**Scope of Article 9**

Welcome to this podcast on the Scope of Article 9 brought to you by CALI. I am Professor Jennifer S. Martin. The topic of this podcast is to summarize and evaluate the nature of security interests covered by Article 9. It will also cover transactions that are within the scope of UCC Article 9 even though the parties may not have intended to create a security interest. The primary code section associated with this inquiry is 9-109, which contains not only provisions on the general scope of Article 9, but also specific situations where the Article does or does not apply. This podcast primarily focuses on security interests created under Article 9, leaving for other study mortgages and statutory and judicial liens.

Ok, so, recall that according to UCC § 1-201 (37), a security interest means an interest in personal property or fixtures which secures payment or performance of an obligation. It is always important when studying a statute to determine at the outset whether it even applies. Article 9 applies to transactions creating a security interest, but perhaps additional guidance is needed. As it turns out, many statutes, including the articles of the Uniform Commercial Code, include a provision near the beginning of the statute specifying exactly when the statute applies. For instance, many first-year law students study Article 2 of the UCC and learn early its directive that Article 2 applies to transactions in goods. As it turns out, each of the articles of the Code have a provision advising to scope. Article 9 follows suit in § 9-109.

So, what does Article 9 say? Well, Article 9 applies to any transaction regardless of form that creates a security interest in personal property or fixtures. Notice the language “regardless of form.” This means that transactions that fit the definition of a security interest come within the scope of Article 9 even though the parties don’t realize they’ve created a security interest and might have sought to avoid Article 9 in the first place. In many cases we will be able to determine readily that parties intended to create a security interest. Let’s look at an example.

Suppose I want to buy a clarinet for my young son Marshall. Music City, the seller of the clarinet, might agree to sell me the clarinet on credit, with Music City taking a security interest in the clarinet to secure payment of $50 per month over three years for the clarinet. We could draft an agreement to accomplish a security interest granted by me in favor of Music City. This transaction would surely be within the scope of Article 9.

But what about other variations on this transaction? Well, what if, instead, Music City proposes a deal whereby I pay them $50 per month over three years for the clarinet. The agreement states that at the end of three years I will become the owner of the clarinet, but that Music City will retain title to the clarinet in the meantime. Is this transaction governed by Article 9? This type of factual situation is a favorite on bar examinations and with professors alike. The simple answer is yes, such transactions are governed by Article 9. Let’s make sure we understand why though. Remember that the Code brings within the scope of Article 9 transactions regardless of form that create a security interest. We might wonder whether this retention of title while I pay for the clarinet is intended to create a security interest.

As it turns out, we don’t have to guess in this situation. Article 2 in section 401 addresses the situation and provides that any retention of title by a seller of goods that are either shipped or delivered to a buyer is limited to the reservation of a security interest. What this means is that Music City has a security interest in the clarinet. It also means that I own the clarinet, even though I’ve not paid for it yet. This is a common mistake for students who think that a buyer of goods who has not paid for them does not own them, but that is simply not true. I do own the clarinet, subject to Music City’s security interest.

And, whether Music City intended to take a security interest at all is of no regard -- a security interest is what they have by application of the Code. The invisible string that represents a security interest has attached to that clarinet. In such situations, Music City would be able to enforce its security interest under Article 9 in the same way as any other secured creditor in the event that I failed to make the payments.

So, we see that Article 9 can be a bit tricky. Any attempt to reserve title is just a security interest even though the parties say otherwise. Are there other transactions that might fall within Article 9 even though the parties might not realize they’ve created a security interest? Of course, the answer is yes.

The next common situation that is governed by Article 9 is that of leases of personal property, but only if the lease is really a disguised sale. Again, remember that Article 9 looks to the substance of the transaction, regardless of the form used by the parties. A simple example of a disguised sale would be Music City leasing the clarinet to me for $50 per month for 3 years where at the end of the three years I become the owner of the clarinet automatically.

While we normally think of Article 9 as applied to transactions involving some type of debt and some type of collateral, there are a few nontraditional situations where it applies in order to protect others who might somehow be misled if Article 9 did not apply. In particular, this includes sale of accounts, chattel paper, payment intangibles or promissory notes, as well as consignment transactions.

All right, how about accounts? What is an account, you ask? Well, an account is simply a right to payment of a monetary obligation. For instance, you probably have service from your local electric company. The service likely has an account whereby periodically the electric company sends you an invoice and you pay on the account. What if the electric company were to need money in order to, for example, finance a new power plant? The electric company might decide to sell the accounts, rather than borrow the money and give a security interest in them to secure the loan. In order to prevent any confusion by other lenders, who might not know about the sale, Article 9 treats the sale of accounts in the same way as the ordinary granting of a security interest. As it turns out, both transactions are governed by Article 9.

So far we’ve looked at transactions that are ordinarily covered by Article 9 and those that, regardless of form, are covered by Article 9 nevertheless. You might ask whether there are specific transactions to look out for where Article 9 does *not* apply.

There are a few particular exclusions from Article 9. While earlier we found that sales of accounts were governed by Article 9, in the event that the sale of accounts, chattel paper, payment intangibles, or promissory notes is part of the sale of a business out of which they arose, in those cases Article 9 does not apply. Similarly if the transaction is one of an assignment for the purpose of collection only, here again Article 9 does not apply. Other common exclusions are assignments of a right to payment where the assignee is obliged to perform under the contract and assignments of a single account, payment intangible or promissory note in full or partial satisfaction of pre-existing indebtedness. For instance, if you as an attorney receive an assignment of a single account from the electric company to pay an invoice outstanding to you, that type of transfer would not be subject to Article 9 so we would not need to worry about its requirements here.

Other examples of transactions not within the scope of Article 9 include landlord liens, statutory liens, and wage assignments. For example, a mechanic’s lien, like the right of the repair shop to keep possession of your car until you pay the bill, is created by statute and is not an Article 9 security interest.

At this point, you should be able to recognize transactions that are governed by Article 9, particularly traditional security interests and retentions of title. You should also be able to recognize transactions such as sales of accounts and promissory notes that are likewise governed by Article 9. Finally, you should be able to identify transactions that are not governed by Article 9 because they do not fit within our traditional construct of the security interest or are specifically excluded transactions.

I hope you’ve enjoyed this podcast on the Scope of Article 9.

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