Commercial Law
Professor Meiklejohn – Spring 01

Macro organization
• Articles 3 and 4
• Mechanics of check payment
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  o Check transaction between Prof. M and Student
• Enforcement of check/ holder in due course analysis
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Holder in due course analysis
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Theft
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I. Payment Systems
a. Checks
   i. 3-104 Draft other than documentary draft payable on demand and drawn on a bank or a cashiers check or tellers check
   ii. almost all checks are negotiable
        1. drawner (creator)
        2. drawee (bank on which check is drawn)
        3. payee (person to whom check is payable)
   iii. obligation
        1. how is the bank willing / obligated to respond to drawer?
        2. contract between drawer (accountholder) and his bank.
   iv. terms:
        1. set out in K between bank and cust
        2. UCC
        3. Case law
   v. Relationship
        1. drawer / depositer relationship is like a debtor / creditor relationship
        2. not like a bailor / bailee
        3. drawee is not a third party beneficiary
   vi. Important §§
        1. accepts 3-408
        2. certify 3-409
        3. primarily liable 3-413
        4. cashiers check
b. the nature of commercial paper
   i. more than just the note or the check
   ii. the right to “sue on the instrument” is an independently significant theory of recovery—one can sue on the instrument rather than the underlying contract
      1. liability pursuant to 3-413
      2. fewer defenses
      3. II benefits from pleading and proof provisions of Art III
      4. right to recover on the instrument supercedes or takes precedence over II’s right to recover for breach of the underlying K
   iii. prima facie “contract liability of drawers, indorsers, makers and accepters
   iv. final steps in the check paying process
      1. 4-215; 4-301
   v. check is a demand item under 3-108
   vi. Midnight deadline?
      1. 4-301
      2. VNB gets check
         a. 10:am Thursday
         b. Midnight Friday is the bank’s midnight deadline

II. Sale of book from Sandy to student:
   a. When drafters wrote Art III, they had a vision of the payment process
   b. Governed by what?
      i. UCC II – sale of goods
      ii. UCC III – check is a negotiable inst
   c. How does the payment process happen? (what the fuck is this)
      i. 4-215 (final payment of item by payor bank); 4-301(deferred posting, recovery of payment by return of items, time of dishonor, return of items by payor bank)
   ii.
   d. Displacement 1-103
      i. Common law supplements the code to the extent to which the code does not displace the common law
   e. Negotiable instrument
      i. Defined in 3-104
      ii. Except as provided in subsections (c) and (d), “negotiable instrument” means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it...(conditions)
      iii. Unconditional promise or order, 3-106
      iv. Want to know if the check is a negotiable inst
         1. 3-104(a) \(\Rightarrow\) 3-106(a)
            a. promise 3-103(a)(9)
            b. Written 1-201(46)
               i. Back to promise
            c. Money
i. Back to promise
d. Signed 1-201 (39)
   i. Party 3-103
      1. Instrument (negotiable instrument)
   ii. Party 1-201
       1. person
   iii. back to party
   iv. back to signed
   v. authenticate
   vi. back to promise

f. payment
   i. person entitled to enforce
      1. holder 1-201 (20)
      2. (Bearer 1-201(5))
         a. payable to bearer or to order 3-103(a)(6)
      3. Bearer
         a. Document of title 1-201(15)
            i. Bill of lading 1-201(6)
            ii. Goods 2-105
            iii. Warehouse receipt 1-201
   ii. claim to the inst 3-306
   iii. knowledge 1-201 (25)
   iv. obligor 9-102 (a)(59)

g. Relationship
   i. Relationship between bank and customer is a debtor/creditor relationship

h. Discharge of debt from Sandy giving the check to me?
   i. 3-601 (this might be the one – my first guess)
   ii. (class notes) 3-310 effect of instrument on obligation for which taken
      1. obligation is first suspended
   iii. 3-502

i.

j. What is the effect of Vermont National paying by check?
   i. 3-603 tender of payment? (who knows)

k. what if the check bounces—how does the suit turn out?
   i. Assuming something is wrong with the book?
      1. (my guesses) 3-409; 3-415; 3-502; 3-402
      2. I think its this one – 3-416
      3. Actually: 3-305 – defenses and claims in recoupment
         a. Difference between a defense and a claim in recoupment
      4. Article II stuff (should we use this in exam?)
         a. Reject book under 2-601
         b. Revoke accept under 2-608
   ii. If nothing is wrong with the book:
      1. not sure on this one
   iii. (From Class) it goes back to firstar, then back to student, \(\Rightarrow\) student becomes a holder – entitled to enforce under 3-301
1. sue under breach – Art II
2. Sue on check – Art III
   a. What do you need to sue (minimum)
      i. Holder (1-201(20)) – entitled to enforce (3-301)
      ii. Obligation 3-414(b) of drawer
   b. Lawsuit looks like
      i. (see class notes 18 January)
3. Student has to try to prove that he is a holder in due course
   iv.
   l. What § makes a non-holder (bank) a holder when the teller forgets to get an
      indorsement?
      i. 4-205 – depository bank holder of unindorced item
   m. If thief takes it?
      i. Is it payable to bearer?
      ii. Is it indorced?
   n. Anomalous indorsement 3-205(d)
      i. Made by thief? Who?
      ii. Read comment – who usually is the person making the anomalous
          indorsement
   o. Transfer of instrument 3-203(c)
      i. Start at 3-301 person entitled to enforce instrument
         1. will take back to holder
      ii. We want to get to indorsement
      iii. Also want to get to 3-409

III. Kanjari v. Iqubal
   a. Facts:
      i. Iqubal gave ahlomo checks
      ii. Ashlomo tried to get checks back from Iqbal but couldn’t
      iii. Khanjari deposited the two checks – chemical bank dishonored for insuf.
           Funds
      iv. Iqbal gave some rugs back to Khanjari to reduce his debt to 50K
   b. Does the code apply?
      i. See 1-105
   c. Is this a negotiable inst?
      i. Does it matter that there is no payee in check? No 3-109
      ii. Payable to bearer if it doesn’t state a payee
   d. Payable on demand if not dated?
      i. 3-108
   e. Kanjari is winning-
      i. Holder
      ii. Entitled to enforce
   f. Gem’s defenses:
      i. Alteration 3-407
      ii. 3-305
      iii. 3-306 ***
g. Now gem is in good shape. Where does kanjari go now?
   i. 3-305(b)

i. Holder in due course:
   i. 3-302
      1. 3-303 value
      2. 3-103(a)(4) good faith
      3. 1-201(27) notice
         a. good faith is combined with notice of defenses—if one had notice of defense, maybe not acting in good faith

j. why didn’t gem stop payment 4-403?

k.

l. why holder in due course? Good for commerce to protect the integrity of checks

IV. Citizens
a. (Amoroso v. Winter case)
   i. winter sold house to amoroso. Amoroso paid by check. Winter cashed the chk against his acct bal. Also, on Aug 27 & 28, bank cleared and charged four checks totaling 291.76
ii. next day, amoroso discovered that winter had previously sold the house. Amoroso asked for $ back. Winter apparently agreed then killed himself.
iii. Amoroso told their bank Ft. Lee of the fraud and requested a stop pay [what § is stop pay]
iv. Ft lee issued a stop pay order to ft lee trust co (the drawee) in the meantime, the $3100 check was sent by Π through a clearing house to ft lee trus. By then the stop order had been received.

b. Why did citizens drop its case against ft lee trust?
   i. Check not accepted by Ft Lee trust 3-409 acceptance of draft

c. Amoroso’s def.
   i. Simple K
   ii. 3-306 \( \rightarrow \) (3-202)

d. ft lee
   i. 3-305(c)—claim to the instrument

e. See HIDC analysis in notes (February 1, 5, 8)

def. What is winter’s obligation to citizens?
   i. ????? where in the code is this

V. Banker’s Trust
a. Adfjkl;asdfjkl;
b. See notes 2/7 ish

c. Are the leases negotiable instruments?
   i. No—article III might not apply. Look to Article IX
      1. 9-206?
      2. 9-403

d.
VI. **Laminaciones**
   a. AITF bought laminaciones notes from delta. The financ agreement with laminaciones parent co said they would have right of first refusal
   b. Trans governed by NY law
   c. Laminaciones says machinery not shipped on time. Wants it back
   d. Laminaciones cancelled K
   e. AITF tried to get p’ment from Altos Hornos – they said no
   f. Forfait??
   g. Analysis:
      i. Does AITF win under new UCC 3?
         ii. Are the notes NI?
            1. 3-104 NI—unconditional promise to pay
            2. 3-106 unconditional promise or order
            iii. *** If the notes are conditional, they cannot be negotiable instruments and can’t be a holder in due course. Also, wouldn’t be in art III
   h. **Defenses:**
      i. 3-305(a)(2) simple K
      ii. 3-303(b) no consideration
      iii. 3-305(b) claim in recoupment
   i. 3-305 Issue
      i. [conditional issuance as a defense. If the instrument was issued conditionally and the condition is not met, failure to meet the condition is a defense.] (missing content)
      ii. How does this compare with Khanjari?
   j. Payor bank 4-105
   k. Collecting bank 4-210(a)(1) reason bank had security interest in the ban
   l. Obtain a refund
      i. 4-214(a)
   m. Obligation of indorcer
      i. 3-415
   n. Winter to citizens
      i. 4-207 Transfer warranties—conformes to §3-416 and extends its coverage to items \(\rightarrow\) 4-104
      ii. 3-416 transfer warranties – covers instruments
         1. 3-416 a person who transfers
         2. 4-207 a customer or collecting bank who transfers
         3. 
   o. laminaciones
      i. claim in recoupment?
      ii. Defenses?

VII. **Problem 3-12**
   a. Floor plan financing / legend / HIDC
b. The holder in due course doctrine in consumer transactions
   i. Pages 143-149

c. What is a floor plan financing?
   i. A loan that is secured by merchandise and paid off as the goods are sold (usually given by a mfr to a retailer)
   ii.

d. A payee can be a holder in due course
   i. 3-302 & 3-305 comments

e. 3-302(g) close connectedness doctrine
   i. the bank and the car dealership – closely connected?
   ii. Seller and assignee so closely connected as to be one
   iii. Dragging the body
       1. car dealer sells care and takes consumer directly to lender to have lender write the loan.
       2. even if the HIDC doctrine was abolished, the consumer could not assert his defenses against the creditor who was the payee on the note in such cases

f. FTC abolish HIDC doctrine in consumer transactions

g. 3-106(d) kills the bank’s status as a holder in due course

VIII. Theft!!!

a. Pages 165-171 background info

b. Theft by check
   i. Lawsuits following imbezzlement involve: 3-404 imposter fictitious payee; 3-405 er responsibility; 3-406 negligence; 4-406 customer duty to discover
   ii. Also 3-418; 4-207; 4-208; 3-406; 4-406
   iii. UCC puts the liability of the person who took it from the thief least cost risk avoider
   iv. For a check that has been stolen and forged – bank is responsible
       1. Price v. Neal rule bank knows its customer’s signature
   v. Difference between forged signature of drawer and forged indorsement
   vi. Six theoried of liability on a stolen check
       1. 3-309 owner sue on lost stolen check (these first two not as important)
       2. 4-401 bank charges customer—drawer’s argument that he is not liable for the stolen check
       3. 3-420 conversion of the instrument
       4. 3-418 payment or acceptance by mistake (text says this is a restitution)
   vii. defenses:
       1. 3-406
       2. 4-406
       3. 3-404
       4. 3-405
viii. general rule (from text)
  1. **loss will fall on the 1st solvent party who dealt with the instrument after the thief**
     a. encourages people to be careful accepting checks, etc
     b. ie. 4-207(a); 4-208(a); 3-420
ix. forged instrument (section 35, p 169) payment by one not a party to the instrument
  c. forged drawer’s signature
  d. forged indorsement

IX. **Altman case (1st National City bank v. Altman)**
  a. Checks were forged—forged drawer’s signature
  b. Π says that payment was made in good faith in reliance on endorsements
  c. Δ says Π was negligent
  d. **Altman checked with his bank about the first check to see if it had been paid, but not the second check**
  e. → Again, Price v. Neal rule: on a check that has been paid on a forged drawer’s signature, the loss rests on the payor bank (the drawee)
     i. rationale: the payor bank knows its customers and their signatures. Best equipped to deal with the risk of loss. (least cost risk avoider)
     ii. seems to relate to old 3-418 (requires that a person has in good faith, changed his position in reliance on the payment)
     iii. rule works for the first check, but not the second
  f. Who is responsible for the loss?
     i. JW Mays:
        1. didn’t exercise ordinary care→ 3-406
        2. 3-406 negligence contributing to forged signature or alteration
        3. 3-418 payment or acceptance by mistake
        4. good faith argument—did altman act in good faith?
     ii. What about Trade Bank & Trust’s liability?
        1. 4-208 presentment warranties
  g. Price v. Neal is still good law – subject to the exceptions set out in 3-418

X. **Prudential-Bache Securites v. Citibank**
  a. Facts: (diagram 20 February)
     i. Firm check properly made out but to ficticious payees who were actually prv. Employees
     ii. Employees laundered
     iii. Prudential sues Citibank
  b. Under new code:
     i. Pru sues for conversion – civil version of theft
     ii. **3-420(a)(1) conversion of instrument CANNOT BE USED BY THE ISSUER**
     iii. can Pru get ist $ back from its bank?
1. 4-401
   iv. Properly payable
      1. 4-401?
   v. 3-404 imposters; ficticious payees
      1. (a) a person whose intent determines to whom an instrument is payable \( \rightarrow 3-110 \)
c. the transfer from the fake companies to Citibank was a negotiation
d. the endorsement is effective under 3-404. 3-406 doesn’t apply
e. checks are properly payable \( \rightarrow 4-401 \) can’t be used.
f. Adverse agents?
   i. What is this?
   ii. A new concept to everyone in the class, including SM
g. What if Harvard and MN were incorporated? Then could we get out of 3-404?
h. Money laundering:
   i. Transferring illegally obtained $ through legitimate persons or accounts so that its original source can’t be traced.

XI. Immanuel Kant
   a. Problem 4-7 – the wrongdoing is an EE of the Immanuel Kant Corporation who obtains payment from the drawee and absconds with the money. In which instances will Kant be successful in getting its account recredited?
   b. The various scenarios are on page 236

SECURED TRANSACTIONS

XII. Security in Business Equipment
   a. written security agreement
      i. 9-203 requirement
   b. perfection occurs only by filing financing statement that complies with 9-502
   c. financing statement form 9-521
   d. Attachment requirement of 9-203
   e. Perfection requirement of 9-502
   f. Perfection
      i. Validation of a security interest as against other creditors usually by filing a statement with some public office or by taking possession of the collateral
   g. Negative pledge clause:
      i. promise by the debtor not to grant security to any other person. Has some of the practical consequences of a security interest
   h. making an enforceable security interest
      i. 9-203 requires a few steps
         1. creditor must give value
         2. debtor must have rights in the collateral
         3. there must be a security agreement
4. A security agreement must describe the collateral.
5. Either the security agreement must be in writing signed by the debtor or there must be some other authenticating event as described in 9-203(b)(3) to provide grounds for concluding that the parties have entered into a security agreement.

XIII. A-1 Paving & Contracting
a. A-1 was in the asphalt and aggregate business.
b. Paragraph 23 of the conditional sales contract reserved to PR “all rights and remedies under the Indiana UCC relating to the foreclosure of mortgages.”
c. Following formation of the K, PR filed a FS with the sec of state and the county recorder.
   i. Lists A-1 as debtor
   ii. PR as secured party
   iii. Separate document describes the equip and vehicles.
d. PR maintained title.
e. A-1 defaulted and later filed for bankruptcy.
f. Another of A-1’s creditors, state bank, intervened in the bankruptcy proceedings.
g. PR tried to gain access to the assets in which it claimed title by filing an “application for order terminating the automatic stay” with the B court.
h. Court determined that PR had a valid sec interest and was entitled to relief.
i. Issue: whether PR and A-1 created a valid security interest in the assets that PR contracted to sell A-1.
j. Security interest is created if there is a properly filed financing statement that meets the requirements of 9-203(1) and the finder of fact decides that the parties intended the financing statement to create a security interest.
k. Once you have attachment, you have enforceability:
   i. Attachment: 9-203 a security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.
m. Issue in A-1: did the parties intend the financing statement to be a security agreement?
   i. Show there was a signed agreement and the intention.

XIV. Krystal Hill v. The Farmers & Merchants Bank of Waterloo
a. Once KD hill endorsed the check, Krystal became the person entitled to enforce the
b. Was Krystal Hill a straw person or a nominee?
   i. Should the bank get anywhere with the fraudulent debt argument?
c. Bank tried to win by saying:
   i. Krystal has no security interest
   ii. Bank’s security interest is superior.
d. What about the bank’s argument that the deal is fraudulent because KD Hill is hiding assets?
   i. Not a good argument – Hill’s creditors are no better off if Krystal’s security interest is no good

XV. Perfection
a. Generally:
   i. §§ 9-308 – 9-316
   ii. perfected secured creditors
b. Perfecting security interests:
   i. Financing statement (filing a financing statement)
   ii. Creditor possession of the collateral
   iii. Control
   iv. Automatic
c. Perfection usually requires some action
d. Minimum data for a filing statement to be effective – 9-502
e. Additional requirements 9-516
f. ****Out of the ST book, pg 19
   i. if a FS fails to meet the conditions of 9-502, the filing is not effective, even if it is accepted and indexed
   ii. if a financing statement satisfies 9-502 but not 9-516(b), and the filing officer refuses to accept it because of its failure, the filing is not effective
   iii. if a financing statement satisfies 9-502 but not 9-516(b) and the filing officer accepts it, the filing is effective (for most purposes), and
   iv. If a financing statement satisfies section 9-502 and the filing officer refuses to accept it for reasons other than those stated in section 9-516(b) (we never take financing statements from red haired people), the filing is effective (for most purposes).

XVI. Problem 1-3 (Retondo Brothers)
a. Retondo Brothers: The client is Retondo Brothers, an Illinois corporation in suburban Chicago. How do you perfect in interest in its equipment (drill presses, grinders, and sophisticated machine tools and their operating software)?
b. Requirements of 9-502
   i. Name of debtor
   ii. Name of secured party
   iii. Indicates collateral
c. What constitutes filing 9-516
   i. We don’t seem to know from the facts whether it was even filed
d. Injury from failure to state the address of the bank?
   i. Shouldn’t matter – not required by 9-502
e. Financing statement – 9-502 (here is the process)
   i. Name of debtor
      1. → 9-503 (name of debtor and secured party)
2.  9-102 (50)
   ii. Indication of collateral
      1.  9-504(2): financing statement can make a supergeneric description
      2.  9-108 (c): security interest cannot make supergeneric description
      3.  Rabbit rabbit
   f. Corporation fills out financing statement saying it is a sole proprietorship
      i. Effect of errors or omissions – 3-506 (does this apply????)
   g. Priority of security interest…perfected by filing financing statement providing
      certain incorrect information  9-338
      i. This is the place to look when a party argues that he/she has been injured
         by false information
   h. What about the address of the bank?
      i.  9-516(b)(4) problem
         1. takes us out of 9-338
         2. 9-338 is only for 9-516(b)(5)
      i. What about when neither box is checked for corporation or sole proprietor?
         i. Information is omitted – not wrong (so says Sandy)

XVII. Problem 1-4 (Bisgard Larson the Delaware corp)
a. Facts:
   i. I represent Bank One, who proposes to lend $20 million to a large
      construction co that does business in Wisconsin, Minnesota, and the
      Dakotas. The construction company is a Delaware corp, and has three
      subsidiaries, two of which are Minnesota corporations, and one of them is
      a Wisconsin corporation. It also has an unincorporated joint venture with
      its principle office in western North Dakota where it is constructing a dam.
      The equipment for collateral is conventional construction equipment.
      Banker tells me that the equipment is worth at least $30 million and is
      located at various places throughout the four state area where the debtor
      does business. It is possible that during the term of the loan some or much
      of the equipment will be moved to other places. What docs must I file, in
      which places, to perfect the Banks security interests?
   ii. Also issues with the names
   iii. This is diagramed in class & reading notes
b. What to file and where, for perfection?
   i.  9-301(2) – where collateral is located? NO!!!! Only for possessory
      security interest (where creditor has control of collateral)
   ii. 9-301(1) – where debtor is located
c. Bank One’s lawyer – what is he doing?
   i.  9-301 – law governing perfection & priority of security interests
      1.  9-307 – location of debtor
   ii. who are the debtors?
      1. each of the subsidiaries are debtors
      2.  9-102(a)(59) & 9-102(a)(28) – don’t have to be an obligor to be a
         debtor THIS APPLIES TO KONKEL ALSO
iii. What about the names?
   1. 9-503? (not entirely sure. Maybe)

d. Debtors trade name is insufficient – 9-503(c) (use this for problem 1-5?)
e. Debtor that is an organization (def organization?) and has more than one place of business is located at its chief executive office

XVIII. Konkel v. Golden Plains Credit Union
a. Do a two-part analysis:
   i. Did his sale to Konkel affect Golden Plains’ security interest?
   ii. (what the hell is the second part?)
b. Konkel became a debtor, but not an obligor. He was a debtor because he took property subject to a security agreement. See also 9-203(d)

XIX. Problem 1-11
a. This is where 9-325 comes in
b. Problem:
   i. Debtor one gives a perfected security interest in a large and expensive piece of industrial machinery to Bank One. Debtor one sold the machine to debtor two whose bill of sale explicitly provided that debtor two took subject to Bank One’s security interest. Debtor Two then went to Bank Two, represented that he owned the machine free and clear and procured a $200,000 loan against it. Bank two checked the files under Debtor Two’s name and finding nothing, perfected its security interest by a filing. When the scheme was discovered, both Bank One and Two claimed the asset
   ii. Assume there was a defect in Bank One’s financing statement that caused it to be unperfected. Bank Two argues that it is a perfected secured creditor and as such has priority over Bank One’s interest because of sections 9-201 and 9-322
c. What will bank two’s loan officer want to see?
   i. Some evidence of ownership
   ii. The contract between debtor one and debtor two
d. Why search under debtor one’s name?
   i. 9-315 says that a SI lasts even when collateral is sole
   ii. 9-507 says that perfection lasts when collateral is sold
e. have to search the title the same way you would land records
f. 9-515 financing statement lasts for five years
g. 9-322(f)(4) –
   i. is there a security interest arising from art II?
   ii. Sandy doesn’t think we have to deal with this
h. 9-325 Priority of security interest in transferred collateral
   i. why is 9-325 in the code?
   ii. Comment 3, example I
i. 9-308 when security interest is perfected
j. 9-322(a)(1) Priority of conflicting security interests
k. 9-502(d) – financing statement can be filed before security agreement is made
   (need debtor’s authorization first in order to do this)

l.

XX. Foreclosure and Resale – Problem 1-16
a. Foreclosure issue – see pages 59-61
b. Secured creditor has a right to the collateral under 9-609 and right to take
   possession as long as there is no breach of the peace
c. Bank can also hire someone to do this
d. If debtor refuses, there would be a quick cause of action under replevin or the like
e. Once secured creditor has possession, it is entitled to sell the property – after
   proper notice and with proper commercially reasonable efforts under 9-610(b)
   i. Also assuming it complies with other provisions in 9-611 through 9-614
f. Can sue the debtor for a deficiency under 9-615(d)(2)
   i. In the deficiency suit the debtor might claim:
      1. deficient sale
      2. element of sale was not commercially reasonable
         a. timeliness
         b. place sale was held
         c. mode of advertising
         d. etc
g. Secured creditor is also pretty safe if debtor goes into bankruptcy before the
   repossessioon
   i. §506 of the bankruptcy code – secured creditor is recognized as “secured”
      to the extent of the value of the collateral
   ii. under §361, would be entitled to adequate protection to protect it against
       the decline in the value of the collateral.
   iii. §1129 gives protection if debtor files ch. 11 – reorg plan gives creditor an
        amount (in $ if necessary) equal to the value of collateral
h. If the creditor is unsecured:
   i. No rights under §361
   ii. Fewer rights under §1129
   iii. Principal right is to share
i. Outside of bankruptcy, unsecured creditor is equally screwed
   i. Remedies:
      1. sue the debtor
      2. recover a judgment
      3. seize property
      This all takes time!!
j. Consent makes it okay, but you cant get there through the security agreement –
   need some other consent

k. (All notes FOR class)
   i. Secured creditor has right to possess upon default → 9-609
ii. Reselling property 9-610(b)
   1. 9-611 – 9-614
iii. Sue for deficiency 9-615(d)(2)
iv. Breach of the peach 9-609(a)(2)
v. Commercially reasonable disposition 9-610(b)
vi. No notification before disposition of collateral 9-612; 9-613
vii. No explanation of calculation 9-616
1.

XXI. Security in Inventory and its Proceeds
a. See generally pp 62-74

XXII. Problem 2-1
a. Ajax Sisters and Neiman Marcus
b. Facts
   i. Ajax sisters, a bank, had filed a financing statement covering “inventory
      existing and after-acquired” of Neiman Marcus. I am counsel for Ajax
      and they ask me some questions:
c. Attachment doesn’t occur until value has been given
d. Attachment 9-203
e. Ajax can file FS against NM before loan is made, as long as NM gives permission
   9-509
f. 9-322(f) says we have to look at other sections – maybe 90323
g. Ct. if bank is

XXIII. Problem 2-2
a. Macy’s and Chase
b. 2-2.2 – same priority
c. .3 bankruptcy §§552 & 363 – use sale or lease of property -- §361 who will use
   this? Chase
d. cash collateral order – p270
e. Lien creditor does not have a security interest. This is what Sandy thinks. Is this
   so?
f. Vary priority by agreement – 9-339
g.

XXIV. LMS Holding Company v. Coremark
a. LMS
   i. Coremark was a candy and cigarette supplier to convenience stores
   ii. What was the distinction between Konkel and RMC?
   iii. Konkel was a debtor
   iv. RMC was a debtor and an obligor
b. Konkel was a debtor because he took possession of the inventory
c. RMC is a new debtor – 9-102(a)(56); 9-507 – now what? (see also comment 3, 9-508)
   i. 9-507(a) & (b)
      1. 9-508 & 9-506
   ii. in what order do we go through these sections?
      1. 9-507 9-508 9-506 (Sandy thinks that this is the correct
         order, but you need to consult each section)

I don’t know where this came from:
d. Buyer in the ordinary course of business – see comment 3, 9-320 (pg. 984)
e. Lien creditor §544 bankruptcy code.
f. RMC becomes lien creditor as of the date of the filing of the bankruptcy petition.
g. Is this a 9-317 problem or a 9-322 problem?
   i. 9-317(e) is purchase money security

XXV. Problem 2-3
   a. Chase and Macy’s
   b. Chase loaned Macy’s $, took a N and SA (include inv., proceeds, and fut.
      Advances) – macy’s to other store
c. Is chase still perfected?
   i. 9-316
   ii. 9-507
   iii. 9-506
   iv. 9-508
d. does it matter that collateral moved?
   i. No – Macy’s has not moved location.
e. 9-507
f. 9-309 automatic perfection
g. What if it then gets moved to a Macy’s subsidiary?
   i. Problem 2.3
      1. 9-315 (SI)
      2. 9-507(a) (not sure if it is a, might be c, fucking handwriting) (FS-
         Perfection)
      3. If the subsidiary is in NJ – this is exactly like konkel

XXVI. In Re Smith
   a. Purchase money security interest
   b. Super-priority of purchase money – 9-324
   c. See page 102 – calves are identifiable products in the unmanufactured state within
      the meaning of 9-324(d)

Aside: (not sure about all this)
   How does payment process happen?
Deposit without indorcing?
   3-419 (don’t know about this one)
   3-205 Analogous indorsement

Thief:
   Alteration 3-407
   Negligence 3-406
   Fraud ER/EE 3-405
   Unauth sign 3-403
   Signature 3-401