

APPROSHEETS | SECURED TRANSACTIONS

First things to check!

- Identify parties involved: creditors/secured parties (with security interest in collateral), debtor, any obligors
- Define and classify **type of good** between each debtor-creditor pair involved
 - Any possible ambiguity? For example, PMSI in a computer could be used for home use or business use and be treated as *consumer goods* or *equipment* to be analyzed separately [2000 Feb MEE]
- Confirm type of interest. For example, is it actually a security interest or a lease? [2009 July MEE]
- Identify type of security interest held by each creditor: **Is it a PMSI?** (Special rules may apply)

Was there a complete creation of a security interest?

- PMSI (credit for purchasing collateral) in *consumer goods*? Automatically perfected upon attachment
- Attached? 3 requirements
 - After-acquired property? Interest attaches only when debtor gets right to collateral [2010 Feb MEE]
- Perfected?
 - Does the type of good and security interest qualify for automatic perfection (no filing required)?
 - PMSI in *consumer goods*? Automatic perfection upon attachment
 - Any statute that provides for a specific way to perfect interest (e.g., notation on certificate of title)?
 - Proper name and address of debtor in financing statement?

Multiple creditors with conflicting security interests in collateral? Determine priority & entitlement to payment

- Special considerations to check for:
 - Is the interest a PMSI in consumer goods?
 - Is debtor an “innocent customer” who bought in the ordinary course of business? Highest priority
- Determine priority dates for each collateral and each debtor-creditor pair:
 - Date of filing financing statement? (May determine perfection date)
 - Date of possession/control? (May determine perfection date)
 - Date of attachment? (May determine priority between unperfected secured parties)
- Consider specific cases:
 - Good (accession) installed to another good? Security interest in whole > accession [2008 July MEE]
 - PMSI in equipment? PMSI in equipment prevails if perfected when debtor receives possession
 - Mortgage interest vs. security interest in fixture?
- Priority order in general—check when making final determination of priority:
 - Buyer in the ordinary course of business (think innocent consumer) wins over creditor
 - Subsequent buyer? Shelter rule (also wins over creditor)
 - Perfected creditor
 - Multiple perfected creditors? First to *file* or *perfect* has priority
 - Lien creditor
 - Buyer not in ordinary course of business
 - Attached but unperfected creditor
 - Unsecured creditor

Debtor defaults on (fails to pay) obligation? Statutory remedies may (or may not) be available for secured party

- Secured party may take possession of collateral
 - Self-help (repossess collateral)
 - Breach of the peace?
 - Judicial process (obtain a writ)
 - Strict foreclosure
- Secured party may dispose of collateral
 - Sale of collateral
 - Commercially reasonable?
 - Any leftover proceeds? Junior interests (by third party) may be entitled
 - Deficiency judgment if sale insufficient
- Did secured party violate rule? Secured party may be liable for damages or not be entitled to deficiency

