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SECURED TRANSACTIONS

Secured Transactions is an essay-only subject that is fairly frequently tested on the MEE. It is so frequently tested that you should be thoroughly prepared for secured transactions even if it has been administered on the last several exams. Thankfully, secured transactions is a fairly straightforward subject and the same issues seem to be tested repeatedly: attachment, perfection, and priority.

Overview

Essentially, secured transactions tests the process and rights when a creditor gives a loan to a debtor and the creditor secures that loan with collateral that is some form of personal property (inventory, equipment, consumer goods, etc.). If the debtor defaults on the loan, the creditor can legally take the collateral.

Initially, the creditor creates a security interest, which protects the creditor against the debtor. To do this, the creditor needs to **attach** their interest by the creditor giving value, the debtor having rights in the collateral, and a proper security statement being created that sufficiently describes the collateral which the debtor authenticates.

Then, to protect themselves against third parties (other creditors, bankruptcy trustees, and subsequent purchasers), the creditor must **perfect** their security interest, which may be done in a variety of ways. Critically, there are often competing creditors and the bar exam frequently tests **priority** of competing interests.

If a debtor defaults, then the creditor may enforce their interest in the collateral via repossession, disposition, resale, etc. Upon default, the creditor(s) and debtor each have rights, which are often tested.

Classification of Collateral

To analyze how a court will classify an item, you must first be familiar with various categories of collateral.

Definitions of Collateral Types

Accessions

Where goods are physically united with other goods in such a manner that the identity of the original goods is not lost, the goods become accessions. A security interest in goods that is created and perfected before the goods become accessions continues after the goods have become accessions. When the collateral of one creditor becomes the collateral of another, each creditor's collateral is an accession to the other's collateral and the two items of collateral together are regarded as the whole. Whether either creditor's security interest applies to the whole or applies only to its original collateral turns on the description of the collateral in that creditor's security agreement.

Account

Account means a right to payment of a monetary obligation, whether earned by performance, for property that is to be sold, leased, or otherwise disposed of, for an insurance policy, for a secondary obligation incurred or to be incurred, for energy provided or to be provided, for the use or hire of a vessel under a charter or other contract, arising out of the use of a credit or charge card or information contained on or for use with the card, or as winnings in a lottery or other game of chance operated by a State or person authorized by the State. An account does not cover rights to payments evidenced by chattel paper or an instrument, commercial tort claims, deposit accounts, investment property, letter of credit rights, or rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

After-Acquired Collateral

After acquired property is property a debtor acquires after having taken on a debt secured by all of their property, which becomes additional collateral for the debt. Such property includes improvements to real property and personal property. If an agreement states "all inventory" it likely created a security interest in after-acquired property.

Consumer Goods

Consumer goods are goods used or bought for use primarily for "personal, family or household" purposes.

Deposit Account

A deposit account is a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

Equipment

Equipment means goods other than inventory, farm products, or consumer goods.

Future Advances

A future advance clause is a term in a security agreement that covers additional loaned amounts on present collateral or collateral to be acquired in the future. A security agreement covers future advances only if the security agreement explicitly includes a future advances clause.

Goods

Movable when a security interest attaches.

Inventory

Inventory is goods other than farm products which are leased by a person as lessor; are held by a person for sale or lease or to be furnished under a contract of service; are furnished by a person under a contract of service; or consist of raw materials, work in process, or materials used or consumed in a business.

Lease

Whether a transaction in the form of a lease actually creates a true lease or a security interest depends on the economic realities of the transaction, not on the form of the transaction or the supposed intent of the parties.⁵⁶⁷

Proceeds

Proceeds is property that is acquired upon the sale, lease, license, exchange or other disposition of collateral; whatever is collected on or distributed on account of collateral; rights arising out of collateral; to the extent of the value of the collateral, claims arising out of loss, nonconformity, or interference with the use of, defects or infringement or rights in, or damage to the collateral; and to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of defects or infringement of rights in, or damage to, collateral.

Classification

Classification Not in Dispute

[Rule from collateral type above.]

Here, [collateral] is [collateral type] because [facts + reasoning].

Classification in Dispute

⁵⁶⁷ The following situations create a security interest, not a lease: lease payments must be made for the full term of the lease and are not subject to termination and the lessee has an option to become the owner of the goods for nominal additional consideration at the conclusion of the lease agreement.

To determine how to classify the collateral, the court will look adopt one of two approaches: either the expressed intent at the time of purchase or the actual use of the collateral in the hands of the debtor.

Under the expressed intent approach, the court would likely classify the collateral as [collateral type] because [facts + reasoning]. Under the actual use approach, the court would likely classify the collateral as [collateral type] because [facts + reasoning].

Thus, the rights depend on which approach the court takes.⁵⁶⁸

⁵⁶⁸ For the rest of the essay, think about how the classification might affect the outcome and be sure to address both alternatives where necessary.

Creation of a Security Interest

A security interest is created by means of a contract. The debtor and lender enter into a contract whereby the debtor offers personal property as security and the creditor offers a loan to the debtor. For certain types of collateral, there are particular rules that must be satisfied to create a security interest in such collateral.

Validity of Security Agreements and Rights of Parties

To obtain a security interest, a creditor must receive the debtor's agreement to grant such an interest.

Here, [creditor] [did / did not] receive [debtor's agreement to grant a security interest because [facts + reasoning].

Thus, [Creditor] [does / does not] have a security interest in [collateral].

Reservation of Title⁵⁶⁹

A retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer is limited in effect to a reservation of a security interest.

⁵⁶⁹ This may look like a lease or a contract whereby the seller retains title until the contract price is paid. The substance of a transaction controls irrespective of the form or the label given by the parties.

Attachment

Attachment is one of the most frequently tested issue in secured transactions. If you encounter a secured transactions essay, you will almost certainly have to analyze attachment, so be sure to know how to conduct this analysis well.

Attachment

A secured interest attaches when there is value given⁵⁷⁰, the debtor has rights in the collateral⁵⁷¹, and there is a security agreement⁵⁷² that provides a description of the collateral⁵⁷³, signed by the debtor.

Here, there [was / was not] value given because [facts + reasoning]. [Debtor] [does / does not] have rights in the collateral because [facts + reasoning]. There [is / is not] a security agreement that provides a sufficient description of the collateral because [facts + reasoning]. The security agreement [is / is not] signed by the debtor because [facts + reasoning].

Thus, the secured interest [has / has not] attached and [is / is not], therefore enforceable.

⁵⁷⁰ Value is generally given through a loan of money, providing a line of credit or making a credit sale of collateral. Past consideration may also be value.

⁵⁷¹ Rights in the collateral: generally, a debtor must have full ownership of the collateral.

⁵⁷² A security agreement is just an agreement that creates or provides for a security interest. No specific language is required to create a security agreement. The description must just reasonably identify the collateral. The debtor must authenticate the agreement by signing it or its electronic equivalent.

⁵⁷³ Remember, a description that describes the debtor's property as "all of the debtor's personal property" or words of a similar import do NOT reasonably identify the collateral. NOTE: this is different from a financing statement, where such a description IS sufficient. But the financing statement cannot perfect a statement that is not attached.

Perfection

Perfection is notice to the public that a security interest has been created. Remember, attachment protects the creditor against the debtor. Perfection protects the creditor against other creditor.

A security interest may be perfected by filing, possession, control, or it may happen automatically, such as with a PMSI. Below, we list the requirements for each type of perfection. We also address unique issues that arise with certain collateral.

Filing a Financing Statement

A party may perfect their security interest by filing a financing statement. A financing statement is properly filed when it lists and describe the type of collateral⁵⁷⁴, name and address of the debtor.⁵⁷⁵ If the debtor transfers the collateral to a second creditor, the collateral is consumer goods or equipment, and the second creditor files a financing statement within 20 days of creating the secured interest.⁵⁷⁶

Here, the financing statement [did / did not] properly list and describe the type of collateral because [facts + reasoning]. It [did / did not] state the name⁵⁷⁷ and address⁵⁷⁸ of the debtor because [facts + reasoning].

The collateral is consumer goods because [facts + reasoning explaining how it is used for personal, family, or household purposes]. [Debtor] [did / did not] transfer the [collateral] to a second debtor because [facts]. The financing statement [was / was not] filed within 20 days of creating the secured interest because [facts + reasoning].⁵⁷⁹

Thus, [Creditor] [did / did not] properly perfect its interest by filing a financing statement.

Certificate of Title Statute

Filing a finance statement is not effective to perfect a security interest in property subject to a certificate of title statute.

⁵⁷⁴ If the collateral is improperly described, the security interest is only perfected to the extent of the collateral described. A description that states it covers “all assets” or “all personal property” is sufficient to cover all assets and personal property.

⁵⁷⁵ The name must be the individual or organizational name of the debtor. If the debtor is a registered organization, the financing statement must use the official registered corporate name of the debtor. Trade names are insufficient. If the debtor does not have a name, it must provide the names of the partners, members, or other persons comprising the debtor. If a financing statement originally lists the debtor’s name incorrectly and it is later corrected, the interest is not perfected until the name is corrected.

⁵⁷⁶ Only include this if triggered by the facts.

⁵⁷⁷ If the financing statement fails to sufficiently provide the name of the debtor → it’s seriously misleading and an ineffective perfection. If the debtor’s name is incorrect but using the standard search logic of the filing office, a search with the debtor’s proper name would turn up the misspelled / improper name financing statement → it’s NOT seriously misleading and is perfected.

⁵⁷⁸ A financing statement that has misspelled or failed to include the debtor’s and secured party’s address is perfected if it is accepted by the filing office. It is NOT perfected if the filing office rejects it.

⁵⁷⁹ Only include this if triggered by the facts.

Here, there [is / is not] a certificate of title statute because [facts]. [Secured Party] [did / did not] perfect its interest by complying with the certificate of title statute because [facts + reasoning].

Thus, [Secured Party] [did / did not] effectively perfect its interest.

Possession

A secured party may perfect a security interest in negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral.

Here, there [is / is not] possession because [facts + reasoning].

Thus, [Creditor] [did / did not] perfect its interest via possession.

Control⁵⁸⁰

A security interest in investment property, deposit accounts, letter-of-credit rights, or electronic chattel paper may be perfected by control of the collateral under Article 9. A party controls a deposit account if the secured party is the bank with which the deposit account is maintained, the debtor, secured party, and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor, or the secured party becomes the bank's customer with respect to the deposit account. A secured party has control of electronic chattel paper when a system employed for evidencing the transfer of interests in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned. A secured party has control of investment property if it meets the requirements of 9-106. A party has control of a letter-of-credit right to the extent of any right to payment or performance by the issuer or any nominated person if the issuer or nominated person has consented to an assignment of proceeds of the letter of credit.

Here, there [is / is not] control because [facts + reasoning].

Thus, [Creditor] [did / did not] perfect its interest via control.

Automatic

Perfection is automatic when there is a purchase money security interest (PMSI)⁵⁸¹ in consumer goods, the sale of payment intangible, the sale of a promissory note, or an interest in accounts that do not transfer a significant part⁵⁸² of the assignor's outstanding accounts to the secured party.

Here, this is a [PMSI in consumer goods / the sale of payment intangible / the sale of a promissory note / accounts] because [facts + reasoning].

Thus, the interest [did / did not] automatically perfect.

⁵⁸⁰ An interest in a deposit account may only be perfected by control.

⁵⁸¹ A PMSI is a security interest in purchase money collateral. Purchase money collateral is the collateral that was purchased completely or in part by the debtor with the funds given to create a security interest in the collateral.

⁵⁸² What constitutes a "significant part" is unclear. However, an account amounting to more than 50% of the total value of the debtor's accounts is likely significant.

Assignment and Sale

Assignment of Interest

A secured party or assignee of an account has the right to collect directly from the account debtor in the event of a default by the debtor.

Here, [Secured Party] [is / is not] an assignee] because [facts + reasoning].

Account Debtor

An account debtor with respect to assigned accounts is entitled to discharge its obligation by paying the assignor only until the account debtor receives notice of the assignment to the assignee, authenticated by either the assignor or the assignee, directing the account debtor to make payment to the assignee. Once such notice has been received, the account debtor is entitled to discharge only by paying the assignee. Payments made to the assignor do not result in discharge. The rights of an assignee are subject to any defense or claim in recoupment arising from the transaction that gave rise to the contract.

Here, [Debtor] [is / is not] an account debtor because [facts + reasoning]. [Debtor] [did / did not] receive notice of the assignment because [facts]. The notice [was / was not] authenticated by the [assignor / assignee] because [facts].

Thus, the obligation [was / was not] discharged by payment to [Payee].

Sale of Collateral

A security interest continues in collateral notwithstanding its sale unless the secured party authorized the sale. Buyers in the ordinary course of business⁵⁸³ and some purchasers of consumer goods can sometimes prevail over a protected secured party.

Here, [Secured Party] [did / did not] authorize the sale because [facts]. [Seller] [is / is not] a merchant in the business of selling [collateral] because [facts]. The sale [was / was not] in the ordinary course because [facts + reasoning]. [Buyer] [did / did not] buy in good faith because [facts + reasoning]. [Buyer] [did / did not] know the sale violated [Secured Party's] rights because [facts + reasoning]. The sale [was / was not] in the ordinary course of business because [facts + reasoning].

Thus, [Secured Party] [did / did not] continue after the sale of [collateral].

Shelter Principle

A subsequent buyer who buys from someone who took free of another's security interest also takes free of that security interest.

Here, [Buyer] bought from someone who took free of [Creditor's] security interest because [facts + reasoning].

⁵⁸³ A buyer is a buyer in the ordinary course of business when they are a buyer who buys goods in good faith, without knowledge that the sale violates the rights of another, from a person in the business of selling goods of the kind, in the ordinary course of the seller's business.

Thus, [Buyer] [does / does not] take free from [Creditor's] security interest.

Priority

When more than one lender gives value against the same collateral to the same debtor. If default occurs, the law provides rules of priority. Priority is one of the most frequently tested issues on Secured Transactions essays and will often involve evaluating two or three creditors.

Priority

Generally, the first creditor to file a financing statement or perfect its interest prevails.

Here, [creditor] [was / was not] the first to file a financing statement / perfect its interest because [facts + reasoning].

Thus, [creditor] has priority.

Purchase Money Security Interest

Creditors who have a purchase-money security interest qualify for special priority. If the purchase money security interest is in collateral other than inventory, the secured creditor takes priority over competing interest in the same collateral so long as the PMSI was perfected at the time the debtor received possession of the collateral or within 20 days thereafter.

Here, [Creditor] [does / does not] have a PMSI because [facts + reasoning]. The interest is in collateral other than inventory because [facts + reasoning]. The PMSI [was / was not] perfected within time because [facts + reasoning].

Thus, [Creditor] [does / does not] have priority over [Creditor 2].

Perfected vs. Unperfected Interest in Inventory

A perfected security interest in inventory has priority over an unperfected security interest in the same inventory even if the unperfected interest is a PMSI. This priority extends to the proceeds of that inventory. An unperfected PMSI interest can prevail over a perfected interest if the holder of the unperfected interest files a financing statement against the debtor and sent a notification to all holders of conflicting interests in the debtor's inventory explaining that the secured party was keeping a PMSI in the inventory.

Here, there [is / is not] a perfected security interest in inventory because [facts + reasoning]. [Holder of unperfected interest] [did / did not] file a financing statement against the debtor because [facts + reasoning]. [Holder of unperfected interest] [did / did not] send a notification to all holders of conflicting interest in [Debtor's] inventory explaining that they were keeping a PMSI in the inventory because [facts + reasoning].

Thus, [Secured Party] has priority over [Secured Party 2].

Future Advances

The priority of future advances dates back to the time of the first advance but only if the security interest is perfected.

Here, [future advance] [does / does not] date back to the time of the first advance because [facts + reasoning].

Thus, [Secured Party 1] [does / does not] have priority over [Secured Party 2].

Fixtures

A security interest in a fixture is ordinarily subordinate to a conflicting interest of an encumbrancer of the related real property unless the debtor has an interest of record in or is in possession of the real property and the security interest is a PMSI, the interest of the encumbrancer or owner arises before the goods become fixtures, and the security interest is perfected by a fixture filing before the goods become fixtures or within 20 days thereafter. If collateral became a fixture, the security interest is subordinate to the interests created by prior construction mortgages. A secured party does not have a right to remove the collateral from real estate unless the secured party has priority over all real property interests.

Here, [Collateral] [is / is not] a fixture because [facts + reasoning].

Thus, [Secured Party 1] [does / does not] have priority over [Secured Party 2].

Buyers in the Ordinary Course of Business

A buyer in the ordinary course of business takes free of a security interest created by his seller when the buyer is without knowledge that the sale to him is in violation of the security interest of a third party, buys in the ordinary course from a person in the business of selling goods of that kind.

Here, [Buyer] [is / is not] a buyer in the ordinary course of business because [facts + reasoning]. [Buyer] [did / did not] know the sale was in violation of [third party's] security interest because [facts + reasoning]. [Buyer] [did / did not] buy in the ordinary course because [facts + reasoning]. [Seller] [is / is not] in the business of selling [good] because [facts + reasoning].

Thus, [Buyer] [does / does not] take free of [third-party's] security interest.

Buyer of Consumer Goods⁵⁸⁴

A buyer of consumer goods takes free of a security interest in those goods if the buyer buys without knowledge of the security interest, gives value, buys for personal, family, or household use, and receives the goods before the filing of any financing statement covering them.

Here, [Buyer] bought [consumer good] because [facts + reasoning]. [Buyer] [was / was not] without knowledge of the security interest because [facts + reasoning]. [Buyer] [did / did not] give value because [facts + reasoning]. [Buyer] [did / did not] buy for personal, family, or household use because [facts + reasoning]. [Buyer] [did / did not] receive the goods before the filing of any financing statement covering them because [facts + reasoning].

Thus, [Buyer] [does / does not] take free of [Creditor's] security interest.

Lien Creditors

⁵⁸⁴ Note: a person who received goods as a GIFT does not take priority because they are not a buyer.

A security interest is subordinate to the rights of a person who became a lien creditor before the interest was perfected. Lien creditors are subordinate to perfected security interests when the interest secures advances made before the lien arose, within 45 days of the lien, without knowledge of the lien, or pursuant to a commitment entered into without knowledge of the lien.

Here, [Creditor] has a perfected security interest because [facts + reasoning]. [Lien creditor] [did / did not] become a lien creditor before [Secured Party] perfected its interest because [facts + reasoning]. The interest [does / does not] secure advances made [before the lien arose / within 45 days of the lien / without knowledge of the lien / pursuant to a commitment entered into without knowledge of the lien] because [facts + reasoning].

Thus, [Individual] [does / does not] have priority over [Second Individual].

Consignment

For purposes of determining the rights of a creditor of an assignee, the consignee of goods under a consignment governed by Article 9 is deemed to have rights and title to the goods identical to those of the consignor. An Article 9 consignment exists when goods are delivered to a merchant for the purpose of sale, the merchant deals in those goods under a name other than the name of the consignor, the goods are not consumer goods immediately before their delivery to the merchant, the value of the goods exceeds \$1000, and the transaction does not otherwise create a security interest.

Here, [good] [was / was not] delivered to [merchant] for the purpose of a sale because [facts + reasoning]. [Merchant] [does / does not] deal in goods under the name other than the name of the consignor because [facts]. The goods [are / are not] consumer goods because [facts + reasoning]. The value of [good] [does / does not] exceed \$1000 because [facts]. The transaction [does / does not] otherwise create a security interest because [facts + reasoning].

Thus, [good] [is / is not] part of [secured party's] collateral.

Sale or Settlement

This occurs after a default. If a default occurs, the lender can repossess the collateral and sell it to recover debts. Secured party may also keep the collateral and discharge the debt.

Creditor's Rights at Debtor Default

Repossession

Generally, a secured party has the right to repossess collateral that secures an obligation when the debtor is in default on the obligation.⁵⁸⁵ Repossession must be without a breach of peace.⁵⁸⁶

Here, [debtor] [was / was not] in default because [facts + reasoning]. There [was / was not] a breach of the peace because [facts + reasoning].

Thus, the repossession [was / was not] improper.

Resale

When a creditor resells collateral, reasonable notice of a proposed resale must be sent to the debtor and secondary obligors, and any resale must be commercially reasonable^{587 588} as to method, manner, time, place, and terms. Notice is reasonable when it gives the debtor sufficient time to take appropriate steps to protect their interests by taking part in the sale or other disposition if they so desire.

Here, [Creditor] [did / did not] provide proper notice because [facts + reasoning]. The resale [was / was not] commercially reasonable because [facts + reasoning].

Thus, the resale [was / was not] proper.

Render Equipment Unusable

When a debtor defaults on equipment, a secured party may leave the equipment in place and render it unusable. The secured party may pursue this option without judicial process so long as there is no breach of the peace.

⁵⁸⁵ Nothing requires the secured party to give either notice of default or notice of intent to repossess.

Repossession can be through self-help and without the need to commence judicial proceedings. The only requirement is that repossession be without a breach of the peace.

⁵⁸⁶ Breach of peace is not defined; however, in determining whether there has been a breach of peace, a court will consider whether the creditor entered upon the premises of the debtor and whether the debtor consented to the entry and repossession. Most courts would find an unauthorized entry into the residence of a debtor would amount to a breach of the peace. Other conduct that may amount to a breach of the peace: breaking a lock to a mobile home to gain entry; hot-wiring an engine; using trickery; oral protest or opposition to entry or seizure.

⁵⁸⁷ A resale may not be commercially reasonable if it fails to give sufficient advance publicity to insure the success of a public sale.

⁵⁸⁸ A resale may also be deemed not commercially reasonable when the price is below the fair market value. While selling below the fair market value does not always establish a lack of commercial reasonableness, most courts assume a low price is a factor in deciding commercial reasonableness.

Here, [Debtor] defaulted on equipment because [facts + reasoning]. [Secured Party] [did / did not] render [equipment] unusable without a breach of the peace because [facts + reasoning].

Thus, [Secured Party] [can / cannot] render [equipment] unusable.

Disposing Collateral

A secured party must notify the debtor before disposing collateral. The notice must describe the intended disposition and must be sent within a reasonable time before the disposition. Every aspect of a disposition must be commercially reasonable. A secured party may purchase the collateral only if the secured party buys it at a public disposition or at a private disposition only if the collateral is of a kind that is customarily sold on a recognized market, the subject of widely distributed standard price quotations, or if it is perishable or threatens to decline speedily in value.⁵⁸⁹

[Secured Party] [did / did not] notify [Debtor] before they disposed of [collateral] because [facts + reasoning]. The notice [did / did not] describe the intended disposition because [facts + reasoning]. The notice [was / was not] sent within a reasonable time because [facts + reasoning]. Every aspect of the disposition [was / was not] commercially reasonable because.

[Secured Party] [did / did not] buy [collateral] at a proper disposition sale because [facts + reasoning].⁵⁹⁰

Thus, [debtor] [does / does not] have a claim against [Secured Party] regarding the disposal of [collateral].

Proceeds of Disposition

When a secured party with priority disposes of collateral, the proceeds of that disposition are applied in the following order: (1) the expenses of the disposition; (2) satisfaction of the obligation owed to the disposing secured party; and (3) satisfaction of any obligation secured by a subordinate interest.

Here, the proceeds should be distributed as follows: [analysis indicating whether the proceeds cover the expenses of the disposition, then whether the proceeds satisfy the obligation owed to the disposing secured party, and then which subordinate interest gets what, if there are any proceeds remaining after (1) and (2) are paid.

Deficiency Judgment

A deficiency judgment is a judgment that a secured party may obtain after the collection, enforcement, disposition, or acceptance of collateral. The deficiency judgment is the difference between the debtor's unpaid loan obligation and what the secured party recovered after collection, enforcement, disposition, or acceptance of collateral.

Here, [Secured Party] was owed [loan amount]. [Secured Party] received [amount] from the [collection / enforcement / disposition / acceptance] of the collateral.

⁵⁸⁹ Only include this if triggered by the facts.

⁵⁹⁰ Only include this if triggered by the facts.

Thus, [Secured Party] is entitled to [amount] as a deficiency judgment.

Transferee Rights

A secured party's disposition of collateral after a debtor's default transfers the debtor's rights in the collateral to any transferee for value and also discharges the secured party's interest in the collateral and any subordinate security interest. A transferee is a transferee for value when they are a good-faith buyer.

Here, [Transferee] [is / is not] a transferee for value because [facts + reasoning].

Thus, [Transferee] [does / does not] take free of [subordinate interest(s)].

Debtor's Rights at Default

Consumer Goods⁵⁹¹

When a creditor resells consumer goods, reasonable notice of a proposed resale must be sent to the debtor and any resale must be commercially reasonable^{592 593} as to method, manner, time, place, and terms. Notice is reasonable when it gives the debtor sufficient time to take appropriate steps to protect their interests by taking part in the sale or other disposition if they so desire.

Debtor Remedy

Damages

A debtor may recover any loss caused by a failure to comply with the provisions of Article 9 regarding default, including either the difference between the fair market value and the resale price on the day the goods were sold and, as a civil penalty, not less than the greater of the credit service charge plus 10% of the principal of the debt or the time price differential plus 10% of the cash price. Damages may also include consequential damages.^{594 595}

Here, [Secured Party] [did / did not] fail to comply with the default rules because [facts + reasoning].

Thus, [Debtor] is entitled to [amount].

Statutory Damages

⁵⁹¹ Consumer goods are goods used or bought for use primarily for personal, family, or household purposes.

⁵⁹² A resale may not be commercially reasonable if it fails to give sufficient advance publicity to insure the success of a public sale.

⁵⁹³ A resale may also be deemed not commercially reasonable when the price is below the fair market value. While selling below the fair market value does not always establish a lack of commercial reasonableness, most courts assume a low price is a factor in deciding commercial reasonableness.

⁵⁹⁴ Consequential damages may include loss of business opportunity.

⁵⁹⁵ Damages may also include losses resulting from the debtor's inability to obtain alternative financing.

When the collateral is consumer goods, the debtor is guaranteed a minimum recovery of statutory damages in an amount not less than the credit service charge plus 10% of the principal amount of the loan.

Here, [Debtor] is entitled to [amount] because [facts + reasoning].

Deficiency Judgment

Where the creditor has violated a relevant rule, the creditor will not be allowed to obtain a deficiency judgment unless the debtor proves the amount owed would have been realized if the creditor acted properly is less than the amount to which the creditor was entitled.

Here, [Debtor] [can / cannot] prove [amount owed] would have been realized had creditor acted properly is less than the amount the creditor was entitled [Creditor] acted properly because [facts + reasoning].

Debtor Right to Redeem

A debtor may redeem collateral at any time before a secured party has disposed of collateral or entered into a contract for its disposition.⁵⁹⁶ A debtor may redeem collateral when they have fulfilled all obligations secured by the collateral and paid expenses reasonably incurred by the secured party in retaking, holding, and preparing the collateral for disposition. The right to redeem is mandatory and not waivable.

Here, [Debtor] [has / has not] fulfilled all obligations and paid expenses because [facts + reasoning].

Thus, [Debtor] [is / is not] entitled to redemption.

⁵⁹⁶ The right to redeem is a mandatory right and may not be waived in the security agreement.