payment or performance of an obligation.

Even if sell something on credit, try to reserve credit that is still a sale with a retention of a security interest. If looks like secured transaction, the UCC will treat it as one.

B. Pledge

C. Chattle Mortgage

D. Conditional Sale

Prob 254:

Can only reposes if is a secured creditor. Here this is an oral k. If are an unsecured creditor- then sue under art 2- and then take the write and go and reposes.

Only can reposes if is insolvent within 10 days.

§9 the new version is not in effect in any state yet.
p. 1018 is the new version of Art 9

E. Trust Receipt

F. Factor's Lien

G. Field Warehousing

Chapter 18: The Scope of Article 9

(797)

§9-109: talks about the policy and scope of the article:

a.

1. Security interest in personal prop or fixtures by k- this is the most imp one.
2. Agricultural lien
3. Sale of accts, chattel, intangibles, or promissory notes
4. Cosignment
5. Sec interest under art 2
6. Sec interest under art 4/5

b. Sec trans action that art 9 doesn't apply to real prop mortgage, but if want to use the mortgage as collateral, can use that as personal prop and art 9 does apply. Does apply to loan secured by mortgage

A. Security Interest Defined

(797)

§1-201(37) defines "security interest"

Even if sell something on credit, try to reserve credit that is still a sale with a retention of a security interest. If looks like secured transaction, the UCC will treat it as one.

Hard to tell if something is a sec interest or leases and consignments.

Look at whether something is a true lease or a disguised sale.
Installed plan or a genuine lease- look at whether is the whole life of the good.

Look at the transfer of title. Whether have a reversionary interest. That is only so if there is still some economic good at the then of the lease. If at the end worth nothing, then have really bought the good.

Prob 255:

Is the artisan's lien a sec interest- 9102- was a service and therefore not a lien and not sec interest. Not a lien unless is an agricultural lien.

This is a new exception.

Only to consensual sec interest created by k.

Art 9 is commercial finance that is basically controlled by k.

109-a-1: by k parties agreed that this is a lien. Under the changed facts, voluntarily by k decided to give the right to repo thru a k. and therefore a sec interest.

(d)- accepts statutory liens- but if is created by k then art 9 does apply.
Here had a consensual agreement that subject to repo.

Prob 256:

§9-109 (scope) (3) sale of accounts. Applies to an outright sale of accounts just like applies to cosignment agreements even though are not security interests. This sec interests is really just a term of art. For art 9 purposes, even though sold them, he is a debtor for art 9 terms.

Therefore, would have to file art 9 interests for later parties. Why bring outright sale of accts under the coverage of art 9?

Want to give notice that this interest has been transferred. Otherwise could still have been used as collateral. After sold has to apply art 9 requirements.

B. Consignments

(798)

Cosignment sale:

A kind of marketing procedure where the retailer acts as the agent. The retailer sells and keeps a stated commission. If they don't sell it then they return it to you.

All consignments are in §9 and require the cosignor to take the usual steps to perfect a purchase money sec interest in the cosigned goods.

§9-102 (20): Cosignment: a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

A. The merchant:

- i. deals with goods of that kind
- ii. is not an auctioneer

- iii. where the merchant is not known to be selling the goods of others- then have to let them know that not merchants goods. If are known to be selling goods of others then don't have to comply with art 9.

If a security interest is intended, then it is not a cosignment at all.

§9-102 (20)D. The transaction does not create a security interest that secures an obligation.

§9 then must be complied with (perfection by filing, etc)

The merchant can then try to use the collateralized merchandise for a loan. It looks to people that are the creditors like these goods belong to the merchant, why not accept them as collateral.

Art 9 treats them as sec interest, so that if do cosignment, then have to go thru art 9 steps so that the general lenders know that not the cosigning vendors property.

Prob 257:

this is the exception of the def of cosignment. Are selling for other people's accounts and they know that.

C. Leases

(806)

Why bother disguising a sale as a lease?

If is a true lease, it is excluded from article 9.

- Do not have to comply with the various art 9 formalities like publicity or notice.
- Tax benefits
- Positive balance sheet

The leasing of personal prop is increasing. The leasers sent lobbyists b/c they didn't want to comply with art 9.

How to tell real lease from disguised lease (installment plan):

1. At the end of the lease, becomes owner for little or no consideration- then have a sec trans
2. If there is a clause that can cancel the lease and return the good- then that is a lease- not sec trans
3. If is for the entire economic life of the good- then is sec trans.
Look at the transfer of title. Whether have a reversionary interest.

Prob 258:

This is a sale that is disguised as a lease

At the end of the 5 year lease, she would have to pay only \$5. this is an installment sale.

Prob 259:

This is a true lease b/c at the end there was still a lot of *useful economic life*.
At the end of the lease period, there was *substantial consideration*. This is not really nominal consideration.

1-201(37) : Def of security- The 3rd ¶.

This lease v. security is definitely not clear- there is space for argument therefore open for hypo on exam

In Re Winston

Leasing of cars- the court had to figure if the lease of the car was a lease or sale.
Was a lease b/c had a useful life at the end of the leasing period.
And at the end would have had to pay more than nominal consideration.

Chapter 19: The Creation of a Security Interest

A. Classifying the Collateral

How create an interest is b/c is based on the classification of collateral.

“**Collateral**” §9-102-a12: (1041)

Means the property subject to a security interest or agricultural lien.

The term includes:

- (a) Proceeds to which a security interest attaches
- (b) Accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and
- (c) Goods that are the subject of a consignment

Look at how the debtor uses the collateral.

Good can only be one type of collateral at a time.

(833-834)

Goods

This is the key category

- Consumer goods- §9-102(a)(23)
- **Equipment** – this is the goods catch-all §9-102(a)(33)
- Farm Products §9-102(a)(34)
- Inventory §9- 102(a)(48)

Quasi-Tangible Property

- Instruments (negotiable instruments Art 3) §9-102(a)(47) & §3-104
- Investment Property- (sec: stocks & bonds and rights to accounts containing same) §9-102a49

- Documents- of title (warehouse recpts and bills of landing) §9-102a30 & §1-201(15)
- Chattel Paper- §9-102(a)(11)

Intangible Property (property having no significant physical form)

Accounts (acts receivable) §9-102(a)(2)

Deposit accounts (CB's)- §9-102(a)(29)

General Intangibles (very imp- catchall for intang prop)- §9-102(a)(42)

Health-Care Insurance Receivables – this is a new part of the revised one. This may be a part where the revised version is too technical- §9-102(a)(46)

Payment intangibles- (give the right to money) - §9-102a61

Prob 265:

- prof piano: good- (b/c physical form) – equipment. Check the other 4 and then know that is the catch-all.
- Cattle fattened by farmer for sale: comment 4a – (1049)- equipment is cap good that lasts a long time. Not things that are used up.
Farmer's tractor: farm prod b/c is supply used for farming.
Farmer's chickens: Farm product-
Manure from dairy herd: farm prod, supplies used or produced in farming.
What is not a farm product but inventory: once process then are not farm product but rather inventory. If are untreated then are farm products
- A mobile home: consumer good. For household good. If wanted to be something else, would try to say real prop. Then look at how mobile. If real prop, then not Art 9.
- Right to sue: generally intangible.
Right to sue for car accident: generally intangible can be collateral. §9-109: (12) claim rising in tort- then that is excluded. General intangible.
- Pencils and other stationery supplies by sears: this is equipment
- Liquor license: general intangible. This is not an account §9-102(a2)- right to payment of a monetary obligation. This is not money for rental or property.
Right to papers already delivered: this is a right to monetary payment for services rendered. So this is an account.
Right for papers to be delivered in the future: account- includes for “services to be rendered”
- Curtains bought for law office: equipment- b/c is used in the law office and bought by lawyer. Goods are for personal and household use. But here they are for commercial use.

If changes the use and brings them home. The use of the good is at the time of attachment. So that don't have to police how using the collateral. So if brings the curtains home, then are still considered equipment.

Ask how plan to use the collateral that they have. Make them put it down in writing.

Collateral can only be one thing at a time.

The same milk in the next prob is three things.

The debtors use determinates the classification of the good at that time.

Prob 268:

- a. Milk in the hands of the farmer: consumer good if for personal use. Farm product. §9102(34)(d). if subjected to manufacturing process- then lose status as farm products and become inventory. So if the milk were in cartons, then that is inventory.
In the story- inventory
When bought by the buyer: consumer goods.
What about a restaurant: inventory still- still being resold. Just being consumed on the premises doesn't make not inventor
- c. rare coins bought by hobbyist for goods: this is consumer good.
§9- 102- "goods" last sentence: doesn't include money. They are still consumer goods though b/c money is a medium of exchange, these coins are not med of exchange, they are not being bought and sold as money.
- e. Debenture bond: investment property: bonds, stocks, ext. §9-102 (a)(49):
stock or
bond either certificated or not.
Right to 100 shares of stock: "security entitlement"- investment property.
That is when the broker has the securities in their name and then you have the account and includes these stocks and bonds. "Sec entitlement" defined in Art 8: 102.
- f. sec act: deposite account
- g. a comp prog: goods- if the prog is embedded in the good, then it is a good. Then there are four categories of goods. If sold sep as software, then is a general intangible.
If go to the store and buy software- it is imbedded in a disk, that is b/c can't buy software any other way. So that is not what they mean by embedded in goods. It means that when buy a car and there is a comp embedded, that is what embedded means.

Morgan County Feeders, Inc. v. McCormick
(840) (1992)

The cattle are equipment.

They were being used for recreational purpose. It was a dude ranch. They weren't being used for milk or meat. They weren't farm products. They are aren't inventory b/c not process or resale. Just a part of what own to make business.

Equipment is this residual category, many things fall into this category.

B. Technical Validity of The Forms

(843)

Art 9 **security interest:**

- *Security agreement:* contract b/w the debtor and the creditor where grants the security interest in the collateral: **§9-102(a)(73)**
- *Financing statement:* the notice that is filed in the place specified in §9-501 (and indexed under the debtor's name) in order to give later creditors an awareness that the collateral is encumbered.

1. The Security Agreement

Art 9 is for consensual sec agreements that are created voluntarily.

These are a creation of k.

Debtor and Creditor, and when they enter into a sec agreement that is when the debt is created.

So if the creditor is worried that others are coming to take an interest in the collateral. Then must file financing statement.

When the collateral is in possession by the party, then no security agreement is necessary

If the possession is not in the creditor's control, then require a security agreement under **§9-203: Attachment** and Enforceability of Security Interest; Proceeds, Supporting Obligations, Formal Requisites

(b) enforceable if:

1. value added
2. debtor has rights
3. conditions met:
 - a. authenticated (signed)
 - b. not certified security- in possession of security party
 - c. security cert has been delivered to party.
 - d. Collateral is in deposit account

Prob 272

Buys a computer on credit but doesn't get the credit until fully paid. Is this a security agreement as defined? 2-401- (1) second sent- if the seller, even if says that reserves title, can't keep title. That is only a reservation of security interest, can't keep actual title.

Authenticated: signed

Description: yes

Comment 3: 9-203: This is a security agreement. Doesn't have to say "security agreement". Can use Parole Evidence.

2. The Financing Statement

Gives rights to the creditor against anyone else that has rights against the debtor from other creditors.

Then there are all sorts of priority disputes.

This is the second part of the sec agreement

This is the best way to give notice of sec interests.

Another way is to take possession, therefore telling all that own it

§9-502: Contents of financing statement; Record of Mortgage as Financing Statement; Time of Filing Financing Statement.

a. name of the debtor

b. name of the secured party

c. indicate the collateral covered by the finance statement.

Doesn't have to be signed, as long as underlying sec agreement.

When see a financing statement indicates that he collateral may be incumbered.

The sec party may have a security interest in it.

It may be incumbered, doesn't meant that definitely is.

When see sec agreement that includes different things, then should check them.

Sample form (1208)

(d) Can prefile it earlier, before there is even a sec agreement. Can have first financing statement or the sec agreement, but for perfection need all of them.

For attachment it doesn't matter what order.

3. The Debtor's Identity

If can't ID the debtor when look at the finance statement.

If don't know the debtor, then don't reach the standards for sec agreement.

Don't have the notice that need.

Prob 273:

The business name is a trade name. 9.503(c)says that shouldn't use the trade name. Should be the debtor's real name.

The partnership name could be the real name. If have an org, then can and should use the organization. Don't have to list every partner's name, can just do the partner.

Prob 274:

What if make a typo?

§9-506: Says that if is typo then stays, unless is seriously misleading.

If this is a comp search, then won't get the other comp.

Comment 4 to §9-507(c)

The financing statement is fine as long as acquired the equipment before the name change.

Floating lien- the inventory is being sold and it goes in and out.

At least the equipment, there is sec interest in it.

They get that sec interest for 4 months even into the four month, then if want it then have to change to the new name.

Only have to police the debtor's name change if it is in a floating lease.

Note 275:

9-102(a): he is debtor b/c has an interest in the collateral.

The financing statement should be filed under Richard's b/c it is his future creditors need to know in case he wants to borrow against it in the future.

The creditor has to write in the sec agreement that wants to know that debtor has an obligation to tell if the debtor changed his name.

4. Description of the Collateral

(848) There is a fear that the creditor will over describe the collateral so that can over claim. They would want the more broad version of collateral.

§9-204(a): After- Acquired Property: Future Advances (**floating lien**)

(a) except as stated in (b) can have a sec interest in after acquired goods

(b) cannot have this interest in 1. consumer goods or 2. commercial tort claims.

Prob 278:

9-108- general standard for fin state or security agreement

9-504(2)- this is only financing statements

when there are super general like "all the belongings" then used to be too specific.

Personal prop is okay as long as reasonably describes what is described. This allows the super generic in the financing statemtn. Not allowed in the security agreement. This is meant to notice the future creditors that certain things MAY be encumbered. So better to be carefull and say all.. but in terms of he sec agreement, then the debtor is entitled to a more specific agreement.

Prob 279: jewelry sufficiently defined under personal prop? Yes. However, you can also argue this is too broad. Notes this is a statement found int eh finan statement. Ultimatly will depend on how was described in sec agreement .

(848)

Prob 281: does it reasonably id the collateral. This is a problematic description so would fall in to the general and then would fall into all debtor's

Prob 282: the later creditors are protected because was only overbroad in the sec agreement and not the finance statement. Sec agreement stated that collateral was machinery equot fur and fixtures. Funan stated added inventor and accounts receivable. The debtor is willing to testify that they were meant to be attached. The other creditors don't want them to be added. Does the secured party's interest reach inventory and councts receivable? Yes b/c finance statements sufficient enough to give other creditors notice- included inventory and accounts receivable.

Look at p. 851: **list of what to do when creditor:**

1. Make sure all the forms are correctly filled out in all particulars
2. Check the debtor's technical legal name and in the immediate past and make sure it is correctly listed on all the documents
3. Refile of the debtor's name changes in any way
4. Describe the collateral as accurately and completely as possible in all docs.
5. Make sure that the security agreement contains a granting clause
6. Inquire into the source of the debtor's title to ensure that the former owner's creditors have no valid claims.

C. Attachment of the Security Interest

(851)

Attachment is the process by which the security interest in favor of the creditor becomes effective against the debtor.

Steps are in §9-203:

§9-204- this is the after acquired prop clause

if are a consumer and give a lender a right to after acquired prop. If buy prop that will all be covered by sec interest for sure. If buy a new couch, that is not covered unless this was bough w/in 10 days of the loan.

This also does not attach to a commercial tort claim.

Can say that the lender can lend 10k and gets a sec interest in 5 cars, can also specify that any future loans that may are also secured by those same cars. Then can in the original statement can say also collateral for future advances.

Prob 284:

When attached to guitars?-

need (1) sec agreement (written); (2) value; and (3) right to collateral.

Jan 6th - there was 1, 2, and

Could argue that wasn't attached till got to the store

What are the three basic elements that need for sec interest to attac:

1. value
2. debter has to have right fof collateral
3. security agreement (or evidence of sec agreement)

Prob 284:

(856)

when does sec interest attach to the later aquired trumpets-

when the are packed to be shipped b/c under art 2 when they are labeled they are ready to identified.

If the bank filed a proper finance statement the day after the sec agreement was entered into? He doesn't have them yet.

There are just three req, there is no requirment for filing.

Can have a perfectly good security interest w/o filing.

The point of filing is for perfection.

The point of having it perfected, so that have priority over other debtors.

Can a financing statement be filed b/4 the sec agreement is signed and attached?

Can b/c want to put self on notice to other creditors, are free to prefile, b/c then have one up on the other filers. That means that attachment and perfection will attach simultaneously.

Why do so before sec agreement has attached?

Can prefile, but why would you want to?

§322 – priority §- when have diff perfected interests, who gets 1st. the one that either filed or perfected first gets a higher priority. So that way may put self before other creditors.

(c): if the bank didn't make any firm commitment till that day, when did the security interest attach? Would attach on the date that the loan was given. Until then, there was no firm commitment or granting of money.

In Re Howell Enterprises, Inc.
(857)

This is about the *rights and collateral element*- this is not very controversial.

Two comp that sell rice,
Customer wants to use a commercial letter of credit to buy.
Use a system where the two rice merchants allow the one to sell the right to the other.

Howell records this as accounts receivable, and the other records as a sale.
Howell goes bankrupt.
And the bank has an interest in the bank. Interest in all its accounts.

So the banks claims that the sec interest in the letter of credit.
Does Howell have a right in that letter of credit? If does, then the bank gets it.

The bank wasn't hurt when the letter of credit was sent, this wasn't money that ever anticipated having.

Said that the other rice comp has the right to the letter. The rice never owned the rice, shouldn't have interest in it. Therefore the bank doesn't get it.

Chapter 20: Perfection of the Security Interest

Attachment: b/w the debtor and the creditor

Perfection: b/c are all these other creditors that have claims too.

Perfection: Attachment + publicity /notice

Notice

1. possession (pledge) this is the oldest way to enter into a sec transaction
 - has to be a tangible good. Can't possess an intangilble. It may be a machine that the creditor can't take b/c then the debtor cannot work off the debt.
If is an inventory k, then the banker couldn't generate the interest
2. Filing- this is what is done in 99% of secured transactions
3. Automatic- don't have to file or anything, just happens when attaches.
Ex, purchanse money security interest

4. Control- This is for intangible. Can control of a deposit account. This is like possession of tangibles except for intangible. This is a recent category.

“Perfection:”

Two things:

Attachment

(b) elements of attachment

Several elements:

§9-203 (1074) (a) is all the elements of the attachment

- a. Value has been given- can't give a sec interest to some one as a gift
- b. Debtor must have a right to the collateral or the power to transfer rights to the collateral.
- c. One of the following must be met:
 - 1) Enter into sec agreement
 - 2) Can take possession of it. Then don't need a written sec agreement. That shows that the person who has it was meant to have the sec interest in the collateral. Or at the least control of the collateral

The creditor must authenticate a security agreement. 9-102(7) – authentic- to sign with the present attempt of authenticating the record. this is more broad than signed .

Need also the description of the collateral

Want to have a granting clause,

Want to specify events of default when could reposes the collateral.

When all three things done, the sec interest has attached.

These can happen in any order, but don't attach till all done.

Publicity (notice)

This is the finance statement

A. Perfection by Possession (Pledge)

§9-310 : When Filing Required to Perfect Security Interest or Agricultural Lien; Security Interest or Agricultural Lien; Security Interests and Agricultural Liens to Which Filing Provisions Do not Apply

(1) General rule is that must file a finance statement except §9-312 and (2)

(2) exceptions:

(6) in collateral in the secured party's possession under §9-313.

§9-313: When the Possession by or Delivery to Secured Party Perfects Security Interest Without Filing

Perfect the security interest by possession of the collateral.

Comment 2: only for goods, instruments, negotiable docs, money, or tangible chattel paper

If perfect by possession-

1. relates to attachment by showing that have sec agreement
2. also provides notice to the other creditors,

§9-312: Perfection of Security Interests in Chattel Paper, Deposit Accounts, Documents, Goods Covered by Documents, Instruments, Investment Property, Letter of Credit Rights, and Money; Perfection by Permissive Filing; Temporary perfection without filing or Transfer of Possession.

(1) a security Interest may be perfected by filing

(2) Except with §9-315(c)&(d). then- when can have control to perfect

(3) Goods covered by negotiable instruments:

Can have security interest in the doc and not have the goods. This takes preference over other security interests of the goods.

So handles both sides of the prong.

Prob 285:

(864)

collateral is a diamond- perfect for sec trans by possession.

Issue is that the owner of the diamond keeps on display at a museum but retains sec interest in the diamond.

If the diamond is on display, is it in possession?

Yes, so long as the 3rd party will give a sign or authenticated doc that will give to the creditor. Can have another person possessing for the creditor.

Field warehousing:

Now don't do this any longer.

Prob 286:

Promissory notes used for collateral from customers to the finance comp.

They took the notes and then filed sec interest.

Comp wanted one back to give it to customer to pay.

Forgot to give back to bank.

Does bank have sec interest in any or all of the notes:

What type of collateral are these promissory notes: look at instremtn (102-8.7)

- 1043- negotiable instrument that gives right to payment that can transfere.

§312(g)- if have perfected sec interest, remains perfected for 20 days w/o filing- then the perfection lapses.

The days did lapse here, could have maintained by filing.

Under the old Art 9- possession was the only way that could perfect. Now can do in both ways.

With possession- there are wrinkles, like this with the lapse.
This is the most straight forward category.

B. Automatic Perfection

Applies in small number of situations.

This is a small category- purchase money sec interest in consumer goods.
If get this PMSI- then the creditor doesn't have to do any filing, is perfected automatically.

* Just have to make sure that the interest has attached.

§9- 309: Security Interest Perfected Upon Attachment

(1) PMSI- except what stated in §9-311(b)

All consumer goods

No automatic perfection for motor vehicles **§9-311(a)(2)**

1. Purchase Money Security Interest in Consumer Goods

§9-103: Purchase-Money Security Interest; Application of Payments; Burden of Establishing

(a)- refers to situation where the debtor gets credit from the seller directly, so that the other can buy the good.

(b)- not the seller that extends the credit- can go to the bank, and then they give the loan for the specific good, then will give the money. That is also a PMSI- has to be for a specific purpose.

Comment 8: the Court decides what the proper rules are in consumer-goods transactions.

Policy idea: if have a PMSI then get automatic perfection. Why would the law give this special treatment to consumer goods? Could not have bought the good if not for the seller hadn't credited.

There is little risk that consumer goods would be used for collateral for something else. So later creditors wouldn't be hurt very much. So why not do it.

Prob 288:

Put up siding on the house, and Bilko has a PMSI to the siding and all consumer goods.

Then buy sewing machine with interest in sewing machine.

Bilko doesn't have sec interest in sewing machine.

Don't get interest in consumer goods, unless resigne sec interest w/in 10 days after. 204(b)(1).

Creditors want after acquired sec interest in everything that the debtor buys later. That way can keep the debtor in fear forever.

That would keep the debtor paying.

(b) what this a PMSI – yes- can be a 3rd party that gives money for purpose

(c)- what if didn't use the money for the right reason. Have to use the funds to buy the consumer goods.

103(a)(2) – value given but not used for the right purpose, so not perfected.

(d)- Bilko out- after acquired prop- in respect to consumer goods w/in 10 days or Bankruptcy trustee gets the rights of the lead creditor- v. finance comp.

Finance comp wins b/c of the automatic perfection.

If perfected b/4 the bankruptcy, then win over the bankruptcy trustee.

There are some assets that are protected under the bankruptcy code:

Non- pimsy sec interest in consumer goods: Bankruptcy Code 522

* the idea is that there are certain prop that can keep: Home, and basic consumer goods, unless the good has a pimsy- then can be repossessed

In Re Short

(868)

Sometimes there are probs when buy consumer good on time, give pimsies. They are later consolidated. If have pimi's consolidated, do they loose their pimsi standards?

Consolodation rules- ifconsolidate with other loans, then becomes normal

Dual status: two nonpimsi, then are in proportion pimsi and not pimsi.

The revised code, non consumer goods- 9-103 efg, they take the dual status rule.

If have in a non-consumer good and consolidate with non pimsi, then are part one and part the other.

That doesn't tell us about pimsi consumer good is not answer in code on purpose, left up to the common law.

April 11, 2001

Prob 289:

(878)

not subject to the creditor's claims till accepted

§2-326- (89)

goods "held on approval" are not ... till accepted.

Have a sale and approval if are delivered to buyer but the buyer can return them if they are conforming.

If can still return b/c don't like, then until acquire rights to the collateral.

(b)- Is it a pmsi- look at whether they are closely allied.

The dealer would not have bought the cars if had not thought would have gotten the loan. So was really given to buy the cars, even though the cars were bought days earlier. This is a PMSI.

General Electric Capital Commercial Automotive Finance, Inc. v. Spartan Motors
(889)

B. Certain Accounts and Other Intangibles

§9-309 (2): also perfected when attached:

an assignment of accounts or payment intangibles which does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts or payment intangibles.

Comment 4: the reason for this paragraph is to protect from *ex post facto* invalidation casual or isolated assignments.

In re Wood

(889)

C. Perfection by Filing

(893)

This is they way that 90% of the sec interests are secured- this is almost the default

§ 9-310: When Filing Requirement to Perfect Security Interest or Agricultural Lien; Security Interest or Agricultural Liens to which Filing Provisions Do not apply

(1) financing statement must be filed to perfect all security interests and agri liens.

Federal exceptions that are not covered under filing.

Ex- aircraft- this preempts the UCC.

State exceptions- goods that have a certificate of title to them.
There are some personal prop that does have that title (cars) then cars are not covered in the UCC system. Can go and check who has title and whether that is inherent.

1. The Mechanics of Filing

(894)

The new UCC sets up a system of centralized filing, at the Sec of State's Office. Always pay extra for the second copy.

Prob 292:

Who filed first and who bares the error?

B/c the office made a mistake doesn't mean that effected who the first person to file was.

Can't do anything past try to file the risk is on the filig office.

The creditor who looses should sue the state.

As long as have a copy can show that did file, when filed.

2. Other Filings

(895)

§9-102(a)(39): Financing statement: a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

This creates the *open drawer* idea that can look at every transaction relating to the finance statement.

§9-519: Maintenance of the Financing Office:

(c) must be indexed by the name of the debtor

§9-523: Info from the Filing Office

(c) info that shall be made available upon request

§9-515: Duration and Effectiveness of Financing Statement; Effect of Lapsed Financing Statement

(a) When file finance statement only good for five years.

(b) Public Finance Transaction and Home Mort Loan- are 30 years

(c) When there is a lapse and the perfection lapses.

(d) Can only file for the continuation w/in 6 months of the expiration.

(e) Can continue to file the continuations in the same fashion.

§9-102(a)(67)- Public- Finance Transaction: a secured transaction in connection with ---- debt security is issued.

§9-522: Maintenance and Destruction of Records

The Sec of State's office keeps the lapsed financing statement in their records for at least a year.

§9-519: Filing Office Duties:

(g) must keep the name of the debtor on file for that one year after lapse.

§9-514: Assignment of Powers of Secured Party of Record
???

D. Perfection by Control
(897)

Can also file by control. This is for intangibles.

§9-314: Perfection by Control:

(a) Can perfect security interest by control with sec interest in investment property, deposit accounts, letter of credit rights, or electronic chattel paper
§9-104,105,106,107.

Chapter 22: Priority

A. Simple Disputes

§9-201: General Effectiveness of Security Agreement

This is against purchasers of the collateral and creditors.

Secured creditors win over unsecured creditors

(even though perfection has not been done)

** If have secured creditor, then he wins over the unsecured.

But often times is one secured v one secured.

§9-317: Interests That Take Priority Over or Take Free of Security Interest or Agri Lien
Unperfected sec creditors.

Interests that take priority over security interests.

(1) Security interest is below one with priority under **§9-322** (this is about perfected sec creditors)

(2) sec interest below one who is a lien creditor before is perfected or there is a filing.

As long as perfect before lien creditor's lien attaches or filing, then win.

Prob 303:

(905)

who gets paid first when merchandise is sold or pay the debts?

So long as the bank was unperfected the travel service would get priority (they had a judicial lien for their debt).

They didn't take possession b/c was inventory- and they never filed a finance statmetn.

So long as the judicial lien attaches b/4 perfection, then the lien creditor wins.

What if filed a bankruptcy while unperfected bank?

The trustee takes priority over the bank §9-201 (52)(c): the trustee is a lien creditor to all that are not perfected lien creditors. The results therefore would not change.

This bankruptcy cuts off all unsecured credits.

Prob 304:

Which bank has superior interest in the collateral?

The one that perfected their security interest over the one that did not.

Even though it is the second bank, still takes priority over the first.

What about where there are several? **Major Article 9 Priorities Clause**

§322: Priorities Among Conflicting Security Interests in and Agricultural Liens on Same Collateral

General priorities rules except with these:

(1) Perfected SC v. Perfected Sec Creditors

“First in time, first in right”

- First to file or first to perfect. This is a bright line rule so that can't argue. Look for the *priority date*- this is whatever came first, the filing or perfection.

(2) Perfected security interest priority over unperfected security interests

(3) Two unperfected security creditors: the first to attach or become effective has priority.

Prob 305:

Man running clothing store, 2 banks with security agreement and financing statements.

Bank 1: filed and sec agreement on 25th money handed over on 10th Nov. Bank 2 money handed over on 2nd. Bank #2 prevails. Remember that attachment does not occur until value given. Who has a superior right? 1st bank wins b/c they are both perfected creditors and the first to file or perfect wins. Here bank #1 files before bank #2 regardless of the fact that the bank #2 perfects first.

Creates a race to the court house, regardless of whether knew of other creditors, meant to protect the system of the whole.

Priority date and perfection date are not the same thing.

Prob 306:

204(c)

bc of the pre-filing, when make other ?? don't have to keep checking.

Prob 307:

The first to file or the first to perfect.

The bank would win b/c had perfection by possession.

Yes can perfect by possession, but is only good as long as have possession.

§9-323: Future Advances

perfection of the security interest dates from the time an advance is made to the extent that the security interest secures an advance that:

1. is made while the security interest is perfected
2. perfected by a method other than 309 or 312

§9-312(f) : remains perfected for 20 days without filing if with the bailee that doesn't apply here b/c has to be in possession of a bailee (a 3rd party holding on behalf of someone else) here were given right back to the debtor, therefore not relevant.

If don't file a finance statement, then sec agreement won't perfect. So lose against the father who filed. So the bank should have filed.
When in doubt, file and file early.

Could initially perfect by one means then later file, then calculated by the earlier way.

§9-204(c) allows future advance clauses. When parties enter into sec agreement say that whatever collateral applied before for collateral will continue to apply in future loans. Authorizes *dragnet clauses* also- extend the sec interest to certain transactions that shouldn't allow cross collateralization.
Courts have been traditionally very hostile with these types of clauses.

The art 9 drafter felt that they shouldn't be allowed unless the transactions were similar or belonged in the same class of actions.

Prob 309:

Howard into cattle business. Got a loan and credit card. Did the bank security in the cattle encompass credit card debt . to the extent that they were same kind same class transactions you can go after collateral. What if he bought curtains with credit cards? Cattle would not have secured credit card.

In Re James:

Car loan and then credit card transaction. The credit card agreement said that any other loans with the same would also be secured by the credit card would be secured. So when think credit card, think unsecured credit, (anyone can get one, don't really need to offer collateral) but then banks will say that any other loan from the bank will also function as collateral. Said that were the same class of transaction: car loan and credit card bills- same bank and for consumer purposes. They are both consumer financing.

B. Purchase Money Security Interests

Basic Rule

§9-103: Purchase Money Security Interest; Application of Payments; Burdens of Establishing

- (1) This is when creditor pays directly for the good
- (2) This is when the bank finances a loan specifically for the good

§9- 301(9)- if get PMSI then is perfected automatically- the only exception is the car loan

§9-317(e)- if file a financing statement or in first 20 days then have the security interest and take priority over all other creditors

§9-324: Priority of Purchase- money Security Interests

If the PMSI is for something that is not a consumer good:

(a)- General Rule-

If any good other than inventory and livestock- when the debtor receives perfection of the collateral or after 20 days. Get 20 days, then have to file a finance statement.

PMSI- gets a *super priority*. Get to jump to the head of the line. This is the main exception to the first in time, first in right. Can get ahead of the secured creditor.

Why give PMSI in equipment? Why give special priority?

Reason 1:

Creditor financed Equipment 1, then the debtor buys E2. the second sells on pmsi, creditor one didn't give on the assumption of the existence of E2. they only lent the money against E1. If buy more later. Then that doesn't impair the economic interest of the first creditor.

Reason 2:

What if debtor wants to buy some other piece of equipment, then no other financier would finance if didn't have first right.. then could only go to the first general creditor. Wouldn't have the choice.

So have to allow the second to have a PMSI, otherwise would give too much power to the first lender.

That is why they get the second in time but first in right priv.

Also get a grace period for filing.

Why don't you have to prefile?

Often times the buyer will want to take the goods with them right away.

So let them as long as file later.

That is in recognition of how the commercial system works.

Prob 310:

The furniture thought that was getting a good sec interest, but the comp had a lien with the bank. Store didn't have a policy of filing. Why did it have this policy?

Many of the people buy furniture for household use, so would be auto perfected and wouldn't have to file. This is for office bldg and therefore equipment. that is why should have filed.

On June 10th- the furniture store will have priority

June 30th - this is equipment (not inventory- not resling, not farm good, not consum good b/c not household good) by default is equipment. So have 20 days graceperiod where perfected. So June 30th, the perfection is lapsed and lose to the bank.

Galleon Industries
(919)

Someone who got perfection accidentally.

Went to buy some sort of machine from machine comp –that only took cash. So galleon had to come with cash. The manufacturer sent directly to gall rather than the comp. So when ended up at the Gal, the seller (comp). Sued for \$\$.

So Gal went broke.

Gal's bank claimed the interest under the after acquired clause. And the mach comp claimed an interest b/c never was paid for.

Issue was whether the bank's sec interest attached after acquired clause whether Gal had rights in the collateral to the floating lien to attach?

They had modified the earlier agreement, when they found out that wasn't a cash sale, then changed the terms and made a PMSI according to the court.

They didn't file, not a consumer good, they got a PMSI, but their period lapsed. When they found out about the machine had two days and didn't file.

The comp should have asked for return of the product instead of immediate payment (which changed the terms of the deal) to protect their interest against the bank.

Inventory and Livestock:

Inventory rule is diff b/c the debtor is buying new equipment financed by someone else, then not effecting that original debt.

With inventory lender takes a floating lien.

So when debtor sells out that inventory out, and acquires new one, then creditor gets the lien in the new inventory.

If let all the future lenders get PMSI's then the first lender has no real collateral: after acquired should be included.

§9-324 (b): Inventory purchase- money priority

Main rule- PMSI- priority over conflicting sec interest IF

1. Perfected when the debtor recvs possession of the inventory
2. PMSI creditor must send authenticated cert to the other previous holders of sec interest

3. When send notification, is good for 5 years. (can't complete after 5 years)
4. The person sending has or expects to receive PMSI and describes the inventory.

If one does all this, then the first creditor can call the loan in defect.
The initial credit can stop giving advances secured by the original inventory.

Prob 313:

Perfect interest b/w debtor gets possession of inventory?

She perfected when she filed. Dec 22 and delivered goods on 12. PMSI must send authenticated notice to holder of conflicting interest holder? She sent them a notice, but not clear when.

Subsec 2- only says send notification, doesn't say anything about rect.

3- does talk about rect. Can say that the debtor didn't receive notice b/w possession, so that might not work.

Would change if the notice wasn't received till 13th? Argue both ways, b/w 2 and 3.

Notice received 11th- can sell for indef time or just this transaction.

The notice is good for 5 years. That implies that she can keep selling goods to Harold, not for indefinite time, but for 5 years.

Prob 315:

Cosignment case:

Gave 5 fav pieces, there was a floating lien from the bank. They took everything. The consignee has all the rights of the cosignor.

Cosignment: when one merchant agrees to sell another person's goods in their name. **§9-103(d)**- this is the UCC- the cosignment is a PMSI. So if do a cosign to protect has to act as though was keeping a sec interest. So she would have to comply with the 4 steps. (this is quite a burden). She didn't notify the bank that there was a new PMSI? No. so she didn't go thru the notification process.

This rule is meant to protect third parties.

C. Control and Priorities

D. Buyer's Priority

This is where the security detaches.

- Most common way- for the debtor to perform their obligation.
- Can also just release the debtor.

§9-201: General Effectiveness of Security Agreement

Rule: YOU CAN ONLY SELL WHAT YOU HAVE.

(a)- security agreement is good b/w parties and purchaser of the collateral

So if one has a good that is encumbered, they can't sell it full and clear.

Can only sell the share that own.
The Security interest travels with the collateral

There are many exceptions to this rule:

Exceptions:

1. **§9-315(a)(1)**: the secured party authorized the disposition—
the authorization doesn't have to be express. Can just be implied.
2. Buyer in the ordinary course of business: (BOC) **§9-320(a)**:
People who buy from store a get to keep – they get over all the perfect secured creditors and unsecured creditors. There are a couple of wrinkles:
 - a. **§1-201(9)**: “Buyer in the ordinary course of business” means a person who in good faith and w/o knowledge that the sale to him is in violation of the ownership rights or security interest of a 3rd party in the goods buys in the ordinary course of business of selling goods of that kind but does not include a pawnbroker.
person who in good faith and w/o knowledge that the sale is in violation of someone else's interest, buys. Can have knowledge of the sec interest just can't have knowledge that in violation of the security interest.
§9-320- one thing to know that sec interest, another thing to know that sale violates that. There re some that expressly allow that sale.
 - b. Then look at whether is in the ordinary course of business?
The seller has to be in the ordinary course of business, doesn't really matter what the buyer is.
 - c. Security interest created by the buyer or seller: can only take of security interest that was created for that person. If is someone else's sec interest, then can't use this exception.
 - d. farm products- even if in the ordinary course buy far prod, then still can't get the exception.
3. Buyer Not in the Ordinary Course of Business. **§9-317(b)**- will prevail over an Unperfected Secured Creditor only when –
 - Buyer gives value,
 - Takes possession, b/4 unperfected creditor, and
 - Have no knowledge of conflicting security interest.
4. Garages Sale Exception (from consumer to consumer)
§9-320(b)- a buyer of consumer goods takes free of security interest even perfected when
 - (i) for value
 - (ii) without knowledge of sec interest,
 - (iii) primarily for personal use
 - (iv) before filing a financing statement covering the goods.
Note: (iv) becomes relevant where you have PMSI in consumer goods and no requirement for filing.

Implication is that when buy neighbor's couch, then should check b/c could be PMSI, so check b/4 buying the couch.

Prob: 319: 920a- can tell that takes free of sec interest b/c is buyer in ordinary course of business. The bank has no claim- even if she knew about the bank had a perfected interest. She would have to know that it was a violation of the security interest for it to apply.

What if had put the TV on lay away, then paid some, the TV was at the store, then the store went bankrupt.

§2- 502: so long as bankrupt w/in 10 days of payment, then has the right to reclaim the lay away goods, and they do not have to lose the goods.

She would have to pay for the rest of the TV though.

Either way, she would have a claim against the comp that went under, but would realistically never really recover anything.

If she has been paying for the TV for the year, then would be after the 10 days of the initial and loses everything... so would bring a claim against the comp and get really nothing just like the other creditors.

Prob 320:

if the goods are perfected by possession- then good even against these buyers in the ordinary course of business.

That had possession of the goods, should have put the potential buyer on notice that something is going on.

What kind of action would they bring?

They could bring art 2 cause of action: breach of warranty of title.

Prob 324:

(925)

bought a stereo receiver –store got PMSI didn't file financing statement .. sold to neighbor and stopped making payments.

The store can't get the good from neighbor.

- the buyer had no knowledge of the sec interest
- bought the value
- bought for own use
- never filed financing statement (didn't b.c though that were automatically perfected (which were) but not against neighbor)

Prob 325:

Does he lose to the bank? He loses unless he is one of the exceptions.

- a- the bank had not authorized the sale.
- b- He would be a buyer in the ordinary course of the business.
§1-201-9: buyer in the ordinary course- he doesn't normally sell ice cream machines- he sells ice cream.

Not all innocent buyers are protected. Have to be careful.

What about unperfected bank interest at time of sale? §9-317(b)- BNOC – ha can prevail over UPSC. What if bank knew or approved of the sale? If the bank authorizes the bank to sell free of the sec inters,t hten the sec interest doesn't travel.

What has the bank authorized? If has authorized free and clear- then bill would win.

April 23, 2001

The baseline rule is :

The sec interets follow the collateral when sold. There are a lot of exceptions though.

Prob 327
(957):

Farmer remits the money for loan w.o the permission of the bank-
The buyer does

§9-328: Priority in Investment Property

(1) a secured party that has control has priority over a secured party that does not have control. This is an exception in first in time, first in right.

Under the UCC there is an exception for farm prod.

§9-313: can perfect by possession (the other way other than filing)

can be sold when the creditor authorizes it.

So the courts are liable to find waivers of this sort.

E. Enforcement

This is the key to art 9 sec interest.

This gives access to special kinds of remedies.

Only on default do sec and unsecured interest differences come into play.

Having to enforce your security interest is not attractive.

This is not something that want to have to resort to.

This is triggered by default, that sec creditor gets certain rights.

Before default, the secured party, if in possession of collateral, has certain duties.

Have to take reasonable care and preserve the value of the collateral in your possession.

Default- triggers the whole scheme.

The UCC doesn't define default.

What constitutes default:

- not paying
- the parties can define default- lawyer should define (ex- if destroy the collateral, or giving a conflicting security interest, defaulting on another agreements, could require the debtor to insure the collateral.)

So however the sec agreement is drafted, there is a default-

If foreclose in real estate- then have a judicial forecloser.

Here there is the right to reposes the collateral your self.

Don't have to go to court and get in this case.

They can do this if it is done w/o breach of the peace.

Also, very imp that people can keep their homes.

Less important for personal prop, so don't have to go all the way to court.

If that that collateral, then what do you do?

Can then auction. Most times the owners do not really need the collateral, so can sell at a reasonably price and then can keep the money.

What if has depreciated? And can't get money back,

Then can sue the debtor for a deficiently judgment.

If make too much. Then the money goes towards the resale, then the underlying obligation, and the rest to the debtor.

Another option:(not self help)

Can also have the court conduct the resale just like have in real estate.

Option 3: can chose to keep the collateral- this is the strict foreclosure.

Often times though, this is not convenient. Don't really want the collateral.