

# LAW 438 - SECURED TRANSACTIONS - WINTER 2014 MACDOUGALL

SITUATING THE PPSA	<ul style="list-style-type: none"> <li>• <b>PPSA PREVAILS OVER OTHER LEGISLATION, ABSENT AN EXPRESS PROVISION TO THE CONTRARY:</b> and in accordance w/ a few exceptions - <b>73</b> (<i>Marine Building Holdings</i> - PPSA prevailed)             <ul style="list-style-type: none"> <li>• <b>Exceptions:</b> <i>Business Practices &amp; Consumer Protection Act</i> and <i>Land Title Act</i> -- though ss. 36, 37, and 49 still apply to LTA - <b>74</b></li> </ul> </li> <li>• <b>PPSA DOES NOT ADDRESS EVERY GIVEN SITUATION:</b> rules of <u>equity</u>, <u>common law</u>, and the <u>law merchant</u> apply so long as not inconsistent - <b>68</b> <ul style="list-style-type: none"> <li>• <b>BWM says:</b> If a provision of the PPSA doesn't perfectly apply, it shouldn't be forced; use CL rules (<i>nemo dat</i>); doesn't like that judges have gotten creative with the rules of equity wrt secured trans &amp; deeply hopes that they'll be reverse upon appeal</li> </ul> </li> </ul>
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## CREATING A SECURITY INTEREST

### BASICS

IS A SECURITY INTEREST CREATED?	<ul style="list-style-type: none"> <li>• <b>SUBSTANCE OVER FORM:</b> PPSA applies to <u>any transaction</u> that creates a <b>security interest</b> w/out regard to form OR ownership - <b>2(1)(a)</b></li> <li>• Creation of the SI must be the <b>essence</b> of the transaction vs incidental (+) <b>debtor-creditor</b> relationship of some sort</li> <li>• <b>"SECURITY INTEREST" - 1(1)</b> <ul style="list-style-type: none"> <li>• <b>"TRUE" - (a)</b> <u>interest</u> in goods, chattel paper, investment property, document of title, instrument, money, or intangible that <u>secures payment or performance of an obligation</u></li> <li>• <b>"DEEMED" - (b)</b> interest in <b>(i)</b> <u>transfer of account or chattel paper</u>; <b>(ii)</b> <u>commercial consignment</u>; or <b>(iii)</b> a <u>lease for a term of more than one year</u></li> </ul> </li> </ul>
PARTIES TO A SECURED TRANSACTION - <b>1(1)</b>	<ul style="list-style-type: none"> <li>• <b>"CREDITOR":</b> fairly broad definition, though incomplete definition in the PPSA</li> <li>• <b>"SECURED PARTY":</b> person who has SI; hold SI for benefit of another; or trustee of trust that holds SI</li> <li>• <b>"DEBTOR":</b> individuals must fit w/in the definition for the PPSA to apply!             <ul style="list-style-type: none"> <li>• <b>(a)</b> person who owes payment or performance of obligation, whether or not person owns or has rights in collateral</li> <li>• <b>(b)(c)(d)</b> "deemed" debtors: person who receives goods under commercial consignment; lessee under lease &gt; 1 year, transferor of account/chattel paper</li> <li>• <b>(e)</b> person who <u>acquires the secured property</u> from the original debtor; SI remains attached</li> </ul> </li> <li>• <b>The meaning of "debtor" can change in situations where A owes the obligation, but B is the owner of the collateral.</b> <ul style="list-style-type: none"> <li>• For provisions dealing w/ collateral, "debtor" will mean B, the owner of the collateral // wrt obligations, A // <u>or where possible BOTH the owner and the obligor</u></li> </ul> </li> </ul>
STANDARD OF BEHAVIOR	<ul style="list-style-type: none"> <li>• <b>GOOD FAITH &amp; COMMERCIALY REASONABLE MANNER:</b> the standard expected of parties wrt rights, duties &amp; obligations - <b>68(2)</b></li> <li>• <b>ACTING DESPITE MERE KNOWLEDGE OF THE SI OF ANOTHER DOES NOT CONSTITUTE BAD FAITH - 68(3)</b></li> </ul>
THE OBLIGATION SECURED	<ul style="list-style-type: none"> <li>• <b>EXTENT:</b> SI is only used to satisfy the extent of the obligation owed &amp; no more -- though amount can change over time (see <b>tacking</b>)</li> <li>• <b>DEFAULT:</b> SI can only be used to satisfy indebtedness in default on an obligation <u>currently due</u>, therefore it's critical to know what constitutes default!             <ul style="list-style-type: none"> <li>• <b>BWM says:</b> make conditions for default as <u>broad</u> as possible; not required to act on all provisions, but preserves <u>ability to act</u></li> </ul> </li> <li>• <b>ACCELERATION CLAUSE:</b> <b>failure to pay any amount owing leads to all amounts due immediately.</b></li> <li>• <b>AVAILABILITY OF AC'S:</b> SP has <u>commercially reasonable grounds</u> to believe payment/performance is/is about to be impaired OR collateral is/is about to be in jeopardy - <b>16</b></li> </ul>
TACKING	<ul style="list-style-type: none"> <li>• <b>SA MAY PROVIDE FOR FUTURE ADVANCES - 14(1)</b></li> <li>• <b>LATER INDEBTEDNESS ADDED ON TO (PRE-EXISTING) SENIOR PRIORITY - 35(6)</b> - this can "eat up" the collateral available to Jr creditors; Jr's are <u>expected to take tacking into account</u> when entering into a security agreement.</li> <li>• <b>Assignees (buyers) of a senior SI can't tack their own (preexisting) debt onto that priority position (Canamsucco)</b> <ul style="list-style-type: none"> <li>• But...you <u>can</u> buy the assignment and then tack on more <u>new debt</u> to the senior position.</li> <li>• BWM doesn't agree w/ this; sees no reason to protect Jr creditor here, where other situations leave them unprotected</li> </ul> </li> <li>• <b>Subordination Agreement:</b> contract b/w SP1 and SP2 (for example) that sorts out <u>their</u> relative priorities; no effect on other SP's!</li> </ul>
WHAT IS THE COLLATERAL?	<ul style="list-style-type: none"> <li>• <b>CHARACTERIZATION OF GOODS:</b> determination of sub-category made <u>at the time the SI attaches</u> - <b>1(4)</b> <ul style="list-style-type: none"> <li>• <b>CONSUMER GOODS:</b> primarily used or acquired for personal, family, or household purposes</li> <li>• <b>INVENTORY:</b> goods held for <u>sale or lease</u>; furnished under contract of service; raw materials; materials used/consumed in business</li> <li>• <b>EQUIPMENT:</b> residual category - goods that are NOT inventory or consumer goods</li> </ul> </li> </ul>
KNOWLEDGE	<ul style="list-style-type: none"> <li>• <b>NATURAL PERSON:</b> information acquired in circumstances where <u>reasonable person</u> would take notice - <i>constructive</i> - <b>1(2)(a)</b></li> <li>• <b>CORPORATION:</b> reasonable attention of managing D/O, or sr. employee responsible for matters to which info relates - <b>1(2)(c)</b></li> </ul>

## FORM & CONTENT

<b>ENFORCEABLE?</b>	<ul style="list-style-type: none"> <li>• <b>AGAINST DEBTOR</b> --&gt; <b>NO PARTICULAR FORM REQUIRED:</b> “SA is effective <u>according to its terms</u>” - 9</li> <li>• <b>AGAINST 3RD PARTIES</b> --&gt; (1) <b>SP MUST HAVE POSSESSION OR (2) MEET WRITING REQUIREMENTS</b> - 10(1)</li> <li>• <b>POSSESSION:</b> one way to make SI effective against 3rd parties - 10(1)(a) // leads to rights &amp; obligations of SP's in possession - 17</li> </ul>
<b>WRITING REQUIREMENTS FOR SECURITY AGREEMENTS</b>	<p><b>SIGNATURE OF DEBTOR (+) ONE OF THE FOLLOWING</b> - 10(1)(d)</p> <ul style="list-style-type: none"> <li>• (i) description of collateral: <b>ITEM / KIND / or REFERENCE</b> to one or more: <ul style="list-style-type: none"> <li>• <b>goods, investment property, instruments, documents of title, chattel paper, intangibles, money, crops, or licenses</b></li> </ul> </li> <li>• (iii) all-PAAP // this prevents future problems with form &amp; is the preferred method - “GSA”</li> <li>• (iv) all-PAAP with exceptions</li> </ul> <ul style="list-style-type: none"> <li>• <b>Riepe</b> - <b>lack of compliance w/ writing requirements</b> // verbal agreement, but no written SA // SP's interest ineffective against 3rd party, even though 3rd party knew of SP's interest</li> <li>• <b>674921</b> - <b>use of an unrecognized term</b> // parties to SA used term “assets” // not recognized // SP's interest rendered ineffective against third parties, despite understanding b/w contracting parties as to what the term was meant to cover</li> </ul> <p><b>MISCELLANEOUS</b></p> <ul style="list-style-type: none"> <li>• “<b>CONSUMER GOODS</b>” &amp; “<b>EQUIPMENT</b>” - <u>require further description</u> - ex/ serial number or category - 10(3)</li> <li>• “<b>INVENTORY</b>” - only adequate as description for 10(1)(d) <u>while property is held by the debtor as inventory</u> - 10(4) <ul style="list-style-type: none"> <li>• BUT --&gt; if property <u>becomes</u> inventory you're fine b/c determination of goods <u>made at the time the SI attaches</u> - 1(4)</li> </ul> </li> <li>• “<b>PROCEEDS</b>” - SA need not reference “proceeds” to be enforceable against 3rd parties - 10(5) - says nothing of PRIORITY!</li> </ul>

## TRANSACTIONS CREATING “TRUE” SECURITY INTERESTS

<b>COMMON LAW AND EQUITABLE FORMS</b>	<ul style="list-style-type: none"> <li>• <b>CLASSIC FORMS ARE PRESERVED</b> - 2(1)(b) <ul style="list-style-type: none"> <li>• <b>PLEDGE:</b> CL // possessory // tangible property // no writing req's // classically used by pawn shops, inconvenient for big lenders</li> <li>• <b>MORTGAGE:</b> EQ // no possession required -- upon default, mortgagee gets ownership rights &amp; possession // tangible property // owner-mortgagor + lender-mortgagee</li> <li>• <b>CHARGE:</b> EQ // tangible or intangible // non-possessory -- upon default, chargee obtains <u>right to sell</u> property <ul style="list-style-type: none"> <li>• <b>Fixed Charge</b> - subject matter identified immediately</li> <li>• <b>Floating Charge</b> - SP has charge over <u>category</u> of things; crystallizes and settles upon property at the time of default</li> </ul> </li> <li>• <b>ASSIGNMENT:</b> EQ // intangible // most common form is <b>ACCOUNT</b> (debt) // absolute is <u>not</u> a SI, whereas conditional <u>is</u> a SI</li> <li>• <b>CONDITIONAL SALE:</b> buy/sell on <u>credit</u> triggers law of secured transactions</li> <li>• <b>LIEN:</b> can be possessory or non-possessory</li> </ul> </li> </ul>
<b>PPSA FORMS</b>	<ul style="list-style-type: none"> <li>• <b>SECURITY AGREEMENT:</b> agreement that creates/provides for SI and may include: agreements for <u>prior SI</u> and <u>writing</u> evidencing SI</li> <li>• <b>GENERAL SECURITY AGREEMENT:</b> where the collateral is all-PAAP</li> </ul>

## AMBIGUOUS CATEGORIES & DEEMED SECURITY INTERESTS

<b>LEASES</b>	<ul style="list-style-type: none"> <li>• <b>TRUE LEASE:</b> bailment -- possessory interest for a defined period of time // no obligation secured <ul style="list-style-type: none"> <li>• If true lease, Part 5 remedies do not apply --&gt; instead use CL; first-in-time or K law (<b>Newcourt Financial</b> - found to be true lease - instead of PPSA remedies, use remedies &amp; rights as outlined in the lease agreement; P was able to recover vehicle)</li> </ul> </li> <li>• <b>SECURITY LEASE:</b> where the lessee looks very much like a “buyer” under a conditional sale &amp; lessor looks like “seller” --&gt; <b>PPSA applies</b> <ol style="list-style-type: none"> <li>1. lease for mandatory period close to the <u>natural life of the thing</u></li> <li>2. lessee given <u>option to purchase</u> -- almost certain <u>at outset</u> that lessee will exercise</li> <li>3. nature of lessor's biz is <u>financing</u> // lessee assumes ownership responsibilities // acceleration clause (<b>Cameron</b>)</li> </ol> </li> <li>• <b>DEEMED</b> --&gt; <b>LEASE &gt; 1 YEAR:</b> <u>lessor</u> deemed to hold security interest - 1(1)(b)(iii) <ul style="list-style-type: none"> <li>• need not secure obligation or payment --&gt; <b>PPSA applies // Part 5 (remedies) does NOT apply</b> - 3</li> </ul> </li> <li>• <b>DEFINITION</b> - “<b>lease for a term of more than one year</b>” <ol style="list-style-type: none"> <li>a. lease for indefinite term + lease determinable within one year from execution</li> <li>b. lease initially for 1 year --&gt; but goods retained for greater than 1 year</li> <li>c. (i) automatically renewable OR (ii) total terms exceeds 1 year</li> </ol> </li> </ul>
<b>TRANSFER OF ACCOUNT</b>	<ul style="list-style-type: none"> <li>• <b>DEEMED</b> --&gt; <b>TRANSFER OF ACCOUNT / CHATTEL PAPER:</b> Interest of <u>transferee</u> arising from transfer of account OR chattel paper - 1(1)(b)(i) --&gt; <b>PPSA applies // Part 5 (remedies) does NOT apply</b> - 3</li> <li>• Any <u>assignment</u> of an intangible is a security interest - both conditional AND absolute</li> </ul>

CONSIGNMENTS	<p><b>1. TRUE CONSIGNMENT</b></p> <ul style="list-style-type: none"> <li>principal (consignor) leaves property w/ agent (consignee) to find buyer --&gt; presumption = PPSA does NOT apply</li> </ul> <p><b>2. CONSIGNMENT TO SECURE OBLIGATION</b></p> <ul style="list-style-type: none"> <li>interest that secures payment or performance of an obligation - PPSA applies - <b>1(1)(a)</b></li> <li>consignee takes on duties that look like a buyer under a conditional sale --&gt; if no buyer found, consignor agrees to purchase // consignee bears responsibilities of owner (taxes, maintenance, etc)</li> <li><b>Toyerama</b> - <b>factors</b> - obligation of consignee to pay for unsold items; insurance; language of agreement; furnishing of financing statements</li> </ul> <p><b>3. DEEMED SECURITY INTEREST --&gt; COMMERCIAL CONSIGNMENT</b></p> <ul style="list-style-type: none"> <li>fits within description of "commercial consignment" --&gt; deemed to be a secured transaction as per "security interest" - <b>1(1)(b)(ii)</b></li> <li>remedies portion of statute does not apply - <b>3</b></li> <li>COMMERCIAL CONSIGNMENT <ul style="list-style-type: none"> <li>consignor + consignee deal in goods of that description <u>in ordinary course of their biz</u></li> <li>consignor must <u>retain interest</u> after delivery</li> <li>excluded --&gt; auctioneers &amp; consignees <u>generally known</u> to creditors to be in business of selling/leasing goods of others <ul style="list-style-type: none"> <li><b>Furmanek</b> - <b>generally known</b> - refers to what a potential, objective creditor would know - not existing creditors // consignor of jewelry failed to register // found to be a SP b/c business was not objectively known to deal in consignment goods</li> </ul> </li> </ul> </li> </ul>
TRUSTS	<ul style="list-style-type: none"> <li><b>SECURITY TRUST:</b> B is SP // Trustee is D --&gt; if SI is taken to ensure trust obligation is performed (<b>Skybridge</b> - travel agency)</li> <li><b>NO FIDUCIARY RELATIONSHIP REQUIRED TO TRACE PROCEEDS - 1(5)</b> - ie/ no trust required to trace in context of PPSA</li> </ul>

### EXCLUDED TRANSACTIONS

PPSA DOES NOT APPLY - 4	<ul style="list-style-type: none"> <li><b>(a)</b> - lien/charge/interest given by rule of law --&gt; consensual transactions only</li> <li><b>(b)</b> - SA's covered by federal law --&gt; constitutional reasons (<b>Kingsclear</b> - PPSA not applicable to reserve property)</li> <li><b>(c)</b> - interests / claims under insurance policies</li> <li><b>(d)</b> - wages - present &amp; future // will be excluded from any all-PAAP applying to individuals</li> <li><b>(f)</b> - creation or transfer of land interest</li> <li><b>(g)</b> - payments arising in connection w/ land interests</li> </ul>
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## COLLATERAL & PROCEEDS

### COLLATERAL

<b>PERSONAL PROPERTY</b>	<ul style="list-style-type: none"> <li>The PPSA does not define <b>personal property</b> --&gt; if you can argue that an item is NOT personal property, then PPSA doesn't apply</li> <li>Just because a thing is not property at CL, does not mean that it can't be defined so for PPSA purposes</li> <li><b>FACTORS</b> - thing confers rights (proprietary), even if right is contingent or for limited time (<i>Saulnier</i> - fishing licence found to be property)</li> </ul>
<b>COLLATERAL</b>	<ul style="list-style-type: none"> <li><b>COLLATERAL</b> - personal property subject to a SI ---&gt; ORIGINAL COLLATERAL + PROCEEDS</li> </ul>

### GOODS

<b>"GOODS" 1(1)</b>	<ul style="list-style-type: none"> <li><b>DEFINITION:</b> <u>tangible personal property</u> + fixtures + crops &amp; unborn of animals // EXCLUDES: money</li> <li><b>CHARACTERIZATION OF GOODS IS MADE &amp; FIXED AT TIME SI ATTACHES - 1(4)</b></li> <li><b>GOODS MUST BE ONE OF:</b> (the following categories are <u>mutually exclusive</u>) ---&gt; INVENTORY // CONSUMER GOODS // EQUIPMENT</li> </ul>
<b>INVENTORY</b>	<ul style="list-style-type: none"> <li><b>DEFINITION:</b> (a) goods held for <u>sale or lease</u>; (b) furnished under contract of service; (c) raw materials; (d) materials used/consumed in business (<i>judicially-interpreted to mean materials "used up"</i>)</li> <li><b>SA - DESCRIPTION OF COLLATERAL AS INVENTORY:</b> only adequate so long as held by debtor as inventory - 10(4) <ul style="list-style-type: none"> <li><b>NOTE:</b> you can't *force* something to no longer be inventory by seizing it - must be voluntary or some other indication goods were seized for reasons other than default! (<i>Furmanek</i>)</li> </ul> </li> </ul>
<b>CONSUMER GOODS</b>	<ul style="list-style-type: none"> <li><b>DEFINITION:</b> used/acquired <u>primarily</u> for personal, family, or household purposes</li> <li><b>SA - MUST INCLUDE FURTHER REFERENCE AS TO KIND:</b> not enough to just say "CONSUMER GOODS" - 10(3)</li> <li><b>EXCLUSION:</b> adequate to describe only as "consumer goods" - 10(6)</li> </ul>
<b>EQUIPMENT</b>	<ul style="list-style-type: none"> <li><b>DEFINITION:</b> residual category - goods that are NOT inventory or consumer goods</li> <li><b>SA - MUST INCLUDE FURTHER REFERENCE AS TO KIND:</b> not enough to just say "EQUIPMENT" - 10(3)</li> </ul>

### PROCEEDS

<b>"PROCEEDS" - 1(1)</b>	<ul style="list-style-type: none"> <li>(a) IDENTIFIABLE (describable) or TRACEABLE (locatable) personal property, fixtures, and crops <u>derived directly or indirectly from any dealing w/ collateral or proceeds of collateral</u> in which the debtor acquires an interest</li> <li>(c) <u>payments</u> made in total/partial discharge or redemption of intangible</li> <li><b>PROCEEDS OF PROCEEDS:</b> are considered to still be proceeds (<i>Marathon Realty</i>)</li> </ul>
<b>SI PERSISTS</b>	<ul style="list-style-type: none"> <li><b>SA AUTOMATICALLY EXTENDS SI TO PROCEEDS - 28(1)(b)</b> <ul style="list-style-type: none"> <li>EXCEPTION: if SP expressly / impliedly <u>authorizes the dealing</u> then the SI detaches - 28(1)(a)</li> </ul> </li> <li><b>WRITING REQ FOR SA:</b> agreement does not need to specifically reference proceeds to remain enforceable against 3rd parties - 10(5)</li> <li><b>LIMITATION:</b> proceed against <u>both</u> ORIGINAL + PROCEEDS --&gt; amount secured limited to value of collateral <u>at date of dealing</u> - 28(1)</li> </ul>
<b>CONTINUOUSLY PERFECTED</b>	<ul style="list-style-type: none"> <li><b>SI IN PROCEEDS REMAINS PERFECTED IF ORIGINAL COLLATERAL PERFECTED BY REGISTRATION OF FS THAT - 28(2)</b> <ul style="list-style-type: none"> <li>(a) - contains description of proceeds sufficient to perfect SI in OC of same kind</li> <li>(b) - proceeds of KIND that fits description of OC</li> <li>(c) - covers OC if proceeds are MONEY, CHEQUE, or DEPOSIT ACCOUNT</li> </ul> </li> </ul>

### TRACING

<b>PPSA VARIATION</b>	<ul style="list-style-type: none"> <li><b>TRACING INTO PROCEEDS:</b> PPSA modifies --&gt; <u>proceeds are traceable</u> regardless of FR - 1(5) (EQ didn't allow T into mixed fund, absent FR)</li> <li><b>MUST STILL SATISFY DEFN OF "PROCEEDS":</b> ex/ funds deposited into a bank account where <u>negative</u> balance still results NOT proceeds - b/c D has <u>no rights</u> in the property</li> <li><b>CLOSE &amp; SUBSTANTIAL CONNECTION:</b> must exist b/w old property &amp; new to use PPSA tracing (<i>Pettyjohn</i> - one type of cows sold to buy other)</li> <li><b>LOWEST INTERMEDIATE BALANCE RULE:</b> mixed fund with withdrawals &amp; deposits --&gt; any <b>additions</b> to the fund are <u>not</u> presumed to be subject to the SI of previous SP's (unless specifically designated) --&gt; the SP can only claim against the LIB of the account // <b>withdrawals</b> from fund - money out presumed to be D's - ie/ to <u>not</u> affect the interests of 3rd parties (<i>Universal CIT</i> - D deposited proceeds of sale of cars w/ SI) <ul style="list-style-type: none"> <li><b>withdrawals</b> from an account are NOT proceeds unless a portion of that money is subject to SI</li> <li><b>things bought with withdrawal</b> ARE proceeds if SI attached to some of the withdraw funds -- SP can only make proportional claim</li> <li><b>EXAMPLE:</b> SP has SI of \$100 - D's account only has \$50 - D wins \$1000 lottery &amp; deposits money - SP still only has SI in \$50 of \$1000!</li> </ul> </li> <li><b>BC APPROACH:</b> followed <i>Pettyjohn</i> (<i>Re River Industries</i> - close &amp; substantial cx b/w new &amp; old inventory --&gt; constitutes traceable personal property &amp; therefore "proceeds" --&gt; traceable)</li> </ul>
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## ATTACHMENT

- **ATTACHMENT IS NOT A GLOBAL PHENOMENON:** you must assess the state of attachment for each piece of collateral
- **TIMING OF ATTACHMENT:** attachment arises when all the conditions are met (unless specifically postponed by agreement b/w the parties) - **12(1)**
  - **(a) VALUE** is given;
  - **(b) RIGHTS** - debtor has rights in collateral and;
  - **(c) WRITING** - section 10 req's must be met to be enforceable against 3rd parties (*attachment can be present wrt the DEBTOR, but not wrt 3RD PARTIES*)
- **CONDITIONS OF ATTACHMENT NEED NOT PERSIST FOR THE SI TO PERSIST:** once attachment occurs, the SI in collateral continues via operation of **28(1)**

<b>VALUE</b>	<ul style="list-style-type: none"> <li>• <b>VALUE</b> = consideration sufficient to support a simple K; includes <u>past</u> debt or liability - <b>1(1)</b> <ul style="list-style-type: none"> <li>• <b>TD Bank v Nova</b> -- BS advanced money to Nova; no E that a security agreement was contemplated at the time // aprox one year later, Nova granted BS a GSA // court found that "value" includes past consideration</li> </ul> </li> </ul>
<b>RIGHTS</b>	<ul style="list-style-type: none"> <li>• <b>NO MINIMUM LEVEL OF "SUFFICIENT" RIGHTS IS REQUIRED:</b> the provision only requires that the debtor "has rights"</li> <li>• <b>Debtor must only have some degree of CONTROL/AUTHORITY over collateral</b> (<b>KTI Corp</b> -- KTI delivered goods it owned to OHT for repair/enhancement // OHT had SI with bank - defaulted // bank took possession of KTI's property // COURT - bank's SI attached)</li> <li>• <b>Legal/Equitable title not required:</b> rights may be merely possessory in origin (<b>Haibeck</b>)</li> <li>• <b>NEMO DAT APPLIES:</b> no minimum rights required - but the debtor can't give more than they have</li> </ul>

## PURCHASE MONEY SECURITY INTEREST

<b>PMSI</b>	<ul style="list-style-type: none"> <li>• <b>"PURCHASE MONEY SECURITY INTEREST" - 1(1)</b> <ul style="list-style-type: none"> <li>• <b>SELLER PMSI</b> - SI in collateral to extent that it <u>secures payment</u> of all/part of purchase price - <b>(a)</b></li> <li>• <b>LENDER PMSI</b> - SI in collateral where <u>value given</u> to enable debtor to <u>acquire rights</u> in collateral, to extent value is thus applied - <b>(b)</b> <ul style="list-style-type: none"> <li>• lender must KNOW what you're using the money for</li> <li>• providing a LOC, absent anything more, is not sufficient to be a "lender PMSI"</li> </ul> </li> <li>• <b>DEEMED PMSI</b> - <b>(c)</b> interest of lessor of goods in lease for term &gt; 1 year; <b>(d)</b> person who delivers goods under commercial consignment</li> </ul> </li> <li>• <b>PMSI STATUS EXTENDS TO PROCEEDS</b> - says "the security interest", so if "the" SI is a PMSI, status persists - <b>28(1)(b)</b></li> <li>• <b>EVEN IF YOU DON'T HAVE PMSI SUPER-PRIORITY, YOU CAN STILL HAVE PMSI AS A STATUS</b> <ul style="list-style-type: none"> <li>• but to retain super-priority, PMSI must be perfected</li> </ul> </li> <li>• <b>ENABLE DEBTOR TO ACQUIRE RIGHTS?</b> <ul style="list-style-type: none"> <li>• <b>Pettyjohn</b> - <b>enable debtor</b> - ACCS approved loan to buy cattle // debtor used bank's LOC instead - but only b/c ACCS loan had been approved // loan used to pay of LOC // ACCS claims PMSI - court agrees - would be "commercially unreasonable" to divide the transactions // value of ACCS loan was <u>intended</u> to acquire rights)</li> <li>• <b>Unisource</b> - <b>change in nature of rights</b> // debtor had leased property, and as such already had some rights // new lender allowed D to exercise option to purchase &amp; claimed PMSI // court allowed - loan enabled debtor to "acquire further rights" <ul style="list-style-type: none"> <li>• --&gt; interpretation suggests that so long as debtor's rights are being <u>enlarged</u>, PMSI can be claimed</li> </ul> </li> <li>• <b>buy out?</b>--&gt; law is divided if there's no change in <u>nature</u> of right, but rather in <u>percentage of ownership</u></li> </ul> </li> <li>• <b>"COLLECTIVE PMSI"</b> - BC still allows this, while other jurisdictions have clarified legislation ---&gt; <b>Chrysler Credit</b> - CC financed purchase of <u>new</u> car inventory // also claimed PMSI on cars taken in <u>trade</u> for sale of a new car, where loan for new car remained unpaid + cars taken in trade for new cars, where loan *had* been repaid // court allowed PMSI to attach to <u>whole inventory</u></li> </ul>
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## PERFECTION

- ALWAYS START WITH TYPE OF COLLATERAL ---> WILL DICTATE WHAT FORMS OF PERFECTION ARE AVAILABLE
- PERFECTION IS NOT A GLOBAL PHENOMENON: you must assess the state of perfection for each piece of collateral
- SECURITY INTEREST IS PERFECTED WHEN - **12(1)**
  - (a) it has attached, AND
  - (b) all steps required for perfection have been completed
  - regardless of the order of occurrence ---> allows pre-registration of FINANCING STATEMENT that covers later SA's (and get early priority) **43(4)**

<b>CONTINUOUS PERFECTION</b>	<ul style="list-style-type: none"> <li>• SI PERFECTED BY ONE METHOD, THEN ANOTHER, WITH NO UNPERFECTED INTERMEDIATE PERIOD - <b>23(1)</b></li> <li>• PRIORITY OF TRANSFEREE ---&gt; SAME PRIORITY WRT PERFECTION AS THE TRANSFEROR - <b>23(2)</b></li> </ul>
<b>OTHER ISSUES</b>	<ul style="list-style-type: none"> <li>• INTERESTS IN FIXTURES &amp; CROPS SHOULD ALSO BE REGISTERED IN THE LAND TITLE OFFICE</li> <li>• INVESTMENT PROPERTY - CAN PERFECT BY OTHER METHODS ---&gt; ATTACHMENT &amp; CONTROL - not on exam</li> </ul>

## METHODS

<b>REGISTRATION</b>	<ul style="list-style-type: none"> <li>• REGISTRATION OF FINANCING STATEMENT PERFECTS SI IN COLLATERAL - <b>25</b> ---&gt; subject to attachment!</li> <li>• PRO'S - debtor can continue to deal with collateral // SP not responsible for collateral // searchable electronic database // easier to determine priority - impossible to have simultaneous registration - as per <b>43(2)</b></li> </ul> <p><b>I. REGISTRATION &amp; THE FINANCING STATEMENT</b></p> <ul style="list-style-type: none"> <li>• <u>PRE-REGISTRATION</u> - financing statement can be registered <u>in advance</u> of SA - "rush to the registry" to est priority - <b>43(4)</b> <ul style="list-style-type: none"> <li>• <u>New Solutions</u> - FS for all-PAAP registered a year before SA // court - valid - <b>can register FS before SA</b></li> </ul> </li> <li>• <u>SINGLE FS CAN COVER MULTIPLE SA's</u> - there will be an issue wrt <u>description of collateral</u> - see below - <b>43(5)</b></li> <li>• <u>REGISTRATION NOT NOTICE</u> - to 3rd parties of anything - the FS, its contents, the SI perfected, or contents of SA - <b>47</b></li> <li>• ONLY BASIC INFO - names of D &amp; SP + type of collateral + time as per <b>44(1)</b> // need more info? -&gt; follow process in <b>18</b></li> <li>• SEARCH - by D name; serial number; or registration number- <b>48</b></li> <li>• FINANCING CHANGE STATEMENT - reflects transfer of SI from one SP to another - but not required - <b>45</b></li> </ul> <p><b>II. DESCRIPTION OF COLLATERAL IN FS</b></p> <ul style="list-style-type: none"> <li>• SERIAL NUMBERS - required for some goods that are <u>equipment</u> for registration &amp; perfection to be valid - <b>35(4)</b></li> <li>• PROCEEDS - special issues wrt describing proceeds - see below</li> <li>• <u>Regal Feeds</u> - FS described various types of pigs, but no reference to after-acquired or conceived pigs (ie/ piglets) // court - <b>FS can be less specific than SA</b> - sufficient for SP to claim SI in piglets // BWM says this is a very generous view</li> </ul> <p><b>III. PROBLEMS WITH REGISTRATION</b></p> <ul style="list-style-type: none"> <li>• <b>VALID UNLESS SERIOUSLY MISLEADING</b> - not merely b/c of defect, irregularity, omission, or error in registration - <b>43(6)</b> <ul style="list-style-type: none"> <li>• POTENTIAL TO MISLEAD SUFFICIENT - need not establish that anyone was actually misled - <b>43(8)</b></li> <li>• <u>Re Munro</u> - <b>search using alternate criteria</b> // omission of middle name + one-digit mistake in SN <u>not</u> seriously misleading // search using proper SN disclosed required information, as did search by alternate criteria // court - <u>not</u> seriously misleading if search using alternate criteria yields correct result</li> <li>• <u>Coates v GMC</u> - registration of SN off by 1 digit // "exact" search failed to show result, but search that allowed error gave info</li> </ul> </li> <li>• <b>INVALID</b> ---&gt; if <u>multiple D's</u> required to be disclosed OR collateral is <u>consumer goods</u> &amp; there is a seriously misleading error, etc, in either the disclosure of name of <u>any</u> debtor OR serial number of collateral ---&gt; registration is invalid - <b>43(7)</b></li> <li>• <b>FAILURE TO DESCRIBE COLLATERAL</b> - only affects that collateral, not all the other collateral - <b>43(9)</b></li> <li>• <b>LAPSE?</b> ---&gt; RESTORATION RULE           <ol style="list-style-type: none"> <li>1. error or failure to renew? <b>30 day grace period</b> - reregister within this time &amp; recover your priority</li> <li>2. does NOT apply to advances made after lapse, and before reregistration</li> </ol> </li> </ul>
<b>POSSESSION</b>	<ul style="list-style-type: none"> <li>• <b>POSSESSION OF COLLATERAL BY SP PERFECTS SECURITY INTEREST IN COLLATERAL - 24(1)</b> <ul style="list-style-type: none"> <li>• <b>EXCEPTION</b> - no perfection by possession as result of <u>SEIZURE</u> or <u>REPOSSESSION</u></li> <li>• <u>Re BNS &amp; RBC</u> - <b>no perfection by possession after default</b> // both banks messed up FS &amp; had invalid registration as a result // D defaults // one bank tries to amend FS, but before they can, other bank appoints receiver, seizes property, &amp; claimed perfection by possession // court - too late to perfect by possession after default &amp; during receivership</li> </ul> </li> <li>• <b>WHAT CONSTITUTES POSSESSION?</b> <ul style="list-style-type: none"> <li>• NO CONSTRUCTIVE POSSESSION - doesn't count if debtor (or their agent) retains actual or apparent possession or control - <b>24(2)</b></li> <li>• <u>RTC v Number 7 Honda</u> - D defaulted &amp; dumped car on dealership lot // financing co tried to claim vehicle, but dealer claimed priority b/c he possessed vehicle // court - <b>possession must be conscious act to perfect SI</b> - here, dealer simply had car dumped on him</li> </ul> </li> <li>• <b>WHEN USED?</b> tangible collateral only (obviously); commonly used for <u>negotiable</u> &amp; <u>quasi-negotiable</u> property, such as documents of title</li> </ul>

<b>TEMPORARY PERFECTION</b>	<ul style="list-style-type: none"> <li>• <b>SI's PERFECTED BY POSSESSION REMAIN PERFECTED FOR *15 DAYS* AFTER SP HANDS COLLATERAL OVER TO DEBTOR - 26(1)</b> <ul style="list-style-type: none"> <li>• <b>WHAT COLLATERAL?</b> --&gt; INSTRUMENT + NEGOTIABLE DOCUMENT OF TITLE</li> </ul> </li> <li>• <b>MUST PERFECT VIA ALTERNATE METHOD AFTER 15 DAYS - 26(2)</b></li> <li>• <b>TRUE GRACE PERIOD</b> - even if SP does not perfect after expiry of 15 days, they still retain <u>perfected status</u> for the grace period</li> </ul>
<b>PROCEEDS</b>	<ul style="list-style-type: none"> <li>• <b>TO OBTAIN A CONTINUOUSLY PERFECTED SI IN PROCEEDS, YOUR ORIGINAL COLLATERAL MUST BE PERFECTED BY FS THAT - 28(2)</b> <ul style="list-style-type: none"> <li>(a) contains <b>description of proceeds sufficient to perfect SI in same kind of original collateral;</b> <ul style="list-style-type: none"> <li>• FS has to say both OC &amp; P - and describe in sufficient detail to satisfy <b>10</b> (by item or kind, or by reference to list of categories)</li> <li>• can't simply say "all proceeds" - b/c "proceeds" is not a term listed in <b>10</b></li> <li>• should say "all present and after-acquired goods"</li> </ul> </li> <li>(b) covers original collateral if - <b>proceeds are kind that fits within description of OC</b> <ul style="list-style-type: none"> <li>• applies where proceeds are same as OC - ex/ SI in "bikes" can cover proceeds, so long as proceeds are bikes</li> <li>• still some ambiguity about whether this cover only existing bikes - better to say "bikes and proceeds"</li> </ul> </li> <li>(c) cover original collateral if - <b>proceeds are money, cheques, or deposit account</b> <ul style="list-style-type: none"> <li>• these are continuously perfected - no need to describe!</li> </ul> </li> </ul> </li> <li>• <b>GRACE PERIOD --&gt; IF ORIGINAL COLLATERAL PERFECTED, YOUR SI IN PROCEEDS REMAINS PERFECTED FOR *15 DAYS* - 28(3)</b> <ul style="list-style-type: none"> <li>• DEFAULT WITHIN THE 15 DAYS? --&gt; you still have perfection date of OC</li> <li>• DEEMED CONTINUOUSLY PERFECTED - if you perfect proceeds by registration or possession within that time - <b>23(1)</b></li> </ul> </li> </ul>

## PRIORITY RULES

<b>BASICS</b>	<ul style="list-style-type: none"> <li>• <b>PRIORITY RULES USED TO DETERMINE COMPETITION B/W PARTIES IN THE SAME COLLATERAL</b></li> <li>• <b>AT LEAST ONE PARTY MUST BE A SECURED PARTY TO USE PR'S</b></li> <li>• <b>USE THE MOST SPECIFIC PR AVAILABLE:</b> but do NOT force a rule // no PR? --&gt; use CL basic rule = first-in-time, <i>nemo dat quod non habet</i></li> <li>• <b>ACTUAL NOTICE</b> - not relevant to priorities (<b>Robert Simpson</b> - you can take advantage of PR, even if aware of another party's interest)</li> </ul>
<b>GENERAL ISSUES</b>	<ol style="list-style-type: none"> <li>1. <b>CIRCULARITY PROBLEMS</b> arise when the PR's are irreconcilable             <ul style="list-style-type: none"> <li>• RESOLUTION? --&gt; no clear solution, options include: <b>(1)</b> giving priority to the <u>least</u> blameworthy party; <b>(2)</b> arguing for priority based on public policy that one type of SI should be preferred over another; <b>(3)</b> impose burden on first SP to take remedial action</li> <li>• <b>GMS v Rich-Wood</b> - SI of cabinet-maker prevailed over mortgagee; court based decision on policy + <u>reasonable commercial expectation</u></li> </ul> </li> <li>2. <b>SUBORDINATION AGREEMENTS:</b> alteration of priorities via contract             <ul style="list-style-type: none"> <li>• PPSA eliminates privity of K --&gt; sub-agreement may be enforced by 3rd party if it was the party intended to benefit - <b>40(1)</b></li> <li>• sub-agreements can be <u>registered</u> in the PPR - <b>45(6)</b></li> <li>• does not change PPSA priorities, per se, but the contract allows for override of priorities that would otherwise exist b/w the parties                 <ul style="list-style-type: none"> <li>• <b>RBC v Gabriel</b> - K said SI was "<i>subject to the interest of the Royal Bank</i>" // court found this was sufficient to constitute sub-A</li> <li>• <b>Transamerica</b> - clause reference "bankers" of the debtor // TA not allowed to claim benefit, as it was a finance company</li> </ul> </li> </ul> </li> <li>3. <b>MARSHALLING:</b> judicial rearrangement of interests             <ul style="list-style-type: none"> <li>• EQ doctrine designed to promote <u>fairness</u> // prevent destruction of Jr SP's interest by arbitrary action of Sr SP</li> <li>• no change to actual priorities, just <u>practical effect</u> // enabled via court order under <b>63</b></li> <li>• EFFECT: <b>(1)</b> make oversecured party rely on other collateral; <b>(2)</b> give undersecured party the oversecured party's interest in collateral</li> <li>• AVAILABILITY? PPSA mute --&gt; follow basic EQ principles: senior SP must be oversecured &amp; junior undersecured; all SP's should be before the court; no prejudice to 3rd parties; no excessive deprivation to the senior SP (<b>Surrey Metro</b> - example of marshalling)</li> </ul> </li> </ol>

## RESIDUAL PRIORITY RULES

**ONLY USE IF A MORE SPECIFIC RULE DOES NOT APPLY!**

<b>GENERAL</b>	<ul style="list-style-type: none"> <li>• <b>BOTH PARTIES MUST BE SP'S</b> - though one can be a deemed SP</li> <li>• <b>CONTINUOUSLY-PERFECTED SI?</b> ----&gt; use method of <u>ORIGINAL PERFECTION</u> for purpose of applying (1) - <b>35(2)</b></li> <li>• <b>PROCEEDS</b> - USE TIME OF REGISTRATION, POSSESSION, OR PERFECTION OF <u>ORIGINAL COLLATERAL</u> - <b>35(3)</b></li> </ul>
<b>PERFECTED vs PERFECTED</b>	<ul style="list-style-type: none"> <li>• <b>35(1)(a) - PERFECTED SI vs PERFECTED SI</b> <ul style="list-style-type: none"> <li>• <u>REGISTRATION</u> or <u>POSSESSION</u> - whichever is first</li> <li>• prompts a race-to-the-registry</li> <li>• single FS can cover multiple SA's, as per <b>43(5)</b>, so long as description of collateral is broad enough (<b>RBC v ACC Sask</b>)</li> <li>• NOTE --&gt; method of perfection changes? (ex/ from possession to registration of FS), use date of original perfection - <b>35(2)</b></li> </ul> </li> </ul>
<b>PERFECTED vs UNPERFECTED</b>	<ul style="list-style-type: none"> <li>• <b>35(1)(b) - PERFECTED SI vs UNPERFECTED SI</b> <ul style="list-style-type: none"> <li>• perfected takes priority over unperfected</li> </ul> </li> </ul>
<b>UNPERFECTED vs UNPERFECTED</b>	<ul style="list-style-type: none"> <li>• <b>35(1)(c) - UNPERFECTED SI vs UNPERFECTED SI</b> <ul style="list-style-type: none"> <li>• priority determined by <u>ORDER OF ATTACHMENT</u></li> <li>• same time of attachment? --&gt; SP's share equally (<b>Ontario Dairy Cow</b> - SI in proceeds from milk quota, so attachment simultaneous)</li> <li>• NOTE --&gt; one of the few rules that can apply to <u>multiple SP's at once</u> - just rank them all in order of attachment time</li> </ul> </li> </ul>
<b>TACKING RULES</b>	<ul style="list-style-type: none"> <li>• <b>ORIGINAL PRIORITY APPLIES TO FUTURE ADVANCES</b> - <b>35(5)</b></li> <li>• <b>LIMITATION</b> - perfected SP loses priority to persons from <b>20(a)</b> for any advances made AFTER the SP has <u>knowledge</u> of <b>(i)</b> the interest of the UC; <b>(ii)</b> seizure of collateral by the S; or <b>(iii)</b> order giving S a right to the collateral - <b>35(6)(b)</b> <ul style="list-style-type: none"> <li>• persons from <b>20(a)</b> --&gt; unsecured creditors who have judgments &amp; Sheriff who has right to seize, or has seized, collateral</li> <li>• so this is kind of harsh -</li> </ul> </li> </ul>
<b>RESTORATION RULE</b>	<ul style="list-style-type: none"> <li>• <b>35(7) - GIVES 30-DAY GRACE PERIOD FOR LAPSE IN REGISTRATION</b> <ul style="list-style-type: none"> <li>• provided SP <u>re-registers</u> within 30 days after lapse, SP regains its priority over perfected SP's who were subordinate before lapse</li> <li>• EXCEPTION --&gt;                 <ul style="list-style-type: none"> <li>• <b>INTERIM ADVANCES</b> - rule does not apply to advances made by competing SP's after lapse &amp; before re-registration</li> </ul> </li> </ul> </li> </ul>



## SPECIFIC PRIORITY RULES

### PMSI

#### REQUIRES - 2 SP's + AT LEAST ONE PMSI

<b>COLLATERAL &amp; PROCEEDS</b>	<ul style="list-style-type: none"> <li>• <b>PMSI HAS PRIORITY OVER OTHER SI's IN SAME COLLATERAL GIVEN BY SAME DEBTOR - 34(1)</b></li> <li>• <b>REQUIREMENT</b> - PMSI must be perfected ---&gt;             <ul style="list-style-type: none"> <li>• (a) - TANGIBLES (&amp; proceeds) - within 15 days after D gets possession</li> <li>• (b) - INTANGIBLES (&amp; proceeds) - no later than 15 days after D acquires interest (attachment)</li> </ul> </li> <li>• <b>15 days from time D got possession as *collateral*</b> --&gt; though they might have had possession before (<i>McLeod &amp; Co</i> - debtor had possession for far longer than 15 days // was then loaned money to purchase // court - PMSI gets super priority)</li> <li>• <b>SUPER PRIORITY CONTINUES TO PROCEEDS, ONCE ESTABLISHED</b> - including inventory - but can't start as inventory to use this rule</li> <li>• <b>SCOPE</b> - can only use SP to extent of value of PMSI</li> </ul>
<b>INVENTORY &amp; PROCEEDS</b>	<ul style="list-style-type: none"> <li>• <b>PMSI IN INVENTORY TRUMPS OTHER SI's IN SAME COLLATERAL GIVEN BY SAME DEBTOR - 34(2)</b></li> <li>• <b>REQUIREMENT</b> - steps must be completed in order ---&gt;             <ul style="list-style-type: none"> <li>• (a) - PMSI perfected immediately once D takes possession</li> <li>• (b)&amp;(c) - <b>NOTICE</b> - to other SP's with interest in same collateral</li> <li>• (d) - must state that you expect to get PMSI &amp; must describe inventory</li> <li>• (e) - notice must be given before D obtains possession</li> </ul> </li> </ul>
<b>SELLER vs LENDER PMSI's</b>	<ul style="list-style-type: none"> <li>• <b>SELLER PMSI TRUMPS OTHER PMSI IN SAME COLLATERAL GIVEN BY SAME DEBTOR - 34(4)</b></li> <li>• <b>REQUIREMENTS</b> - SELLER PMSI must be perfected ---&gt;             <ul style="list-style-type: none"> <li>• (a) - INVENTORY - immediately once D obtains possession</li> <li>• (b) - COLLATERAL - within 15 days of D obtaining possession</li> </ul> </li> <li>• <b>DOES NOT APPLY</b> - 2 LENDER PMSI's</li> </ul>
<b>COLLATERAL PMSI vs PROCEED PMSI</b>	<ul style="list-style-type: none"> <li>• <b>NON-PROCEEDS PMSI TRUMPS PROCEEDS PMSI IN THE SAME COLLATERAL - 34(6)</b></li> <li>• <b>REQUIREMENTS</b> - NON-PROCEEDS PMSI must be perfected ---&gt;             <ul style="list-style-type: none"> <li>• (a) - INVENTORY - immediately once D obtains possession</li> <li>• (b) - COLLATERAL - within 15 days of D obtaining possession</li> </ul> </li> <li>• <b>RULE APPLIES EVEN IF DIFFERENT DEBTORS</b></li> <li>• <b>TYPICAL SCENARIO</b> - collateral w/ PMSI SI is given in exchange for something else &amp; thus become proceeds for another debtor</li> </ul>

### SPECIAL UNSECURED PARTIES

#### ONLY APPLIES TO UNPERFECTED SECURITY INTERESTS

<b>JUDGEMENT CREDITORS</b>	<ul style="list-style-type: none"> <li>• <b>UNPERFECTED SI IN COLLATERAL SUBORDINATE TO JUDGMENT CREDITORS - 20(a)</b> <ul style="list-style-type: none"> <li>• REQUIREMENT - SI unperfected at time JC's interest arose OR when writ of S&amp;S delivered to Sheriff</li> </ul> </li> </ul>
<b>TRUSTEE IN BANKRUPTCY OR LIQUIDATOR 20(b)</b>	<ul style="list-style-type: none"> <li>• <b>UNPERFECTED SI IN COLLATERAL NOT EFFECTIVE AGAINST TRUSTEE IN BANKRUPTCY OR LIQUIDATOR - 20(b)</b> <ul style="list-style-type: none"> <li>• REQUIREMENT - SI unperfected at time of bankruptcy OR winding-up order made</li> <li>• unclear what "not effective" means - could mean interest disappears OR could mean interest subordinated</li> <li>• <i>Re Giffen</i> - deemed SP (lease &gt; 1 year) failed to register // lessee (debtor) went bankrupt while in possession of vehicle // seized by TIB who then claimed 20(b) // lessor (SP) argued that it was still the owner &amp; nemo dat applied so that TIB couldn't take greater interest than the D had // SCC - title not determinative - trustee able to gain better position wrt collateral than D had - lessee out of luck</li> <li>• MORAL OF STORY? --&gt; good luck if you're an unperfected SI and your debtor goes bankrupt!!!</li> </ul> </li> </ul>

### TRANSFEREES OF COLLATERAL & BUYERS AND LESSEES OF GOODS

<b>UNSECURED BFPWVN 20(c)</b>	<ul style="list-style-type: none"> <li>• <b>UNPERFECTED SI IN - CHATTEL PAPER, DOT, INSTRUMENT, MONEY, INTANGIBLE, OR GOODS - IS SUBORDINATE TO BFPWVN - 20(c)</b> <ul style="list-style-type: none"> <li>• REQUIREMENTS - no SA + value given + no knowledge of SI + unperfected at time BPFV acquired interest</li> <li>• NOTE --&gt; overlap with 28(1)(a) - same context, but that provision DETACHES the SI</li> <li>• so what happens? BMW thinks whatever is best for BFPV prevails, since the SP has only themselves to blame for not perfecting</li> </ul> </li> <li>• <b>"VALUE"</b> - any consideration sufficient to support a simple contract &amp; includes past debt or liability</li> <li>• <i>Dawson</i> - value only passes where there's a change in position - an exculpatory promise is insufficient // BMW thinks this is inconsistent w/ PPSA wording &amp; I agree // case included for completeness</li> </ul>
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<b>AUTHORIZED DEALING</b> <b>28(1)(a)</b>	<ul style="list-style-type: none"> <li>• <b>SECURITY INTEREST DETACHES UPON DEALINGS WITH COLLATERAL IF SP EXPRESSLY/IMPLIEDLY AUTHORIZED DEALING - 28(1)(a)</b></li> <li>• <b>WHEN?</b> --&gt; commonly seen wrt dealing w/ <u>INVENTORY</u> &amp; generally limited to <u>SALES</u></li> <li>• <b>HOW TO PREVENT?</b> --&gt; SP can expressly say no dealings allowed, free of it security interest</li> </ul>
<b>SALE / LEASE GOODS IN ORDINARY COURSE OF BUSINESS</b> <b>30(2)</b>	<ul style="list-style-type: none"> <li>• <b>B/L TAKES FREE FROM SI'S GIVEN BY THE SELLER FOR GOODS SOLD/LEASED IN ORDINARY COURSE OF SELLER'S BUSINESS - 30(2)</b> <ul style="list-style-type: none"> <li>• REQUIREMENT - B/L cannot know sale is in breach of SA (though can know SI exists)</li> <li>• ONLY DETACHES SI'S GIVEN BY THE *SELLER*</li> <li>• APPLIES WHERE GOODS BECOME <u>FIXTURES</u> OR <u>ACCESSIONS</u> - 30(1)</li> </ul> </li> <li>• <b>ORDINARY COURSE OF BUSINESS?</b> <ul style="list-style-type: none"> <li>• <b>"ordinary course of business"</b> --&gt; includes supply of goods under contract for <u>SERVICES</u> &amp; <u>MATERIALS</u> - 30(1)</li> <li>• <b>Fairline Boats</b> - <b>OCB is that of the seller // factors to determine OCB</b> --&gt; who are the parties? // where was agreement made? // quantity of goods // price w/in usual market range? // here, boat was sold at boat show, rather than ordinary place of biz + unusually low price + financial difficulty of seller</li> <li>• <b>Wheaton Pontiac</b> - <b>series of sales</b> - SI in car perfected by registration // court - end purchaser subject to earlier SI's // while the <u>final</u> transaction was in OCB, the earlier ones were not &amp; so those SI's persist // liquidation sale, vendor had no place of business, &amp; was not licensed to sell automobiles</li> <li>• <b>Ford Motor Credit</b> - <b>parties to agreement cannot define meaning of OCB</b> // whether transaction is in OCB is question of fact, assessed objectively // so, buyer under sale apparently in OCB, that was actually fraudulent, can still access protection of this section</li> </ul> </li> <li>• <b>BUYER?</b> <ul style="list-style-type: none"> <li>• <b>SALE OF GOODS ACT</b> - <i>differentiates b/w party to SALE OF GOODS (ownership has passed) vs AGREEMENT FOR SALE (ownership will pass) // is this complexity ported into the PPSA? --&gt; some cases say YES, others say NO, shouldn't focus on ownership to define buyer</i></li> <li>• <b>RBC v 216200</b> - furniture dealer had K's with customers, but some goods not yet delivered // court - to get protection of <b>30(2)</b> buyer must be "owner" - therefore goods must be <u>identifiable</u> (ie/ delivered) though full payment of purchase price not required</li> <li>• <b>Spittlehouse</b> - K for sale of boat // payment outstanding - but sale K said title doesn't pass until full payment // court - SGA not relevant to PPSA context // <b>"sale" should be given its ordinary meaning</b> // BWM thinks this case is more solid</li> </ul> </li> </ul>
<b>SALE / LEASE CONSUMER GOODS</b> <b>30(3)</b>	<ul style="list-style-type: none"> <li>• <b>B/L OF CONSUMER GOODS TAKES FREE FROM ALL SECURITY INTERESTS IF VALUE GIVEN + *NO KNOWLEDGE OF SI* - 30(3)</b></li> <li>• <b>LIMITATIONS - 30(4)</b> <ul style="list-style-type: none"> <li>• does not apply to <u>FIXTURES</u></li> <li>• purchase price must be <u>BELOW \$1000</u></li> </ul> </li> </ul>
<b>28(1)(a) vs 30(2)</b>	<ul style="list-style-type: none"> <li>• <b>28(1)(a)</b> - focuses on arrangement b/w SP and DEBTOR</li> <li>• <b>30(2)</b> - focuses on dealings b/w SELLER/DEBTOR and PURCHASER</li> <li>• <b>30(2) TRUMPS 28(1)(a)</b> --&gt; the latter is subject to Act, while former is not // buyer takes goods sold in OCB free from SI of seller, regardless of if the SP forbid dealings with the collateral, <u>provided buyer does not know sale constitutes breach of SA</u></li> </ul>

**MONEY & ACCOUNTS**

<b>MONEY</b> <b>31(1)</b>	<ul style="list-style-type: none"> <li>• <b>PPSA VERY SOLICITOUS OF THOSE IN *POSSESSION* OF NEGOTIABLE/QUASI NEGOTIABLE PROPERTY</b></li> <li>• <b>HOLDER OF MONEY HAS PRIORITY OVER SI'S PERFECTED BY REGISTRATION - 31(1)</b> <ul style="list-style-type: none"> <li>• REQUIREMENT <ul style="list-style-type: none"> <li>• <b>(a)</b> acquired money WITHOUT KNOWLEDGE OF SI; or</li> <li>• <b>(b)</b> is HOLDER FOR VALUE, regardless of knowledge</li> </ul> </li> </ul> </li> </ul>
<b>NATURE OF ACCOUNTS</b>	<ul style="list-style-type: none"> <li>• <b>"ACCOUNT"</b> - monetary obligation not evidenced by chattel paper or instrument (if evidenced by paper you're in to <b>31</b>) - <b>1(1)</b></li> <li>• <b>ANY TRANSFER OF AN ACCOUNT IS A DEEMED SECURED TRANSACTION - 1(1)(b)(i)</b> - but, remedies Part does not apply</li> <li>• <b>NATURE OF PROCEEDS IS *ALWAYS* MONEY --&gt; ISSUES</b> <ul style="list-style-type: none"> <li>• POSSESSOR of money takes top priority (see above)</li> <li>• MONEY LIKELY NOT "PROCEEDS" - when paid out, D does not get interest, therefore doesn't fit description of proceeds!</li> <li>• CAUTION! SP can <u>lose</u> SI when account paid out // or, <u>no longer proceeds</u> when another SP deposits money from assignment of account <ul style="list-style-type: none"> <li>• REMEDY? --&gt; court requires Jr SP to pay amount owed to Sr SP if they knew or ought to have known of its position // failure to do so can result in tort claim for damages</li> </ul> </li> </ul> </li> </ul>
<b>PRIORITY RULES</b> <b>35(1)(a) &amp; 34(5)</b>	<ol style="list-style-type: none"> <li>I. <b>RESIDUAL RULE</b> <ul style="list-style-type: none"> <li>• priority determined by ORDER OF REGISTRATION - <b>35(1)(a)</b></li> </ul> </li> <li>II. <b>NON-PROCEEDS PMSI IN ACCOUNTS GIVEN FOR NEW VALUE TRUMPS PMSI IN ACCOUNT AS PROCEEDS OF INVENTORY - 34(5)</b> <ul style="list-style-type: none"> <li>• REQUIREMENT - FS registered <u>before</u> --&gt; PMSI perfected OR the FS related to it is registered</li> <li>• rule instituted for dealers who buy up accounts at discount</li> <li>• <b>"new value"</b> - value other than previous debt or liability</li> </ul> </li> </ol>

TWO DEBTOR SITUATIONS

<p><b>BASICS</b></p>	<ul style="list-style-type: none"> <li>• <b>EVEN IS SA FORBIDS IT, DEBTORS CAN TRANSFER THEIR RIGHTS IN COLLATERAL - 33(2)</b></li> <li>• <b>NOTE</b> - this may still constitute a default as between the transferor D and their SP</li> <li>• <b>DEBTOR NAME CHANGE</b> --&gt; require re-registration b/c change is "seriously misleading" - rules below would apply</li> </ul>
<p><b>TRANSFEEEE GRANTS SI *BEFORE* TRANSFER</b> 35(8)</p>	<ul style="list-style-type: none"> <li>• <b>APPLIES ONLY WHERE</b> <ol style="list-style-type: none"> <li>1. SP's IN COMPETITION HAVE DIFFERENT DEBTORS;</li> <li>2. SP OF THE TRANSFEROR IS PERFECTED; and</li> <li>3. TRANSFEEEE GRANTED SI *BEFORE* TRANSFER (most common --&gt; transferee subject to an all-PAAP)</li> </ol> </li> <li>• <b>RULE = PERFECTED SI OF TRANSFEROR TAKES PRIORITY OVER SI's GRANTED BY TRANSFEEEE BEFORE THE TRANSFER - 35(8)</b> <ul style="list-style-type: none"> <li>• <b>EXCEPTION</b> --&gt; IF NEW DEBTOR <u>BECOMES KNOWN</u> --&gt; ADVANCES MADE DURING THE "HIATUS" (IF ONE EXISTS)</li> <li>• <b>HIATUS</b> = TIME BETWEEN 15 DAYS <u>AFTER</u> PERFECTED SI LEARNS OF TRANSFER --&gt; TIME THEY GET AROUND TO RE-REGISTERING           <ul style="list-style-type: none"> <li>• SP of <u>transferor</u> must take steps to protect itself by re-registering against the <u>transferee</u> once it knows of the transfer</li> <li>• to be fully protected, all the SP needs to do is re-register <u>within the 15 day</u> GRACE PERIOD</li> </ul> </li> <li>• <b>KNOWLEDGE?</b> --&gt; includes <u>constructive K</u> - 2(a) // but, mere knowledge of FS does not constitute knowledge of transfer! - 47</li> <li>• DOES NOT APPLY - if transferee acquires property free from SI granted by transferor - obviously - 35(9)</li> </ul> </li> </ul>
<p><b>TRANSFEEEE GRANTS SI *AFTER* TRANSFER</b> 51(1)&amp;(2)</p>	<ul style="list-style-type: none"> <li>• <b>APPLIES ONLY WHERE</b> <ol style="list-style-type: none"> <li>1. SP's IN COMPETITION HAVE DIFFERENT DEBTORS;</li> <li>2. SP OF THE TRANSFEROR IS PERFECTED; and</li> <li>3. TRANSFEEEE GRANTED SI *AFTER* TRANSFER</li> </ol> </li> <li>I. <b>CONSENT</b> (use if SP <u>consented</u> to transfer, but not to detachment of its SI) - 51(1)       <ul style="list-style-type: none"> <li>• <b>DEBTOR/TRANSFEROR's PERFECTED SI IS SUBORDINATE TO</b> --&gt;           <ul style="list-style-type: none"> <li>• INTERESTS OR PERFECTED SI's - arising in period b/w <u>15 days after transfer &amp; time SP gets around to re-registering</u></li> <li>• PERFECTED SI's - granted with <u>15 days from transfer</u>, if SP fails to re-register during those 15 days</li> <li>• NOTE --&gt; not a true grace period - failure to re-register new D's name OR take possession of collateral has lasting effects</li> <li>• HOW TO AVOID? --&gt; re-register or take possession of collateral within the 15 days!</li> </ul> </li> </ul> </li> <li>II. <b>KNOWLEDGE</b> (use where SP did not consent to transfer, but later <u>learned of it</u>) - 51(2)       <ul style="list-style-type: none"> <li>• <b>DEBTOR/TRANSFEROR's PERFECTED SI IS SUBORDINATE TO</b> --&gt;           <ul style="list-style-type: none"> <li>• INTERESTS OR PERFECTED SI's - arising in period b/w <u>15 days after knowledge &amp; time SP gets around to re-registering</u></li> <li>• PERFECTED SI's - granted with <u>15 days from knowledge</u>, if SP fails to re-register during those 15 days</li> <li>• KNOWLEDGE = <u>info required to register financing change statement</u> OR <u>new name of debtor</u></li> <li>• NOTE --&gt; not a true grace period - failure to re-register new D's name OR take possession of collateral has lasting effects</li> <li>• HOW TO AVOID? --&gt; re-register or take possession of collateral within 15 days of learning of transfer!</li> </ul> </li> </ul> </li> <li>• <b>Orion Truck - debtor name change</b> // SP failed to re-register with new D name // D went bankrupt - TIB seized trucks - claimed that SP lost priority through action of 51 and its failure to file FCS // court - YES, the TIB is able to use this provision &amp; YES, the SP loses priority</li> <li>• <b>NOTE</b> ----&gt; the interest that arises <u>does not have to be a security interest!</u></li> </ul>

**COMPETITION WITH (POTENTIAL) LAND INTERESTS**

<p><b>FIXTURES</b></p>	<ul style="list-style-type: none"> <li>• <b>2 WAYS TO GET INTEREST IN FIXTURES</b> --&gt; (1) land law, ex/ via mortgage; (2) personal property SI, ex/ via all-PAAP – LAND LAW BETTER</li> <li>• <b>NEED TO KNOW IF YOU'RE EVEN DEALING W/ A FIXTURE</b> – turns on degree of attachment to land – <u>IDENTIFY AMBIGUITY ON EXAM</u> <ul style="list-style-type: none"> <li>• <b>"FIXTURE"</b> – does not include building materials (very helpful)</li> <li>• <b>"BUILDING MATERIALS"</b> – material incorporated into building &amp; goods attached such that removal would cause some <u>serious damage</u> or <u>weaken structure</u>; but does NOT include: heating, air conditioning or conveyancing devices (ex/ elevator) OR machinery installed for use carrying on an activity</li> </ul> </li> <li>I. <b>SI THAT ATTACHES *BEFORE OR AT TIME* GOODS BECOME FIXTURES</b> <ul style="list-style-type: none"> <li>• <b>36(3) – HAS PRIORITY</b> --&gt; <ul style="list-style-type: none"> <li>• WRT THE GOODS, OVER PERSON WITH INTEREST IN THE LAND</li> <li>• NOTE// <u>attachment</u> gives priority here – VERY RARE – and very upsetting to the real estate bar</li> <li>• NO REGISTRATION REQUIRED – aka/ <b>"secret lien"</b></li> </ul> </li> <li>• <b>36(4) – BUT IS SUBORDINATE TO</b> --&gt; <ul style="list-style-type: none"> <li>• PERSON WHO <u>LATER</u> ACQUIRES INTEREST IN LAND PROVIDED – <u>for value + without fraud + before s.49 notice filed</u></li> <li>• MORTGAGEE WHO MAKES SUBSEQUENT ADVANCES PROVIDED – <u>without fraud + before s.49 notice filed</u> <ul style="list-style-type: none"> <li>• NOTE --&gt; M only has priority wrt the advance</li> </ul> </li> </ul> </li> </ul> </li> <li>II. <b>SI THAT ATTACHES *AFTER* GOODS BECOME FIXTURES – 36(5)</b> <ul style="list-style-type: none"> <li>• <b>IS SUBORDINATE TO</b> --&gt; <ul style="list-style-type: none"> <li>• PRE-EXISTING LAND INTERESTS – who hasn't consented to the SI or disclaimed interest in goods or fixtures</li> <li>• SUBSEQUENT LAND INTERESTS IF ACQUIRED – <u>without fraud + before s.49 notice filed</u></li> </ul> </li> </ul> </li> <li>• <b>Rich Wood</b> – <b>secret lien</b> – 2 mortgagees with interests registered in LTO // but – RW had interest in cabinets <u>before</u> they became fixtures // created circularity problem – no way to resolve without violating either LTA or PPSA // court – no single solution – gave RW priority over M1</li> <li>• <b>Furnasman</b> – owner purchased newly-built house that included furnace (fixture) // builder purchased furnace under purported CSA – still owed money // F claimed against owner // appeal court – PPSA doesn't apply b/c contract didn't make clear furnace sold under conditional sale // Furnasman loses out --&gt; clearly see court's dislike of secret liens <ul style="list-style-type: none"> <li>• NOTE --&gt; <b>30(1)</b> seeks to address similar scenarios – OCB can include <u>K for service &amp; materials</u>; give buyers protection under <b>30(2)</b></li> </ul> </li> </ul>
<p><b>ACCESSION</b></p>	<ul style="list-style-type: none"> <li>• <b>"ACCESSION"</b> – goods installed in OR affixed to other goods</li> <li>• MORAL OF THE STORY? --&gt; people w/ attached SI's in goods that become an accession better perfect via registration ASAP</li> <li>I. <b>SI THAT ATTACHES *BEFORE OR AT TIME* GOODS BECOME AN ACCESSION</b> <ul style="list-style-type: none"> <li>• <b>38(2) – HAS PRIORITY</b> --&gt; <ul style="list-style-type: none"> <li>• WRT THE GOODS, OVER PERSON WITH INTEREST IN THE WHOLE</li> <li>• NOTE// <u>attachment</u> again gives priority here – VERY RARE – real estate bar cares less though, b/c doesn't mess w/ land interests</li> <li>• NO REGISTRATION REQUIRED – another <b>"secret lien"</b> scenario that can lead to circularity problems</li> </ul> </li> <li>• <b>38(3) – BUT IS SUBORDINATE TO</b> --&gt; <ul style="list-style-type: none"> <li>• PERSON WHO <u>LATER</u> ACQUIRES INTEREST IN WHOLE PROVIDED – <u>for value + w/out knowledge of SI + before SI perfected</u></li> <li>• SP W/ PERFECTED SI IN WHOLE PROVIDED – <u>w/out knowledge of SI + before SI perfected</u> – COVERS... <ul style="list-style-type: none"> <li>• advances made under SA after goods become accessions &amp; priority only wrt advance</li> <li>• acquires right to retain whole in satisfaction of obligation secured (foreclose)</li> </ul> </li> </ul> </li> </ul> </li> <li>II. <b>SI THAT ATTACHES *AFTER* GOODS BECOME AN ACCESSION – 38(4)</b> <ul style="list-style-type: none"> <li>• <b>IS SUBORDINATE TO</b> --&gt; <ul style="list-style-type: none"> <li>• PERSON WITH PRE-EXISTING INTEREST IN "OTHER GOODS" – who hasn't consented to the SI or disclaimed interest in accession</li> <li>• SUBSEQUENT INTERESTS IN WHOLE IF ACQUIRED – <u>w/out knowledge of SI + before SI in accession perfected</u></li> </ul> </li> </ul> </li> </ul>

## DEFAULT & REMEDIES

<b>DEFAULT</b>	<ul style="list-style-type: none"> <li>• <b>SP CAN ONLY PROCEED AGAINST COLLATERAL IN EVENT OF DEFAULT, THOUGH NOT REQUIRED TO DO SO</b></li> <li>• <b>“DEFAULT”</b> - (a) failure to pay or otherwise perform secured obligation; (b) occurrence of event or circumstances, under terms of SA, that causes SI to become enforceable - <b>1(1)</b> <ul style="list-style-type: none"> <li>• ex/ failure to pay another party; fail to keep up licensing requirements; change type of business; anything you want!</li> </ul> </li> <li>• <b>SP HAS RIGHTS &amp; REMEDIES (&amp; OBLIGATIONS) PROVIDED IN SA + Part 5 OF PPSA - 56(2)</b></li> <li>• <b>SP MUST DECIDE:</b> <ol style="list-style-type: none"> <li>1. has there been a default + for how much + what collateral to proceed against (most valuable &amp; items where you have high priority)</li> <li>2. will they proceed as <u>secured</u> OR <u>unsecured</u> creditor (sue)</li> <li>3. if proceeding as SP ---&gt; move to the remedies section...</li> </ol> </li> </ul>
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## REMEDIES

### STATUTORY REMEDIES

**PPSA REMEDIES ARE SELF-HELP ---> SP DOES NOT HAVE TO GO TO COURT TO ACCESS**

<b>PRELIMINARY NOTICE</b>	<ul style="list-style-type: none"> <li>• <b>BEFORE USING ANY REMEDY, SP MUST PROVIDE NOTICE TO DEBTOR:</b> judicially-imposed, mirrors CL requirement - <b>68(1)</b></li> <li>• <b>PURPOSE:</b> give debtor final chance to meet obligations</li> <li>• <b>CONTENT:</b> tell D they're in default + for how much + consequences of failure to pay + time D has to pay // no particular form required</li> <li>• <b>TIME FRAME?</b> ---&gt; no set time frame - depends what is <u>reasonable</u> given surrounding circumstances <u>at time of default</u> (<b>Waldron</b>)</li> <li>• <b>K OUT?</b> many K's purport to K out of notice requirement; unclear as to whether this is valid</li> </ul>
<b>COLLECTION OF PAYMENTS UNDER INTANGIBLES</b>	<ul style="list-style-type: none"> <li>• <b>DEFAULT ---&gt; SP CHANGES CONDITIONAL ASSIGNMENT TO ABSOLUTE</b> <ol style="list-style-type: none"> <li>1. NOTIFY account debtor to make payments to SP - <b>57(2)(a)</b></li> <li>2. take control of PROCEEDS to which SP is entitled - <b>57(2)(b)</b></li> <li>3. apply to satisfy obligation - <b>57(2)(c)</b></li> <li>4. NOTIFY debtor w/in 15 days - <b>57(4)</b></li> </ol> </li> <li>• <b>PROCEEDS DILEMMA:</b> SP's have <u>fleeting</u> interest in accounts no longer held by their debtor - when another SP deposits money from assignment of account, money is <u>no longer proceeds</u> ---&gt; <b>JUNIOR parties must be careful to pay over what they get out of the account to SENIOR parties, or risk liability for damages</b></li> </ul>
<b>TANGIBLE COLLATERAL</b>	<p><b>I. SEIZURE OF COLLATERAL</b></p> <ul style="list-style-type: none"> <li>• upon default, any SP may seize, regardless of priority - <b>58(2)(a)</b> ---&gt; see exception for consumer goods below</li> <li>• CONSTRUCTIVE POSSESSION - if collateral hard to move or store, SP can seize without actual removal - <b>58(2)(b)</b></li> <li>• SP RIGHTS &amp; OBLIGATIONS: when in possession, SP must use <u>reasonable care</u> to preserve collateral - <b>17(2)</b> // keep collateral identifiable, but can mix fungibles - <b>17(3)(c)</b> // can use increase or profits while in possession to pay down debt - <b>17(3)(c)</b></li> <li>• PERFECTION? possession by SEIZURE does NOT perfect a SI - <b>24(1)</b></li> </ul> <p><b>II. DISPOSITION / SALE</b></p> <ul style="list-style-type: none"> <li>• 4 METHODS: (a) private sale; (b) public sale; (c) as whole or in commercial units/parts; (d) lease - if SA allows - <b>59(3)</b></li> <li>• STANDARD = <b>commercially reasonable manner</b> <ul style="list-style-type: none"> <li>• <b>Medi-Dent</b> - goods sold back to debtor; not CRM b/c no effort to ascertain value &amp; no bids taken; no def action allowed</li> <li>• <b>Donnelly</b> - no repairs before sale + non-arms length tx + no notice of disposition ---&gt; not CRM; no def action allowed</li> </ul> </li> <li>• NOTICE: at least <b>20 days</b> before disposition notice must go to debtor, other known owner, and sub SI's - <b>59(6)</b></li> <li>• BFPV: once in possession, takes collateral free of interest of debtor &amp; subordinate SP's</li> <li>• DISTRIBUTION OF PROCEEDS (in order) ---&gt; reasonable expenses + obligation of SP doing the disposing - <b>59(2)(a)&amp;(b)</b></li> <li>• SURPLUS? (in order) ---&gt; sub SI's perfected by registration or possession + other parties who've given notice of interest in collateral // SURPLUS? back to debtor, becomes <u>proceeds</u> - <b>60(2)</b></li> </ul> <p><b>III. FORECLOSURE</b></p> <ul style="list-style-type: none"> <li>• VOLUNTARY - after seizure (58) SP can <u>propose</u> to take collateral in satisfaction of the obligation secured - <b>61(1)</b></li> <li>• NOTICE of proposal must go to: <b>61(1)(a)</b> debtor + known owners // <b>61(1)(b)</b> subordinate perfected SI's</li> <li>• OBJECTION w/in 15 days ---&gt; SP must dispose of collateral - <b>61(2)</b> // can apply to court to render objection invalid - <b>61(7)</b></li> <li>• CONSTRUCTIVE FORECLOSURE? does it exist in PPSA context?             <ul style="list-style-type: none"> <li>• <b>Angelkovski</b> - NO - notice requirement precludes CF // <b>Inland Kenworth</b> - MAYBE - if party who didn't receive notice is fine w/ CF, then why should anyone else care?</li> </ul> </li> </ul> <p><b>IV. RIGHTS OF REDEMPTION &amp; REINSTATEMENT</b></p> <ul style="list-style-type: none"> <li>• prior to disposition (59) or foreclosure (61), debtor can <u>redeem collateral</u> by satisfying obligation (including AC) - <b>62(1)(a)</b></li> <li>• debtor must be given notice to redeem ---&gt; requirement prevents <u>constructive F</u>; can benefit SP (<b>Angelkovski</b>)</li> </ul>

CONSUMER GOODS	<ul style="list-style-type: none"> <li>• <b>SP CANNOT SEIZE IF DEBTOR HAS PAID &gt; 2/3 OBLIGATION - 58(3)</b></li> <li>• <b>DEBTOR MAY REINSTATE SA BY PAYING AMOUNT IN ARREARS:</b> relieves debtor-consumers from effect of AC's - <b>62(1)(b)</b> <ul style="list-style-type: none"> <li>• <b>LIMITATION</b> --&gt; debtor-consumer can only reinstate <u>twice a year</u> - <b>62(2)</b></li> </ul> </li> <li>• <b>SP MUST CHOOSE - 67(1)</b> <ul style="list-style-type: none"> <li>• <b>(a) SEIZURE; (b) VOLUNTARY F</b> - as per 61; <b>(c) ACCEPT SURRENDER</b> of goods by debtor; OR...<b>(d) SUE</b> for judgment</li> <li>• <b>SURRENDER?</b> --&gt; debtor can't simply dump collateral; must be voluntary action on part of SP (<b>Whitewater</b>)</li> </ul> </li> <li>• <b>USE OF REAL REMEDY (a, b, or c above) EXTINGUISHES DEBTOR (OR GUARANTOR) OBLIGATION - 67(2)</b></li> <li>• <b>ACTION UNDER (d) ALSO EXTINGUISHES OBLIGATION - 67(10)</b></li> </ul>
JUDICIAL OVERSIGHT	<ul style="list-style-type: none"> <li>• <b>REMEDIES:</b> court can make order wrt: - <b>63(2)</b> <ul style="list-style-type: none"> <li>• <b>(a) injunctive relief; (b) directions; (c) relief from compliance</b>, if terms just &amp; reasonable to all; <b>(d) stay enforcement of rights</b></li> <li>• <b>(e) very broad language</b> --&gt; order to "protect interest of any person in the collateral"</li> </ul> </li> <li>• <b>WHO CAN APPLY?</b> debtor; creditor of debtor; SP; sheriff; or person with interest in collateral</li> <li>• <b>SCOPE:</b> purpose to obtain <u>commercially just result</u>; court not to alter <u>substance</u> of contractual rights b/w parties - but can impose terms &amp; conditions to protect rights of parties (<b>Andrews</b> - chambers judge set aside seizure order that was validly made - error corrected on appeal) ----&gt; in practice, courts have interpreted 63 <u>narrowly</u></li> <li>• <b>OTHER MATTERS:</b> <u>interested parties</u> can apply &amp; court can: <ul style="list-style-type: none"> <li>• make order determining <b>QUESTIONS OF PRIORITY or ENTITLEMENT TO COLLATERAL - 70(a)</b></li> <li>• direct action be brought, or issue be tried - <b>70(b)</b></li> </ul> </li> </ul>
NON-COMPLIANCE W/ PPSA?	<ul style="list-style-type: none"> <li>• <b>COURT CAN MAKE ORDER WRT DAMAGES - 69(3)</b></li> <li>• <b>DEFENDANT CAN USE NON-COMPLIANCE AS DEFENCE IN DEFICIENCY ACTION - 69(7)</b></li> <li>• <b>PPSA REMEDIES NOT EXHAUSTIVE - (Osman)</b> - slander of title a pre-existing, CL right - not extinguished by PPSA remedies)</li> </ul>

OTHER REMEDIES

RECEIVER	<ul style="list-style-type: none"> <li>• <b>APPOINTMENT</b> --&gt; by COURT or by virtue of SECURITY AGREEMENT - not sec trans law, per se, but R's mentioned many times in PPSA <ul style="list-style-type: none"> <li>• NOTE/ if SA provides for R, can <u>still</u> go to court to get R appointed; will need to demonstrate <u>why</u> court appt necessary (<b>White Cross</b>)</li> </ul> </li> <li>• <b>OFTEN PRELIMINARY ACTION:</b> receiver can be appointed by SP prior to use of PPSA remedies</li> <li>• <b>"RECEIVER"</b> - includes RECEIVER MANAGER (get biz back to profitable - then return to debtor) - <b>1(1)</b> // other sections = <b>64-66</b></li> </ul>
CONTRACT REMEDIES	<ul style="list-style-type: none"> <li>• <b>GENERAL PRINCIPLE</b> <ul style="list-style-type: none"> <li>• <b>REMEDIES CAN BE DERIVED FROM PPSA OR SET OUT IN SECURITY AGREEMENT - 56(2)</b></li> <li>• <b>LIMITATION</b> = parties cannot K out of PROCEDURAL PROTECTIONS FOR DEBTOR or OBLIGATIONS OF SP's - <b>56(3)</b></li> </ul> </li> <li>• <b>Andrews</b> - K remedy may not be allowed if it's too close to a statutory remedy</li> </ul>
SUE	<ul style="list-style-type: none"> <li>• <b>ACTION FOR DEFICIENCY - 60(5)</b> --&gt; <b>SP WILL RANK AS AN UNSECURED CREDITOR</b></li> </ul>
EQUITABLE / CL REMEDIES	<ul style="list-style-type: none"> <li>• <b>CONSTRUCTIVE TRUST:</b> not commonly used, but courts have been known to impose CT as part of a secured transaction remedy <ul style="list-style-type: none"> <li>• BWM does <u>not</u> like the introduction of equity into secured transactions law</li> </ul> </li> <li>• <b>MISC JUDICIAL APPLICATIONS:</b> PPSA preserves CL &amp; EQ - no reason you can't request order based on court's inherent jurisdiction - <b>68(1)</b> <ul style="list-style-type: none"> <li>• ex/ <b>68 &amp; 70</b> - used together to argue for EQ rearrangement of priorities // but BWM happy to report the BCCA overturned that decision</li> </ul> </li> </ul>