LAW101DL, COMMERCIAL LAW, Secured Transactions, Professor Widen **[draft-02-16-2020 | 11:15 am]**

NOTES: CHAPTER 7, TEXT P. 481 and ff.

OUR STORE SELLS INVENTORY OR OTHER COLLATERAL

As background to Chapter 7, consider a fact pattern in which OUR STORE has borrowed money from OUR BANK in a transaction in which OUR STORE signed a security agreement containing a description of collateral, including goods consisting of inventory and equipment, to create a security interest in favor of OUR BANK. In such a situation, an important set of related questions arise when OUR STORE sells some of these goods to OUR BUYER.

Q 1. Does OUR BANK's security interest continue in the goods sold (or does OUR BUYER acquire the goods free and clear of the security interest)?

Q 2. Does OUR BANK's security interest continue in the proceeds of sale received by OUR STORE?

As a general matter:

A 1. If OUR BUYER is purchasing inventory in the ordinary course of business from OUR STORE, the general rule for inventory sales is that OUR BUYER will take "free" of OUR BANK's security interest. OUR BUYER is a "buyer in the ordinary course of business" or a BIOCOB. See UCC s. 9-322. Note that, in the example, the security interest was created by OUR BUYER's seller (i.e. by OUR STORE). The policy reason for such a rule is plain. Typical customers of normal sellers of goods expect to acquire goods free and clear of security

interests. It makes little sense to require that each buyer of inventory must conduct a search of the UCC records to protect itself. However, if OUR BUYER were to purchase equipment from OUR STORE (equipment which OUR STORE does not usually sell), then OUR BUYER is not a BIOCOB. In such a case, the general rule is that OUR BUYER will take "subject to" OUR BANK's security interest.

A 2. The general rule is that OUR BANK's security interest continues in proceeds received by OUR STORE from the sale of collateral. This is true whether or not a security interest continues in the underlying collateral following the transfer. There are detailed rules about how a security interest in proceeds is maintained (and for how long). See UCC s. 9-315.

WHAT ARE A SECURED CREDITOR'S MAIN REMEDY OPTIONS?

1. SELF HELP REMEDIES. A secured creditor may exercise self help remedies to recover possession of the collateral (so long as it does not breach the peace) when the debtor is in default. This remedy is referred to as "self help" because it does not require the secured creditor to commence a lawsuit. The self-help remedy of repossession is available to a secured creditor (but not an unsecured creditor) because the secured creditor obtains this right when the debtor grants a security interest in an item of collateral pursuant to its security agreement.

2. A LAWSUIT TO COLLECT THE DEBT. A secured creditor may bring a lawsuit for breach of contract in order to obtain a judgment in the amount of the debt. If the secured creditor is successful in its suit, it will obtain a judgment. The judgment will result in the creation of a judgment lien. The creditor will obtain a writ of

execution from the court. The writ of execution will be given to the sheriff. The sheriff will then attempt to fulfill the writ by making a levy on property of the debtor. Property acquired by levy may then be sold at a "sheriff's sale". The proceeds from this sale will be applied first to pay expenses of the proceeding, and then applied to satisfy the judgment. This basic procedure applies to recover an unsecured debt as well as a secured debt.

3. A LAWSUIT TO COLLECT AN AMOUNT EQUAL TO THE VALUE OF COLLATERAL WRONGFULLY TRANSFERRED OR DETAINED. In an appropriate case, a secured creditor may bring a lawsuit for conversion. The goal of a lawsuit based in conversion is to obtain a judgment in the amount of the value of property which has been wrongly transferred or detained. It is an action based in tort, not in contract.

Q 3. HOW DOES A CAUSE OF ACTION FOR SUIT ON THE DEBT ARISE?

A 3. When a debt has become due and payable, and the debtor fails to make payment, the creditor may bring a suit against the debtor for breach of contract. A loan is due and payable on its maturity date. However, a loan may become due and payable earlier than its maturity date if the maturity of the loan is "accelerated." Acceleration of maturity of a debt (often simply called "acceleration") typically occurs for a loan when an "event of default" (as defined in the credit agreement) occurs. Acceleration might be automatic (such as if the debtor files for bankruptcy), automatic but following a grace period (a failure to pay a principal payment within one day after its stated maturity, a failure to pay interest withing three days after its stated due date), or acceleration might occur following notice from the creditor that a "default" has occured under the credit agreement. Typically, an event of default requiring a prior notice occurs when a debtor violates an affirmative covenant in the loan agreement.

TEXT P. 481. What are the relevant contract provisions regarding the debtor's sale of collateral? Most security agreements provide that (i) the debtor's unauthorized sale of collateral is an event of default and (ii) an event of default that makes the entire debt due. Even when the security agreement authorizes the debtor to sell collateral, the authority is typically conditioned on the debtor remitting the proceeds to the secured party. Failing to do so is itself default.

Q 4. WHAT IS CONVERSION?

A 4. Conversion is a tort for wrongfully taking possession of the property of another. It would extend to a failure to return property wrongfully detained after a demand for its return.

Q 5. HOW MIGHT THE TORT OF CONVERSION ARISE IN A SECURED TRANSACTION?

A 5. A buyer might purchase a good in which a security interest continues following the sale. The seller might be liable for conversion for wrongfully selling the good. And, the buyer might be liable for conversion for failing to turn it over to the secured party. Alternately, a lien creditor might take possession of property which is subject to a prior security interest. The property subject to the conversion claim might cover an original item of collateral or the proceeds of that collateral. Note that a security interest may continue in the proceeds of original collateral. The holder of the security interest might demaind return of the good or other collateral subject to the security interest and, if the good or other collateral is not returned, the secured party might sue for conversion.

TEXT P. 482. When a debtor makes an unauthorized sale or other disposition of collateral, the debtor is probably liable for conversion; but the debtor is already liable for the secured debt. What's the point of suing the debtor for conversion and creating a tort debt on top of the contract debt? Possibly liable for conversion, too, are the buyer (who is also subject alternatively to a replevin action) or other people involved in the sale of the collateral, including other creditors.

TEXT P. 482. See Bank v. Parish.

TEXT P. 486. 2.2.2 QUESTIONS ABOUT Bank v. Parish

1. The court affirmed Count V as to Robert Brazin but reversed on this count in favor of Bazin Excavating. Why?

2. In what role was Robert liable for conversion and why?

Robert bought the debtor's rights at the execution sale but subject to the Bank's security interest. He was liable in conversion for refusing the Bank's demand to surrender the vehicle in which the Bank had a superior interest and an immediate right to possession as against Robert. It was this exercise of dominion and control that amounted to conversion by Robert.

3. Bazin Excavating was a judgment lien creditor with respect to the Yukon. However, it's claim was subordinate to the Bank's security interest. Why?

The Bank's security interest was perfected before Bazin became a lien creditor. See UCC s.s.9-201, 9-317(a)(2).

4. Why wasn't Bazin Excavating, as a subordinate creditor who sold the collateral, liable in conversion to the Bank which had a superior security interest? Doesn't this outcome undermine the worth of the Bank's priority?

"Neither do we believe that the subsequent sale of the Yukon hindered the Bank's right to exert control over and obtain possession of the Yukon. The sheriff's sale under attachment was not in itself wrongful, and the Bank's rights in the collateral and the proceeds thereof were not destroyed by the attachment sale" because the Bank's interest continued in the vehicle and the proceeds of the sale."

5. Does this case say that all buyers of collateral are liable to the secured party for conversion? That are creditors with subordinate liens are immune from conversion liability to a senior secured party?

This case does not say that any buyer of collateral who takes subject to a security interest converts the collateral based solely on the purchase. It is further conduct that hinders the secured party's enforcement of its interest that is conversion. Likewise, a creditor with a subordinate lien is not, for that reason, liable to a secured party for conversion but is not completely immune from conversion liability. The subordinate creditor will become liable for conduct that interferes with the secured party's rights to the collateral. Thus, if the Bank in the Bazin case had demanded the vehicle prior to the execution sale and the lien creditor had refused, the lien creditor would have committed conversion.

Q 6. WHY WOULD A CREDITOR WANT A DEBT TO BE NONDISCHARGEABLE?

A 6. An ordinary claim for a contract debt is typically dischargeable in a debtor's bankruptcy. A tort claim for conversion may be non-dischargeable. A nondischargeable debt survives the completion of a Federal bankruptcy case. Thus, following the bankruptcy case, a creditor may continue attempts to collect the debt, at least in the amount of any judgment for conversion.

TEXT P. 487. See In re Jenkins case.

A claim for conversion may arise if debtor wrongfully sells collateral or never acquires collateral which it promised to acquire and use as security for a loan.

TEXT P. 488. See facts of In re Jenkins for the conduct at issue.

Q 7. HOW DOES A CREDITOR PROVE THAT A DEBT IS NONDISCHARGEABLE? TEXT P. 488.

A 7. In order to prevail under s. 523(a)(6), a party must prove that the debt is nondischargeable by a preponderance of the evidence.

An early case addressing s. 523(a)(6) was Kawaauhau v. Geiger, 523 U.S. 57 (1998). In Kawaauhau, the United States Supreme Court stated that "[t]he word 'willful' in (a)(6) modifies the word 'injury,' indicating that nondischargeability takes a deliberate or intentional injury, not merely a deliberate or intentional act that leads to injury."

TEXT P. 489. Consequently, under Fifth Circuit jurisprudence, in determining whether an injury is willful and malicious, a debtor must have acted with "an objective substantial certainty of harm" (objective test) or a debtor must have acted with "a subjective motive to cause harm" (subjective test).

Q 8. WHAT IS THE MEASURE OF DAMAGES FOR A NONDISCHARGEABLE DEBT? TEXT P. 492.

A 8. The appropriate measure of damages is the fair market value at the time the property was sold. It is not the principal amount of the debt secured.

TEXT P. 494. QUESTIONS ABOUT Jenkins

1. The debtor is already liable to the secured creditor on the underlying debt. What's the point of "piling on" with additional conversion liability for selling the collateral?

The underlying debt, to the extent it's unsecured, will be discharged in bankruptcy and forever uncollectible. Damages for conversion liability, to the extent based on willful and malicious injury, are nondischargeable.

2. Does this case hold that any sale of collateral by a debtor without the secured party's consent is non-dischargeable conversion liability?

No.

3. What's the limiting requisite of Jenkins, that is, the key to finding nondischarageable conversion liability?

"[I]n determining whether an injury is willful and malicious, a debtor must have acted with 'an objective substantial certainty of harm' (objective test) or a debtor must have acted with 'a subjective motive to cause harm' (subjective test)."

4. What facts convinced the court that the Debtor knew or should have known that his actions were "at least substantially certain to result in injury to" to Trustmark?

The debtor testified that he understood the purpose of collateral and that not having it threatened the Bank's protection in the event of nonpayment. Yet, the debtor certified to the bank that he owned collateral he had never purchased or had already sold.

TEXT P. 498. Arthur Glick Truck Sales, Inc. v. Stuphen East Corp.

TEXT P. 506 - 507. 2.3 QUESTIONS ABOUT the Arthur Glick case.

1. The court said: "if the Fire Districts qualify as buyers, but not as buyers in the ordinary course of business, then Plaintiff's interest is superior to Defendant's." Explain why.

A security interest is generally effective against everybody. UCC s.9-201. If the Fire Districts could not rely on section 9-320(a), their fallback would be 9-317(b): "a buyer, other than a secured party, of tangible chattel paper, tangible documents, goods, instruments, or a certificated security takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected." This priority rule protects a buyer but not against a

security interest that is perfected when the buyer receives possession of the goods. "Here, the Fire Districts did not "receive[ ] delivery of the collateral ... before [Plaintiff's security interest] [was] perfected," as they received the chassis at some point in 2011. Plaintiff perfected its security interest on June 11, 2009."

2. What's the difference between knowing of the existence of a security interest and knowing that a debtor's sale of the collateral violates the secured party's rights?

Basically, knowing that a sale violates the secured party's rights requires knowing that by selling the collateral, the debtor is violating the contract rights of the secured party, such as knowledge that the security agreement prohibits disposition of the collateral. Knowledge of the security interest is not – in itself – disqualifying.

3. Would the result have changed if the agreement between plaintiff and Wolverine prohibited the sale or delivery of the fire trucks to the Fire Districts?

No.

If there was such a prohibition and the Fire Districts knew about it?

Yes.

Would the timing of such knowledge be important?

To be disqualified, the buyer must know at the time she buys. UCC s.1-201(b)(9).

4. Inasmuch as the agreement between plaintiff and Wolverine did not prohibit sale or delivery of the fire trucks to the Fire Districts, isn't there an argument that the Fire Districts should win even if they hadn't been buyers in the ordinary course and had lost under both 9-317 and 9-320? See UCC s.9-315(a)(1) (A security interest continues in collateral notwithstanding disposition thereof unless the secured party authorized the disposition free of the security interest.).

The argument is that based on all the facts, including the secured party's knowledge that the goods were being sold to the Fire Districts, that the secured party implicitly authorized the sale of the collateral and thereby waived its security interest. The problem is that a security interest is not lost unless section 9-315(a)(1) simply because the secured party authorizes sale of the collateral. The secured party must have authorized sale "free of the security interest."

5. Would the buyers have taken free of GMAC's security interest under section 9-320 if they were buyers in the ordinary course of business from Wolverine?

No. Section 9-320(a) only protects against security interests created by the buyer's seller, which was Wolverine, not security interests created by the plaintiff.

Would the buyers have otherwise prevailed over GMAC?

Two arguments. Wolverine took free of GMAC's interest under 9-320(a), which means that Wolverine's priority over GMAC sheltered the buyers. Or maybe GMAC had authorized the sale by plaintiff to Wolverine free of its security interest and lost its interest under 9-315(a)(1).

TEXT P. 507. 2.4 PROBLEMS: Buyer in the Ordinary Course of Business and Secured Parties

1. Our Store sells new and used collators and booklet makers. Our Buyer buys a collator from Our Store. In determining whether Our Buyer is a buyer in the ordinary course of business, is it relevant whether:

Our Buyer pays cash or buys on credit? No.

Our Buyer is an individual or a business? No.

Our Buyer buys a new or used machine? No.

Our Buyer knows that Our Bank has a security interest In Our Store's inventory? No.

2. Our Bank has a security interest on all of the inventory of Our Store. If Our Buyer buys a new collator from Our Store will it take free of Our Bank's security interest? Yes [if Our Buyer is a buyer in the ordinary course of business].

What if Our Bank has perfected its security interest? Doesn't matter.

What if Our Buyer knows of the existence of Our Bank's security interest? Doesn't matter.

What if the collator is a used collator? Doesn't matter.

3. Our Store, a sporting goods company, buys a Bourg BST-10 booklet maker to produce booklets about its various products. Our Bank has a perfected security interest in all of Our Store's equipment. If Our Store sells the Bourg BST-10 to Our Buyer, can Our Buyer be a buyer in the ordinary course of business? No.

If Our Buyer later sells that same Bourg BST-10 to Another Buyer, can Another Buyer be a buyer in the ordinary course of business? Yes.

If so, can B take free from Bank's security interest? No.

4. Our Bank loaned money to Our Store, which deals in timber and wood products, to buy standing timber on land belonging to third parties. Our Store cut, processed, and sold the timber to Our Buyer, a lumber mill. Our Bank claims a perfected security interest in the lumber under a security agreement describing the collateral as all "the debtor's inventory, receivables, farm products, and products and proceeds." Even so, Our Buyer would take free of such an interest under 9-320(a). Fordyce Bank & Trust Co. v. Bean Timberland, Inc., 369 Ark. 90, 251 S.W.3d 267 (2007). Suppose, however, that Our Store sold the standing timber directly to Our Buyer, the mill. Did Our Bank have a security interest in the standing timber? 9- 102(a)(44), (34) & (35). Would the mill take free under 9-320(a)?

As defined by Article 9, goods includes standing timber "that is to be" cut and removed under a conveyance or contract for sale. In this case, at the time of sale, the timber was not cut and removed but was sold still standing. Not certain this affects Bank having acquired a security interest if the Bank and Store intended Store to have first cut and then sell the timber. If Bank has a security interest, and if the Buyer – having bought

standing timber -- bought "goods," it's not certain that a sale by Our Store of standing timber – as opposed to cut timber – is a sale of goods of the kind Our Store is in the business of selling.

TEXT P. 508. Crestmark Bank v. Electrolux Home Prod., Inc.

2.4.1 Questions and problems based on Crestmark (p. 515)

1. A different reason explained the outcome with respect to each of the three categories of property in dispute. What were the result and reasoning with respect to the:

a. Finished parts?

Plaintiff had a security interest in the parts, but defendant did not qualify as a buyer in the ordinary course of business because the definition requires that the buyer has taken possession of the goods or has a right to recover the goods under Article 2. The defendant had not taken possession; and, the court said, "no evidence documents the specific component parts in question or any advanced payments or commitments Electrolux may have made that might suffice to establish its possessory interest or right of recovery in those specific component parts, as required to be a buyer in ordinary course of business." The court, however, doesn't account for the possibility that the finished parts had been identified to the contract of law, which would have given the defendant buyer an interest and possible rights of specific performance or replevin. UCC s.s.2-501, 2-716.

b. Raw materials?

Basically, Electrolux sold the raw materials to Tarheel on unsecured credit. Title passed to Tarheel. Bank's security interest attached. Electrolux was left with no interest in the goods.

c. Tooling and molds listed on the 2011 UCC statement?

Tarheel had no rights in the goods to which Bank's security interest could attach. The tools belonged to Electrolux, and Taheel had no rights beyond that of a mere bailee.

2. What could Electrolux had done to protect itself with respect to the finished parts? Does the court's decision in Arthur Glick, on when a person becomes a buyer in the ordinary course, conflict with the decision on this issue in Crestmark? The court in Arthur Glick decided that a buyer becomes such upon "identification" of the goods. See UCC s.2-501. The court in Crestmark seems not to have considered this possibility.

3. How and why were the finished parts and raw materials treated differently by the court?

The court decided that the finished parts, which were subject to the Bank's security interest, had not yet been sold to Electrolux so as to give Electrolux any rights to the parts. Bank had an interest; Electrolux did not. The raw materials were sold to Tarheel by Electrolux; the goods were delivered and title passed to Tarheel leaving Electrolux with no interest in them; and, because Tarheel acquired title to the raw materials, Bank's security interest attached to them. Once again, Bank had an interest; Electrolux did not.

4. Did Electrolux really have a "security interest" in any tooling and molds?

The court says that the parties agreed that the tooling and molds were owned by Electrolux. It then says that the record does not establish the rights of each party with respect to the property. But, if the arrangement was a true bailment, Electrolux had title, not a security interest; and Tarheel had no rights to which the Bank's security interest could attach. But the court treats the dispute over the tools and molds as a conflict between competing security interests, with Electrolux clearing winning the dispute as to the goods listed in Electrolux's 2011, surely precautionary UCC filing.

5. Must a bailor file anything anywhere in order to protect its rights in the property against third-party claims? No.

If not, why treat the two sets of tooling and molds differently?

The court decided that the tools listed in Electrolux's 2011, precautionary UCC filing were "indisputably the property of defendant at the time Tarheel ceased operations, and at no time did plaintiff have any rights to this equipment." The court didn't decide with respect to the other tools because the record was unclear on the different parties' rights to this property. But, if the arrangement was a true bailment, Electrolux owned these, too, and neither Tarheel nor the Bank could have acquired an interest in the property.

6. Why didn't Electrolux win with respect to all the tools and molds?

The record was unclear on the parties' rights to the tools beyond those listed in Electrolux's 2011 UCC filing.

7. Does the notion of "rights by estoppel" fit somewhere, somehow in this analysis?

It could be argued that even if the arrangement between Electrolux and Tarheel with respect to the tools was a true bailment under which Tarheel acquired no rights, Electrolux was nevertheless estopped to deny that Tarheel had rights because the arrangement (possession and use) would lead the bank to believe the tools belonged to Tarheel. Perhaps this explains by Electrolux, as a precaution, filed financing statements covering the tools.

8. Apparently, Crestmark was liable for conversion. Why then did Electrolux lose the summary judgment for conversion? With respect to conversion liability, is this case consistent with Bank of Parish, supra?

The court said: "It is not clear what, if any, damages inure to defendant/counter-plaintiff on this claim, and none is specified in its pleading; nonetheless, this matter presents a triable is-sue of fact." Crestmark is mostly consistent with Bank of Parish. In the latter case, the court held that a subordinate creditor will only become liable for conduct that interferes with the secured party's rights to the collateral, such as refusing a demand to turn over the collateral. In Crestmark, the Bank refused to release the tools.

TEXT P. 523. 3.3 PROBLEM: Conditional Authorization

S has a perfected security interest in D's equipment. S authorizes D to sell the equipment on the condition that the proceeds from the sale are paid to it. D sells the equipment to X and uses the sales proceeds to pay L, a bankruptcy lawyer, to file D's Chapter 11 petition. Does S still have a security interest in the equipment?

First, there is no waiver of the security interest unless the sale is authorized free of the security interest. Second, even if there is a waiver, there is the question whether failure of the condition negates the waiver. As the text accompanying the problem reports, the courts are divided.

TEXT P. 526. 4.2 PROBLEMS: Consumers Selling to Other Consumers [NB: There are some typos in the cross-references to these problems as they appear in the TEXT !]

1. OUR STORE APPLIANCES sells OUR BUYER a $7,000 flat screen plasma television on credit and retains a security interest. OUR BUYER uses the television in his game room. OUR BUYER sells the television to ANOTHER BUYER. In determining whether ANOTHER BUYER takes free from OUR STORE APPLIANCES's security interest, is it relevant

a. Who ANOTHER BUYER is and how ANOTHER BUYER will be using the television?

b. Whether OUR STORE APPLIANCES has filed a financing statement?

c. Whether ANOTHER BUYER knows of OUR STORE APPLIANCES's security interest?

d. Do you think that OUR STORE APPLIANCES files a financing statement when it sells a $7,000 television on credit? When it sells a $170 television on credit?

2. Questions about security interests

"Because the Bertones purchased the boat for value from another consumer, intended to use the boat for household purposes, and did not have knowledge of the Bank's security interest, their ownership rights are superior to those of the Bank. Article 9 imposes the burden on the party most able to insulate itself from risk. Here, the Bank had the option of filing a financing statement to ensure its priority in this factual situation, even though it was not required to file to perfect its PMSI. G.L. c. 106, s. 9-320(b)(4). The Bank chose not to avail itself of the additional protection afforded by filing a financing statement."

C. WHAT ARE THE SECURED PARTY'S RIGHTS TO THE PROCEEDS FROM

THE SALE OF THE COLLATERAL? (p. 536)

3. Problem: review questions on right to proceeds (p. 538)

1. Our Bank (B) makes a $35,000,000 loan to Our Store (S) to enable S to buy a new tractor. To secure the loan, B takes a security interest in the tractor. J later trades the tractor for a back-hoe. Does B have a security interest in the backhoe?

Yes

2. Same facts as Q1, but S later sells the tractor. Does B have a security interest in the proceeds from the sale?

Yes.

3. Same facts as Q1, but S later leases the tractor. Does B have a security interest in the lease payments?

Yes. Does it matter whether the transaction is a true lease or a lease intended as security? No.

4. Suppose S receives cash that clearly is proceeds subject to B's security interest and then deposits the proceeds in a bank account. Does the security interest continue?

Yes.

5. Our Supplier has a security interest in the inventory of Our Store (S), a dealer in tire sales and auto repairs. While the security agreement required S to deposit proceeds from the sale of tires in a separate bank account, S instead deposits proceeds in its general bank account at Our Bank. At the time, the proceeds were first deposited in that account, the account balance was 100. Proceeds of 50 were deposited bringing the account balance to 150. Then 110 was withdrawn from the account bringing the account balance down to 40. Then 80 of non-proceeds were deposited bringing the account balance up to 120. To what extent does Our Supplier have a security interest in S's bank account?

$40.

6. Secured party had a perfected security interest in a medical provider's nuclear stress test camera and the proceeds and products thereof. Does this security interest reach the provider's accounts generated solely through use of the camera? In re Gamma Center, Inc., 489 B.R. 688 (Bankr. N.D. Ohio 2013).

No.

The court reasoned:

In arguing that Debtor's accounts receivable are proceeds of the Camera, the Bank relies on the part of the definition that "[w]hatever is collected on, or distributed on account of, collateral" is proceeds. The Bank reasons that use of the Camera by Debtor resulted in a right to payment, or the accounts receivable, and that right to payment is proceeds of the Camera "since payment was certainly collected on account of the Camera." The court finds the Bank's argument flawed in several respects.

First, the Bank reasons that because the nature of Debtor's medical practice was nuclear heart stress testing and because its collateral is the nuclear stress test Camera, then "it only stands to reason that the collateral was the primary, if not exclusive, generator of accounts receivable..." This contention, however, assumes facts not in evidence. The record is silent with respect to how Debtor's accounts receivable were generated. For example, the record is silent as to whether the accounts receivable were generated simply by use of the Camera or whether there was another ingredient in the generation of the accounts, such as the expertise and services of physicians comprising Debtor's medical practice. The record is silent as to whether the Camera produced an image that was then interpreted by the physicians. To the extent that the accounts receivable include the value of services rendered by the physicians, and are from an indistinguishable mixture of services and other assets of the business operation, they were not exclusively generated by the Camera. The record is also silent as to whether the Camera was the only camera or equipment that was used by Debtor's medical practice. This lack of evidence alone precludes a finding on summary judgment that the Bank has a security interest in all of Debtor's accounts receivable and funds collected thereon.

Nevertheless, the court also finds the Banks reasoning faulty in other respects. Even if Debtor's accounts receivable were generated solely by use of the Camera, the funds collected by Plaintiff were "collected on" the accounts receivable, not "collected on" the Camera. While those funds are proceeds of the accounts receivable, they are proceeds of the collateral only if the accounts receivable are themselves proceeds of the Camera. Because the accounts receivable represent debt owed to Debtor or a right to payment, it strains the statutory language to conclude that Debtor's accounts receivable constitute something that is "collected on" the Camera. Unlike, for instance, a right to payment under a contract where the contract is collateral securing an obligation, there is no right to payment that is generated by, or arises out of, the Camera itself.

In addition, according to the Bank, the accounts receivable were generated by use of the Camera. The Bank argues that the words "on account of, collateral" in s. 1309.102(A)(64)(b) includes money collected from the use of the collateral. However, the entire provision states "[w]hatever is collected on, or distributed on account of, collateral." Ohio Rev.Code s. 1309.102(A)(64)(b). As shown by the comma after the word "on," the phrase "on account of" modifies "distributed," not "collected." There was no distribution on account of the Camera, there was only funds collected on Debtor's accounts receivable. The Bank cites no authority that supports its position, and the court is not persuaded, that accounts receivable or funds collected thereon as the result of using equipment collateral constitute proceeds under the UCC. In re Gamma Ctr., Inc., 489 B.R. 688, 695–96 (Bankr. N.D. Ohio 2013)

7. Our Bank (B) makes a $35,000,000 loan to Our Store (S) to enable S to buy a new tractor. To secure the loan, B takes a security interest in the tractor. It is later destroyed. Does B have a security interest in the insurance proceeds? UCC s.9-102(a)(64)(E).

Yes.

8. Does UCS's security interest attach to any settlement and its proceeds? UCC s.9-102(a)(54)(D).

The UCC definition of "proceeds" includes within its scope whatever is acquired upon disposition of collateral, all rights arising out of collateral, and includes all claims arising out of the loss of, or damage to, collateral. Idaho Code s. 28–9–102(64) (emphasis added). All of the categories listed in Debtors' damage analysis stem from either damage to Debtors' cows or from the loss of milk and cows. Even the "miscellaneous" and "labor" categories arise from damage to or loss of cows and milk because they represent expenses such as veterinarian bills and the Debtors' extra labor costs associated with dealing with the electrical problem affecting the cows. The same is true with respect to Debtors' claim for punitive damages. Thus, given these facts, the Court concludes Debtors' claims against Gietzen arose out of the loss of, and damage to, UCB's collateral, the cows and milk. Under the language employed in Idaho Code s. 28–9–102(64), any Gietzen settlement payment represents compensation to Debtors for the loss of and damage to UCB's collateral and must be considered proceeds.

9. Our Bank has a security interest in Our Store's inventory. OUR STORE orders inventory from Our Supplier who fails to deliver the goods. Does Our Bank have a security interest in Our Store's breach of contract claim against Supplier? See UCC 9-102(a)(64).

The cause of action against Supplier is not a kind of property that constitutes proceeds in this case. The cause of action did not result from a "disposition" and does not constitute "rights arising out of collateral." U.C.C. s.9-102(a)(64). The action arises from a breach of contract. Compare In re Hall, 2010 WL 1730684, at *3 (Bankr. D. Kan. 2010) (claim for damages based on defects in collateral); In re Wiersma, 283 B.R. 294 (Bankr. D. Idaho 2002), aff'd, 324 B.R. 92 (B.A.P. 9th Cir. 2005), aff'd in part, rev'd in part on other grounds, 483 F.3d 933 (9th Cir. 2007), and aff'd in part, 227 F. App'x 603 (9th Cir. 2007) (cause of action for harm to debtors' cows resulting from faulty electrical work at dairy).

10. Our Supplier has a security interest in certain inventory of computers Our Supplier sold to Our Store. OUR BUYER buys one of these computers from Our Store on credit pursuant to an installment sales contract that gives Our Store a security interest in the computer. Does Our Supplier have a security interest in the contract?

Yes.

What happens if Our Store sells the contract to a third person?

See Chapter 8, infra.