

personal property

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Security Interests in Personal Property

Personal property consists of tangible property such as automobiles, furniture, and jewelry as well as intangible property such as securities, patents, and copyrights. The law provides for various types of security interests and liens in personal property by sellers of goods and providers of service.



Entrepreneur and the Law

Artisan's and Mechanic's Lien

If a worker in the ordinary course of business works on or provides materials to another person with respect to goods, most states have statutes that grant an **artisan's** or **mechanic's lien** on the goods until the work or materials are paid for. For example, if an owner takes his or her car into an automobile service department or body shop for repairs, the mechanic who repairs the car has an *automatic lien* on the car in the amount of the services and materials provided to repair the car. If the car owner refuses or fails to pay the bill, the mechanic can sell the car to pay off the lien.

The following rules apply to artisan's and mechanic's liens:

- The owner of an automobile or other good authorizes an artisan or mechanic to repair the good.
- The artisan or mechanic does the work and provides the materials as requested.
- The owner does not pay for the services rendered and materials provided.
- The artisan or mechanic gives the required notices and sells the automobile or other good pursuant to the requirements of the relevant state statute.
- If the sale proceeds exceed the amount of the artisan's or mechanic's lien, the balance is paid to other lien holders in the goods, and then to the owner.
- Artisan's and mechanic's liens are given priority over any existing lien on the goods. Artisan's and mechanic's liens are therefore called **super-priority liens**.

Contemporary Business Environment

Collection Remedies

When a debt is past due, the creditor may bring a legal action against the debtor. If the creditor is successful, the court will award a **judgment** against the debtor. The judgment will state that the debtor owes the creditor a specific sum of money. The amount usually consists of principal and interest past due on the debt, other costs resulting from the debtor's default, and court costs.

The most common collection remedies are:

1. **Attachment** A prejudgment court order that permits the seizure of the debtor's property while the lawsuit is pending. To obtain a *writ of attachment*, a creditor must follow the procedures of state law, give the debtor notice, and post a bond with the court.
2. **Execution** A postjudgment court order that permits the seizure of the debtor's property that is in the possession of the debtor. Certain property is exempt from levy (e.g., tools of trade, clothing, homestead exemption). A *writ of execution* is a court order directing the sheriff to seize the debtor's property and authorizing a

judicial sale of that property. The proceeds are used to pay the creditor the amount of the final judgment. Any surplus must be paid to the debtor.

3. **Garnishment** A postjudgment court order that permits the seizure of the debtor's property in the possession of third parties. The creditor (also known as the **garnishor**) must go to court to seek a *writ of garnishment*. The third person is called the **garnishee**. Common garnishees are employers who possess wages due a debtor, banks in possession of funds belonging to the debtor, and other third parties in the possession of property of the debtor.

To protect debtors from abusive and excessive garnishment actions by creditors, Congress enacted Title III of the Consumer Credit Protection Act [15 U.S.C. § 1601 et seq.]. This law allows debtors who are subject to a writ of garnishment to retain the greater of (1) 75 percent of their weekly disposable earnings (after taxes) or (2) an amount equal to 30 hours of work paid at federal minimum wage. State law limitations on garnishment control are more stringent than federal law.

the Inter-American Development Bank (comprised of Latin American countries).

National governments often extend credit to private businesses to stimulate export sales. For example, the **Export-Import Bank (Eximbank)** supports U.S. companies engaged in exporting by lending overseas buyers funds at below-market rates of interest to purchase U.S.-made goods. The Eximbank also provides loan guarantees and insurance to foreign buyers of U.S. products. Credits

have been extended for the purchase of agricultural products, heavy machinery, airplanes, and such. The Eximbank often works closely with commercial banks in structuring credit to foreign buyers.

As international trade continues to develop and become more important to the United States and other countries, credit will become more available to finance international investment and trade.

End-of-Chapter Internet Exercises and Case Questions



Working the Web Internet Exercises

Activities

1. For an overview of the pervasiveness and importance of credit in the United States and the world economy, see www.equifax.com.
2. For a definition and examples of suretyship, see www.lectlaw.com/def2/s208.htm.
3. Check your state law. Does your state have "Assignment for the Benefit of Creditors?" See Legal Information Institute (LII) Secured Transactions Law Overview at www.law.cornell.edu/topics/secured_transactions.html.



Critical Legal Thinking Cases

26.1. On April 25, 1985, Ozark Financial Services (Ozark) loaned money to Lonnie and Patsy Turner to purchase a tractor truck unit. The Turners signed a security agreement giving Ozark a security interest in the tractor truck. Ozark properly filed a financing statement giving public notice of its security interest. In June 1985, the Turners took the truck to Pete & Sons Garage, Inc. (Pete & Sons), for repairs. When the Turners arrived to pick up the truck, they could not pay for the repairs. Pete & Sons returned the truck to the Turners upon their verbal agreement that if they did not pay for the repairs, they would return the truck to Pete & Sons. The Turners did not pay Pete & Sons for the repair services and defaulted on the loan payments due Ozark. Ozark brought this action to recover the truck under its security agreement. Pete & Sons asserts that it has a common law artisan's lien on the truck for the unpaid repair services that it claims takes priority over Ozark's security interest. Who wins? [*Ozark Financial Services v. Turner*, 735 S.W.2d 374 (Mo. App. 1987)]

26.2. On November 8, 1983, Philip and Rosemary Coman entered into a contract to sell the real property known as 9 Woodland Drive, Crete, Illinois, to Robert Talbot for \$120,000. On November 15, 1983, Talbot applied for a \$96,000 loan from Pathway Financial (Pathway). Without telling Pathway, Talbot also obtained a \$24,000 loan from Skidmore, Owings & Merrill (Skidmore), the sellers'

employer. At the closing on December 13, 1983, Pathway issued a check to the Comans, and Talbot gave his \$96,000 note and mortgage to Pathway. Talbot paid the remainder of the purchase price—\$24,000—in cash. Some of the cash was given to him as a gift from his parents. On December 15, 1983, Talbot, without giving notice to Pathway, executed a \$24,000 note and trust deed to Skidmore. Skidmore filed its trust deed with the Will County recorder's office on December 27, 1983. Pathway filed the deed from the Comans to Talbot and its mortgage from Talbot with the Will County recorder's office later in the day on December 27, 1983. When Talbot defaulted on the loans, both Pathway and Skidmore filed foreclosure actions that were consolidated. Which lien has priority? [*Skidmore, Owings & Merrill v. Pathway Financial*, 527 N.E.2d 1033 (Ill. App.1988)]

26.3. Ironwood Exploration, Inc. (Ironwood), owned a lease on oil and gas property located in Duchesne County, Utah. Ironwood contracted to have Lantz Drilling and Exploration Company, Inc. (Lantz), drill an oil well on the property. Thereafter, Lantz rented equipment from Graco Fishing and Rental Tools, Inc. (Graco), for use in drilling the well. Graco billed Lantz for these rentals, but Lantz did not pay. Graco filed a notice of a material person lien on the well in the amount of \$19,766. Ironwood, which had paid Lantz, refused to pay Graco. Graco sued to foreclose on its material person lien. Who wins? [*Graco Fishing and Rental Tools, Inc. v. Ironwood Exploration, Inc.*, 766 P.2d 1074 (UT 1988)]