Exhibit C

C
West's Delaware Code Annotated Currentness
Title 6. Commerce and Trade
Subtitle I. Uniform Commercial Code (Refs & Annos)
Article 9. Secured Transactions (Refs & Annos)
Part 3. Perfection and Priority
Subpart 1. Law Governing Perfection and Priority

§ 9-307. Location of debtor

(a) **"Place of business."** In this section, "place of business" means a place where a debtor conducts its affairs.

(b) **Debtor's location: general rules.** Except as otherwise provided in this section, the following rules determine a debtor's location:

(1) A debtor who is an individual is located at the individual's principal residence.

(2) A debtor that is an organization and has only one place of business is located at its place of business.

(3) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(c) **Limitation of applicability of subsection (b).** Subsection (b) applies only if a debtor's residence, place of business, or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. If subsection (b) does not apply, the debtor is located in the District of Columbia.

(d) **Continuation of location: cessation of existence, etc.** A person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by subsections (b) and (c).

(e) **Location of registered organization organized under State law.** A registered organization that is organized under the law of a State is located in that State.

(f) **Location of registered organization organized under federal law; bank branches and agencies.** Except as otherwise provided in subsection (i), a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United

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States or a State are located:

(1) in the State that the law of the United States designates, if the law designates a State of location;

(2) in the State that the registered organization, branch, or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its State of location; or

(3) in the District of Columbia, if neither paragraph (1) nor paragraph (2) applies.

For purposes of paragraph (2) above, if a registered organization designates a main office, a home office, or other comparable office in accordance with the law of the United States, such registered organization is located in the State that such main office, home office, or other comparable office is located.

(g) **Continuation of location: change in status of registered organization.** A registered organization continues to be located in the jurisdiction specified by subsection (e) or (f) notwithstanding:

(1) the suspension, revocation, forfeiture, or lapse of the registered organization's status as such in its jurisdiction of organization; or

(2) the dissolution, winding up, or cancellation of the existence of the registered organization.

(h) **Location of United States.** The United States is located in the District of Columbia.

(i) **Location of foreign bank branch or agency if licensed in only one State.** A branch or agency of a bank that is not organized under the law of the United States or a State is located in the State in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one State.

(j) **Location of foreign air carrier.** A foreign air carrier under the Federal Aviation Act of 1958 (see now 49 U.S.C. § 40101 et seq.), as amended, is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.

(k) **Location of trusts and trustees.** A debtor that is a trust that is a registered organization is located in the jurisdiction of the trust specified by subsection (e) or (f). A debtor that is a trust that is not a registered organization is located in the jurisdiction of the trust specified by subsection (b)(2) or (b)(3). A debtor that is a trustee acting with respect to property held in trust is located in the jurisdiction of the trustee specified by subsection (b), (e), (f) or (i).

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(l) **Section applies only to this part.** This section applies only for purposes of this part.

72 Laws 2000, ch. 401, § 1, eff. July 1, 2001; 74 Laws 2004, ch. 332, § 52, eff. Jan. 1, 2005.

UNIFORM COMMERCIAL CODE COMMENT

<For UCC acknowledgments, see DE ST UCC Acknowledgments.>

1. **Source.** Former Section 9-103(3)(d), substantially revised.

2. **General Rules.** As a general matter, the location of the debtor determines the jurisdiction whose law governs perfection of a security interest. See Sections 9-301(1), 9-305(c). It also governs priority of a security interest in certain types of intangible collateral, such as accounts, electronic chattel paper, and general intangibles. This section determines the location of the debtor for choice-of-law purposes, but not for other purposes. See subsection (k).

Subsection (b) states the general rules: An individual debtor is deemed to be located at the individual's principal residence with respect to both personal and business assets. Any other debtor is deemed to be located at its place of business if it has only one, or at its chief executive office if it has more than one place of business.

As used in this section, a "place of business" means a place where the debtor conducts its affairs. See subsection (a). Thus, every organization, even eleemosynary institutions and other organizations that do not conduct "for profit" business activities, has a "place of business." Under subsection (d), a person who ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction determined by subsection (b).

The term "chief executive office" is not defined in this Section or elsewhere in the Uniform Commercial Code. "Chief executive office" means the place from which the debtor manages the main part of its business operations or other affairs. This is the place where persons dealing with the debtor would normally look for credit information, and is the appropriate place for filing. With respect to most multi-state debtors, it will be simple to determine which of the debtor's offices is the "chief executive office." Even when a doubt arises, it would be rare that there could be more than two possibilities. A secured party in such a case may protect itself by perfecting under the law of each possible jurisdiction.

Similarly, the term "principal residence" is not defined. If the security interest in question is a purchase-money security interest in consumer goods which is perfected upon attachment, see Section 9-309(1), the choice of law may make no difference. In other cases, when a doubt arises, prudence may dictate perfecting under the law of each jurisdiction that might be the debtor's "principal resid-

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ence."

The general rule is subject to several exceptions, each of which is discussed below.

3. **Non-U.S. Debtors.** Under the general rules of this section, a non-U.S. debtor normally would be located in a foreign jurisdiction and, as a consequence, foreign law would govern perfection. When foreign law affords no public notice of security interests, the general rule yields unacceptable results.

Accordingly, subsection (c) provides that the normal rules for determining the location of a debtor (i.e., the rules in subsection (b)) apply only if they yield a location that is "a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral." The phrase "generally requires" is meant to include legal regimes that generally require notice in a filing or recording system as a condition of perfecting nonpossessory security interests, but which permit perfection by another method (e.g., control, automatic perfection, temporary perfection) in limited circumstances. A jurisdiction that has adopted this Article or an earlier version of this Article is such a jurisdiction. If the rules in subsection (b) yield a jurisdiction whose law does not generally require notice in a filing or registration system, the debtor is located in the District of Columbia.

Example 1: Debtor is an English corporation with 7 offices in the United States and its chief executive office in London, England. Debtor creates a security interest in its accounts. Under subsection (b)(3), Debtor would be located in England. However, subsection (c) provides that subsection (b) applies only if English law generally conditions perfection on giving public notice in a filing, recording, or registration system. Otherwise, Debtor is located in the District of Columbia. Under Section 9-301(1), perfection, the effect of perfection, and priority are governed by the law of the jurisdiction of the debtor's location-here, England or the District of Columbia (depending on the content of English law).

Example 2: Debtor is an English corporation with 7 offices in the United States and its chief executive office in London, England. Debtor creates a security interest in equipment located in London. Under subsection (b)(3) Debtor would be located in England. However, subsection (c) provides that subsection (b) applies only if English law generally conditions perfection on giving public notice in a filing, recording, or registration system. Otherwise, Debtor is located in the District of Columbia. Under Section 9- 301(1), perfection is governed by the law of the jurisdiction of the debtor's location, whereas, under Section 9-301(3), the law of the jurisdiction in which the collateral is located-here, England-governs priority.

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The foregoing discussion assumes that each transaction bears an appropriate relation to the forum State. In the absence of an appropriate relation, the forum State's entire UCC, including the choice-of-law provisions in Article 9 (Sections 9-301 through 9-307), will not apply. See Section 9-109, Comment 9.

4. **Registered Organizations Organized Under Law of a State.** Under subsection (e), a registered organization (e.g., a corporation or limited partnership) organized under the law of a "State" (defined in Section 9-102) is located in its State of organization. Subsection (g) makes clear that events affecting the status of a registered organization, such as the dissolution of a corporation or revocation of its charter, do not affect its location for purposes of subsection (e). However, certain of these events may result in, or be accompanied by, a transfer of collateral from the registered organization to another debtor. This section does not determine whether a transfer occurs, nor does it determine the legal consequences of any transfer.

Determining the registered organization-debtor's location by reference to the jurisdiction of organization could provide some important side benefits for the filing systems. A jurisdiction could structure its filing system so that it would be impossible to make a mistake in a registered organization-debtor's name on a financing statement. For example, a filer would be informed if a filed record designated an incorrect corporate name for the debtor. Linking filing to the jurisdiction of organization also could reduce pressure on the system imposed by transactions in which registered organizations cease to exist-as a consequence of merger or consolidation, for example. The jurisdiction of organization might prohibit such transactions unless steps were taken to ensure that existing filings were refiled against a successor or terminated by the secured party.

5. **Registered Organizations Organized Under Law of United States; Branches and Agencies of Banks Not Organized Under Law of United States.** Subsection (f) specifies the location of a debtor that is a registered organization organized under the law of the United States. It defers to the law of the United States, to the extent that that law determines, or authorizes the debtor to determine, the debtor's location. Thus, if the law of the United States designates a particular State as the debtor's location, that State is the debtor's location for purposes of this Article's choice-of-law rules. Similarly, if the law of the United States authorizes the registered organization to designate its State of location, the State that the registered organization designates is the State in which it is located for purposes of this Article's choice-of-law rules. In other cases, the debtor is located in the District of Columbia.

In some cases, the law of the United States authorizes the registered organization to designate a main office, home office, or other comparable office. See, e.g., 12 U.S.C. §§ 22 and 1464(a); 12 C.F.R. § 552.3. Designation of such an office constitutes the designation of the State of location for purposes of Section 9-307(f)(2).

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Subsection (f) also specifies the location of a branch or agency in the United States of a foreign bank that has one or more branches or agencies in the United States. The law of the United States authorizes a foreign bank (or, on behalf of the bank, a federal regulatory agency) to designate a single home state for all of the foreign bank's branches and agencies in the United States. See 12 U.S.C. § 3103(c) and 12 C.F.R. § 211.22. The designated State constitutes the State of location for the branch or agency for purposes of Section 9-307(f): however if all of the foreign bank's branches or agencies that are in the United States are licensed in only one State, the branches and agencies are located in that State. See subsection (i).

In cases not governed by subsection (f) or (i), the location of a foreign bank is determined by subsections (b) and (c).

Subsection (f) also determines the location of branches and agencies of banks that are not organized under the law of the United States or a State. However, if all the branches and agencies of the bank are licensed only in one State, then they are located in that State. See subsection (i).

6. **United States.** To the extent that Article 9 governs (see Sections 1-105, 9-109(c)), the United States is located in the District of Columbia for purposes of this Article's choice-of-law rules. See subsection (h).

7. **Foreign Air Carriers.** Subsection (j) follows former Section 9-103(3)(d). To the extent that it is applicable, the Convention on the International Recognition of Rights in Aircraft (Geneva Convention) supersedes state legislation on this subject, as set forth in Section 9-311(b), but some nations are not parties to that Convention.

CROSS REFERENCES

Lease distinguished from security interest, see 6 Del.C. § 1-203.

LIBRARY REFERENCES

Secured Transactions k3.1.
Westlaw Key Number Search: 349Ak3.1.
C.J.S. Secured Transactions §§ 2 to 6.

RESEARCH REFERENCES

Forms

14 West's Legal Forms § 4.96, Prohibition of Sale of Collateral.

NOTES OF DECISIONS

In general 1

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1. In general

Definition of "good faith" set forth in provision of sales article of the Uniform Commercial Code would not apply to transaction concerning rights and obligations of buyer and secured creditor, even though a merchant-buyer is involved. 5A Del.C. §§ 1-201(9, 19), 2-101, 2-103(1) (b), 9- 105(4), 9-307, 9-307(1). Sherrock v. Commercial Credit Corp., 1972, 290 A.2d 648. Secured Transactions 141

Where partners in automobile dealership agreed to purchase two new automobiles from another dealership and the two vehicles, still in possession of second dealership, were repossessed by secured creditor, status of partners in first dealership as "buyers in the ordinary course of business" was not to be determined by test of "reasonable commercial standard of fair dealing" but rather by definition of "good faith" found in secured transaction article of Uniform Commercial Code of honesty in fact in the conduct or transaction concerned. 5A Del.C. §§ 1-201(9, 19), 2-101, 2-103(1) (b), 9- 105(4), 9-307, 9-307(1). Sherrock v. Commercial Credit Corp., 1972, 290 A.2d 648. Secured Transactions 141

Buyer, an experienced automobile dealer, who purchased automobiles from seller with whom it had not done business previously, and who, contrary to automobile trade custom, relied on seller to deliver vehicles and made payment at least four days before delivery could be expected without inquiring as to seller's desire to retain possession or into its financial stability, was not "buyer in ordinary course of business" within uniform commercial code; thus, buyer could not recover from seller's secured creditor, who relied on trade custom and who repossessed the automobiles along with seller's other automobiles for selling out of trust. 5A Del.C. §§ 1-201(9), 2-103(1) (b), 2-104(3), 9- 307(1). Sherrock v. Commercial Credit Corp., 1971, 277 A.2d 708, reversed 290 A.2d 648. Secured Transactions 141

6 Del.C. § 9-307, DE ST TI 6 § 9-307

Current through 76 Laws 2008, chs. 252, 254-260, 262, 263, 269, 271, 283 and 285
Revisions to 2008 Acts made by the Delaware Code Revisors were unavailable at time of publication.

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C
West's Delaware Code Annotated Currentness
Title 6. Commerce and Trade
Subtitle I. Uniform Commercial Code (Refs & Annos)
Article 9. Secured Transactions (Refs & Annos)
Part 3. Perfection and Priority
Subpart 1. Law Governing Perfection and Priority

§ 9-301. Law governing perfection and priority of security interests

Except as otherwise provided in Sections 9-303 through 9-306, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

(2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

(3) Except as otherwise provided in paragraph (4), while tangible negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

(A) perfection of a security interest in the goods by filing a fixture filing;

(B) perfection of a security interest in timber to be cut; and

(C) the effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

(4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

72 Laws 2000, ch. 401, § 1, eff. July 1, 2001; 74 Laws 2004, ch. 332, § 51, eff. Jan. 1, 2005.

UNIFORM COMMERCIAL CODE COMMENT

<For UCC acknowledgments, see DE ST UCC Acknowledgments.>

1. **Source.** Former Sections 9-103(1)(a), (b), 9-103(3)(a), (b), 9-103(5), substan-

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tially modified.

2. **Scope of This Subpart.** Part 3, Subpart 1 (Sections 9-301 through 9-307) contains choice-of-law rules similar to those of former Section 9-103. Former Section 9-103 generally addresses which State's law governs "perfection and the effect of perfection or non-perfection of" security interests. See, e.g., former Section 9-103(1)(b). This Article follows the broader and more precise formulation in former Section 9-103(6)(b), which was revised in connection with the promulgation of Revised Article 8 in 1994: "perfection, the effect of perfection or non-perfection, and the priority of" security interests. Priority, in this context, subsumes all of the rules in Part 3, including "cut off" or "take free" rules such as Sections 9-317(b), (c), and (d), 9-320(a), (b), and (d), and 9-332. This subpart does not address choice of law for other purposes. For example, the law applicable to issues such as attachment, validity, characterization (e.g., true lease or security interest), and enforcement is governed by the rules in Section 1-105; that governing law typically is specified in the same agreement that contains the security agreement. And, another jurisdiction's law may govern other third-party matters addressed in this Article. See Section 9-401, Comment 3.

3. **Scope of Referral.** In designating the jurisdiction whose law governs, this Article directs the court to apply only the substantive ("local") law of a particular jurisdiction and not its choice-of-law rules.

Example 1: Litigation over the priority of a security interest in accounts arises in State X. State X has adopted the official text of this Article, which provides that priority is determined by the local law of the jurisdiction in which the debtor is located. See Section 9-301(1). The debtor is located in State Y. Even if State Y has retained former Article 9 or enacted a nonuniform choice-of-law rule (e.g., one that provides that perfection is governed by the law of State Z), a State X court should look only to the substantive law of State Y and disregard State Y's choice-of-law rule. State Y's substantive law (e.g., its Section 9-501) provides that financing statements should be filed in a filing office in State Y. Note, however, that if the identical perfection issue were to be litigated in State Y, the court would look to State Y's former Section 9-103 or nonuniform 9-301 and conclude that a filing in State Y is ineffective.

Example 2: In the preceding Example, assume that State X has adopted the official text of this Article, and State Y has adopted a nonuniform Section 9- 301(1) under which perfection is governed by the whole law of State X, including its choice-of-law rules. If litigation occurs in State X, the court should look to the substantive law of State Y, which provides that financing statements are to be filed in a filing office in State Y. If litigation occurs in State Y, the court should look to the law of State X, whose choice-of-law rule requires that the court apply the substantive law of State Y. Thus, regardless of the jurisdiction in which the litigation arises, the financing statement should be filed in State Y.

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4. **Law Governing Perfection: General Rule.** Paragraph (1) contains the general rule: the law governing perfection of security interests in both tangible and intangible collateral, whether perfected by filing or automatically, is the law of the jurisdiction of the debtor's location, as determined under Section 9- 307.

Paragraph (1) substantially simplifies the choice-of-law rules. Former Section 9-103 contained different choice-of-law rules for different types of collateral. Under Section 9-301(1), the law of a single jurisdiction governs perfection with respect to most types of collateral, both tangible and intangible. Paragraph (1) eliminates the need for former Section 9-103(1)(c), which concerned purchase-money security interests in tangible collateral that is intended to move from one jurisdiction to the other. It is likely to reduce the frequency of cases in which the governing law changes after a financing statement is properly filed. (Presumably, debtors change their own location less frequently than they change the location of their collateral.) The approach taken in paragraph (1) also eliminates some difficult priority issues and the need to distinguish between "mobile" and "ordinary" goods, and it reduces the number of filing offices in which secured parties must file or search when collateral is located in several jurisdictions.

5. **Law Governing Perfection: Exceptions.** The general rule is subject to several exceptions. It does not apply to goods covered by a certificate of title (see Section 9-303), deposit accounts (see Section 9-304), investment property (see Section 9-305), or letter-of-credit rights (see Section 9-306). Nor does it apply to possessory security interests, i.e., security interests that the secured party has perfected by taking possession of the collateral (see paragraph (2)), security interests perfected by filing a fixture filing (see subparagraph (3)(A)), security interests in timber to be cut (subparagraph (3)(B)), or security interests in as-extracted collateral (see paragraph (4)).

a. **Possessory Security Interests.** Paragraph (2) applies to possessory security interests and provides that perfection is governed by the local law of the jurisdiction in which the collateral is located. This is the rule of former Section 9-103(1)(b), except paragraph (2) eliminates the troublesome "last event" test of former law.

The distinction between nonpossessory and possessory security interests creates the potential for the same jurisdiction to apply two different choice-of-law rules to determine perfection in the same collateral. For example, were a secured party in possession of an instrument or tangible document to relinquish possession in reliance on temporary perfection, the applicable law immediately would change from that of the location of the collateral to that of the location of the debtor. The applicability of two different choice-of-law rules for perfection is unlikely to lead to any material practical problems. The perfection rules of one Article 9 jurisdiction are likely to be identical to those of another. Moreover, under paragraph (3), the relative priority of competing security interests in tangible collateral is resolved by reference to the law of the jurisdiction in which the

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collateral is located, regardless of how the security interests are perfected.

b. **Fixtures.** Application of the general rule in paragraph (1) to perfection of a security interest in fixtures would yield strange results. For example, perfection of a security interest in fixtures located in Arizona and owned by a Delaware corporation would be governed by the law of Delaware. Although Delaware law would send one to a filing office in Arizona for the place to file a financing statement as a fixture filing, see Section 9-501, Delaware law would not take account of local, nonuniform, real-property filing and recording requirements that Arizona law might impose. For this reason, paragraph (3)(A) contains a special rule for security interests perfected by a fixture filing; the law of the jurisdiction in which the fixtures are located governs perfection, including the formal requisites of a fixture filing. Under paragraph (3)(C), the same law governs priority. Fixtures are "goods" as defined in Section 9-102.

c. **Timber to Be Cut.** Application of the general rule in paragraph (1) to perfection of a security interest in timber to be cut would yield undesirable results analogous to those described with respect to fixtures. Paragraph (3)(B) adopts a similar solution: perfection is governed by the law of the jurisdiction in which the timber is located. As with fixtures, under paragraph (3)(C), the same law governs priority. Timber to be cut also is "goods" as defined in Section 9-102.

Paragraph (3)(B) applies only to "timber to be cut," not to timber that has been cut. Consequently, once the timber is cut, the general choice-of-law rule in paragraph (1) becomes applicable. To ensure continued perfection, a secured party should file in both the jurisdiction in which the timber to be cut is located and in the state where the debtor is located. The former filing would be with the office in which a real property mortgage would be filed, and the latter would be a central filing. See Section 9-501.

d. **As-Extracted Collateral.** Paragraph (4) adopts the rule of former Section 9-103(5) with respect to certain security interests in minerals and related accounts. Like security interests in fixtures perfected by filing a fixture filing, security interests in minerals that are as-extracted collateral are perfected by filing in the office designated for the filing or recording of a mortgage on the real property. For the same reasons, the law governing perfection and priority is the law of the jurisdiction in which the wellhead or minehead is located.

6. **Change in Law Governing Perfection.** When the debtor changes its location to another jurisdiction, the jurisdiction whose law governs perfection under paragraph (1) changes, as well. Similarly, the law governing perfection of a possessory security interest in collateral under paragraph (2) changes when the collateral is removed to another jurisdiction. Nevertheless, these changes will not result in an immediate loss of perfection. See Section 9-316(a), (b).

7. **Law Governing Effect of Perfection and Priority: Goods, Documents, Instru-**

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ments, Money, Negotiable Documents, and Tangible Chattel Paper. Under former Section 9-103, the law of a single jurisdiction governed both questions of perfection and those of priority. This Article generally adopts that approach. See paragraph (1). But the approach may create problems if the debtor and collateral are located in different jurisdictions. For example, assume a security interest in equipment located in Pennsylvania is perfected by filing in Illinois, where the debtor is located. If the law of the jurisdiction in which the debtor is located were to govern priority, then the priority of an execution lien on goods located in Pennsylvania would be governed by rules enacted by the Illinois legislature.

To address this problem, paragraph (3)(C) divorces questions of perfection from questions of "the effect of perfection or nonperfection and the priority of a security interest." Under paragraph (3)(C), the rights of competing claimants to tangible collateral are resolved by reference to the law of the jurisdiction in which the collateral is located. A similar bifurcation applied to security interests in investment property under former Section 9-103(6). See Section 9- 305.

Paragraph (3)(C) applies the law of the situs to determine priority only with respect to goods (including fixtures), instruments, money, tangible negotiable documents, and tangible chattel paper. Compare former Section 9-103(1), which applied the law of the location of the collateral to documents, instruments, and "ordinary" (as opposed to "mobile") goods. This Article does not distinguish among types of goods. The ordinary/mobile goods distinction appears to address concerns about where to file and search, rather than concerns about priority. There is no reason to preserve this distinction under the bifurcated approach.

Particularly serious confusion may arise when the choice-of-law rules of a given jurisdiction result in each of two competing security interests in the same collateral being governed by a different priority rule. The potential for this confusion existed under former Section 9-103(4) with respect to chattel paper: Perfection by possession was governed by the law of the location of the paper, whereas perfection by filing was governed by the law of the location of the debtor. Consider the mess that would have been created if the language or interpretation of former Section 9-308 were to differ in the two relevant States, or if one of the relevant jurisdictions (e.g., a foreign country) had not adopted Article 9. The potential for confusion could have been exacerbated when a secured party perfected both by taking possession in the State where the collateral is located (State A) and by filing in the State where the debtor is located (State B)-a common practice for some chattel paper financers. By providing that the law of the jurisdiction in which the collateral is located governs priority, paragraph (3) substantially diminishes this problem.

8. **Non-U.S. Debtors.** This Article applies the same choice-of-law rules to all debtors, foreign and domestic. For example, it adopts the bifurcated approach for determining the law applicable to security interests in goods and other tangible collateral. See Comment 5.a., above. The Article contains a new rule specifying

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the location of non-U.S. debtors for purposes of this Part. The rule appears in Section 9-307 and is explained in the Comments to that section. Former Section 9-103(3)(c), which contained a special choice-of-law rule governing security interests created by debtors located in a non-U.S. jurisdiction, proved unsatisfactory and was deleted.

CROSS REFERENCES

Lease distinguished from security interest, see 6 Del.C. § 1-203.

LIBRARY REFERENCES

Secured Transactions 3.1 to 7.
Westlaw Key Number Searches: 349Ak3.1 to 349Ak7.
C.J.S. Secured Transactions §§ 2 to 6.

NOTES OF DECISIONS

In general 1
Accounts receivable 3
Choice of law 2

1. In general

Since, under the Bankruptcy Act, trustee has all the rights of an ideal lien creditor under Uniform Commercial Code provision relating to persons who become lien creditors without knowledge of security interest and before security interest is perfected, his rights are superior to UCC claimants whose interests are unperfected as of the date of bankruptcy. Bankr.Act, § 70, sub. c, 11 U.S.C.A. § 110(c); 6 Del.C. § 9-301(1)(b). Appeal of Copeland, 1976, 531 F.2d 1195. Secured Transactions 139.1

Where financing statement from Florida corporation to assignee of original secured party had been properly filed and contained statement covering corporation's accounts receivable and signatures and addresses of parties to statement, and chain of agreements between Florida corporation, original secured party and assignee constituted agreement that security interest would attach to the accounts receivable, assignee held perfected security interest in the accounts receivable under Florida law, even though no financing statement had been properly filed between the Florida corporation and the original secured party. Superior Court Rules, Civil rule 12(b) (4), Del.C.Ann.; 5A Del.C. §§ 9-101 to 9-507; F.S.A. §§ 679.203(1) (b), 679.204(1), 679.302(2), 679.401, 679.402. Bramble Transp., Inc. v. Sam Senter Sales, Inc., 1971, 294 A.2d 97, affirmed 294 A.2d 104. Secured Transactions 97

2. Choice of law

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Where loan transaction was negotiated and closed in Florida, law of Florida determined nature and extent of interest, if any, which pledgor retained in stock pledged to secure the indebtedness. U. S. Industries, Inc. v. Gregg, 1976, 540 F.2d 142, certiorari denied 97 S.Ct. 2972, 433 U.S. 908, 53 L.Ed.2d 1091, on remand 457 F.Supp. 1293. Secured Transactions 5

Where loan transaction in which recipient of stock in Delaware corporation pledged stock to secure indebtedness was negotiated and closed in Florida, law of Florida determined nature and extent of recipient's interest, if any, in stock, while law of Delaware controlled question of whether any such interest could be sequestered under Delaware law in action against recipient in Delaware federal district court. 10 Del.C. § 366. U. S. Industries, Inc. v. Gregg, 1972, 348 F.Supp. 1004, reversed 540 F.2d 142, certiorari denied 97 S.Ct. 2972, 433 U.S. 908, 53 L.Ed.2d 1091, on remand 457 F.Supp. 1293. Secured Transactions 5; Sequestration 1

Choice of law provision in security agreement between New Jersey bank and debtor, providing that security agreement was governed by New Jersey law, was enforceable under New Jersey Code. N.J.S.A. 12A:1-105. Matter of Collated Products Corp., 1990, 116 B.R. 406, affirmed in part, reversed in part 121 B.R. 195, affirmed 937 F.2d 596. Secured Transactions 3.1

Under Uniform Commercial Code, Florida law was applicable to determination of validity of assignments of accounts receivable where offices of assignor were located in Florida. 5A Del.C. § 9-103(1); F.S.A. § 679.103. Bramble Transp., Inc. v. Sam Senter Sales, Inc., 1971, 294 A.2d 97, affirmed 294 A.2d 104. Secured Transactions 4

3. Accounts receivable

Uniform Commercial Code was applicable to determination of whether assignment of accounts receivable which were owed to Florida corporation and against one of which writ of foreign attachment had been issued in action against the corporation was valid and had priority over writ of foreign attachment issued against the account receivable. 5A Del.C. §§ 9-101 to 9-507, 9-106; 10 Del.C. §§ 3507, 3508. Bramble Transp., Inc. v. Sam Senter Sales, Inc., 1971, 294 A.2d 97, affirmed 294 A.2d 104. Secured Transactions 4

Uniform Commercial Code provision that code was inapplicable to an assignment of accounts for the purpose of collection only did not preclude application of Uniform Commercial Code to determination of validity of assignments of accounts receivable where assignment was a financing transaction rather than one for the purpose of collection. 5A Del.C. §§ 9-101 to 9-507, 9-102(1), 9- 104(f). Bramble Transp., Inc. v. Sam Senter Sales, Inc., 1971, 294 A.2d 97, affirmed 294 A.2d 104. Secured Transactions 4

6 Del.C. § 9-301, DE ST TI 6 § 9-301

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Current through 76 Laws 2008, chs. 252, 254-260, 262, 263, 269, 271, 283 and 285
Revisions to 2008 Acts made by the Delaware Code Revisors were unavailable
at time of publication.

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