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***Personal Property Security Act*** (PPSA): Deals with transfer of various interests

**Secured transaction**: Consensual secondary transaction (**collateral K** to main K) where D gives C security by way of giving him (the “**secured party**”) a **conditional property interest** that he can’t use until D does something wrong. Then C has an absolute interest in the property.

* **Unsecured party**: Where creditor takes no interest in particular property to ensure that he is repaid by the debtor

# I. Situating the PPSA

**S. 73-74**: If there is a **conflict between PPSA and any other act**, then the PPSA prevails unless the other Act contains an express provision that applies in spite of PPSA; Exceptions: BPCPA, LTA (but PPSA s. 36, 37, 49 prevail over it)

* *Marine Buildings v Proton* (1993 BCSC): Supports **s. 73**, allows PPSA to prevail over other legislation

**S. 68****(1)**: Principles of the common law, equity and the law merchant continue to apply except where inconsistent with PPSA.

* **Batman**: Disagrees with judges getting creative w/ rules of EQ, thinks it’s best to rely on CL rules if PPSA doesn’t perfectly apply

# II. Creating a Security Interest

## Basic of a Secured Transaction

“**Security interest**” means

(a) True SI: Interest in goods, chattel paper, investment property, a document of title, an instrument, money or an intangible that secures payment or performance of an obligation,

(b) Deemed SI: Interest in (i) transfer of account or chattel paper (transferee is D), (ii) commercial consignment (consignee is D), or (iii) lease > 1 year (lessee is D), whether or not the interest secures payment or performance of an obligation.

### Parties

**"Debtor"**: Party giving the SI; **s. 1(1)** definitions

(a) person who owes payment or performance of obligation secured (incl 3rd party **guarantor**), whether or not he owns or has rights in collateral

(b)(c)(d) “deemed” debtors: persons receiving goods under a commercial consignment, lessees in lease > 1 year, transferors of accts

(e) person who acquires the secured property from original D in (a); SI continues, even if **transferee** is BFPFV

(f) reiterates what’s said in e. Some people who are not owed money are treated as debtors… sometimes

**"Creditor"**: Lender; includes an assignee for the benefit of a creditor, an executor, administrator or committee of a creditor

**"Secured party"**: Person who receives SI, holds one for benefit of another, or trustee for a SI held in trust; owed underlying obligation

**Guarantor**: C doesn’t feel very secure after getting the SI so insists that D1 find someone else who will enter into a contract with C to guarantee D1’s indebtedness (and also provide C with a SI), that person is also D2 for C

### Standard of Behaviour

**S. 68(2)**: Standard for parties in SAs wrt rights, duties or obligations: Good faith and done in a commercially reasonable manner.

**S. 68(3)**: A person does not act in bad faith merely because the person acts with knowledge of the interest of some other person.

### Obligation Secured

**Obligation secured** is the obligation (usually money) owed by the basic debtor to the creditor

* D required to provide info about previous SPs in property X that could take precedent to SPs who ask, pursuant to **s. 18** (acquisition of info from SPs)

### Future Advances and Tacking

**“Advance”**: Payment of money, the provision of credit or the giving of value; includes any liability of D to pay any interest or costs in connection with an advance; AKA an amount SP adds to D’s debt, but it has an attached interest

**“Future advance”** means an advance whether or not the advance is made in accordance with an obligation and includes reasonable costs incurred and expenditures made for the protection, maintenance, preservation or repair of collateral

\*comes after the parties enter into the agreement

**S. 1****4(1)** A security agreement may provide for **future advances**.

*PPSA* allows for a SI given today to cover **future advances** made by the creditor to the debtor at a future date

With debtor’s permission, creditor can “**tack**” on future advances to his own priority position

* Sucks for parties with junior priority, since more of the value of the property can be eaten up to satisfy the growing indebtedness of a senior lender who keeps tacking on new amounts [**s. 35(6)**]
* Sometimes law just assumes D agrees to tacking on, but it’s entirely determined by K

**“All-obligations” clause** collapses amounts owed (from advances and future advances from each K) into one, covered by 1 overarching ST

Assignees (buyers) of a senior SI can’t tack their own (pre-existing) debt onto that priority position (*Canamsucco*).

**Subordination agreements**: K b/w competing SPs that sort out their relative priorities, no effect on others (see below)

### Acceleration Clauses

**S. 16 Acceleration clause/accelerated debt**: SA provision that, upon default or when SP feels collateral is in jeopardy, all of D’s amounts or performance owed to SP in the future become immediately due and payable. Pursuant to **s. 68** standards of behaviour

Example: D’s in default for payment of $10K. C can seize an item of D’s held as collateral. If C sells it for $700K, he must return $690K surplus to D.

* To justify accelerated debt: If D ever defaults upon a payment, C can say he feels insecure not only about the amount D defaulted on today but also about all the amounts owed.

## Form and Content of the Security Agreement

**“Security agreement”:** Agreement that creates or provides for a security interest (present or prior) and includes writing that evidences such

To be enforceable against D: No form required, effective according to its terms (**s. 9**)

To be enforceable against 3rd parties and ROW: (1) SP must have possession [**s. 10(1)(a)**], or (2) Meet writing requirements below:

**S. 10(1)(d)**: SA must contain signature of D AND one of the following:

(i) Description of collateral by item or kind or reference to one or more: goods, instruments, documents of title, intangibles, money, crops, licences

(iii) Statement that SI is taken in all of D’s **present and after acquired personal property** (All PAAP) – **General Security Agreement**

\*Benefit of declaring All PAAP: Don’t have to worry about a later party coming along and detaching your interest

(iv) All PAAP with exceptions (e.g. for certain PP, or one of the above list in (i))

**S. 11**: SP must deliver a copy of the SA to D within 10 days after it is executed, or else court may order that delivery.

**Security agreement** sets out:

* Amount owing by debtor and how it’ll be repaid
* Obligations of the parties in terms of the treatment of the collateral
* Events that constitute default by D (which triggers right of SP to proceed against the collateral) and SP’s available remedies upon default
* Doesn’t need to set out: Specific SIs and proceeds

*Riepe v Stingray*: Verbal agreement = lack of compliance w/ **s. 10** requirements, so SP’s interest ineffective against third parties even though they knew of SP’s interest

*New Solutions Financial*: Wording needs to be precise and familiar (not vague like “assets”), so despite understanding b/w contracting parties about what the term meant, SP’s interest ineffective against 3rd parties

## Transactions Creating “True” Security Interests

**S. 2****(1)**: Subject to section 4, this Act applies

(a) to every transaction that creates a SI, without regard to its form and without regard to the person who has title to the collateral, AND

(b) without limiting paragraph (a), to the following as long as they secure an obligation (lower in list = less likely to be covered by PPSA):

**(Chattel) mortgage**: EQ // Tangible (e.g. chattel) // Lender gets a charge // Non-possessory // Upon default, mortgagee gets ownership rights and possession // Borrower = mortgagor = D in ST, lender = mortgagee = SP

**Conditional sale**: Buying/selling on credit triggers ST law

**Charge**: EQ // Tangible or intangible // Non-possessory // Upon default, chargee obtains right to sell property

 **Fixed charge**: SP has charge over property ID’d immediately (e.g. debts in existence = immediate charges)

**Floating charge**: SP has charge over category of things, which crystallizes/settles upon property at time of default

**Pledge**: CL // Tangible // Possessory // No writing req’s // Pawn shops et al, not for big lenders

**Assignment**: EQ // Intangible // Most common form is transfer of **account** (i.e. debt) // Absolute is not a SI, conditional is a SI

## Transactions Deemed to Create Security Interests

**S. 3**: S.1(1) definitions apply to these transactions whether or not they secure payment for an obligation, but Part 5 (Remedies) does not [**S. 55**]:

(a) a transfer of an account,

(b) a commercial consignment, and

(c) a lease for a term of more than one year

**\*Deemed SI\* Transfer of account**: Any assignment of an intangible account is a SI (both conditional AND absolute); here, it arises for transferee

### Consignment

**True consignment**: Like a bailment transaction where bailor/consignor leaves property w/ agent (bailee/consignee) to find buyer 🡪 Doesn’t create SI 🡪 Presumption: PPSA doesn’t apply

**Security consignment**: Consignment to secure obligation for payment/performance 🡪 PPSA applies [**s. 1, 2**]; consignor = SP, consignee = D

* When it’s in essence disguised conditional sale (parties have role of buyer and seller)
* *Toyerama*: Agent/consignee has to buy goods if can’t find buyer = like a conditional sale (if looks like a buyer) // Agency not essential to be a consignment agreement

**\*Deemed SI\* Commercial consignment** [**s. 3**]: Consignment under which goods are delivered for sale, lease or other disposition to a consignee who deals in goods of that description (i.e. parties deal with same goods in their ordinary course of business)

* Consignor must retain interest after delivery
* Excluded: Auctioneers, consignees generally known to creditors to be in biz of selling/leasing goods of others
	+ *Furmanek* (2000) BCSC: “Generally known” = What potential objective creditor would know (not existing creditors). Found to be SP b/c business was not objectively known to deal in consignment goods

### Lease

**True lease**: Like bailment // Possessory interest for defined period of time // NO obligation secured 🡪 PPSA doesn’t apply

1. Lease with lessee owning the goods at the end of lease, but lease can be discontinued at any time
2. Mandatory period of time of lease, w/o option to discontinue or for lessee to become owner, and after lease owner gets the goods back
3. Mandatory period of time of lease, but allows optioning out or altering price at time of purchase

- Since Part 5 doesn’t apply, for remedies: Use CL’s first-in-time rule or follow what’s said in K/lease agreement (*Newcourt*)

**Security lease**: Where lessee looks like “buyer” under conditional sale, lessor looks like “seller” 🡪 Tantamount to sale 🡪 PPSA applies:

1. Lease for mandatory period close to the natural/useable life of the thing
2. Lessee given option to purchase (though almost certain that, at outset, lessee will exercise): Thus lease payments become **installments**

\*Only if the price to pay to exercise that option is set out in advance, and doesn’t = reasonable market value at time of exercising option

\**Yeung v Au* (2006) BCCA: *MVA* rules applied in absence of PPSA. Lease w/ option to purchase is not conditional sale.

1. Nature of lessor’s business is financing: Lessee assumes ownership responsibilities (*Daimler Chrysler v Cameron*)

**\*Deemed SI\* Lease for term of more than 1 year** [**s. 3**]: Lessor deemed to hold SI // No obligation secured needed [**s. 3**]

**“Lease for a term of more than one year”** includes

(a) Lease for an indefinite term + lease that is determinable within one year from execution

(b) Lease initially for one year or less if the lessee, with the consent of the lessor, retains uninterrupted or substantially uninterrupted possession of the leased goods for > 1 year // But it doesn’t account until the moment that possession exceeds 1 year [**S. 1(3)**]

(c) Lease for < 1 year but that’s (i) automatically renewable, OR (ii) total terms exceed one year

Excluded: (d) Where lessor’s ordinary course of business isn’t in leasing goods, (e) Lease of household goods incidental to use of land, (f) Any lease on prescribed kind of goods

### Trust

**Security trust**: Where B is SP with beneficial interest in property, T is D and legal owner // EQ // Non-possessory interest 🡪 SI is taken to ensure trust obligation is performed (*Skybridge*: Travel agency held $ in trust = unperfected SI)

* ST doesn’t need to be trust/fiduciary relationship to trace proceeds [**S. 1(5)**] // Allows SP to follow money thru mixed accts
* **Batman**: Loophole that allows ON law to get around this statutory protection of B’s interest

## Security Transactions Excluded from the PPSA

**S. 4**: PPSA does not apply for these (unless otherwise stated):

(a) Lien, charge or other interest given by a rule of law or enactment 🡪 Why: PPSA covers consensual transactions only

(b) SA covered by fed law (i.e. shipping and banking) 🡪 Why: Constitutionally, if fed law gives something, PPSA can’t take it away

\**Kingsclear*: Property on reservation can’t be collateral

(c) Interest/claim under insurance policies

(d) Interest in present or future wages other than fees for professional services; will be excluded from any All-PAAP applying to individuals

(f) Subject matter of SI is creation/transfer of land interest (incl forest agreements, petroleum, coal, NG) 🡪 Why: PPSA doesn’t cover land

(g) Interest in a right to payment that arises in connection w/ land interest

# III. The Property Encumbered: Collateral and Proceeds

## Collateral

**Collateral**: Property that is the subject of an attached SI created by the ST; upon D’s default, any of it can be seized by creditor

* Or: Original property that is the subject of the SI and **proceeds** (any derived property from original collateral)

**Personal property**: Not real // Something not considered PP at CL can be defined so for PPSA purposes (e.g. fixtures, crops)

* **Intangible property** like license-like interests (e.g. a *profit a prendre*) or another generation of SI
* Goods: Tangible personal property + fixtures + crops + animals’ unborn // Excludes money
* Things that confer proprietary rights, even contingent or limited-time (*Saulnier* SCC: Fishing license held to be vested w/ prop-like rights)

Non-overlapping characterization of **goods** made at time SI attaches [**s. 1(4)**] so that, even if reality changes goods’ nature or later SPs see differently, no onus on SP to change classification from what it was at time of attachment:

* **Consumer goods**: Primarily acquired for personal, family, household purposes
	+ Require further description (e.g. serial number) AND reference as to kind [**s. 10(3)**]
	+ PP excluded from a description of collateral may be described as consumer goods [**s. 10(6)**] – can’t exclude anything else
* **Inventory**: (a) Goods held for sale/lease, (b) furnished under K of service, (c) raw materials, (d) materials consumed in course of business
	+ **Exam Protip**: Don’t label collateral as “inventory” since only adequate for when collateral held by D [**s. 10(4)**]
	+ *Furmanek*: You can’t force something to not be inventory by seizing it – must be voluntary or indication goods were seized for reason other than default
* **Equipment**: Residual category for everything else; e.g. crops // Requires further description in writing req (e.g. serial #, kind) [**s. 10(3)**]

## Proceeds

“**Proceeds**”: (a) Identifiable/traceable PP, fixtures and crops derived directly or indirectly from any dealing with collateral or the proceeds of collateral in which original D acquires an interest (automatically), OR (c) Payment made in total or partial discharge of an intangible or instrument

* Proceeds of proceeds constitute proceeds (*Marathon Realty*); proceeds several dealings after orig dealing can still give OD a prop interest
* SA automatically extends SI to proceeds from dealings [**s. 28(1)(b)**] EXCEPT if SP expressly/impliedly **authorizes the dealing** [**s. 28(1)(a)**]
	+ Writing req: Doesn’t need to specifically reference proceeds to remain enforceable against 3rd parties [**s. 10(5)**]

If originally said All-PAAP for a SI in the **original collateral**, then all property derived from OC are also part of the **original property**.

* If SI enforced against ORIGINAL + PROCEEDS, amount secured limited to value of collateral at date of dealing [**s. 28(1)**]

## Tracing

**Tracing**: Tracking down property // Exception to EQ (which doesn’t allow T into **mixed funds**): Don’t need FR to trace proceeds [**s. 1(5)**]

* For PPSA tracing rules to apply (EQ be damned): Need to establish close and substantial connection between old and new property to show how one is traced into another and rights can flow from old to new (*Pettyjohn*)
* Must still satisfy definition of proceeds (i.e. D must have rights in the property)

**Lowest intermediate balance rule** (*Universal CIT*, US): EQ rule that when money (subject to one’s SI) goes into mixed account, money withdrawn from that acct withdraws first from money not affected by the SI (i.e. funds w/o someone else’s legally recognized interest) // See example

* Withdrawals from an acct are NOT proceeds unless a portion of that money is subject to SI
	+ Things bought with withdrawal ARE proceeds if SI attached to part of that withdrawal // SP can only make proportional claim
* Deposits: Any additions to the fund are NOT presumed to be subject to the SI of previous SPs unless specifically designated
	+ SP can only claim against the LIB of the acct

**Exam Protip**: Tell Batman how you would approach the tracing problems, no need to do actual calculations

# IV. Creating the Security Interest: Attachment

**Attachment**: Getting a SI, attaching it to the property involved; arises when all these conditions are met [**s. 12(1)**]:

(a) **value** is given (**s. 1(1): A**ny consideration sufficient to support a simple contract; incl past debt/liability/consideration: *TD Bank*)

(b) D has **rights** in the [PP that will become the] collateral once attachment occurs (even if they’re later lost)

(c) **writing reqs** must be met (**s. 10**) but not for 1) enforcing rights between only D and SP, or 2) when SP takes possession of the collateral

* **Batman**: First go thru these conditions to determine when attachment normally occurs, then parties can agree to postpone attachment
* Regardless if these conditions persist, attached SI hangs on to collateral after it’s dealt [**s. 28(1)**], until PPSA deems an event **detaches** it

**“Sufficient” rights** not required (e.g. that D “owns” the property that becomes collateral)

* D only needs some degree of control/authority over collateral (enough to be able to subject it to SI) (*Kinetics Technology*, US)
* No legal/EQ title required; rights may be merely possessory in origin (*Haibeck*)
* No minimum rights required, as long as D follows Nemo Dat

## Purchase Money Security Interest

**“Purchase money security interest”** [**s. 1(1)]:** Doesn’t include sale by and lease back to the seller, REQUIRES INTENTION, and include these:

**(a)** **Seller PMSI**: SI in collateral to extent that it secures payment of all/part of that collateral’s purchase price

**(b)** **Financier/lender PMSI**: SI in collateral where value was given to enable D to acquire rights in the collateral, to extent that value is thus applied

\*Lender must know what D is using money for; providing a line of credit, absent anything more, not sufficient to be lender PMSI

\**Pettyjohn*: Sufficient for lender PMSI if value of a loan was the intention to enable D to acquire rights in collateral // PMSI in each item bought with a total loan amount each secure for that full amount (\*Unlikely to be followed outside of SK\*) (agrees with *Chrysler*)

\**Unisource*: If D’s rights are being enlarged, PMSI can be claimed (e.g. enabling D to acquire title in the collateral) // Change in nature of D’s property right (law divided on how to deal with change in % of ownership)

\**Chrysler Credit*: If D’s borrowed funds are used to purchase collateral, treat as one big “**collective PMSI**”; can’t pay it back individually over time

**Deemed PMSI**: **(c)** Interest of a lessor of goods in lease > 1 year; OR **(d)** interest of a person who delivers goods under commercial consignment

Even if you don’t have a PMSI super-priority, you can still have PMSI as a status… but to retain super-priority, PMSI must be perfected.

PMSI status extends thru proceeds, as long as SI does: **s. 28(1)**

# V. Perfection of the Security Interest

**Perfection** gives SP greatest degree of certainty about SI’s value in the collateral as against claims by other SPs and the trustee in bankruptcy.

**S. 19**  A security interest is **perfected** when

(a) it has attached, AND (b) all steps required for perfection have been completed. \*Regardless of order of occurrence

**Continuous perfection**: Where SI perfected by one method, then another, w/o unperfected intermediate period [**S. 23****(1)**]

## Perfection by Registration

**S. 25**: **Registration** of a financing statement in Personal Property Registry (mostly online now) perfects a SI in collateral 🡪 Subject to attachment!

* Due to **s. 19**, can register FS that anticipates later events (e.g. attachment, SAs) and get earliest possible priority [**s. 43(4)**] (*New Solutions*)
* Can register FS to cover multiple SAs [**s. 43(5)**], just be wary of how collateral is described
	+ When FS covers “All PAAP”, then can cover any SA between the two parties, relationships before and after FS reg
* Registration by itself does NOT constitute express, constructive or implied notice to any 3rd party of: FS, its contents, the SI perfected, or SA’s contents [**s. 47**] – UNLIKE LTO registration of titles

**Financing statements** can’t possibly have simultaneous registration [**S. 43(2)**], so easier to determine priority

* Only basic info provided: names of D and SP, type of collateral, period reg will last for [**s. 44(1)**]
	+ **Exam Protip**: For perfection of interests it covers, FS must report both interests AND proceeds **[s. 43(1)**]
* *Regal Feeds*: FS can be less specific than SA, esp about future property // **Exam Protip**: For inventory, better to explicitly say what meant
* Need more info? Follow **s. 18** process
	+ Can also request a search, by D name, serial number, registration number [**s. 48**]
* Serial numbers required in FS for some equipment to make reg and perfection valid [**s. 35(4)**]

**Financing change statement**: Reflects transfer of SI from one SP to another, NOT required // Shows amendments to registration [**s. 44(3)**]

* **S. 23(2)**: A transferee of a SI has the same priority wrt perfection of the SI as the transferor had at the time of the transfer.

Problems with registration: Most errors are omissions

* Valid unless seriously misleading [potential = sufficient: **s. 43(8)**]: Not affected by defect, irregularity, omission, error in reg [**s. 43(6)]**
	+ *Munro*: Not seriously misleading if search using alternate criteria yields correct result
	+ *Coates*: “Exact” search fails to show result, but search that allowed error gave good info
* If multiple D’s required to be disclosed in FS OR collateral is consumer goods, then seriously misleading error 🡪 Reg invalid **[s. 43(7)**]
* Failure to describe collateral only affects that collateral, not all else **[s. 43(9)**]
* **Restoration rule** if error in or failure to renew: **30 day grace period** – reregister within this time and recover the priority
	+ Doesn’t apply to advances made after lapse, and before reregistration

## Perfection by Possession

**S. 24****(1)**: **Possession** of the collateral by SP automatically perfects SI in it (tangible property only: goods, instrument, doc of title, $$)

EXCEPTIONS to perfection despite SP’s possession of the collateral, under s. 24:

1. D has defaulted so SP seized the collateral from D (Too late to perfect by possession after D’s in default: *Re BNS & RBC*)

\*SP confined to only using that collateral to satisfy D’s indebtedness to him

\*If SP wasn’t in possession at moment of default, if SP waives default and wants to take possession, he must record that

1. D has returned the property to SP (repossession). Accidental usually. Doesn’t count (*Number 7 Honda*)

No constructive possession: Doesn’t count if actual or apparent possession/control by D (or his agent) [**s. 24(2)**]

## Middle Ground: Temporary Perfection

**S. 2****6(1)**: SI perfected by possession remains perfected for **15 days after SP parts with possession** of collateral (this is allowed in some scenarios)

What collateral? (a) Instrument, OR (b) Negotiable document of title

\*After **15 days grace period**? Must perfect via alternate method [**s. 26(2)**], OR loses the perfected status held during grace period

\*If perfected within the 15 days, the **perfected SI continues** in any proceeds yielded from dealing the OC

\*IF BFPFVWN comes along during 15 days and completes a sale of the collateral from seller D, he takes free from that not-yet-perfected SI [**s. 30(5)**]

## Proceeds

**S. 28(2)**: To obtain a **continuously perfected SI in proceeds** (i.e. preferred perfected status wrt proceeds), OC must be perfected by reg of FS that:

**(a)** Contains a description of the proceeds sufficient to perfect a SI in same kind of OC; OR

 \*FS has to include OC and sufficient details about proceeds to satisfy **s. 10** (by item or kind, or by ref to list of categories)

 \*Should say “all present and after-acquired goods”

**(b)** Covers OC if: Proceeds are of the kind that fit within OC’s description; OR

 \*Example: SI in “bikes” covers proceeds as long as they are bikes, so **Exam Protip**: Better include in FS “bikes and proceeds”

**(c)** Covers OC if: Proceeds are money, cheques or deposit accounts

\*Easiest requirement: Continuously perfected so no need to describe

Go first for **s. 28(2)**. If it fails, go for **s. 28(3)**: If SI in OC perfected, SI in proceeds remains perfected for **15 days**

\***Before 15 days expire**, SP meets requirements in **s. 28(2)**: SP will continue to have this continuously perfected SI in the proceeds

\***After 15 days expire** w/o SP meeting **s. 28(2)** requirements: SP’s SI in the proceeds becomes unperfected (but doesn’t disappear)

# VI. Competing Interests: Priority Rules

**Priority rule**: Determines whose claim must be satisfied before that of any other SP in the same property (can’t be b/w non-SPs)

 \*Tend to want to use the one with strongest effect to protect a party’s interest

* **Batman**: Use the most specific PR available, but DON’T force it 🡪 Residual rules 🡪 CL rules (*Nemo Dat*, i.e. **first-in-time**) as last resort
* In some cases, one party’s SI coming into existence **detaches** the SI of a competing party
* Actual notice isn’t relevant to priorities, you can still take advantage of PR if aware of competing party’s SI in same prop (*Robert Simpson*)
* **Batman**: When thinking thru all potential competitors, Bruce will tell us flat-out the priorities of unsecured creditors, govts, etc.

## General Issues

Priority rules set out by PPSA can be changed by parties contractually or by courts (through doctrine of marshalling)

### Circularity Problems

**Circular priority**: When priority rules give irreconcilable priorities w/o clear hierarchy, here’s some options for resolution (by court intervention!):

1. Give priority to least blameworthy party
2. Argue based on public policy, that one type of SI is preferred over another, OR reasonable commercial expectation (*GMS v Rich-Wood*)
3. Impose burden on first SP to take remedial action

### Subordination Agreements

**S. 40****(1)** SP may **subordinate** his SI to any other interest and this will be effective according to K terms between the parties BUT ONLY to that extent

\*Rule that eliminates privity of K; **subordination agreement** may be enforced by 3rd party if that’s the party intended to get benefit

**S. 45(6)**: Allows SP to file this subordination agreement in the Personal Property Registry thru financing change statement

In practice called **priority agreements** that don’t change priorities per se, but K allows for override of priorities that would otherwise bind parties

* *Gabriel*: Easy to show what constitutes sub-A, K just needs to say SI was “subject to the interest of [junior party]”
* *Transamerica*: Sub-As will be interpreted strictly // If SA refers to “bank”, a finance company can’t claim benefit
* Can appear in SA, and can occur when subordinate parties annoyed at a senior SI in All-PAAP

### Marshalling

**Marshalling**: Judicial rearrangement of SIs (almost like injunction) // Changes practical effects, not actual priorities // Example: *Surrey Metro*

* EQ: Prevents Sr SP arbitrary action destroying Jr SP’s SI // Not used if 3rd party interests adversely affected or Sr SP excessively deprived

Court might order (via powers granted by **s. 63**) if SP1 is **oversecured** (has more than enough collateral) and SP2 is **undersecured** because: (1) USP is subordinate, OR (2) OSP has taken action against the collateral, eliminating USP’s interest and leaving the USP w/o collateral, or (3) Defaults

Possible effects of marshalling:

1. Forces OSP to rely on his interest in collateral unaffected by USP’s interest 🡪 No overlap in collateral 🡪 USP gains priority
2. Gives USP the OSP’s interest in collateral

## Residual Priority Rules

\*Use only if a more specific rule does not apply\* \*If this doesn’t work, seek CL\*

- Both parties must be SPs… though one can be deemed SP

**S. 35(1)(a)** If it’s **perfected SI vs perfected SI:**

 \*Registration vs possession race-to-the-registry

 \*Single FS can cover multiple SAs [**s. 43(5)**] as long as description of collateral is broad enough (*RBC v ACC Sask*)

**(b)** If it’s **perfected SI vs unperfected SI**: Perfected always > unperfected

**(c)** if it’s **unperfected SI vs unperfected SI** (can be more than two)**:** Priority determined by order of attachment, can have multiple SPs at same time

 \*If same time of attachment 🡪 SPs share equally (*Ontario Dairy Cow* – simultaneous attachment of SI in proceeds)

**(2)** If a **continuously perfected SI** (i.e. no break btw present and when FS was registered): Use the **method of original perfection** for purposes of **(1)**

 \*Also applies if method of perfection changed (e.g. from possession to registration)

**(3)** Time of reg, possession, perfection of SI of OC = same for proceeds

**(5)** **Future advances** **tacked** onto OC get the original priority

**(7)** **Restoration Rule**: If **lapse in registration**, SP gets **30-day grace period** to re-register 🡪 Lets SP regain priority over perfected SPs who were subordinate before lapse

 \*EXCEPTION: Interim advances made by competing SPs after lapses and before re-registration

## Specific Priority Rules

### SI vs PMSI Holders

- Requires: 2 SPs with at least 1 PMSI between them

**S. 34(1)** PMSI > any other non-PMSI SI in the same collateral given by same D

 \***Super-priority** requirements: PMSI must be perfected 🡪

 **(a)** Tangibles (& proceeds) 🡪 **Within 15 days after D gets possession**… as collateral; D can have normal possession before (*McLeod*)

**(b)** Intangibles (& proceeds) 🡪 **No later than 15 days after D acquires interest** (i.e. the SI attaches)

\*Super-priority **continues to proceeds** once established, including inventory, but CAN’T START as inventory to be able to use this rule

\*Can only use SP to extent of value of PMSI (\_\_\_\_???)

**(2)** **PMSI in inventory** > any other SI in the same collateral given by same D

 \***Super-priority** requirements: All steps must be completed in order 🡪

 **(a)** PMSI perfected immediately once D takes possession

 **(b)(c)** NOTICE to other SPs with same interest in same collateral

 **(d)** Must state that you expect to get PMSI and must describe inventory

 **(e)** Notice must be given BEFORE D obtains possession

**(4)** **Seller PMSI** > other PMSI in the same collateral given by same D

 \*Requirements: Seller PMSI must be perfected 🡪

 **(a)** Inventory 🡪 Immediately once D takes possession

 **(b)** Collateral 🡪 **Within 15 days after D gets possession**

 \*RULE DOESN’T APPLY: 2 Lender PMSIs (but seller PMSI > lender PMSI)

**(6)** **Non-proceeds PMSI** > proceeds PMSI in the same collateral

 \*Requirements: Non-proceeds PMSI must be perfected 🡪

 **(a)** Inventory 🡪 Immediately once D takes possession

 **(b)** Collateral 🡪 **Within 15 days after D gets possession**

 \*Rule applies even if competition is between different Ds or between PMSIs from same D

 \*Typical scenario: Collateral with PMSI SI is given in exchange for something else, and thus becomes proceeds for another D

\*Because: Holder of PMSI = person who facilitated the SI of every other SP of the same D in the same collateral

### Unperfected SI vs Special Unsecured Parties

**S. 20(a)** **If D defaults against an unsecured creditor** and UC takes steps to have judgment against D satisfied, upon a sheriff coming to **seize and sell D’s property**, UC gains interest in that property with priority > original SP’s SI **unless it was perfected**

 \*Requires: Unperfected SIs at time UC’s interest arose OR when writ of seizure/sale delivered to sheriff

\*Exceptions/limitations from **s. 35(6)**, where **advances** of the holder of SI still has priority over UC’s interest: Advances made before UC’s interest arise, OR before seizure of collateral, OR before order giving sheriff right to the collateral on behalf of the UC

**(b)** Unperfected Si in collateral detaches against **TIB or liquidator**, so needs to be perfected or it disappears/is subordinated!

 \*Requires: Unperfected SIs at time of bankruptcy or when winding-up order made

\**Re Giffen* SCC: TIB able to gain better position wrt collateral than D had due to SP failing to register and D went bankrupt and TIB seized the collateral

**S. 22(1)** A PMSI in collateral that is not inventory and is **perfected within 15 days** has priority > UCs

### (Mostly) Unperfected SI vs Transferees of Collateral & Buyers and Lessees of Goods

**S. 20(c)** Unperfected SI in [doc of title, instrument, money, intangible, goods] is **subordinate to unsecured BFPFVWN**

 \*Requires: Unperfected SI at time when BFPFV acquired interest + No SA + Value given + No knowledge of SI by transferee

 \***Value**: Any consideration sufficient to support K, incl past debt/liability, promise to do something (**Batman**: disagree w/ *Dawson Motors*)

**S. 28(1)(a)** SP can expressly/impliedly authorize (to D or to 3rd party) that a **collateral be dealt with free of the SP’s interest**

 \*CL protects purchaser who believes it’s a straightforward transaction // Mainly seen in sales and dealings w/ inventory: Protects

\*How to prevent: SP can expressly say no dealings allowed, remove self from implicit license to deal, take possession of collateral so D can’t transfer it

**S. 30(2)** Buyer/lessee takes free from SIs given by seller for **goods sold/leased in ordinary course of seller’s business**

 \*Requires: Buyer/lessee cannot know the sale is in breach of SA (though can know SI exists) + SI given by the seller

 \*Exception: Where SP of the seller has prohibited expressly a sale w/o SP’s permission in the SA

**Ordinary course of business**: Includes supply of goods under **K for services/materials** [**s. 30(1)**] (*Furnasman*)

- Factors to determine: Who are the parties? Where agreement made? Quantity of goods? Price w/in usual market range? (*Fairline Boats*)

- Cannot be defined by parties to agreement, needs fot be determined objectively on facts (*Ford v Centre Motors*)

 - Not if seller **D goes out of business** by the time he makes a sale (*Wheaton Pontiac*)

 - In **series of sales** where final transaction is in OCB but earlier ones aren’t, the SIs in earlier transactions persist (*Wheaton Pontiac*)

- **Buyer of goods**: Must be owner (*RBC v 216200 Alberta*) [**s. 30(1)**]

- **Goods** must be ascertained; can become fixture or accession to property [**s. 30(1)**]

- **Sale** should be given its ordinary meaning, not SGA-relevant (*Spittlehouse*)

- **Seller** includes a person who supplies goods that become fixture/accession under a contract with a buyer of goods [**s. 30(1)**]

**(3) Buyer/lessee of consumer goods** takes free from ANY SIs (whether given by seller D or not)

 \*Requires: Value given + No knowledge of SI

 \*Exceptions [**s. 30(4)**]: Doesn’t apply to fixtures, or for goods with purchase price > $1000

**(5)** Buyer/lessee of goods **takes free from temporarily perfected SI** (see **s. 26**) in the **15 day grace period** to preserve perfected status

 \*Requires: Value given + No knowledge of SI + Sale made before 15 days are up

**S. 30(2)** focuses on dealings b/w SELLER/D and PURCHASER; TRUMPS **s. 28(1)(a)**, which focuses on arrangement b/w SP and D (subject to PPSA)

### Two-Debtor Situations

D can transfer their rights in collateral \*Even if SA forbids it\*[**s. 33(2)**] … But may constitute a default btw transferor D and his SP

 - Would **require re-registration** even if **just one D but he changes his name**… otherwise that’s “seriously misleading”

**I. If Transferee Grants SI \*BEFORE\* Transfer [S. 35(8)**]:

- Applies only where: 1) SPs in competition have different Ds; 2) SP of transferor is perfected; AND 3) SP of transferor gets transferee as new D

- Transferee would commonly be subject to an all-PAAP in a pre-transfer promise to his own SP

**Priority Rule**: Perfected SI of transferor’s SP > Any SIs granted by transferee to any SPs before transfer

 - Exception: If new D becomes known 🡪 **Advances made during the hiatus**

 - Knowledge: Includes constructive K [**s. 2(a)**], but knowledge of FS isn’t enough [**s. 47**]

 - Doesn’t apply: If transferee acquires property free from SI granted by transferor [**s. 35(9)**]

**Hiatus period**: Comes into effect if SP doesn’t take steps to **re-register to include the transferee as a new D** within the **15 day grace period**

**(a)** Starting point of hiatus period: 15 days after SP with perfected SI learns of the transfer

\*Within that time range, would use residual priority rules instead of **s. 35(8)**

**(b)** Endpoint of hiatus period: When SP gets around to re-registering

**II. If Transferee Grants SI \*AFTER\* Transfer** [**S. 51**]:

- Applies only where: 1) SPs in competition have different Ds; AND 2) SP of transferor is perfected

- Total subordination of one SP’s interest to another – **doesn’t differentiate advances**

**(1)** Use if **SP consented to the transfer**, but not to detachment of his SI; here, D/transferor’s perfected SI is subordinate to:

 \*Interests or perfected SIs arising in the **period btw 15 days after transfer AND time SP finally re-registers**

 - Even non-SIs belonging to TIB can get priority if no re-registration

\***Perfected SIs granted by transferor D within 15 days from transfer**, if SP failed to re-register during those 15 days

 \*Not a true grace period: Failure to re-register new D’s name OR take possession of the collateral has lasting effects

 \*How to avoid: Re-register, or take possession of collateral within the 15 days

 \*Transfer not necessarily free from the SI [**s. 28(1)(a)**]

**(2)** Use if **SP didn’t consent to the transfer**, but later had knowledge; here, D/transferor’s perfected SI is subordinate to:

 \*Interests or perfected SIs arising in the **period btw 15 days after knowledge AND time SP finally re-registers**

 \***Perfected SIs granted within 15 days from knowledge**, if SP failed to re-register during those 15 days

 \***Knowledge**: Knowledge of info required to register FCS OR knowledge of new name of D

- Every time there is awareness of a transfer (even if to **many other debtors**) 🡪 Must re-register! 🡪 At every new point of having knowledge, the **15 day period** restarts

- Even applies to subordinate SP’s interest to that of a TIB (*Orion Truck*)

 \*Not a true grace period: Failure to re-register new D’s name OR take possession of the collateral has lasting effects

 \*How to avoid: Re-register, or take possession of collateral within the 15 days of learning of transfer

If neither knowledge nor consent and the SI survives the transfer 🡪 No need for transferor’s SP to re-register

Can also apply if both SPs actually have the same D who underwent a name change (*Orion Truck*)

### Competition with Holders of Interests Given after Transfer of Collateral

In some cases “taking free” provisions don’t apply 🡪 **SI’s continue in the collateral after transfer** even though D no longer has interest in it

### Competition with Transferees of Accounts

**Account**: Monetary obligation not evidenced by instrument; a promise to pay/do something

**New value**: Value other than previous debt or liability; includes consideration (except past)

At least 1 SP (the transferee), most often two

There is **account creditor** (who owns the account; will act as D for corresponding SPs) and **account debtor** (person obligated: **s. 41(1)**)

- **Conditional transferees** don’t get the account until the transfer becomes absolute

- **Absolute transferee** can be deemed to be SP

Sometimes, account can be the only **proceeds from a transfer of goods** in which the SI detaches, so your SI is only in the account

Priority rules apply to both the account and **money in the account**, which can: a) flow out as proceeds, OR b) be absolutely assigned to another SP

**Residual Priority Rule**: Priority determined by **order of registration** [**s. 35(1)(a)**]

**S. 34(5)** **Non-proceeds PMSI** in accounts given for new value > PMSI in account as proceeds of inventory

 \*Requirement: FS registered BEFORE either PMSI is perfected OR FS related to it is registered

\*Restricts super-priority of a PMSI in accounts as proceeds when there is a competing SI in accounts given for new value

\*Usually arises in car dealership or any high-price goods

**Exam Protip**: So need to ensure that underlying SI is also perfected

**Assignment** (can be EQ or CL) **of accounts**

**S. 41(2)** Rights of assignee of collateral are subject to terms of K btw account debtor and assignor, and to any defence/claim of account debtor against the assignor made before account debtor has knowledge of the assignment

**(3)** If original creditor access less in satisfaction, assignee is held to that

**(7)** Account debtor can continue to make payments even if there was an assignment

**(9)** To the extent that assignment is dealt with by PPSA, can say that: Account creditor cannot assign the account to anyone else

### Competition with Holders of Interests in a Fixture/Crops

**Ways to get interest** in fixtures: 1) Land law (e.g. via mortgage); 2) Personal property SI (e.g. via all-PAAP)

Case can turn on **degree of attachment to land** – **Exam Protip**: Identify ambiguity on exam

**S. 1(1) Goods** means tangible personal property, fixtures, crops, etc.

- **Fixture** does not include building materials // Real property, not land (for PPSA purposes only; it’s land in other non-PPSA aspects)

- **Building materials** means materials that are incorporated into a building and includes goods attached to a building so that their removal might cause serious damage/weaken structure; NOT INCLUDED: Heating, air conditioning, elevators, machinery installed to carry on an activity

**I. If SI Attaches \*BEFORE OR AT THE TIME\* Goods Become Fixtures** [**s. 36(3)**]:

**Priority** wrt the goods over person with interest in the land

- Attachment can give priority here

- No registration required: It’s a **secret lien** (might lead to circularity problems: *GMS v Rich-Wood*; resolve by following red example)

But is **subordinate** to [**s. 36(4)**]:

 **(a)** Person who LATER acquires interest in land as long as: For value + W/o fraud + Before **s. 49** notice is filed (i.e. BFPFVWN)

 **(b)** Mortgagee who makes subsequent advances as long as: W/o fraud + Before **s. 49** notice is filed… BUT ONLY WRT THE ADVANCE!

**II. If SI Attaches \*AFTER\* Goods Become Fixtures** [**s. 36(5)**]:

It’s **subordinate** to:

 - Pre-existing land interests, who hadn’t consented to SI or disclaimed interest in goods or fixtures

 - Subsequent land interests if acquired: W/o fraud + Before **s. 49** notice is filed

**S. 49(2)** SP may file in LTO a notice of a SI, registrar must file it and make entry in register

*Manning v Furnasman*: Not a conditional sale 🡪 No indication that seller of furnace reserved title in it 🡪 No collateral and no ST

 \*Had a **s. 30** argument: Sale is not in OCB (which is installing furnaces), so it can apply and the SI survives the sale

### Competition with Holders of Interests in an Accession

**Exam Protip**: **S. 38** says basically same thing as **s. 36**, but one sub earlier; work together if accession attach to thing that later becomes fixtures

**Accessions** means (smaller) goods that are installed in or affixed to other goods (the “whole”)

 - Also means they can be removed again as long as don’t lose identity entirely (e.g. communal goods like flour mixed into cake)

- Your interest in an accession or the other/whole stays that way, and it’s possible to have interests in the accession and in the whole

- Confusion about size of what’s attached, or value, that makes something an accession

**Other goods** means goods to which an accession is installed or affixed

**“The whole”** means an accession and the goods to which the accession is installed or affixed

**I. If SI Attaches \*BEFORE OR AT THE TIME\* Goods Become Accessions** [**s. 38(2)**]:

**Priority** wrt the goods over person with interest in the whole

- Attachment can give priority here, even over a perfected SI in the whole

- No registration required: Another **secret lien** (might lead to circularity problems again)

But is **subordinate** to [**s. 38(3)**]:

 **(a)** Person who LATER acquires interest in the whole as long as: For value + W/o knowledge of SI + Before SI perfected

 **(b)** SP w/ perfected SI in the whole as long as: W/o knowledge of SI + Before SI perfected, which covers

 **(i)** (Perfected) advances made under SA after goods become accessions and priority ONLY wrt advance

 **(ii)** Acquires right to retain whole in satisfaction of obligation secured (foreclose)

**II. If SI Attaches \*AFTER\* Goods Become Accessions** [**s. 38(4)**]:

It’s **subordinate** to:

 - Person w/ pre-existing interest in “other goods”, who hadn’t consented to SI or disclaimed interest in accession

 - Subsequent interests in the whole if acquired: W/o knowledge of SI + Before SI in accession perfected

**Exam Protip**: For both fixtures (**s. 36**) and accessions (**s. 38**): Have to choose one of these OR PMSI (**s. 34**) … They don’t work in conjunction

# VII. Default and Remedies

## Default

SP can only proceed against collateral in the event of default, though not required to do so (**can waive and not realize** on his security: CL)

 - Can also sue for damages or both to cover all bases

**S. 1(1)** “**Default**”: **(a)** Failure to pay or otherwise perform the OS; OR **(b)** Occurrence of event or circumstances that, under the SA terms, causes SI to become enforceable (i.e. D doesn’t meet her obligations under the SA) = **Pre-condition for SP being able to use D’s property is fulfilled**

 \***Rights and remedies** (and obligations) available for SP in SA and in Part 5 [**s. 56(2)**]

Examples: D’s **insolvency** (inability to meet obligation) or bankruptcy (where **TIB** is appointed to wind up D’s business affairs and pay what can be paid to creditors); D not maintaining a particular financial state; D defaulting under another SA with a different SP; failure to keep up licensing requirements; change type of business

1) Has there been a default? For how much?

2) If yes 🡪 What collateral to proceed against? (Answer: Most valuable ones, and items where you have high priority)

3) Will SP proceed as secured or unsecured creditor (i.e. sue)? (If proceeding as SP 🡪 See remedies below!)

## Remedies

Before remedies, must give **preliminary notice** to D for last chance to meet the OS: Judicially-imposed, **s. 68(1)** mirrors CL requirement unless it’s allowed by law and D expressly waives notice (*Waldron*) // Otherwise, C could be found guilty of tort of conversion

- Content: Tell D she’s in default + For how much + Consequences of failure to pay + Time D has to pay… No Form requirements

- Time frame: Dependent on what’s reasonable given circumstances at time of default (*Waldron*)

**I. Collection of Payments under Intangibles after Default** – Intangibles can directly generate money payments that can be used to pay down the obligation in default

SP can change its conditional assignment in this property (i.e. its SI) into absolute assignment and become the account creditor

1) Notify account D to make payments to SP [**s. 57(2)(a)**]

2) Take control of proceeds to which SP is entitled [**s. 57(2)(b)**]

3) Apply to satisfy obligation [**s. 57(2)(c)**]

4) **Notify debtor within 15 days** [**s. 57(4)**]

- Marshalling can kick in here and court orders a senior SP to release its interests

**II. Remedies for Tangible Collateral**

**1.** **Seizure of Collateral** – Upon default, any SP may do this regardless of priority [**s. 58(2)(a)**] 🡪 EXCEPTION: Consumer goods, see below

 - **Constructive possession**: If collateral hard to move/store, SP can seize w/o actual removal [**s. 58(2)(b)**]

- When in possession, SP must use **reasonable care to preserve collateral** [**s. 17(2)(4)**] and keep it identifiable (but can mix fungibles: **s. 17(3)(c)**] // Can use profits while in possession to pay down debt [**s. 17(3)(c)**]

 - Possession by seizure does NOT perfect a SI [**s. 24(1)**]

**2. Disposition/Sale** – 4 methods, **s. 59(3)**: a) Private sale; b) Public sale (price close to market value: **13**); c) Whole or parts; d) Lease, if SA allows

 - Standard = **commercially reasonable manner** (*Medi-Dent, Donnelly*); violation 🡪 no default action allowed

- Before disposition, **must give notice** to D, other owners, and sub-SPs (but not prior SIs) **at least 20 days before disposition** [**s. 59(6)**]

 - Must contain description of collateral, amount required to satisfy OS **(7)**

 - **Proceeds must be distributed** in this order: Reasonable expenses, then satisfaction of obligation of SP doing disposing [**s. 59(2)**]

 - BFPFV, once in possession, takes collateral free of interest of D and subordinate SPs [**s. 59(14)**]

- Thus, practically, a disposing SP will do what it takes to remove senior SP’s SI from collateral before BFPFV comes by, otherwise senior SP can seize collateral if D defaults on his obligations to him

- If **surplus**, in order: Sub-SIs perfected by registration/possession > Other parties who’ve given notice of interest in collateral > Other Ds own by SP to be owners [**s. 60(2)**]

\***Money from disposition pays for**, in order: Pay for costs of seizure/disposition > Satisfy obligations owed to disposing SP > Holders of perfected SI’s > Surplus goes to D… and none for a senior priority SI, bye! Since his SI still subsists

**S. 68(2)**: Latches on to the sale/disposition provisions in **s. 59**; SP must conduct sale, no matter public/private, in a **commercially reasonable manner**, or else it could get set aside in favour of other creditors.

**3. Foreclosure** – SP can choose to foreclose on the collateral (and thus satisfy the obligation secured by that collateral) [**s. 61(1)**]

 - **Notice of proposal** goes to **(a)** D + known owners, **(b)** Creditor w/ subordinated SI to the SP

 - **Notice of objection** within 15 days 🡪 SP must dispose of the collateral instead **(2)** // Alternate objection: go to court **(7)**

 - If none, then **(3)** says SP is deemed to have irrevocably elected to retain the collateral to satisfy the OS

- Constructive foreclosure: Not possible due to statutes and notice requirement (*Angelkovski*) // CL says if it appears to ROW you’re treating property as your own, or if party who didn’t get notice is fine with CF (*Inland Kenworth*)

\*If the object foreclosed on is worth more than the debt owed and there is no objection within the reasonable period of time, you hit the jackpot!

**4. Rights of Redemption and Reinstatement** – Prior to dispose/foreclose, D can redeem collateral by satisfying OS (incl acc clause) [**s. 62(1)**]

 \*Can also be done by a holder of subordinate SI

 - Notice must be given to D, can benefit SP (*Angelkovski*)

**III. Remedies for Consumer Goods**

 - Special **writing requirement**: Description of collateral as consumer goods must have further reference to kind of collateral [**s. 10(3)**]

- SI doesn’t **attach to after-acquired property** that is consumer goods (other than accession) [**s. 13(2)**]

- SP must choose one of: a) Seizure, b) Voluntary foreclosure, c) Accept surrender of goods by D (Must be voluntary action on SP’s part: *Whitewater*), or d) Sue for judgment [**s. 67(1)**]

 - Use of **real remedy** above extinguishes D obligation and SI **(2)** and **personal remedy** (suing) does the same **(10)**

\*D can waive that, but only once default has occurred and D has agreed to that

 - SP cannot seize if D has paid > 2/3 of the OS [**s. 58(3)**]

 - **S. 62**: More generous reinstatement rights (basically: alleviating effect of acc clauses on D-consumers): **D just pays amount in arrears**

 - Limitation: D-Consumer can only reinstate twice a year **(2)**

**IV. Court Variance** – **S. 63(2)** Remedies and alterations BCSC can make orders for: a) Injunctive relief; b) Directions; c) Relief from compliance (if terms just and reasonable to all), d) Stay enforcement of rights; e) Order to protect interests of all

- SC can extend or abridge the time for compliance **[s. 71]**

 - Scope of power: To obtain commercially just result, impose T&Cs to protect rights, not to alter substance of K (*Andrews and Trotchie*)

**V. Remedies for Non-Compliance with PPSA** – Can get damages [**s. 69(3)**], pre-existing CL rights remain to counter slander of title (*Osman*)

- **S. 56(3)** limits the ability of parties to waive or contract out of much of the PPSA

**VI. Other Non-Statutory Remedies**

**1. Receivers and Managers** – **S. 64** makes it clear that Court can appoint // Also works if can prove WHY court appt necessary (*RBC v White Cross*)

 - SA or K can also allow for appointment, Court is for when SA doesn’t provide one

- **Receivers** are usually appointed to be agents (of D) but can do things that SP can do; provisions like **s. 57(1)**

 - Can facilitate exercise of SP’s real remedies, giving insurance that D won’t jeopardize SP’s interest in the collateral

 - Usually preliminary to another remedy or to winding up D’s business

- **Manager** has more power to run business, since receiver only collects money, pays debts, realizes on SI

**2. K Remedies** – Parties cannot K out of procedural protections for D or SPs’ obligations [**s. 56(3)**]

- *Andrews and Trotchie*: K remedy may not be allowed if it’s too close to a statutory remedy

**3. Sue/Action for Deficiency** [**s. 60(5)**] 🡪 Will rank SP as UC since doing the same thing

\*SP can sue for this after realizing on the SI in collateral; but SP and un-SP have same status

The amount you can extract from a property (when defaults occur, or debt collection) is limited to how much the property is worth when it is sold