Does Secured Transaction Mean I Have a Lien? Thoughts on Chattel Mortgages (What?) and Other Complexities of Article IX

Marianne M. Jennings

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Does Secured Transaction Mean I Have a Lien? Thoughts on Chattel Mortgages (What?) and Other Complexities of Article IX

Marianne M. Jennings

Abstract

Article IX of the UCC is called Secured Transactions; Sales of Accounts and Chattel Paper.

KEYWORDS: neophytes, Olympics, creditors
As a final point, I note that some prospective employers have felt compelled to ask why I attended seven different law schools, to which I respond that I shop for education no less thoroughly than I shop for a toaster. Some have asked why I would shop seven places for a toaster, to which I have no response, but I can get one by Thursday if you’re really interested. With six years of law school under my belt, I can’t help but feel that I am a more competent attorney for the experience. I can also recite large portions of Palsgraf verbatim which is a real crowd pleaser at children’s parties.

I am not an apologist for my career choices. I feel it is important to say that right at the beginning of this letter. (In rereading this letter I note that I did not say it right at the beginning, but I assure you I was thinking it the entire time.) The point is, my career is the career of every lawyer, the career every lawyer lusts after, the career every lawyer would choose if he were not so afraid of being considered a slacker, a loser, a dolt. I am not unwilling to climb the law firm ladder or to play the game. I have years of untapped ass-kissing left in me and the perspective of life’s ups-and-downs to appreciate just how important that is. Post hoc, ergo propter hoc. That’s what I always say, although usually after I’ve been drinking when its meaning is more clear.

Circumstances beyond my control have prevented me from attaining many of the prizes my peers believe are the sine qua non of a career in justice, but who could argue with my record? Nay, who? (I would be writing my own recommendation. Ha.)

I look forward to meeting you and your fellow partners, to discussing your partnership track and how profits are shared. Such frank talks always get me extremely excited as I’m sure they do you. If you have any questions after reading over my resume, please contact me and I will gladly address them further or to your satisfaction, whichever comes first. If after all this you are still unsure, I will consider springing for lunch, though I warn you, it may cause me to seriously question your commitment to any future business collaboration. Thank you way, way ahead in advance.

Sincerely,

Franklin Nebliss

enc: resume
naked photos of your wife

FN/fn
I. INTRODUCTION

Article IX of the UCC is called Secured Transactions, Sales of Accounts and Chattel Paper. The title alone tells you’re in big trouble because: a) no one ever uses the term "secured transaction," b) the term chattel paper has never been used in real life by anyone who continues to hold a job, and c) no one sells accounts anymore. Therefore, you have a title that reflects a law for things that are out of use, out of work, and out of date.

But beyond the title of Article IX, there are other complexities. My theory is that no one really understands Article IX and that’s why most of us are still operating with the 1972 version of Article IX, and why car titles and liens are handled through a different set of rules altogether. In fact, my students go out of their way to tell me that they would not accept a six-figure salary if the job involved any sort of work with Article IX or saying the word "chattel."

Article IX has become one of those areas of law completely dependent on forms, devoid of any real comprehension and capable of disasters of biblical proportions in the event the forms were lost. Additionally, we describe the last time someone could explain to you why a purchase money security interest in consumer goods is perfected automatically, but the perfection doesn’t count if someone buys the secured property (i.e., chattel). See UCC § 9-307(2) (1992). In fact, describe the last time someone could explain to you the automatic perfection of a purchase money security interest in consumer goods. In fact, describe the last time someone could explain to you what a purchase money security interest (PMSI) is. Better yet, name a human being who talks about Article IX and has a social life.

11. Oh, sure, there were amendments in 1977. These amendments made Article IX applicable to unsecured securities. When was the last time someone was able to explain what unsecured securities are? Better yet, when was the last time you saw an unsecured security? See UCC § 9-103(b). Now there is currently an Article IX study committee. These people are in high demand for judicial appointments and raises. The committee’s charge is to decide whether Article IX needs revision. The committee was formed in 1990 and last seen in 1991. Police are still investigating, but it is believed they disappeared leaving only a single chattel as a clue, somewhere around § 9-301. See WILLIAM H. BURKE, ET AL., INTERIM REPORT ON THE ACTIVITIES OF THE ARTICLE 9 STUDY COMMITTEE (1991).

12. Otherwise, we run the risk of having our cars referred to as chattels. Okay, the Mercury Bobcat, Plymouth Volare and Pacer (formerly of American Motors) deserve to be called chattels, but it’s a tragedy to label a Lexus a chattel.

13. I have no documented proof that they would turn down a six-figure salary to avoid secured transactions. But, what I can offer as circumstantial proof is the fact that their preliminary question to interviewers is: “This job doesn’t involve PMSIs does it?” Hence, this self-screening device precludes obtaining documentation of the six-figure claim. Preclusion by self-screening devices is rare among lawyers seeking employment. I offer this example as evidence of the trauma inflicted upon students who have taken a course on UCC Article IX. Also, I think preclusion by self-screening is an exception to the general priority rules under Article IX. See UCC §§ 9-301 to 316 (1992).

14. Actually, I’ve also described bankruptcy, negotiable instruments, discovery and ERISA. But, with the exception of bankruptcy, there are not chattels in the other areas. A disaster of biblical proportion would include having the counter help (i.e., filing officer per § 9-407) out sick, thus leaving lawyers unattended as they attempt to file financing statements. We would need a new priority under § 9-319 (which does not exist) for the authority to give creditors whose lawyers tried to file financing statements without counter help priority over unsecured creditors. We could punish the lawyers by instituting a future ban on them ever having a consumer PMSI.
Jennings: Does Secured Transaction Mean I Have a Lien? Thoughts on Chattel

1. INTRODUCTION

Article IX of the UCC is called Secured Transactions; Sales of Accounts and Chattel Paper. The title alone tells you you're in big trouble because: a) no one ever uses the term "secured transaction," b) the term chattel paper has never been used in real life by anyone who continues to hold a job, and, c) no one sells accounts anymore. Therefore, you have a title that reflects a law for things that are out of use, out of work, and out of date. But beyond the title of Article IX, there are other complexities. My

1. That's "9" for those of you who forget your Ms, Cs, Vs, Xs, Ls and haven't watched the credits to a movie in so long that your recollection remains unchanged by the only mode of modern communication that continues to use roman numerals (i.e., movie copyright dates) it's Hollywood kids—the land of Axel Rose, Woody Allen, Pee Wee Herman, Madonna and other such shining examples who make us glad that we don't use roman numerals if these folks are evidence of what will happen to you if you do apart from the UCC folks and people who do the outlines for law review articles. Just let them try to outline this article. I'm doing my subject heads in the metric system. By the way, I have it on good authority (albeit non-Bluebook authority because I didn't get his first name) that Hollywood is considering a switch to the metric system.

2. That would be Uniform Commercial Code for those of you who opted out of sight for years two and three of law school or who have been practicing personal injury law for seventeen years and forgotten that there are statutes. Should this be a colon or a comma? For be it from me to correct a UCC-type.

3. Has anyone ever seen a piece of chattel paper? If so, is it stamped "Chattel Paper" with one of those stamps like we have for "Copy" or "Paid," or for non-personal injury lawyers and their bills "Past Due?"

4. In fact, business people would be either a) drummed out of their rotary club or b) not work for the RTC (that's Resolution Corporation for the three lawyers who have escaped unscathed from the savings and loan crisis) if they used this term. Business people say things like, "I have a lien on his inventory" or "His eyeballs are mortgaged to me," or more correctly, "His chattels are mine!"

5. In fairness to the authors of the UCC (no one has yet come forward to confess to authorship and if their Miranda warnings are given, they'll never own up to writing those sections on priorities. See, e.g., UCC §§ 9-301, 9-302, 9-306 (1992) (chattel paper is defined in § 9-105(b)).

6. What with no economy and all, there doesn't seem to be much interest in buying "Accounts Receivable." There are no more "Accounts Receivable" only "Past Due."

7. This same description could apply to members of Congress and we're still tolerating them, so why do I pick on Article IX? Elaboration will arrive. That's lay language for the Bluebook's infra 9-83 and accompanying text. Thankfully, the short title is Uniform Commercial Code — Secured Transactions. Also should the — be a? See supra note 3.

8. That's "Article 9 items" in metric.

Theory is that no one really understands Article IX and that's why most of us are still operating with the 1972 version of Article IX, and why car titles and liens are handled through a different set of rules altogether. In fact, my students go out of their way to tell me that they would not accept a six-figure salary if the job involved any sort of work with Article IX or saying the word "chattel." Article IX has become one of those areas of law completely dependent on forms, devoid of any real comprehension and capable of disasters of biblical proportions in the event the forms were lost. Additionally, we

10. Describe the last time someone could explain to you why a purchase money security interest in consumer goods is perfected automatically, but the perfection doesn't count if someone buys the secured property (i.e., chattel). See UCC § 9-3072 (1992). In fact, describe the last time someone could explain to you the automatic perfection of a purchase money security interest in consumer goods. In fact, describe the last time someone could explain to you what a purchase money security interest (PMSI) is. Better yet, name a human being who talks about Article IX and has a social life.

11. Oh, sure, there were amendments in 1977. These amendments made Article IX applicable to unincorporated securities. When was the last time someone was able to explain what unincorporated securities are? Better yet, when was the last time you saw an unincorporated security? See UCC § 9-108(b). Now there is currently an Article IX study committee. These people are in high demand for judicial appointments and wacks. The committee's charge is to decide whether Article IX needs revision. The committee was formed in 1990 and last seen in 1991. Police are still investigating, but it is believed they disappeared leaving only a single chattel as a clue, somewhere around § 9-301. See WILLIAM H. BURKE, ET AL., INTERIM REPORT ON THE ACTIVITIES OF THE ARTICLES 9 STUDY COMMITTEE (1991).

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My follow-up to my theory on no one understanding Article IX is that
no one has ever read Article IX. 56 We could motivate change (in trading
habits and perhaps Article IX itself) by including pictures. We might even
be able to get students to accept six-figure salaries that involve work with
financing statements. Also, I believe we have handicapped the counter help
at recording offices for too long. A final theory I have is that the counter help
are the only ones capable of executing Article IX requirements. This ability
stems from never being forced to read Article IX. 57

5K. (THAT'S METRIC FOR "II.") CREATING A SECURITY INTEREST
(THAT'S A LIEN FOR ARTICLE IX NEOPHYES.)

For folks who practice law and dabble in Article IX, 58 creating a
security interest is easy. You buy a security agreement form from the local
form place, 59 fill it out, 60 and you’ve got a security interest. However,
Article IX creates all sorts of form nuances. For example, on the security
agreement, you have to describe the collateral in which you are creating the

15. Even negotiable instruments (i.e., Articles III and IV, "Articles 3 & 4 notes" in metric) have been reduced to charts. One of the most famous appears in White & Summers, JONES J., WHITE & ROBERT S. SUMMERS, UNIFORM COMMERCIAL CODE § 9-302 (1982). It's that chart with ← → ← → ← → going so many different ways it makes you think it would have been easier to try for that Ph.D. in Biochemical Calculus and Engineering and forget the law.

16. I exaggerate. There was that one guy who read it and now opens a fancy near a Montana town, wears a misshapen J.L. Bean boot and has a (since 1977) version except to mutter, "How can one find something under Article IX? Their comprehension is so extensive you can witness lawyers actually holding conditions' charts while standing at the counter asking, "Can I file this?" The counter help modestly replies to accept their sail water squeezer and joysticks and exploit that possession and filing need be done simultaneously under Article IX. One or the other will work for perfection. See UCC § 9-302 (1992) infra notes 44-64.

17. Those would be the folks who got tired of running forms in town with populations of 50, all of whom had their own boots.

18. Run by the folks who used to be counter help at the financing statement filing places, but got tired of helping lawyers create perfect security interests for free and decided to make some money, while avoiding one-on-one daily contact with lawyers. A darn, I might add, often expressed by 99% of the American public.

19. The form is a chart, really. These counter folks label all the boxes so you know exactly what to do. You must avoid law school to be able to draft forms with such daintiness.

20. The form also has a parenthetical: "Put down the stuff you want a lien on." These counter people clearly understand the level of intellectual comprehension and cognitive reasoning skills their lawyer customers possess.

21. Mr. Green Jeans was Captain Kangaroo's friend. I don't know either of their first names in spite of the Bluebook's fourteenth edition requirement that all cited folks now have first names.

22. Section 9-110 includes this language. When I was in law school, we were required to memorize the titles and numbers of the UCC sections. My professor assured us that these section numbers would be a means of speaking shorthand and such shorthand would be expected in the practice of law. I memorized them all and moved to Arizona where my state numbers for the UCC didn't match the code sections until 1984. Further, the first time I went to court, I began using my long-forgotten shorthand. The judge stopped, looked at me over the top of his glasses and said, "I have no idea what you're talking about. And if you say FMS one more time I'm citing you for contempt."

23. Jennings

security interest. Many people would just like to write "Vera's inventory" in the blank space following the instructions, "List collateral here." But Article IX requirements on security agreements are a little bit fancier and certainly more formal than say, "Mr. Green Jean's livestock." You must "reasonably identify" your collateral. Actually, "Vera's inventory" might work if Article IX didn't throw in confusing issues about what Vera's inventory could become. For example, collateral that started as inventory can turn into proceeds, accounts, or in the case of farm inventory, can actually multiply. In Cargill, Inc. v. Perlich, Shipkewa-
na State Bank took a security interest in "the hogs on Perlich's farm together with the young, product and produce thereof." As it turns out, hogs are purchased, fattened, and turned into bacon over a six-month

24. Vera's inventory is not made up of channelmen. It's just that Vera could sell that original inventory. Unless, of course, Vera just has inventory to impress his friends with statements such as, "My inventory is high this month." Indeed, without any sales, Vera's inventory is bound to remain high. I learned this while working my undergraduate foreign degree. But, we never know Article IX entitled. In fact I don't think any business folks know or care about Article IX. It's those trustees in bankruptcy who get all worked up about it.

25. Classification. The inventory reproduces; it is not a mathematical function. The form collateral is not sitting around doing multiplication tables. Well, they could be (see Mr. Green Jeans, supra note 22), but you can't get a security interest in multiplication tables or math ability. If you could, there would be many defaults and sales come SAT time each season.


27. Shipkewanna is a small town near Sprints, but as far as I have been able to determine, it's fancyless.

just don't have enough charts for Article IX. In fact, no one has been able to reduce all the complexities of Article IX to chart form.15

My follow-up to my theory on no one understanding Article IX is that no one has ever read Article IX.16 We could motivate change (in reading habits and perhaps Article IX itself) by including pictures. We might even be able to get students to accept six-figure salaries that involve work with financing statements. Also, I believe we have burdened the counter help at recording offices for too long. A final theory I have is that the counter help are the only ones capable of executing Article IX requirements. This ability stems from never being forced to read Article IX.17

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For folks who practice law and dabble in Article IX,18 creating a security interest is easy. You buy a security agreement form from the local form place,19 fill it out,20 and you've got a security interest. However, Article IX creates all sorts of form nuances. For example, on the security agreement, you have to describe the collateral in which you are creating the security interest. Many people would just like to write "Vern's inventory" in the blank space following the instructions, "List collateral here."21

But Article IX requirements on security agreements are a little bit fussier and certainly more formal than say, "Mr. Green Jean's livestock."22 You must "reasonably identify"23 your collateral. Actually, "Vern's Inventory" might work if Article IX didn't throw in confusing issues about what Vern's inventory could become.24 For example, collateral that started as inventory can turn into proceeds, accounts, or in the case of farm inventory, can actually multiply.25 In Cargill, Inc. v. Perlch,26 Shiphewana State Bank27 took a security interest in "the hogs on Perlch's farm together with the young, product and produce thereof."28 As it turns out, hogs are purchased, fattened, and turned into bacon over a six-month

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16. I exaggerate. There was that one guy who read it and now operates a ferry near Squam, Washington, wears two mismatched L.L. Bean boots and hasn't spoken since the 1977 version except to mutter, "How can field warehousing constitute perfection?"

17. They have never even touched the Gilbert's Outline on Article IX. Their comprehension is so extensive you can witness lawyers actually holding creditors' chattel while standing at the counter asking, "Can I file this?" The counter help tenderly refuse to accept their salt water aquaria and jellies and explain that possession and filing need not be done simultaneously under Article IX. One or the other will work for perfection. See UCC § 9-302 (1992) infra notes 44-64.

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24. Vern's inventory is not made up of chameleons. It's just that Vern could sell that original inventory. Unless, of course, Vern just has inventory to impress his friends with statements such as, "My inventory is high this month." Indeed, without any sales, Vern's inventory is bound to remain high. I learned this while seeking my undergraduate finance degree. But, we never knew Article IX existed. In fact I don't think any business folks know or care about Article IX. It's those trustees in bankruptcy who get all worked up about it.

25. Clarification: The inventory reproduces; it is not a mathematical function. The farm collateral is not sitting around doing multiplication tables. Well, they could be (see Mr. Green Jean, supra note 22), but you can't get a security interest in multiplication tables or math ability. If you could, there would be many defaults and sales come SAT time each semester.


27. Shiphewana is a small town near Squam, but as far as I have been able to determine, it's ferryless.

We thus learn from the hogs and develop our first chart.

**CHART 1**

**Making Sure You Have a Security Interest**

1. Buy a form (preferably a security interest form).
2. Fill in the blanks (seek help from filing clerks or counter help if you get confused).
3. When describing the collateral, be sure to explain what it can turn into, and include what it makes, for example: Ivor’s Chickens; Ivor’s Chickens’ eggs; Ivor’s frozen chicken parts; McNuggets (Chicken); Ivor’s canned eggs; Ivor’s omelettes (canned).
4. There is no need to take hogs to be filed.

Keep in mind there are exceptions to the requirement that you need a security agreement (form) to create a security agreement. This is the Article IX version of “Possession is nine tenths of the law.”\(^{25}\) If you got the collateral, you got priority.\(^{26}\)

My favorite means of possession under Article IX is field warehousing. Initially students wonder how a creditor is able to get fields into a warehouse and how inventory is done.\(^{27}\) But under this type of possession the creditor sends an agent to camp out\(^{28}\) at the debtor’s place to watch over the collateral.\(^{29}\) Usually the buyer can’t touch the collateral or anything it turns into unless the agent says it’s okay. You don’t need too much in the way of paperwork when the creditor’s agent is sitting on the collateral with a .44 Magnum.\(^{30}\) It’s just lovely to have this Article IX

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25. We learned this as toddlers when we grabbed a Pound-a-Peg hammer from another child and yelled, “Mine.” This was the Article IX equivalent of an automatically perfected consumer PMSI. We immediately had priority. Of course we did not learn of our Article IX priority until our adult years. It’s best this way due to anticipated problems with juvenile delinquency induced by early exposure to chattels and being pounded by hammers.

26. This line was adapted from Al Pacino in *The Godfather II* (MCMXLI).

27. However, by this point in the semester, they are more than willing to accept it as yet another bit of Article IX farm trivia.

28. Well, he’s just there during business hours. What with the farm, field and stream focus, I did not want to mislead you and have you convinced that Article IX is a haven for the *Flee* Haw crowd.

29. Preferably a trustworthy agent, i.e., non-lawyer agent.

30. This Article IX principle was adapted from Marlon Brando and James Caan in *The Godfather* (CMCLXII), or is it Mario Puzo’s *The Godfather*? Or is it Don Corleone and Sonny (Santino) Corleone?
period. Hogs were coming and going and Perlich didn't pay his loan back to the bank. The bank wanted the hogs. Perlich said they weren't the same hogs that existed when the security agreement was executed and "young," product and produce wasn't a good enough description to experience, held the clause was sufficient to cover after-acquired hogs. So the bank lacked out with whole hog coverage, so to speak.

29. Article IX and litigation on it are full of farm trivia like this. For example, the definition of "farm products" under § 9-106(3) says farm products apply to crops or livestock in their unmanufactured state and live-grown cotton, wool, eggs, maple syrup, pork, and eggs as examples. UCC § 9-106(3) (1992). When do eggs become manufactured and what form do they take when they are manufactured? [For generally Roger A. Alton, Law and the Chicken: An Egg-oscerated Curriculum Proposal, 17 NOVA L. REV. 701 (1993), see a dissertation regarding law and chickens.] The comments to § 9-106 offer this clarification:

"[W]hat is and what is not a manufacturing operation is not determined by this Article. At one end of the scale some processes are so closely connected with farming—such as pasteurizing milk or boiling sap to produce maple syrup—that they would not need manufacturing. On the other hand an extensive canning operation would be manufacturing. This line is one for the courts to draw.

UCC § 9-106 comm. 4. I think if we leave it to the courts, we should soon have a ruling that canned eggs are inventory and not farm products. Other farm trivia: [Brewers. During the early days the beer was brewed in tanks and sold by the barrel. Today it is sold in bottles and cans. The court would have to determine if these are farm products.]

1. A potato farmer grows potatoes and potato chips. He sells the potatoes to a processor who makes potato chips. The potato farmer has a security interest in the potatoes and potato chips. The processor has a security interest in the potato chips. If the processor goes out of business, the potato farmer can foreclose on his security interest in the potatoes and potato chips.

2. A poultry farmer grows eggs and sells them to a processor who makes eggs into egg products such as eggs, egg products, and egg substitutes. The poultry farmer has a security interest in the eggs, and the processor has a security interest in the egg products.

3. A cotton farmer grows cotton and sells it to a processor who makes cotton into cotton products such as cotton, cotton products, and cotton substitutes. The cotton farmer has a security interest in the cotton, and the processor has a security interest in the cotton products.

4. A sugarcane farmer grows sugarcane and sells it to a processor who makes sugarcane into sugarcane products such as sugarcane, sugarcane products, and sugarcane substitutes. The sugarcane farmer has a security interest in the sugarcane, and the processor has a security interest in the sugarcane products.

5. A dairy farmer grows milk and sells it to a processor who makes milk into milk products such as milk, milk products, and milk substitutes. The dairy farmer has a security interest in the milk, and the processor has a security interest in the milk products.

6. A pig farmer grows hogs and sells them to a processor who makes hogs into hog products such as hogs, hog products, and hog substitutes. The pig farmer has a security interest in the hogs, and the processor has a security interest in the hog products.

7. A cattle farmer grows cattle and sells them to a processor who makes cattle into cattle products such as cattle, cattle products, and cattle substitutes. The cattle farmer has a security interest in the cattle, and the processor has a security interest in the cattle products.
exception for a security device that was last used in the days of Dilling.

10K. (THAT'S METRIC FOR "III") WHY A SECURITY INTEREST IS NEVER ENOUGH AND ARTICLE IX PLACES SO MUCH PRESSURE ON CREDITORS FOR PERFECTION

The drafters of Article IX were a compulsive lot. Having collateral is not good enough for a creditor. Creditors need to obtain perfection if they expect to have any real rights in the collateral. Once you reach perfection, you win out over those shoddy secured parties and the delinquent unsecured parties whose lack of personal drive relegates them to positions beneath the perfected.45

The first way to perfect your security interest is by possession. Possession is IX's. Key to Article IX. Again, the gun and guard have equal weight with filing papers. The only trick is to get the collateral in your possession before the other secured parties pull some alternative means of perfection.46

Those alternative means of perfection include the ever-popular filing of a financing statement.48 The filing of the financing statement is mental gymnastics. First, you have to figure out what your collateral is.10 Collateral is divided into several Article IX categories. Collateral can be inventory, consumer goods, fixtures, farm products, chattel paper, accounts, and general intangibles.42

41. Inserting a religious tone here, once you reach perfection, you should probably be transferred to the next life and priority and foreclosure on Article IX security interests may no longer be one of your high priorities, so to speak.

42. In fairness to both secured and unsecured parties, I should note that their lack of ambition may be attributable to the fact that they looked at §§ 9-302 to -305 of the Uniform Commercial Code and decided they would rather risk Chapter 7 bankruptcy than read about Article IX perfection. See UCC §§ 9-302 to -305 (1992). Those unsecured and second creditors are no worse off than students who reject six-figure salaries rather than say "PMU." See supra note 14.

43. A gun will also come in handy here. You might also try some farm products and animal heads in their toads to convince them to allow you to take possession. See Gefahrkist I, supra note XL.

44. No one expects to get anything filed in this term. The correct term is UCC § 9-307.

45. As we know from supra note 31-34, this may be intriguing for items such as log produce.

46. These are goods of consumers. The Bluebook people made me do this footnote.

47. Goods affixed to real property or some law students in the student lounge.

48. We've been down this road supra. Let's not go hosipital.

https://nsuworks.nova.edu/nlr/vol17/iss2/5

49. This would be paper covering chattels. From the same family as wallpaper. Actually chattel paper is commercial paper or negotiable instruments. Now, wouldn't it make more sense to use the same term here as we use in Articles III and IV? Also, wouldn't it make more sense to use a term that some functioning human being with an income has used in the twentieth century (that's XIX century!)? If you say to a debtor, "I'll need to have your chattel paper as collateral," he will respond by saying either, a) "F*** out of school, etc." or b) "I'm calling the vice squad."

50. The real definition for this is found in UCC § 9-106 (1982).

51. This would be where you pledge your accounts receivable as collateral. It tends to jolt the cash flow, but not as much as me selling inventory. See Venn in supra note 24.

52. Surprisingly, log produce is not a general intangible. "General intangibles" sounds like something you would pledge when all you have for collateral is a pair of pants and an eight-track cassette player. The term seems to consist of no executable document. Actually, § 9-106 defines general intangibles as anything other than the stuff listed before that is not chattel paper, but includes payment for the use or hire of a vessel. UCC § 9-106 (1982). It's a good thing sailors' wages are classified as general intangibles. For those keeping score, citizens and sailors score big under Article IX.

53. But the creditor could take an additional interest in a general intangible, like have the student's pledge of a stream of six-figure earnings that will come once he or she tenure to say UCC-1.

54. Actually, UCC § 9-401 (1982) has three possible alternatives which states could adopt for filing and a note to remind legislators to select only one of the three alternatives.

55. We believe this reminder supports my theory that no one understands Article IX because the drafters even had to explain that the sections prepared were different plans for filing. Otherwise, states probably would have adopted all three and then faced the priority problems later. See infra notes 56-64.

56. An imprecise term that includes limited partnerships, d/b/a's, a/k/a's, trademarks, inventions and other business paraphernalia.
exception for a security device that was last used in the days of Dillinger.

10K. (THAT'S METRIC FOR "III.") WHY A SECURITY INTEREST IS NEVER ENOUGH AND ARTICLE IX PLACES SO MUCH PRESSURE ON CREDITORS FOR PERFECTION

The drafters of Article IX were a compulsive lot. Having collateral is not good enough for a creditor. Creditors need to obtain perfection if they expect to have any real rights in the collateral. Once you reach perfection,\(^4\) you win out over those slothful secured parties and the derelict unsecured parties whose lack of personal drive relegated them to positions beneath the perfected.\(^5\)

The first way to perfect your security interest is by possession. Possession is IX tenths of Article IX. Again, the gun and guard have equal weight with filing papers. The only trick is to get the collateral in your possession before the other secured parties pull some alternative means of perfection.\(^6\)

Those alternative means of perfection include the ever-popular filing of a financing statement.\(^7\) The filing of the financing statement is mental gymnastics. First, you have to figure out what your collateral is.\(^8\) Collateral is divided into several Article IX categories. Collateral can be inventory, consumer goods,\(^9\) fixtures,\(^10\) farm products,\(^11\) chattel pa-

\(^41\) Inserting a religious tone here, once you reach perfection, you should probably be transferred to the next life and priority and foreclosure on Article IX security interests may no longer be one of your high priorities, so to speak.

\(^42\) In fairness to both secured and unsecured parties, I should note that their lack of ambition may be attributable to the fact that they looked at §§ 9-302 - 305 of the Uniform Commercial Code and decided they would rather risk Chapter 7 bankruptcy than read about Article IX perfection. See UCC §§ 9-302 to -305 (1992). These unsecured and secured creditors are no worse off than students who reject six-figure salaries rather than say "PMSL." See supra note 14.

\(^43\) A gun will also come in handy here. You might also try some farm products and animal heads in their beds to convince them to allow you to take possession. See GODFATHER I, supra note XL.

\(^44\) No one who expects to get anything filed uses this term. The correct term is UCC-1.

\(^45\) Try telling the counter person that you would like to file a financing statement and they will respond, "Fresh out of law school, eh?"

\(^46\) As we know from supra notes 31-34, this may be intriguing for items such as hog produce.

\(^47\) These are goods of consumers. The Bluebook people made me do this footnote.

\(^48\) We've been down this road supra. Let's not go hogwild.

49. This would be paper covering chattels. From the same family as wallpaper. Actually chattel paper is commercial paper or negotiable instruments. Now, wouldn't it make more sense to use the same term here as we use in Articles III and IV? Also, wouldn't it make more sense to use a term that some functioning human being with an income has used in the twentieth century (that's XXth century)? If you say to a debtor, "I'll need to have your chattel paper as collateral," he will respond by saying either, a) "Fresh out of law school, eh?" or b) "I'm calling the vice squad." The real definition for this is found in UCC § 9-109(2) (1992).

51. This would be where you pledge your accounts receivable as collateral. It tends to hurt the cash flow, but not as much as not selling inventory. See Vern in supra note 24.

52. Surprisingly, hog produce is not a general intangible. "General intangibles" sounds like something you would pledge when all you have for collateral is a Pacer and an eight-track cassette player. The term seems to connotate "no documented value." Actually, § 9-106 defines general intangibles as anything other than the stuff listed before that is not chattel paper, but includes payment for the use or hire of a vessel. UCC § 9-106 (1992). It's a good thing sailors' wages are classified as general intangibles. For those keeping score, farmers and sailors score big under Article IX.

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55. An imprecise term that includes limited partnerships, d/b/a's, a/k/a's, trademarks, Published by NSUWorks, 1993. Putative/realness paraphernalia.
UCC-1s according to the types of collateral and also to demonstrate how, by creating confusion about collateral, the drafters of Article IX were able to double filing revenues in all states.

CHART 2
Proper Filing Locations for Financing Statements* According to Collateral Type

<table>
<thead>
<tr>
<th>Collateral</th>
<th>Place of Filing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Central</td>
<td></td>
</tr>
<tr>
<td>Local</td>
<td></td>
</tr>
<tr>
<td>Consumer Goods</td>
<td>✓</td>
</tr>
<tr>
<td>Fixtures</td>
<td>✓</td>
</tr>
<tr>
<td>Inventory</td>
<td>✓</td>
</tr>
<tr>
<td>Equipment</td>
<td>✓</td>
</tr>
<tr>
<td>Chattel Paper</td>
<td>✓</td>
</tr>
<tr>
<td>Farm Products</td>
<td>✓</td>
</tr>
<tr>
<td>Accounts</td>
<td>✓</td>
</tr>
<tr>
<td>General Intangibles</td>
<td></td>
</tr>
</tbody>
</table>

*UCC-1 for non-law students

In addition, Article IX has other means of perfection.57 As near as I've been able to figure, two of these means of perfection involve time limits of twenty-one days58 and four months,59 and apply to both chattel paper60 and tractors moved out of state.61 With that limited scope, I believe we could garner support for just ignoring these exceptions altogether. In fact, as the counter help will tell you, "Hey, no filing, no perfection."62

26K. ("IV"). THE MARATHON OF ARTICLE IX-
PRIORITY OF PARTIES

Just the order of Article IX is a clue as to how much trouble you're in if you try to figure out the priorities of creditors in the same collateral.63 Part 3 of Article IX covers the order of priorities and precedes Part 4 on filing, which tells you how to get priority. I believe most people get lost in priorities because right in the first section of Part 3, there is a discussion of lien creditors.64 Most secured parties thought they had a lien when they...
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filed their UCC-1, and hence believed they were lien creditors until the priority issue arose. Confused and concerned about their priority, you find them traipsing back to the counter help (filling officer) and asking, "You know when I filed that UCC-1 thing, well, did that give me a lien or not?" 

Once the identity crisis is over (through the realization that Article IX does not give you a lien), you are free to proceed to a real discussion of priorities. It will be the first discussion of Article IX priorities ever held. Courts exercise the greatest judicial restraint in Article IX cases on priorities. That restraint involves never really deciding on priorities but finding some flaw in the paperwork to get rid of all the priorities but one. Hence, no priority issues. In fact, I have yet to discover another theory on Article IX.

All those rules for filing in different places exist to help courts narrow down the parties to avoid priority conflicts. For example, suppose a consumer buys a tractor for use in his vegetable garden which sometimes produces sufficient yield for sales. Where does John Deere, the seller/creditor file? Or does John Deere have a PMSI in consumer goods hence eliminating the need to file? Either way the court has a nice out and can avoid deciding between John Deere and the seed company that took a security interest in the tractor as well.

Now, even the best courts are occasionally unable to akipick their way out of Article IX priorities. At some point we have the showdown at the

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65. To which the counter help will respond, "Hey, we're just here to tell lawyers what to do. We don't do windows and we don't do stools, especially not Article IX." 

66. See, e.g., National Cash Register Co. v. Firestone & Co., 191 N.E.2d 471, 472 (Mass. 1962). (All contents of the lunchcounter including equipment such as: booths and tables; stand and counter; tables; chairs; booths; steam tables; salad units; potato peeler; U.S. Slicer; range; case; fryer; griddle; boiler; milk dispenser; slicer; 100 class air conditioners; sign; piano case; mixer; dish; silverware; tables; hot fudge; 7 Hovee Est.; 2 door stationwagon 1957 Ford A57R107215 . . . was held to include a cash register hence defeating a second security interest in the cash register). If you are going to list hot fudge, wouldn't you include a cash register? By eliminating the cash register, the court fixed security interests in different collateral, didn't have to delve into priorities, avoided making reversible error, didn't make a higher court split at them because an Article IX priorities case was dumped on them, and got to go home early. Also, judges have offices near the counter where UCC-1s are filed. They can turn to the counter help at anytime to solicit errors. It short, appellate courts have the Article IX pass as consulates.

67. See supra notes 44-53 and Chart 2.

68. One has to wonder about tractor collision for a couple of envelopes of pumpkin seeds. One also has to wonder about consumers using tractors in 9 X 12 gardens. But, in we https://datatux.De/non-shelving/35999/ta/ and not reality.

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1901

Jennings

711

OK Corral. Priorities under Article IX are covered in sixteen sections, not counting the rules on filing. Those sixteen sections can be reduced to two charts.

**CHART 3**

**Article Priority Rules**

<table>
<thead>
<tr>
<th>General Rules</th>
<th>Parties</th>
<th>Performed vs. Perfected</th>
<th>Priority Rule</th>
<th>First to Perfect</th>
<th>Exceptions to the General Rule</th>
</tr>
</thead>
<tbody>
<tr>
<td>PMSI in inventory (later) vs. Performed</td>
<td>PMSI in inventory (Perfected before delivery/notifies perfected party)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>PMSI in equipment vs. Perfected</td>
<td>PMSI in equipment if perfected within 10 days of delivery</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fixtures vs. Perfected</td>
<td>Fixtures if perfected within 10 days of delivery</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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* Source: UCC § 9-312 (1992). When you read it you won't believe how great this chart is.

** Assuming the court finds no errors in your paperwork. If such error is present, you lose all your standing. Priority rules don't apply.

If you have a situation that doesn't fit into Chart 3 and it's not a buyer situation (see Chart 4), you should consult Beulah the Palm Reader. She has an inside track on who will have priority in your Article IX bottlenecks. Now, if you have a buyer situation, say a buyer who has purchased a Garfield suction cup doll with thirty-two perfected Article IX security interests, you will want to know if the buyer will get to keep Garfield.

Before proceeding to Chart 4, you will need to determine if the Garfield buyer was a buyer in the ordinary course of business. If he bought Garfield at a Garfield store, he's a buyer in the ordinary course of business.

69. This is not to imply that all showdowns involve farm products or equipment. Although a filing (UCC-1) on the "OK Corral" would not include hot fudge or cash registers.

70. No Bluebook size. But see section notes.

filed their UCC-1, and hence believed they were lien creditors until the priority issue arose. Confused and concerned about their priority, they find themselves tripping back to the counter help filing offices and asking, "I'm not sure when I filed the UCC-1, thing, well, did that give me a lien or not?"

Once the identity crisis is over, through the realization that Article IX does not give you a lien, you are free to proceed to a real discussion of priorities. It will be the first discussion of Article IX priorities over held collateral. Courts exercise the greatest judicial restraint in Article IX cases on priorities. That restraint involves never really deciding on priorities but finding some flaw in the paperwork to get rid of all the parties but me. Hence, no priority issues. In fact, I have yet to discover another theory on Article IX.

All those rules for filing in different places exist to help narrow down the parties to avoid priority conflicts. For example, suppose a consumer buys a tractor for use in his vegetable garden which sometimes produces sufficient yield for sales. Where does John Deere, the seller-borrower file? Or does John Deere have a PMSI in consumer goods have eliminating the need to file? Either way the court has a nice out and can avoid deciding between John Deere and the seed company that took a security interest in the tractor as well.

Now, even the best courts are occasionally unable to slippick their way out of Article IX priorities. At some point we have the showdown at the filing office. What do we do next?

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65. To which the court help will respond, "Hey, we're just here to fill blanks not to do. We don't do windows and we don't read statutes, especially not Article IX."

66. See, e.g., National Cash Register Co. v. Finestone & Co., 91 N.E.2d 671, 672 (Mass. 1953) ("All contents of the luncheonette including equipment such as: beds of tables; stand and counter; tables, chairs, heater; steam table; salad unit; potato press; 1/2 Slicer; range; case; fryer; compressor; beehive; milk dispenser; sink; 100 class air conditioner; signer; petty case; mixer; dish; silverware, tableware; hot jugs; 7 Hands, Inc.; 2 Int. station wagons 1957 Ford & 1972 Int. station wagon; hound and a second security interest in the cash register). If you are going to be hit full, wouldn't you include a cash register?"

67. See supra notes 44-53 and Chart 2. One has to wonder about tractor collateral for a couple of envelopes of peppercorns. One also has to wonder about consumers using tractors in a C X 12 garden. But if we know, Article IX is into priority conflicts and not reality.

68. Of course, OK Court. Priorities under Article IX are covered in sixteen sections, not counting the rules on filing. Those sixteen sections can be reduced to two charts.

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69. This is not to imply that all showdowns involve farm products or equipment. Although filing (UCC-1) on the "OK Court" would not include hot jugs or cash registers.

70. No Bluebook cite. But see newly published.
business. If he bought Garfield from a member of the Hell’s Angels outside Pierre’s Lucky Seven Bar, he is not a buyer in the ordinary course of business. Chart 4 shows what happens to Garfield, his buyer and the creditors of the Hell’s Angels.

CHART 4

- UCC-I filed; correct as to form; description = "All store’s inventory of Garfield suction-cup dolls and their cash register."

- Also applies to Garfield dolls without suction cups. See section 9-307 which makes it clear Article IX priority rules are not respecters of suction cups.

- Assumes he is able to leave Pierre’s.

- There is a minority view that Don Corleone wins regardless of the presence of a UCC-1.

- But don’t ever call them this.

Now, there is one variation in this buyer exception. So we are moving into exceptions to the exceptions to Article IX priorities. This exception to the exception says that automatically perfected PMSIs in consumer goods aren’t good against buyers who don’t know about them even if they’re not buyers in the ordinary course of business. So Don Corleone could lose even with automatic perfection, but without filing. This is a nice exception because it allows debtors to sell their refrigerators, stairmasters and clappers to their neighbors, pocket the money and leave the creditor with no collateral.

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To be certain you’ve conquered the charts and intricacies of Article IX, and assuming after having read this and Article IX, you are not sitting naked in a tower with a high-powered rifle, take the following brain fryer and choose the correct answer.

Fogel purchased a TV set for $900 from Hamilton Appliance Store. Hamilton took a promissory not signed by Fogel and a security interest for the $800 balance due on the set. It was Hamilton’s policy not to file a financing statement until the purchaser defaulted. Fogel obtained a loan of $500 from Reliable Finance which took and recorded a security interest in the set. A month later Fogel defaulted on several loans outstanding and one of his creditors, Harp, obtained a judgment against Fogel which was properly recorded. After making several payments, Fogel defaulted on a payment due to Hamilton, who then recorded a financing statement subsequent to Reliable’s filing and the entry of the Harp judgment. Subsequently, at a garage sale, Fogel sold the set for $300 to Mobray. Which of the parties has the priority claim to the set?

Answer Choices:
A. Beulah, the palmreader.
B. Determine why anyone would give Fogel credit.
C. Ask the counter people if Hamilton had any errors in his UCC-1 and avoid priority problems.
D. Mobray, but only in the Pacific Time Zone; Answer is Harp, EST.
E. Does anyone have a lien here?
F. Was any chattel paper involved? Is the TV a chattel?
G. Garfield
H. Hamilton
I. Harp
J. Reliable

---

72. He is probably also lucky to be alive.
73. The UCC provides for automatic perfection of the creditor’s interest in consumer goods with no filing required. UCC § 9-302(1)(d) (1992). But they neglect to mention this automatic perfection doesn’t work against buyers. That’s a pretty important omission, eh?
74. Except when Don Corleone is creditor. This is an exception to the exception to the exception. If you do sell the Don’s collateral to your neighbor, large men with no necks and hairy thumbs will visit both of you. This exception applies even if your neighbor is a bona fide purchaser who had no knowledge of the PMSI and has never seen one of the Godfather movies. See id. § 1-201(19).
75. Or a .44 Magnum.
76. This is not one of Iver’s products. See supra Chart 1.
77. This problem appears courtesy of the AICPA from its Business Law Examination for CPA certification. It would explain why so many accountants are in litigation today over their audits. In their zeal to conquer Article IX, they lost their audit skills as well as rational thought processes.
business. If he bought Garfield from a member of the Hell’s Angels outside Pierre’s Lucky Seven Bar, he is not a buyer in the ordinary course of business. Chart 4 shows what happens to Garfield, his buyer and the creditors of the Hell’s Angels.

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*a* UCC-I filed; correct as to form; description = “All store’s inventory of Garfield suction-cup dolls and their cash register.”

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*c* Assumes he is able to leave Pierre’s.

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37K. ("V" IN ROMAN NUMERALS). **THE OLYMPICS OF ARTICLE IX**

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The correct answer is "H," Hamilton. Hamilton had an automatically perfected PMSI which did not require filing. Reliable's interest was not a PMSI, but was perfected by filing after Hamilton's perfection. The judgment of Harp was not perfected (i.e., recorded) until after both Hamilton and Reliable perfected. Mobray is not a buyer in the ordinary course of business. But with a non-filed but perfected PMSI in the television consumer good, Mobray would fall into the exception to the exception to the exception and get to keep the TV. However, that ruthless Hamilton filed a financing statement after Reliable and Harp did their filing but before Mobray did his buying. This conduct gives us an exception to the exception to the exception to the exception which is if you file on a PMSI in consumer goods, you can win big time even over buyers. This gives us some good advice on Article IX and a final chart.

**CHART 6**
**Rules for Surviving Article IX**

1. Always file to perfect (UCC-1) even when they (drafters of Article IX) tell you, "No problem."
2. Never try to figure out collateral or where to file. Just file everywhere.
3. Rely on counter help.
4. Never read Article IX.
5. Put errors in paperwork to avoid priority conflicts.

---

78. For many students this is the last choice. It even follows Beulah.
80. Different counter help but the same paper work theories.
81. He should be ashamed of himself. He is also a frequent patron of Pierre's Lucky-7 Bar and has two Garfield suction dolls in his Pacer.
82. UCC-1 and by all counter help accounts, it was one of the finest they've seen.
83. Not identified by name because no one has 'fessed up.
84. I have it on good authority she's earning six-figures off PMSI creditors alone. She's considering a branch office for buyers not in the ordinary course of business.
Bedtime prayers before Mommy went to law school.

'RALPH WARNER & TOSHI ISHABA, 29 REASONS NOT TO GO TO LAW SCHOOL, 96 (3d ed. 1987) (Illustration by Mari Stein).

Published by NSUWorks, 1993
Bedtime prayers before Mommy went to law school.