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

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## **Abstract**

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

**KEYWORDS:** neophytes, Olympics, creditors

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## Thoughts on Chattel Mortgages (What?)

### and Other Complexities of Article IX

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Marianne wishes to thank some people for helping her with this article, but none of them were willing to have her/his name associated with it. Her law student, David Gass, when approached about a line of credit replied, "Please, I'm trying to get a job here."



## I. INTRODUCTION

Article IX<sup>1</sup> of the UCC<sup>2</sup> is called Secured Transactions;<sup>3</sup> Sales of Accounts and Chattel Paper.<sup>4</sup> The title alone tells you you're in big trouble because: a) no one ever uses the term "secured transaction;"<sup>5</sup> b) the term chattel paper has never been used in real life by anyone who continues to hold a job;<sup>6</sup> and, c) no one sells accounts anymore.<sup>7</sup> Therefore, you have a title that reflects a law for things that are out of use, out of work, and out of date.<sup>8</sup>

But beyond the title of Article IX,<sup>9</sup> there are other complexities. My

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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 unrefreshed 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 rigor 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.

3. Should this be a colon or a comma? Far be it from me to correct a UCC-typo.

4. 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?"

5. In fact, business people would be either a) drummed out of their rotary club or b) sent to work for the RTC (that's Resolution Trust 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!"

6. 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, 9-308 (1992) (chattel paper is defined in § 9-105(b)).

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

8. 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 see *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.

9. That's "Article 9 liters" in metric.



theory is that no one really understands Article IX<sup>10</sup> and that's why most of us are still operating with the 1972<sup>11</sup> version of Article IX, and why car titles and liens are handled through a different set of rules altogether.<sup>12</sup> 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."<sup>13</sup>

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.<sup>14</sup> 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 § 9-307(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 uncertificated securities. When was the last time someone was able to explain what uncertificated securities are? Better yet, when was the last time you saw an uncertificated 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 wakes. 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.



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.<sup>15</sup>

My follow-up to my theory on no one understanding Article IX is that no one has ever read Article IX.<sup>16</sup> 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.<sup>17</sup>

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

For folks who practice law and dabble in Article IX,<sup>18</sup> creating a security interest is easy. You buy a security agreement form from the local form place,<sup>19</sup> fill it out,<sup>20</sup> 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 kilos and 4 meters" in metric) have been reduced to charts. One of the most famous appears in White & Summers. JAMES J. WHITE & ROBERT S. SUMMERS, UNIFORM COMMERCIAL CODE 581 (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 operates a ferry near Squim, 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' chattels while standing at the counter asking, "Can I file this?" The counter help tenderly refuse to accept their salt water aquaria and javelins 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.

18. These would be the folks who got tired of running ferries in towns with populations of 50, all of whom had their own boats.

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

20. The form is a chart, really. Those 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 clarity.



security interest. Many people would just like to write "Vern's inventory" in the blank space following the instructions, "List collateral here."<sup>21</sup>

But Article IX requirements on security agreements are a little bit fussier and certainly more formal than say, "Mr. Green Jean's livestock."<sup>22</sup> You must "reasonably identify"<sup>23</sup> your collateral. Actually, "Vern's Inventory" might work if Article IX didn't throw in confusing issues about what Vern's inventory could become.<sup>24</sup> For example, collateral that started as inventory can turn into proceeds, accounts, or in the case of farm inventory, can actually multiply.<sup>25</sup> In *Cargill, Inc. v. Perlich*,<sup>26</sup> Shipshewana State Bank<sup>27</sup> took a security interest in "the hogs on Perlich's farm together with the young, product and produce thereof."<sup>28</sup> As it turns out, hogs are purchased, fattened, and turned into bacon over a six-month

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21. The form also has in parentheses: "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.

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

23. 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. Our 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 our statute 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-fought-for 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 PMSI one more time I'm citing you for contempt."

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 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 semester.

26. 418 N.E.2d 274 (Ind. Ct. App. 1981).

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

28. *Cargill*, 418 N.E.2d at 277.



period.<sup>29</sup> Hogs were coming and going and Perlich didn't pay his loan back to the bank. The bank wanted the hogs.<sup>30</sup> Perlich said they weren't the same hogs that existed when the security agreement was executed and "young,"<sup>31</sup> product<sup>32</sup> and produce<sup>33</sup> wasn't a good enough description to cover new hogs.<sup>34</sup> But the Indiana court, drawing on its vast farm trivia experience, held the clause was sufficient to cover after-acquired hogs. So the bank lucked out with whole hog coverage, so to speak.

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29. Article IX and litigation on it are full of farm trivia like this. For example, the definition of "farm products" under § 9-109(3) says farm products applies to crops or livestock in their unmanufactured states and lists ginned-cotton, wool-clip, maple syrup, milk and eggs as examples. UCC § 9-109(3) (1992). When do eggs become manufactured and what form do they take when they are manufactured? [See generally Roger I. Abrams, *Law and the Chicken: An Eggs-agerated Curriculum Proposal*, 17 NOVA L. REV. 771 (1993) (for a dissertation regarding law and chickens)]. The comments to § 9-109 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 or maple sugar—that they would not rank as manufacturing. On the other hand an extensive canning operation would be manufacturing. This line is one for the courts to draw.

UCC § 9-109 cmt. 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: Hailstorms destroy cotton crops, and hence collateral (when it is the cotton) and hence security interests and hence the farmer growing the crop and hence the bank carrying the farmer, cotton and hail. Valley Nat'l Bank v. Cotton Growers Hail Ins., Inc., 747 P.2d 1225 (Ariz. Ct. App. 1987).

It's just plain nifty to realize that one can purchase hail insurance, isn't it? Ultimate farm trivia: You can have a floating lien on cheese. This floating lien cheese (or is it floating cheese lien?) doesn't sound like the type of cheese you'd want on your sandwich, but it does give you Article IX priority. Masson Cheese Corp. v. Valley Lea Dairies, Inc., 411 N.E.2d 716 (Ind. Ct. App. 1980).

30. One has to wonder what the bank officer's "To Do" list looked like:

- Review new FASB guidelines;
- Prepare loan data for HUD;
- Repossess Perlich's hogs.

31. This would be baby hogs. Or it could be hogs in their mid-twenties.

32. This would be pork, bacon, pork rinds and other high cholesterol foods denounced by everyone but, nonetheless, purchased and eaten by everyone as evidenced by Perlich's high hog turnover (unlike Vern).

33. I don't think we really want to know what this is. Hog produce has little appeal even in the most charitable vision.

34. Whether young or old. For other cases hog-tied under Article IX, see FDIC v. Bowles Livestock Comm'n Co., 937 F. Supp. 1350 (D. Neb. 1990) and Farmers State Bank & Trust Co. v. Mikesell, 554 N.E.2d 900 (Ohio 1988).



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."<sup>35</sup> If you got the collateral, you got priority.<sup>36</sup>

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.<sup>37</sup> But under this type of possession the creditor sends an agent to camp out<sup>38</sup> at the debtor's place to watch over the collateral.<sup>39</sup> 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.<sup>40</sup> It's just lovely to have this Article IX

35. 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.

36. This line was adapted from Al Pacino in *THE GODFATHER II* (MCMLXXIV).

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

38. 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 *Hee Haw* crowd.

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

40. This Article IX principle was adapted from Marlon Brando and James Caan in *THE GODFATHER* (MCMLXXII), or is it Mario Puzo's *The Godfather*? Or is it Don Corleone and Sonny (Santino) Corleone?



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,<sup>41</sup> you win out over those slothful secured parties and the derelict unsecured parties whose lack of personal drive relegates them to positions beneath the perfected.<sup>42</sup>

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.<sup>43</sup>

Those alternative means of perfection include the ever-popular filing of a financing statement.<sup>44</sup> The filing of the financing statement is mental gymnastics. First, you have to figure out what your collateral is.<sup>45</sup> Collateral is divided into several Article IX categories. Collateral can be inventory, consumer goods,<sup>46</sup> fixtures,<sup>47</sup> farm products,<sup>48</sup> 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 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). These unsecured and secured creditors are no worse off than students who reject six-figure salaries rather than say "PMSI." 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. Try telling the counter person that you would like to file a financing statement and they will respond, "Fresh out of law school, eh?"

45. As we know from *supra* notes 31-34, this may be intriguing for items such as hog 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 hogwild.



per,<sup>49</sup> equipment,<sup>50</sup> accounts<sup>51</sup> and general intangibles.<sup>52</sup> The best part about collateral under Article IX is that the answer is never the same. A computer in the hands of IBM is inventory. A computer in the hands of H & R Block is equipment. A computer in the hands of a law student is a consumer good that is not paid for.<sup>53</sup> A computer in the hands of a farmer should be covered by hail insurance.

The ever-changing quality of collateral contributes to the ever-fluctuating process of filing a UCC-1. There are two places to file a financing statement to reach perfection. One is local and one is central. No state should be without these government offices: the Local Recorder and the Secretary of Central.<sup>54</sup> The basic thrust of the filing location is that some UCC-1s are filed with land records and other UCC-1s are filed with all the other business stuff<sup>55</sup> with the Secretary of State.

Here's the real problem. If you file in the wrong place, it's as if you didn't file at all. So, Chart 2 is designed to show you where to file the

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."

50. 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 connote "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.

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 learns to say UCC-1.

54. Actually, UCC § 9-401 (1992) has three possible alternatives which states could adopt for filing and a note to remind legislators to select only one of the three alternatives. I believe this reminder supports my theory that no one understands Article IX because the drafters even had to explain that the sections proposed were different rules for filing. Otherwise, states probably would have adopted all three and then faced the priority problems later. See *infra* notes 56-64.

55. An imprecise term that includes limited partnerships, d/b/as, a/k/as, tradenames, Published by NSUWorks, 1993 business 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<sup>56</sup>*

Collateral	Place of Filing	
	Central	Local
Consumer Goods	✓	✓
Fixtures	✓	✓
Inventory	✓	✓
Equipment	✓	✓
Chattel Paper	✓	✓
Farm Products	✓	✓
Accounts	✓	✓
General Intangibles	✓	✓

\*UCC-1 for non-law students

In addition, Article IX has other means of perfection.<sup>57</sup> As near as I've been able to figure, two of these means of perfection involve time limits of twenty-one days<sup>58</sup> and four months,<sup>59</sup> and apply to both chattel

56. Sitting in a field warehouse with a .44 Magnum is looking good, eh?

57. These other means are studied in law school and ignored by everyone else except in cases where Don Corleone is involved.

58. See UCC § 9-304(4) (1992). You have 21 days to find the negotiable instrument or chattel paper used as collateral. Is this really a problem? Don't most creditors want to see collateral first? Except, of course, in the case of general intangibles which, as we know, are largely air.

59. *Id.* § 9-103(3). If the debtor trots out of state with your collateral, you have four months to figure out that he has gone and refile in the state where he has gone to (at both



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paper<sup>60</sup> and tractors moved out of state.<sup>61</sup> 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."<sup>62</sup>

## 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.<sup>63</sup> 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.<sup>64</sup> Most secured parties thought they had a lien when they

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the Secretary of Central and Local Records).

60. Interestingly, § 9-304 switches back to terms like instruments and negotiable documents, largely ignoring chattel paper. I'm all for it, of course. *Id.* § 9-304.

61. In *Exchange Bank v. Jarrett*, 588 P.2d 1006 (Mont. 1979), Daniel F. Holland (Holland), a Florida contractor (from Kissimmee), borrowed money from the Exchange Bank of Osceola (Osceola) and gave Osceola a security interest in his tractor-scraper. Osceola filed a financing statement in Florida (with counter help, of course). Holland then took his tractor-scraper collateral to Montana. (I don't know the difference between a tractor and a tractor-scraper but the court uses the terms interchangeably and does not indulge in farm trivia enlightenment.) Holland then sold his tractor-scraper to Spencer Jarrett without Osceola's permission and proceeded to default on the Osceola loan. (Osceola and Kissimmee have Squim potential.) The bank filed its UCC-1 in Montana after the sale to Jarrett, but before four months had expired. The bank was able to keep the tractor-scraper. No bank should be without one. Jarrett was last seen wandering the streets of Kissimmee in search of Holland muttering phrases such as, "Perfection without filing?"

62. Jarrett has obviously not spoken with the counter help.

63. This is the UCC's charitable description of debtors who pledge 30 bottlecaps as collateral for five creditors who are owed \$12 million in the aggregate. Just a twist to the right or left (no pun intended) and it would be fraud. Under Article IX it translates into fun and games in bankruptcy court as the trustee tries to decide whether to just give the creditors a pro rata share of the bottlecaps or actually be forced to read Article IX and decide who has priority and give them all to that creditor. Counting bottle caps is more fun than reading about priorities under Article IX. In fact, chewing bottlecaps is more fun than reading about priorities under Article IX.

64. UCC § 9-301(3) (1992) defines a lien creditor as a "creditor who has acquired a lien on the property involved by attachment, levy or the like . . . ." This definition doesn't help because security agreements are brought about by "attachment" too. See UCC § 9-203 (1992). Go figure. In addition, any statute that offers a definition that includes terms as vague as "and the like" gives the appearance that the drafters didn't know what was going on either. But see my theory *passim* on no one understands Article IX.



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 (filing officer) and asking, "You know when I filed that UCC-1 thing, well, did that give me a lien or not?"<sup>65</sup>

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 parties but one. Hence, no priority issues.<sup>66</sup> In fact, I have yet to discover another theory on Article IX.

All those rules for filing in different places<sup>67</sup> 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.<sup>68</sup>

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

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 read statutes, especially not Article IX."

66. See, e.g., *National Cash Register Co. v. Firestone & Co.*, 191 N.E.2d 471, 472 (Mass. 1963) ("All contents of the luncheonette including equipment such as: booths and tables; stand and counter; tables; chairs; booths; steam tables; salad unit; potato peeler, U.S. Slicer; range; case; fryer; compressor; bobtail; milk dispenser; silex; 100 class air conditioner; signs; pastry case; mixer; dishes; silverware; tables; hot fudge; ? Haven Ex.; 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 found security interests in different collateral, didn't have to delve into priorities, avoided making reversible error, didn't make a higher court spit 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. In short, appellate courts have the Article IX pros as consultants.

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

68. One has to wonder about tractor collateral for a couple of envelopes of pumpkin seeds. One also has to wonder about consumers using tractors in 9 X 12 gardens. But, as we know, Article IX is a conflict of laws and not reality.



OK Corral.<sup>69</sup> 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\*\*

General Rules Parties Perfected vs. Perfected	Priority Rule First to Perfect
Exceptions to the General Rule:	
PMSI in inventory (later) vs. Perfected	PMSI in inventory (Perfected before delivery/ notifies perfected party)
PMSI in equipment vs. Perfected	PMSI in equipment if perfected within 10 days of delivery
Fixtures vs. Perfected	Fixtures if perfected within 10 days of annexation

\* 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.<sup>70</sup> She has an inside track on who will have priority in your Article IX bottlecaps. 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.<sup>71</sup> If he bought Garfield at a Garfield store, he's a buyer in the ordinary course of

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* cite. But see seedy motels.

71. Defined in UCC § 1-201(9) (1992).



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.<sup>72</sup> Chart 4 shows what happens to Garfield, his buyer and the creditors of the Hell's Angels.

#### CHART 4

<sup>a</sup> UCC-I filed; correct as to form; description = "All store's inventory of Garfield suction-cup dolls and their cash register."

<sup>b</sup> 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.

<sup>c</sup> Assumes he is able to leave Pierre's.

<sup>d</sup> There is a minority view that Don Corleone wins regardless of the presence of a UCC-1.

<sup>e</sup> 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<sup>73</sup> 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.<sup>74</sup>

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).



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

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,<sup>75</sup> take the following brain fryer<sup>76</sup> 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?<sup>77</sup>

#### 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

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75. Or a .44 Magnum.

76. This is not one of Ivor'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.



The correct answer is "H," Hamilton.<sup>78</sup> Hamilton had an automatically perfected PMSI which did not require filing.<sup>79</sup> 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)<sup>80</sup> until *after* both Hamilton and Reliable perfected. Mobray is not a buyer in the ordinary course of business.<sup>81</sup> 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<sup>82</sup> 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)<sup>83</sup> 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.
6. Keep Beulah's card.<sup>84</sup>

78. For many students this is the last choice. It even follows Beulah.

79. See UCC § 9-302 (1989).

80. Different counter help but the same paper work theories.

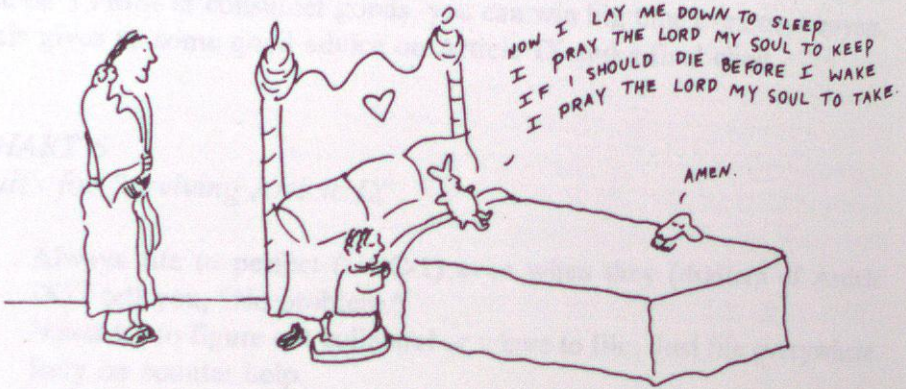
81. He should be ashamed of himself. He is also a frequent patron of Pierre's Lucky-7 Bar and has two Garfield suction dolls in his Pacer.

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 & TONI IHARA, 29 REASONS NOT TO GO TO LAW SCHOOL 96 (3d ed. 1987) (Illustration by Mari Stein).



AT THE PRESENT JUNCTURE, THIS DAY AND AGE, THIS HOUR, ON THIS, THE PRESENT OCCASION; I, MYSELF, THIS PARTICULAR INDIVIDUAL AND ENTITY, ALLEGED TO BE MARY JOYCE HARGOURT AND SOMETIMES REFERRED TO AS "JOYCE" OR "MOMMY" (MOTHER TO THE ALLEGED LIBERTY REESE HARGOURT); REPORT, ASSIGN AND CONSIGN, FIX AND ESTABLISH THIS SAID PERSON, THE ABOVE AND AFOREMENTIONED (SEE PARAGRAPH 1, LINE 3, WORDS 26, 27, 28) WHO SHALL BE REFERRED TO AS THE PARTY OF THE FIRST PART FROM THIS TIME FORWARD, IN A LOWERED (AS COMPARED TO UPRIGHT) RECLINED AND/OR PROSTRATED POSITION, FOR THE SOLE PURPOSE OF SLUMBER, REPOSE REST IN THE ARMS OF MORPHEUS, SOUNDLY AND/OR HEAVILY, LIKENED TO A TOP AND/OR LOG; NOT TO THE EXCLUSION OF DREAMING AND/OR SHORING WHICH SHALL REMAIN TO BE SEEN ON THE EVIDENCE OF THOSE WHO SHALL REMAIN ANONYMOUS AT THIS TIME; I, MYSELF, THIS PERSON, THIS PARTICULAR INDIVIDUAL AFOREMENTIONED AND NOW REFERRED TO AS THE PARTY OF THE FIRST PART, PROPOSE, REQUEST AND PETITION, MAKE BOLD TO ASK, PUT TO AND CALL UPON, COURT, SEEK TO ENTREAT, AND IMPLORE, BESEECH, IMPORTUNE AND ADJURE, BEG AND BESEECH THE DIVINE DEITY, GODSHIP, GODHEAD, OMNIPOTENT AND OMNISCIANT SPIRIT I.E. SUPREME BEING, SOUL, HIGHER POWER, PROVIDENCE, KING OF KINGS, QUEEN OF QUEENS, LORD OF LORDS, ALMIGHTY ONE, ABSOLUTE BEING, INFINITE CAUSE, SOURCE, UNIVERSAL MIND, NATURE, ALL POWERFUL, ETERNAL BEING, ALL KNOWING, ALL WISE, ALL MERCIFUL, ALL HOLY; THE PRESERVER, MAKER, CREATOR, AUTHOR AND/OR CREATOR OF ALL THINGS, TRUTH AND LOVE; MY, THE AFOREMENTIONED PARTY OF THE FIRST PART, ESSENCE, FUNDAMENTAL TRUE BEING, INMOST NATURE, CORE, INNER AND ESOTERIC REALITY, VITAL CENTER, ESSENTIAL QUALITY AND SURENESS, GUIDIDY OF PATH, KERNEL, NUCLEUS, INMOST RECESSES OF THE HEART, SPIRIT, PRANA, LIFE FORCE; TO TAKE CUSTODY OF CAUTIOUS SURVEILLANCE OF, TO PROTECT, HOLD AND KEEP SHOULD CIRCUMSTANCES WARRANT THAT I, THE AFOREMENTIONED ONE, NOW KNOWN AS THE PARTY OF THE FIRST PART, SHOULD EXPIRE, ENP, CEASE TO LIVE, EXTINGUISH THE MORTAL LIGHT, LEAVE THIS PHYSICAL PLANE, EXPERIENCE MY DEMISE, DESIST, QUIT THIS WORLD, MAKE MY EXIT, PASS ON, PASS AWAY, MEET MY END, SHUFFLE OFF THIS MORTAL COIL, RELINQUISH OR SURRENDER MY LIFE, YIELD THE GHOST, GIVE UP MY BREATH, GO OUT LIKE THE SNUFF OF A CANDLE, BEFORE OR AT A TIME PRIOR TO THE TIME I REGAIN CONSCIOUSNESS, PASS FROM THE SLEEPING TO THE WAKING STATE, ROUSE MYSELF, WARM TO THE MY OPEN EYES, I, THE PARTY OF THE FIRST PART, IMPLORE, BEG, AND BESEECH, INVOKe AND THINGS, MAMMALS, FISH, TREE ALMIGHTY, EVER PRESENT UNIFYER OF ALL PERSONS, PLACES AND THINGS, ONE WHO GIVES ENDLESS LOVE UNCONDITIONALLY, MY, AS IN ME AND MINE, AS IN I, THE PARTY OF THE FIRST PART, OF LOWER OR MORTAL NATURE, SPIRIT, ATAMA, BUDDHI, VITAL FORCE, INNER PRINCIPLE, HEART, MIND AND EMBODIED BREATH, ANIMATING PRINCIPLE AND TRUE SELF, ESSENCE AND SUBSTANCE OF LIFE, THE DIVINITY THAT STIRS WITHIN, INNER FLAME AND SEAT OF CONSCIOUSNESS TO; (IF IT PLEASES THEE) APPROPRIATE, CAPTURE, SEIZE, ABDUCT WITH AND ACQUIRE FOR AN INFINITE PERIOD OF TIME, ENTER INTO POSSESSION OF, AND TAKE RESPONSIBILITY FOR, OBTAIN AND RESCUE, PICK UP, CLEAN, GATHER IN, CAPTURE AND SEIZE AND HOLD UNTIL SUCH TIME AS IT SHALL BE RELINQUISHED BY THE SAID HOLDER AMEN.



Bedtime prayers after Mommy went to law school.

\* RALPH WARNER & TONI IHARA, 29 REASONS NOT TO GO TO LAW SCHOOL 97 (3d ed. 1987) (Illustration by Mari Stein).