COMMERCIAL TORT CLAIMS: ARTICLE 9's ILL-FITTING PUZZLE PIECE

Abstract: Lending is a cornerstone of the American economy. Historically, lending practices were informal and relied on personal relationships and trust. As economies grew and trade expanded, a need for a more structured system of lending arose. This led to the rise of secured transactions. Secured transactions allow borrowers to grant security interest in their assets to creditors. The security interest reduces risk for creditors because it allows them to seize the borrower's assets to recover any loans in the event the borrower defaults. Borrowers also benefit from secured transactions because they have access to larger levels of financing, often at lower interest rates. To bring uniformity among states regarding secured transactions, the American Law Institute and the Uniform Law Commission developed Article 9 of the Uniform Commercial Code (UCC). Nevertheless, even with these provisions in place, secured transactions still face unique challenges. The 2001 revision of the UCC allowed borrowers to grant lenders a security interest in their commercial tort claims. While this allowed for new lending opportunities, it also introduced risks. Section 9-108(e)(1) of the UCC requires borrowers and creditors to specifically identify commercial tort claims in security agreements designed to establish and perfect security interest. Moreover, section 9-204(b)(2) prohibits lenders from having security interests in any commercial tort claims that arise after the debtor has signed the security agreement. These provisions have caused numerous issues for creditors. Many creditors establish security interest in all a debtor's assets, only to find that they do not have security interest in the debtor's commercial tort claims because of section 9-108(e)(1) and section 9-204(b)(2). This Note argues that section 9-108(e)(1) and section 9-204(b)(2) must be removed to allow for more efficient handling of security interests in commercial tort claims.

INTRODUCTION

As of the third fiscal quarter of 2025, the total debt burden across American households had reached a staggering $18.585 trillion.[1] In many ways, lending is a pillar of the American economy.[2] Lending stimulates the economy

[1] Jack Caporal, *Average American Household Debt in 2025: Facts and Figures*, MOTLEY FOOL MONEY, https://www.fool.com/money/research/average-household-debt/?FG_ID=kl_biallo%2Ckl_biallo%2Ckl_biallo%2Ckl_biallo# [https://perma.cc/95RS-YXU9] (Mar. 4, 2025).

[2] *See* Ngina Chiteji & Lowell R. Ricketts, *When Does It Make Sense for Households to Borrow?*, FED. RSRV. BANK OF ST. LOUIS (Jan. 24, 2024), https://www.stlouisfed.org/open-vault/2024/jan/when-household-borrowing-makes-sense# [https://perma.cc/AP6K-2UBW] (noting that lending is important to the economy); *Business Lending Acts as a Critical Lubricant for the American Economy*, FIRST UTAH BANK, https://firstutahbank.com/business-lending-acts-as-a-critical-lubricant-for-the-american-economy/# [https://perma.cc/KAX5-HR2P] (stating that business lending is important to the growth

by providing financial support for expanding businesses, new ventures, and large purchases.[3] In the United States, lending traces back to the early days of commerce, when lenders (also known as creditors) and borrowers (also known as debtors) relied mainly on personal relationships and informal agreements to reinforce a loan.[4] The growth of the U.S. economy and the expansion of interstate trade brought forth a need for more structured and reliable lending practices.[5] Thus, lawmakers introduced an arrangement where borrowers grant creditors a security interest in their assets as collateral for a loan—also known as a secured transaction.[6]

The introduction of secured transactions substantially altered how lending worked in the U.S.[7] The introduction of secured transactions empowered bor-

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of companies, stimulating the economy); M. GREG BRASWELL & ELIZABETH CHERNOW, U.S. FED. TRADE COMM'N, CONSUMER CREDIT LAW & PRACTICE IN THE U.S. 1, https://www.ftc.gov/sites/default/files/attachments/training-materials/law_practice.pdf [https://perma.cc/AT6W-HDL3] (explaining that consumer credit stimulates economic growth because it allows consumers to borrow funds easily).

[3] Raghavi Kasa, *Lending and Lenders: A Comprehensive Guide*, RAZORPAY (Nov. 13, 2023), https://razorpay.com/learn/business-banking/lending-and-lenders/# [https://perma.cc/BR92-52JQ]; BRASWELL & CHERNOW, *supra* note 2.

[4] *See, e.g.*, K-Sue Park, *Money, Mortgages, and the Conquest of America*, 41 LAW & SOC. INQUIRY 1006, 1019 (2016) (explaining that in the early days of lending, networks of relationships allowed lenders to use "book accounts" to keep track of loans and the lenders expected individuals to pay loans off at regular intervals); *A Brief History of Loans: Business Lending Through the Ages*, BECOME, https://www.become.co/blog/a-brief-history-of-loans-business-lending-through-the-ages/ [https://perma.cc/3ZKV-J8DF] (noting that farmers would borrow seeds and promise to pay the lender back using livestock).

[5] *See* Fairfax Leary, Jr., *Secured Transactions—Revolution or Evolution*, 22 U. MIA. L. REV. 54, 58 (1967) (explaining that the growth of the country led to the decline of conditional sales and brought forth a recording system for grantors and grantees).

[6] *See* U.C.C. § 1-201(b)(35) (A.L.I. & UNIF. L. COMM'N 2022) (defining security interest as an interest in personal property or fixtures that ensures the fulfilment of a debt or obligation); Heywood Fleisig, *Secured Transactions: The Power of Collateral*, 33 FIN. & DEV., June 1996, at 44 (stating that lawmakers created secured transactions to curb increased risks associated with lending). A security interest is a legal claim on specific assets that ensures the payment or fulfilment of a loan. *Security Interest*, WESTLAW, https://content.next.westlaw.com/practical-law/document/I03f4d852eee311e28578f7ccc38dcbee/Security-Interest?viewType=FullText&transitionType=Default&contextData=(sc.Default) [https://perma.cc/6ZMC-PE9A]. The law defines the asset underlying a legal claim as collateral. U.C.C. § 9-102(a)(12).

[7] *See* Yaron Leitner, *Using Collateral to Secure Loans*, 2006 FED. RSRV. BANK PHILA. BUS. REV. 9, 9 n.1 (disclosing that in 2005, more than fifty percent of commercial and industrial loans that banks in the U.S. distributed were secured loans); Ian Koplin, *Secured Financing Volume Reached Nearly $4.9T in 2022*, ABFJOURNAL (June 6, 2023), https://www.abfjournal.com/dailynews/secured-financing-volume-reached-nearly-4-9t-in-2022/ [https://perma.cc/KP3Z-YZPV] (expressing that secured financing in the United States totaled almost $4.9 trillion for commercial businesses alone in 2022); MAXIMIZE MKT. RSCH., ASSET-BASED LENDING MARKET: GLOBAL INDUSTRY ANALYSIS AND FORECAST (2025–2032) (2025), https://www.maximizemarketresearch.com/market-report/asset-based-lending-market/189641/ [https://perma.cc/HR2G-JG2S] (noting that the global asset based lending market was worth $696.13 billion in 2024); GLOBE NEWSWIRE, ASSET-BASED LENDING MARKET WORTH $1.28 TRILLION BY 2033—GLOBAL MARKET OPPORTUNITIES AND STRATEGIES FEATURING STRATEGIC ANALYSIS OF BANCO SANTANDER, BNP PARIBAS, SUMITOMO MITSUI BANKING CORP, AND MORE

rowers because providing a security interest in their assets gave them access to higher levels of capital—at lower interest rates—than they could otherwise obtain.[8] Lenders were able to mitigate risks because if the borrower defaulted, they could seize collateral to recover their loan.[9] Lending, however, still involved many risks for lenders, even though they had a security interest protecting their loan.[10] With the rise of complex business transactions and interstate trade, lenders of secured loans faced numerous issues.[11] To combat these issues, the American Law Institute (ALI) and the Uniform Law Commission (ULC) established the Uniform Commercial Code (UCC) in the 1950s to provide a set of rules aiding lenders seeking to mitigate risks.[12] Article 9 of the UCC sets forth the guidelines for enforcing security interests, making it easier

(2024), https://www.globenewswire.com/news-release/2024/07/23/2917503/28124/en/Asset-based-Lending-Market-Worth-1-28-Trillion-by-2033-Global-Market-Opportunities-and-Strategies-Featuring-Strategic-Analysis-of-Banco-Santander-BNP-Paribas-Sumitomo-Mitsui-Bankin.html [https://perma.cc/Q972-ZF86] (explaining that projections estimate the global asset-based lending market will grow to $1.28 trillion by 2033).

[8] *Securing Transactions: Understanding the Basics of Secured Transaction Law*, MONTAGUE L., https://montague.law/blog/securing-transactions-understanding-secured-transaction-law/# [https://perma.cc/2EMA-TF5S]. A debtor defaults on their loan when they fail to make payments on their debt or their interest accrued from the debt. James Chen, *Default: What It Means, What Happens When You Default, and Examples*, INVESTOPEDIA, https://www.investopedia.com/terms/d/default2.asp [https://perma.cc/9AD5-VUG6] (July 2, 2025).

[9] *Securing Transactions: Understanding the Basics of Secured Transaction Law*, *supra* note 8.

[10] *See* YORAM KEINAN, WORLD BANK PROJECT, THE EVOLUTION OF SECURED TRANSACTIONS 21 (2000), https://documents1.worldbank.org/curated/en/564371468780338375/pdf/wdr27827.pdf [https://perma.cc/38RC-RW64] (noting that prior to the Uniform Commercial Code's (UCC) implementation, creditors had to go through ineffective and expensive practices when securing a loan).

[11] *See* RICHARD F. DUNCAN, WILLIAM H. LYONS & CATHERINE LEE WILSON, LAW AND PRACTICE OF SECURED TRANSACTIONS § 1.01 (2011) (noting that laws surrounding security interest in property developed in response to complex transactions becoming more common); Peter Winship, *An Historical Overview of UCC Article 9* (noting that the devices lenders used to establish security interest were complex and that before Article 9, the rules surrounding secured transactions were not uniform) *in* SECURED TRANSACTIONS LAW REFORM: PRINCIPLES, POLICIES AND PRACTICE ch. 3, at 2 (Louise Gullifer & Orkun Akseli eds., 2016), https://scholar.smu.edu/cgi/viewcontent.cgi?article=1199&context=law_faculty [https://perma.cc/UW9T-W3KW]. Prior to Article 9, lenders had issues navigating the differing state laws to obtain security interests in multiple states and had to face judges that were antagonistic to lenders with security interests. Winship, *supra*, at 2.

[12] *See Basics of the Uniform Commercial Code (UCC)*, FIRST CORP. SOLS., https://ficoso.com/ucc/basics-of-the-uniform-commercial-code-ucc/ [https://perma.cc/GM2Q-MLN6] (stating that UCC drafters published the first version of the UCC in 1952); *In re* Nat'l Promoters & Servs., Inc., 499 B.R. 192, 200 (Bankr. D.P.R. 2013) (explaining that the UCC's purpose is to simplify transactions); *see also* Daniel Lias, *UCC Forms: What You Need to Know*, WOLTERS KLUWER https://www.wolterskluwer.com/en/expert-insights/what-you-need-to-know-about-common-uniform-commercial-code-forms#:~:text=The%20Uniform%20Commercial%20Code%20(UCC,transactions%2C%20and%20other%20business%20transactions [https://perma.cc/7GRY-4KE2] (Sep. 12, 2025) (noting that the UCC creates a consistent legal system for business transactions and makes interstate commerce easier).

for lenders to establish legally enforceable security interests in the assets of borrowers.[13]

Despite the added protection of the UCC rules, the reality of secured lending remains complicated.[14] Even though secured transactions have given lenders viable options to recover money they have loaned out, there are still significant risks involved in granting secured loans.[15] A common issue arises when a security interest is not truly attached to the borrower's collateral.[16] Under the UCC, for a security interest to be valid and enforceable, it must "attach" to the collateral; the parties can do this through a security agreement.[17] If

[13] *See* Adam Hayes, *Article 9: Secured Transactions Explained*, INVESTOPEDIA, https://www.investopedia.com/terms/a/article-9.asp#:~:text=our%20editorial%20policies-,What%20Is%20Article%209?,does%20not%20meet%20their%20obligations [https://perma.cc/F28C-WVCN] (Oct. 7, 2025) (explaining that Article 9 is a uniform set of rules that control a creditor's ability to create security interest in collateral).

[14] *See, e.g.*, John L. Kirtley & Maria L. Krieter, *Secured Lender Loses Security Interest Because It Was on "Inquiry Notice" of Its Customer's Fraudulent Conveyance*, GODFREY KAHN (Feb. 2, 2016), https://www.gklaw.com/Insights/Secured-lender-loses-security-interest-because-it-was-on-inquiry-notice-of-its-customer-s-fraudulent-conveyance-2016-02-02-1.htm [https://perma.cc/7JLV-2ES6] (explaining that a creditor lost security interest in collateral because it knew of its debtor's fraudulent conduct). For example, in 2016, in *Grede v. Bank of N.Y. Mellon Corp.* (*In re Sentinel Mgmt. Grp. Inc.*), Sentinel, a firm that used money from its clients to invest in securities, borrowed money from a bank to use for trading. 809 F.3d 958, 960 (7th Cir. 2016). To secure this loan, Sentinel improperly granted the bank security interest in the securities that it invested in on behalf of its clients. *Id.* at 960–61. Sentinel then filed for bankruptcy, leading to the bank trying to collect the securities to satisfy Sentinel's loan obligations. *Id.* at 961. The U.S. Court of Appeals for the Seventh Circuit held that the bank did not have security interest because the bank knew that Sentinel granted the security interest in securities not belonging to the firm but still accepted it. *Id.* at 966.

[15] *See* Bruce S. Nathan & David M. Banker, *The Hazards to Secured Status Caused by Minor Mistakes in a Security Agreement*, LOWENSTEIN SANDLER LLP (2015), https://www.lowenstein.com/media/3179/the-hazards-to-secured-status-caused-by-minor-mistakes.pdf [https://perma.cc/B3E9-3X73] (stating that there is a chance a lender may lose security interest in the collateral securing the loan if there are mistakes in completing the agreement where the debtor grants the creditor security interest in its collateral).

[16] *See, e.g.*, C.I.T. Fin. Servs. v. First Nat'l Bank, 344 So. 2d 125, 126 (Miss. 1977) (ruling that although the debtor assigned the creditor security interest in its collateral, the security interest did not attach because the debtor did not have rights to the collateral at the time the debtor granted the interest); *see also* U.C.C. § 9-102(a)(12) (A.L.I. & UNIF. L. COMM'N 2022) (defining collateral as property in which an entity has security interest or on which an entity has an agricultural lien). Security interest attaches to collateral when the security interest becomes enforceable against the debtor and the creditor can pursue collecting the collateral if the debtor does not meet its payment obligations. U.C.C. § 9-203(a); *see infra* note 90 and accompanying text (noting that attachment involves creditors giving value in exchange for rights in collateral).

[17] U.C.C. § 9-203(a) (noting that security interest attaches to collateral when the creditor can legally enforce it against the debtor). The security agreement outlines that the borrower is granting the lender security interest in said collateral. *See id.* § 9-102(a)(74) (defining a security agreement as a contract that establishes or outlines security interest); *id.* § 9-203(b)(3)(A) (requiring a debtor to authenticate a security agreement for the security interest to be enforceable). Parties can authenticate a security agreement by signing it. *Id.* § 9-102(a)(7)(A). In lieu of a security agreement, parties can also establish enforceable security interest through possession of the collateral, having a security certificate delivered to them, or controlling the collateral. *Id.*; *id.* § 9-203(B)–(D).

the lender fails to properly execute this agreement or the borrower does not have rights in the collateral, the security interest may fail to attach.[18] If a security interest does not attach, then the lender does not have a legal right to seize collateral in the event of default and they receive no protection from Article 9 of the UCC.[19]

Another common problem arises when lenders fail to perfect their security interest in the collateral.[20] Perfecting a security interest allows lenders to ensure that their security interest is legally recognized and enforceable against other creditors.[21] If a lender fails to properly perfect its interest, it risks losing priority over other creditors in debt recovery or losing its ability to recover the debt entirely.[22]

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[18] Nathan & Banker, *supra* note 15.

[19] *Id.* Article 9 of the UCC does not define "default." Christopher H. Oldham & Elizabeth A. Napps, *In the Ditch: Remedies and Enforcement upon Default Under the UCC*, A.B.A. (Mar. 2, 2023), https://businesslawtoday.org/2023/03/remedies-enforcement-upon-default-under-ucc-article-9/#:~:text=Default%20itself%20is%20not%20defined,secured%20party%20to%20exercise%20remedies [https://perma.cc/996B-5FRA]. As a result, the parties have the power to define when a debtor will have defaulted on the loan. *Id.* Once a debtor has failed to fulfill its obligations, the secured party will have rights to collect the collateral. *Id.*

[20] *See, e.g.*, Davis Forestry Prods., Inc. v. DownEast Power Co., LLC, 12 A.3d 1180, 1188 (Me. 2011) (ruling that a creditor lost priority to receive payment from a defaulting debtor because their security interest was unperfected). To perfect a security interest in collateral, a creditor must complete all required steps set out in Article 9 to ensure that third parties have notice of the interest and allow for a bankruptcy court to enforce it against others who may have security interest in the same collateral. *See Perfecting a Security Interest*, LAW OFF. OF MICHAEL J. POLACHEK, LTD. (Jan. 11, 2025), https://www.polacheklawfirm.com/perfecting-a-security-interest/# [https://perma.cc/6ER8-9TN3] (explaining the steps to perfection and that perfecting security interest in collateral puts everyone on notice about the creditor's interest in the property).

[21] *See* Hayes, *supra* note 13 (stating that perfection occurs when a creditor meets all requirements to establish priority over other creditors who have security interest in the same collateral); Elliot Weiss & Liza Kirillova, *Know Your Collateral When Perfecting Security Interests*, MICHELMAN & ROBINSON, LLP (Mar. 28, 2023), https://www.mrllp.com/know-your-collateral-when-perfecting-security-interests/#:~:text=The%20reason%3A%20perfecting%20a%20security,claims%20on%20a%20debtor%27s%20assets [https://perma.cc/3PFM-LUKE] (noting that perfecting security interests allows a creditor to have priority over other creditors). Perfecting a security interest typically entails filing specific paperwork on the collateral in a specific state, taking control of the collateral, or possessing the collateral. Stephen Fishman, *Attaching and Perfecting a Security Interest Under the UCC*, NOLO, https://www.nolo.com/legal-encyclopedia/how-attach-perfect-security-interest-under-the-ucc.html#3 [https://perma.cc/ESX8-FHAB] (May 10, 2023). Most creditors file a financing statement when looking to perfect security interest in a debtor's assets. *See id.* (noting that filing a financing statement is the most common form of perfecting security interest).

[22] *See Davis Forestry Prods., Inc.*, 12 A.3d at 1188 (ruling that a creditor lost priority in debt repayment from a defaulting debtor because their security interest was not perfected); *see infra* note 126 and accompanying text (stating that priority rules in Article 9 allow for creditors with perfected security interest to have a "first-in-line" claim to collateral). For example, if a debtor grants two creditors security interest in the same asset as collateral and the first creditor to have security interest does not complete all requirements to perfect its interest while the second creditor completes everything, the second creditor will have priority over the collateral and be able to use it to fulfil the debtor's payment obligations. *See* Fishman, *supra* note 21 (explaining that creditors with perfected security interest have priority over creditors with unperfected security interest). It is not uncommon for credi-

The UCC's secured transactions rules have continued to evolve to bring about heightened protection and meet the needs of lenders and borrowers.[23] In recent years, UCC drafters have allowed lenders to obtain a security interest in unconventional forms of collateral, including commercial tort claims.[24] These claims arise out of tortious acts committed against businesses or individuals.[25] Commercial tort claims can be highly valuable, especially when the claim involves a large corporation.[26]

Although establishing a security interest in commercial tort claims can provide great opportunities to recover debt, it also involves unique risks and challenges.[27] One of these challenges is the strict legal requirements in sections 9-108 and 9-204 of the UCC.[28]

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tors to realize, too late, that better-positioned claims have taken priority over theirs. *See, e.g.*, *Davis Forestry Prods., Inc.*, 12 A.3d at 1188 (stating that a creditor lost priority due to having unperfected security interest in the collateral). This issue underscores a critical challenge in the world of secured lending: despite the safeguards that secured transactions offer, there are numerous technicalities that can lead to the lender losing their right to the collateral, leaving them exposed to significant financial risk. *See Creditor's Rights Law Alert: Make Sure Your Security Interests Are in Place and Perfected*, HANCOCK ESTABROOK (July 29, 2020), https://www.hancocklaw.com/publications/creditors-rights-law-alert-make-sure-your-security-interests-are-in-place-and-perfected/#:~:text=Your%20failure%20to%20perfect%20a,obtaining%20title%20to%20your%20property [https://perma.cc/2HXB-WRT9] (noting that by not following Article 9's rules for perfection correctly, creditors can lose the ability to obtain their debtor's property, preventing them from receiving compensation for the debt).

[23] *See* Ben Halverson, *What Is UCC Article 9, and What Is It Used For?*, LORMAN (Jan. 7, 2020), https://www.lorman.com/resources/what-is-ucc-article-9-and-what-is-it-used-for-17413 [https://perma.cc/AKU7-X6D5] (stating that Article 9 has undergone multiple revisions).

[24] John L. McCabe & Arthur H. Travers, *Introducing Revised Article 9 of the Uniform Commercial Code*, COLO. L., Sep. 2001, at 9, 9, 13.

[25] U.C.C. § 9-102(a)(13) (A.L.I. & UNIF. L. COMM'N 2022). Under Article 9, a commercial tort claim is a claim arising in tort from a business. *Id.* A commercial tort claim can also arise from an individual based on a tort that occurred during the course of the individual's business or profession as long as it does not include damages due to personal injury or death. *Id.*; *see infra* notes 144–145 and accompanying text (providing an in-depth definition of commercial tort claims). Some commercial torts include tortious interference, restraint of trade, unfair competition, fraudulent misrepresentation, and shareholder oppression and derivative actions. *The Different Types of Business Torts*, FELDMAN & FELDMAN (Sep. 11, 2024), https://feldman.law/news/the-different-types-of-business-torts/ [https://perma.cc/Z4PG-DBHL].

[26] *See Contracts and Business Claims*, FRIEDMAN RUBIN, https://friedmanrubin.com/verdicts-and-settlements/business-torts/ [https://perma.cc/W9SD-M9NQ] (describing a commercial tort claim between State Farm and a former employee that led to State Farm paying out a $152 million verdict).

[27] *See* Stephen L. Sepinuck, *Gotcha! Caught in the Explicitness Trap*, A.B.A.: BUS. L. TODAY (Aug. 15, 2018), https://businesslawtoday.org/2018/08/gotcha-caught-explicitness-trap/ [https://perma.cc/B7ZL-TE9H] (noting that Article 9 is problematic for creditors because it requires special rules for describing commercial tort claims in security agreements).

[28] *See* Sarah B. Boehm & Shawn R. Fox, *Commercial Tort Collateral: Ain't No Sunshine When It's Gone*, AM. BANKR. INST. J. (Oct. 2023), https://media.mcguirewoods.com/publications/2023/commercial-tort-collateral-aint-no-sunshine-when-its-gone.pdf [https://perma.cc/YJZ5-23HD] (noting the various issues that result from § 9-108(a) of the UCC); *infra* notes 194–208 and accompanying text (outlining the various problems that arise due to UCC § 9-204).

Under section 9-108(e)(1) of the UCC, lenders must specifically identify commercial tort claims in security agreements.[29] This means that a lender must clearly label the claim in the security agreement for the security interest to attach to the collateral.[30] Vagueness in the creditor's description of the claim leads to the creditor losing security interest in the commercial tort claim because of a failure to "attach."[31] Section 9-204(b)(2) of the UCC further complicates rules surrounding commercial tort claims by limiting the scope of the claims in which creditors can have a security interest.[32] This provision prohibits lenders from having a security interest in any tort claims that arise after the debtor executes the security agreement.[33] A creditor cannot be aware of all the tort claims that will arise at the time of the execution of the security agreement.[34] Therefore, as a result of these provisions, lenders face great risks as they could lose their security interest in commercial tort claims or be unable to recover all debt.[35] Lenders that face uncertainty or high risk tend to distribute lower loan amounts at higher interest rates to borrowers.[36]

Part I of this Note explains the historical background of the UCC and Article 9 and outlines how lenders can establish security interest in collateral.[37] Part II of this Note analyzes sections 9-108 and 9-204 and delves into the effects these provisions have on secured transactions.[38] Finally, Part III of this Note argues that UCC drafters should change section 9-108(e)(1) to allow generic descriptions of commercial tort claims and that UCC drafters should change section 9-204(b)(2) to allow for lenders to have security interest in commercial tort claims that arise after a security agreement has been executed.[39]

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[29] U.C.C. § 9-108(e)(1).

[30] *Id.* § 9-108 cmt. 5; Sepinuck, *supra* note 27.

[31] *See, e.g.*, Helms v. Certified Packaging Corp., 551 F.3d 675, 681 (7th Cir. 2008) (holding that a creditor had no security interest in their debtor's commercial tort claims because the commercial tort claim's description in the security agreement lacked specificity).

[32] U.C.C. § 9-204(b)(2).

[33] *See* Boehm & Fox, *supra* note 28 (explaining that a debtor cannot use a security agreement to grant a creditor security interest in commercial tort claims that will arise after the debtor signs said agreement).

[34] *See id.* (noting that commercial tort claims are unknown until the tort has occurred, making it hard for creditors to describe the claims in the security agreement prior to the tort occurring).

[35] *See id.* (stating that rules such as UCC § 9-108(e)(1) can be problematic for lenders because they increase the risk of lenders not having security interest in commercial tort claims even though they have executed a security agreement).

[36] Miranda Crace, *High-Risk Loans: How They Work and Why to Avoid Them*, ROCKET LOANS (Mar. 22, 2024), https://www.rocketloans.com/learn/explore-your-options/high-risk-loans [https://perma.cc/GBL3-GMVH].

[37] *See infra* notes 40–137 and accompanying text.

[38] *See infra* notes 138–208 and accompanying text.

[39] *See infra* notes 209–237 and accompanying text.

I. EXPLORING THE BUILDING BLOCKS OF ARTICLE 9

Secured transactions have long been a central part of modern lending practices.[40] By establishing a security interest in collateral, creditors and debtors can better protect their interests and manage their risks.[41] As commercial practices became more complex, it became increasingly necessary to develop a legal framework to govern secured lending.[42] The Uniform Commercial Code (UCC), created in the mid-twentieth century, represents a significant attempt to standardize and simplify the laws governing commercial transactions nationwide.[43] As society has evolved, UCC drafters have worked to ensure that Article 9's rules for secured transactions can keep pace with evolving business practices.[44]

Section A of this Part describes the history of the UCC.[45] Section B of this Part explains the emergence of Article 9.[46] Finally, Section C of this Part outlines how a creditor can go about establishing a secured loan and the effects of a secured loan.[47]

A. The History of the UCC

Before states adopted the UCC, individualized state law governed commercial transactions in the United States.[48] States took different approaches to regulating contracts, personal property, and secured transactions.[49] These diverging approaches caused significant challenges for businesses operating

[40] *See* Chrissy Kapralos, *A Brief History of Lending Through the Ages*, KOHO (Dec. 14, 2025), https://www.koho.ca/learn/history-of-lending/ [https://perma.cc/EDM8-JFJ5] (explaining that there were secured transactions in ancient Mesopotamia because people borrowed seeds and promised the harvest from the seeds as a form of payment).

[41] Julia Kagan, *Understanding Security Interests: Legal Definition and Key Requirements*, INVESTOPEDIA, https://www.investopedia.com/terms/s/security-interest.asp#:~:text=A%20security%20interest%20on%20a,lower%20interest%20on%20the%20loan [https://perma.cc/7WKM-QJ84] (Nov. 13, 2025).

[42] Winship, *supra* note 11, at 1.

[43] *See id.* at 3–4 (explaining that William A. Schnader recommended making uniform commercial laws to bring about simplified commercial rules that all fifty states adopted).

[44] *See Uniform Commercial Code*, UNIF. L. COMM'N, https://www.uniformlaws.org/acts/ucc#:~:text=A%20substantial%20revision%20to%20Article,2000%2C%202001%2C%20and%202010 [https://perma.cc/Y5MF-M75F] (explaining that since its 1998 inception, the American Law Institute (ALI) and the Uniform Law Commission (ULC) revised the UCC "in 1999, 2000, 2001, and 2010").

[45] *See infra* notes 48–65 and accompanying text.

[46] *See infra* notes 66–78 and accompanying text.

[47] *See infra* notes 79–137 and accompanying text.

[48] *All About Business Law*, PBS, https://www.pbs.org/standarddeviantstv/transcript_business.html#:~:text=In%20the%20chaotic%20days%20before,be%20bought%20or%20sold%2C%20right? [https://perma.cc/TUU7-CM32].

[49] Winship, *supra* note 11, at 2 (mentioning that the laws of secured transactions were individualized state law before Article 9's inception).

across state lines.[50] Companies conducting transactions in multiple states were met with inefficiencies, misunderstandings, and unnecessary legal disputes.[51] These challenges hindered the growth of the U.S. economy.[52] Hurdles to interstate commerce and a growing and complex economic environment led lawmakers to take action.[53]

In the 1940s and 1950s, the ALI and the ULC collaborated to resolve the legal gap in interstate transactions.[54] Together, they drafted the first version of

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[50] *See id.* (noting that the diverging state laws caused inconsistencies and that the ALI and the ULC introduced the UCC to create a standardized set of rules for commercial law).

[51] *See An Overview of the Uniform Commercial Code*, LAWINFO, https://www.lawinfo.com/resources/business-law/an-overview-of-the-uniform-commercial-code.html [https://perma.cc/8QA9-Z4X2] (Oct. 17, 2023) (expressing the difficulties of developing contracts for interstate business commerce prior to the UCC's establishment); Steven G. Craig & Joel W. Sailors, *Interstate Trade Barriers and the Constitution*, 6 CATO J. 819, 821 (1987) (noting the importance of interstate commerce to the U.S. economy).

[52] *See Chapter 4—The Uniform Commercial Code Sale of Goods*, FULLERTON & KNOWLES, https://fullertonlaw.com/uniform-commercial-code [https://perma.cc/6BFL-PKGV] (explaining that the differing state laws on interstate transactions became problematic for businesses).

[53] *Id.*

[54] *See Why the Uniform Commercial Code Is Important in Real Estate*, LEV (Apr. 2, 2024), https://www.lev.co/blog/uniform-commercial-code-ucc# [https://perma.cc/CF4A-WWUY] (stating that the National Conference of Commissioners on Uniform State Laws (NCCUSL) and ALI began working on the official UCC in 1942); Daniel Liberto, *What Is the Uniform Commercial Code (UCC)? Key Articles and Purpose*, INVESTOPEDIA, https://www.investopedia.com/terms/u/uniform-commercial-code.asp# [https://perma.cc/9YZH-XD9E] (Aug. 27, 2025) (explaining that the ALI and ULC introduced the UCC to the states in 1951). The NCCUSL eventually changed their name to the Uniform Law Commission (ULC). Liberto, *supra.* The ALI held its inaugural annual meeting in February 1923, with prominent judges, lawyers, and law professors such as William Howard Taft, Charles Evans Hughes, Learned Hand, and Benjamin Cardozo in Washington, D.C. Andrew S. Gold & Robert W. Gordon, *Introduction to the Centennial History*, *in* THE AMERICAN LAW INSTITUTE: A CENTENNIAL HISTORY 1, 1 (Andrew S. Gold & Robert W. Gordon eds., 2023); *Tracing 100 Years of the American Law Institute*, YALE L. SCH. (Sep. 21, 2023), https://law.yale.edu/yls-today/news/tracing-100-years-american-law-institute [https://perma.cc/E3J4-LTWR]. These legal professionals met to address issues in the administration of justice that created uncertainty and complexity in American law. Kenneth S. Abraham & G. Edward White, *The Work of the American Law Institute in Historical Context*, *in* THE AMERICAN LAW INSTITUTE: A CENTENNIAL HISTORY 51, 51–52 (Andrew S. Gold & Robert W. Gordon eds., 2023). Since its inception, the ALI has focused on clarifying and modernizing American law. *Tracing 100 Years of the American Law Institute*, *supra*. The ALI publishes three types of projects: restatements, principles, and codes, each serving as an authoritative reference for courts and legislatures. *Id.* The ALI's restatements differ from previous legal summaries because they are analytical, critical, and constructive, aiming to clarify uncertain areas, simplify complexity, and promote legal reforms. Abraham & White, *supra*, at 52. These restatements provide principles of law with discussions and references to authorities. *Id.* at 53. The process for creating the restatements involved legal experts, particularly law professors, judges, and experienced practitioners. *Id.* at 51. The initial focus was on conflict of laws, torts, and business associations. *Id.* at 53. The restatements are not intended to serve as statutes but hold significant influence in courts. *Id.* The restatements, published between 1932 and 1937, originally received criticism due to their lack of detailed commentary. *Id.* at 57. Overall, the ALI is renowned for fostering a culture of lively debate and democratic discussion. *Tracing 100 Years of the American Law Institute*, *supra*. The ULC, established in 1892, drafts well-crafted, non-partisan legislation to promote uniformity in state laws. *National Conference of Commissioners on Uniform State Laws*, HEINONLINE, https://heinonline.org/HeinDocs/

the UCC.[55] They designed the UCC to provide a standardized set of rules pertaining to commercial transactions for all states.[56] Drafting the UCC was a monumental task that involved consulting numerous legal scholars, practitioners, and business leaders.[57] The ALI and ULC published the first version of the UCC in 1951, and all fifty states eventually adopted the UCC, albeit with some modifications.[58] Since then, the UCC has received several updates to facilitate evolving business practices and balance the changing interests of parties involved in interstate commerce.[59]

The UCC's impact has been far-reaching.[60] It has not only influenced business practices and commercial law in the U.S., but other countries have also used it as a framework for establishing their own commercial laws.[61]

The UCC is divided into several articles.[62] Each article addresses a different aspect of commercial law.[63] Article 9 focuses on secured transactions—the area of law that governs the creation, perfection, and enforcement of security interests

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NCCUSL.pdf [https://perma.cc/FMF8-R8KU]. It consists of commissioners from each state, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands, with members typically being law practitioners, judges, or professors. *Id.* Commissioners, who serve fixed terms without pay, help identify areas where uniform laws are needed and draft proposals for states to adopt. *Id.* The ULC has created over three hundred uniform acts in areas like commercial law, real estate, and healthcare. *Id.* Notable acts include the Uniform Probate Code and the Uniform Anatomical Gift Act. *Id.* Commissioners collaborate to draft, amend, and advocate for their home jurisdictions to adopt these laws. *Id.*

[55] Liberto, *supra* note 54 (noting that the NCCUSL and ALI worked together to draft the first version of the UCC).

[56] Winship, *supra* note 11, at 3–4 (detailing that the ALI and ULC made the UCC to provide a uniform set of laws for all states).

[57] *Id.* at 4 (describing how the UCC drafters recruited numerous legal practitioners to work on the first version of the UCC). The UCC drafters sought to create a comprehensive and flexible body of law that would facilitate the growth of commerce while also balancing the interests of stakeholders. *See generally* F. Stephen Knippenberg & William J. Woodward, Jr., *Uniformity and Efficiency in the Uniform Commercial Code: A Partial Research Agenda*, 45 BUS. LAW. 2519, 2523 (1990) (explaining that the approach to the UCC allowed for a balance of national and local interests).

[58] *See Uniform Commercial Code*, *supra* note 44 (noting that the ALI and ULC published the first version of the UCC in 1951 and that all states enacted it within twenty years).

[59] *See, e.g.*, UNIF. L. COMM'N, OVERVIEW OF 2022 AMENDMENTS TO THE UNIFORM COMMERCIAL CODE—EMERGING TECHNOLOGIES 1–2 (2022), https://www.house.mn.gov/comm/docs/wOu_-uI8XUGVWcJ3CMokrQ.pdf [https://perma.cc/BVW7-45JR] (explaining that UCC drafters updated the UCC in 2022 to include rules for emerging business practices such as handling digital assets and hybrid transactions).

[60] *See* KEINAN, *supra* note 10, at 5 (explaining that Canada adopted the UCC into its commercial laws).

[61] *Id.* (explaining how Canada implemented laws similar to UCC Article 9 into all of its Common Law Providences and partially infused into Quebec's laws).

[62] *See* David M. Steingold, *Legal Guide to the UCC*, NOLO, https://www.nolo.com/legal-encyclopedia/what-is-the-ucc.html#:~:text=a%20Business%20Attorney-,An%20Overview%20of%20the%20UCC%20Articles,Article%209:%20Secured%20Transactions [https://perma.cc/84QF-UUUD] (May 12, 2023) (listing the UCC's articles).

[63] *See Articles of the UCC*, USLEGAL, https://uniformcommercialcode.uslegal.com/articles-of-the-ucc/ [https://perma.cc/L7WH-LT74] (explaining the various aspects of law that each article of the UCC covers).

in personal property or fixtures.[64] The drafters intended to provide a reliable approach to secured lending while balancing the interests of creditors and debtors.[65]

B. The Development of Article 9

The addition of Article 9 to the UCC was a pivotal moment in the history of commercial law.[66] The ULC and ALI developed Article 9 with the primary objective of providing a unified and systematic approach to the creation and enforcement of security interests in personal property and fixtures.[67] Article 9 is grounded in the desire to create a standardized legal framework for security interest laws.[68] The Article 9 drafters wanted to alleviate the burden on creditors by reducing risks involved with lending, thereby ensuring creditors have legal rights to seize and sell collateral in the event of a default.[69] The drafters also addressed the interests of debtors by allowing them to offer their assets as collateral in a protected legal manner, thereby enabling access to greater financing options.[70]

Article 9 provides precise guidelines for the development, perfection, and enforcement of security interests.[71] The idea of "perfection," which guarantees

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[64] *Id.*; *see infra* notes 90–129 and accompanying text (explaining how creditors can create, perfect, and enforce security interests).

[65] *See* GARRY M. GRABER & STEVEN W. WELLS, HODGSON RUSS LLP, UCC ARTICLE 9 SECURED PARTY SALES 1 (2017), Westlaw Practical Law W-008-7326, https://www.hodgsonruss.com/media/publication/1758_UCC%20Article%209%20Secured%20Party%20Sales%20_w-008-7326_.pdf [https://perma.cc/XC86-SCKH] (explaining that the drafters developed Article 9 to create standardized laws for establishing and enforcing security interest in personal property); *see also* Phil Neuffer, *How Asset-Based Lenders Can Leverage Article 9 to Generate Business, Mitigate Loss*, ABFJOURNAL (Jan. 1, 1970), https://www.abfjournal.com/how-asset-based-lenders-can-leverage-article-9-to-generate-business-mitigate-loss/#:~:text=Article%209%20of%20the%20Uniform,extracting%20value%20from%20distressed%20businesses [https://perma.cc/KJA4-VBJJ] (noting that Article 9 allows creditors to mitigate risks when lending to debtors).

[66] *See* Michael A. Stover, *Understanding Article Nine of the UCC—Security Interests*, WRIGHT, CONSTABLE & SKEEN (Nov. 1, 2022), https://www.wcslaw.com/accolades/understanding-article-nine-of-the-ucc-security-interests/ [https://perma.cc/8X6P-DPX2] (explaining that Article 9 allows creditors to be more certain about their security interest and makes it easier for them to do research on their debtors).

[67] *Articles of the UCC*, *supra* note 63. A fixture is a good that becomes so attached to real estate that it develops interest under real property law. U.C.C. § 9-102(a)(41) (A.L.I. & UNIF. L. COMM'N 2022); Wolters Kluwer Compliance Sols. Staff, *Learn More About UCC Fixture Filings*, WOLTERS KLUWER, https://www.wolterskluwer.com/en/expert-insights/ucc-basics-fixture-filings [https://perma.cc/44PH-3PWP] (Sep. 28, 2022).

[68] *Articles of the UCC*, *supra* note 63.

[69] GRABER & WELLS, *supra* note 65 (explaining that secured lenders can repossess collateral in the event debtors default).

[70] *See* IRA L. HERMAN, BLANK ROME LLP, SECURITY INTERESTS AND LIENS PRIORITIES, Lexis Practice Advisor (database updated Jan. 30, 2025), https://www.blankrome.com/sites/default/files/2020-06/security_interests_and_liens_priorities.pdf [https://perma.cc/9TE6-TUMA] (noting that debtors can grant creditors security interest for loans).

[71] Stover, *supra* note 66.

that a creditor's interests in collateral are given priority over the security interests of other entities, lies at the core of these regulations.[72] Creditors can achieve perfection by filing a financing statement, possessing the collateral, or by other means—depending on the type of collateral involved.[73]

One of the key features of Article 9 is that it provides many different types of collateral in which parties can establish a security interest.[74] This allows businesses to access capital based on the assets they own and assets they expect to own in the future.[75] Since the UCC's inception, the UCC drafters have worked to keep the UCC current with new commercial developments.[76] For example, the 2001 revision of Article 9 introduced new types of collateral and new rules surrounding the perfection of security interests in certain types of collateral, such as payment intangibles.[77] Despite its numerous revisions,

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[72] *Id.*

[73] Fishman, *supra* note 21.

[74] *Chapter 5 Classification of Collateral*, CALI, https://www.cali.org/lessons/web/ct11/chapter_5.htm [https://perma.cc/E9ZM-4D3D] (Aug. 22, 2011) (defining the different types of collateral that creditors can have security interest in). Creditors can have a security interest in commercial tort claims, deposit accounts, electronic chattel paper, fixtures, investment property, letter of credit rights, money, minerals, farm products, inventory, consumer goods, equipment, documents of title, chattel paper, instrument, accounts, and general intangibles. *Id.*

[75] *See* U.C.C. § 9-204(a) (A.L.I. & UNIF. L. COMM'N 2022) (allowing for creditors to have security interest in certain collateral that the debtor will acquire after signing the security agreement). Capital includes any financial resources and assets that companies can access to help with the running of the business. *What Is Capital in Business? Definition and Types Explained*, UNIV. OF KAN. SCH. OF BUS. (Aug. 22, 2024), https://onlinemba.ku.edu/experience-ku/mba-blog/what-is-capital-in-business#:~:text=Businesses%20have%20to%20efficiently%20manage,1 [https://perma.cc/KF8G-D7V7]. Capital can include assets such as equipment and intellectual property but is usually used to refer to the cash that a company uses. Marshall Hargrave, *Capital: Definition, How It's Used, Structure, and Types in Business*, INVESTOPEDIA, https://www.investopedia.com/terms/c/capital.asp [https://perma.cc/9RCH-V5DD] (Apr. 1, 2025). Companies usually seek capital from creditors in the form of debt capital. *Id.* An asset is a resource that entities can use to create income. *What Is an Asset? Definition, Types, and Examples*, INVESTOPEDIA, https://www.investopedia.com/terms/a/asset.asp [https://perma.cc/4NRK-MW2D] (Oct. 15, 2025). Assets can include tangible objects, such as machinery and inventory, as well as intangible objects, such as intellectual property and patents. Scott Beaver, *What Is an Asset? Types & Examples in Business Accounting*, NETSUITE (Sep. 15, 2025), https://www.netsuite.com/portal/resource/articles/accounting/asset.shtml [https://perma.cc/PQY9-U2GG].

[76] *See, e.g.*, McCabe & Travers, *supra* note 24, at 13 (noting that there are new types of collateral in the 2001 amendments to Article 9). The 2001 amendments to Article 9 introduced deposit accounts, commercial tort claims, software, letter of credit rights, health-care insurance receivables, and payment intangibles as new types of collateral. *Id.*

[77] *Id.* Payment intangibles are a type of intangible collateral that represents a right to a payment from a third party. U.C.C. § 9-102(a)(61); Jeffrey A. Wurst, *Rights in Payment Intangibles: Collateral or Red Herring?*, SECURED LENDER, Nov. 2015, at 40, 41. For example, accounts receivables and royalties are seen as payment intangibles. *Payment Intangible*, CORNELL L. SCH.: LEGAL INFO. INST., https://www.law.cornell.edu/wex/payment_intangible#:~:text=A%20payment%20intangible%20is%20a,money%20and%20financial%20problems [https://perma.cc/JK96-ARFT]. Intangible collateral are non-physical assets in which debtors can grant creditors security interest. *UCC Compliance Tips*, AARON HALL ATT'Y, https://aaronhall.com/ucc-compliance-tips-2/ [https://perma.cc/98PH-P4KV]. Examples of intangible collateral include patents, trademarks, and copyrights. *Id.*; *A Guide to Tangible*

Article 9's original goal of providing a standard and fair system for secured transactions remains unchanged.[78]

C. Securing a Transaction

When a debtor defaults on a secured loan, creditors have the right to enforce their security interest in the collateral.[79] The UCC provides many provisions for enforcing creditors' rights in collateral.[80] Creditors can take actions such as possessing the collateral, selling or leasing the collateral, or seizing proceeds from the collateral to satisfy the debt.[81]

There are key steps required when securing a transaction.[82] These steps are fundamental to ensuring that a security interest is attached and perfected.[83] Subsection 1 of this Section describes classifying collateral.[84] Subsection 2 of this Section outlines establishing security interest.[85] Subsection 3 of this Section explains how creditors can perfect security interest.[86] Subsection 4 of this Section sets out how security interest passes to the proceeds of collateral.[87] Subsection 5 of this Section discusses the priority of security interests between creditors

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and Intangible Assets, WILLOWWEALTH (Feb. 15, 2024), https://www.yieldstreet.com/blog/article/tangible-and-intangible-assets/#:~:text=What%20are%20the%20Different%20Types%20of%20Intangible%20Assets?,duplication%20by%20non%2Dauthorized%20parties [https://perma.cc/2Z22-829Q].

[78] *See* TARA E. CASTILLO, JOSEPH MCKERNAN & BILL SPRINGER, ALSTON & BIRD, UNIFORM COMMERCIAL CODE AMENDMENTS (2022): REVISIONS TO ARTICLE 9 (2023), Bloomberg Law Practical Guidance, https://www.bloomberglaw.com/external/document/XD31ROM4000000/banking-overview-uniform-commercial-code-amendments-2022-revisio [https://perma.cc/EPH8-PTJS] (explaining that Article 9's most recent amendments were simply to promote consistency across all articles and update laws on collateral); *Uniform Commercial Code*, *supra* note 44 (explaining that the purpose of Article 9 is to provide a standardized set of rules to govern secured transactions).

[79] U.C.C. § 9-601(a).

[80] *See id.* (listing the provisions); *see, e.g.*, GRABER & WELLS, *supra* note 65 (explaining how creditors can exercise their rights in collateral after a debtor has defaulted). Article 9 allows creditors to exercise rights through actions such as repossessing collateral, forcing debtors to make payments, and disposing of the collateral. Christopher H. Oldham & Elizabeth A. Napps, *In the Ditch: Remedies and Enforcement upon Default Under the UCC*, A.B.A.: BUS. L. TODAY (Mar. 2, 2023), https://businesslawtoday.org/2023/03/remedies-enforcement-upon-default-under-ucc-article-9/ [https://perma.cc/6CWW-URWC]. The creditor can dispose of the collateral by selling, leasing, or licensing the collateral. *Id.* If the creditor decides to sell the collateral, the creditor must ensure that it repossesses the collateral in accordance with the law, gives the debtor and others with interest in the collateral proper notice of its plans to sell the collateral, and tries to sell the collateral for as much as it can under reasonable circumstances. GRABER & WELLS, *supra* note 65.

[81] Oldham & Napps, *supra* note 80.

[82] Fishman, *supra* note 21.

[83] *Id.*

[84] *See infra* notes 90–96 and accompanying text.

[85] *See infra* notes 97–105 and accompanying text.

[86] *See infra* notes 106–116 and accompanying text.

[87] *See infra* notes 117–124 and accompanying text.

with perfected security interests.[88] Finally, Subsection 6 of this Section expounds on the intersection between secured transactions and bankruptcy law.[89]

1. Classifying Collateral

To gain a security interest, a lender must first classify the collateral that the borrower is offering them interest in.[90] It is important to accurately classify collateral because the type of collateral used in a transaction affects how creditors perfect and enforce their security interests and the remedies they can pursue in the event of default.[91]

Under Article 9, collateral can be tangible, semi-intangible, or purely intangible.[92] Each type of collateral has specific instructions regarding perfecting, enforcing, and deciding the priority of the security interests in it.[93] For example, the rules for perfecting a security interest in inventory differ from those for perfecting a security interest in fixtures.[94] By properly identifying collateral, creditors can ensure that they create a valid and enforceable security agreement.[95] In the event that a creditor incorrectly classifies collateral, the

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[88] *See infra* notes 125–129 and accompanying text.

[89] *See infra* notes 130–137 and accompanying text.

[90] *See* U.C.C. § 9-203(b)(3)(A) (A.L.I. & UNIF. L. COMM'N 2022) (requiring a creditor to include a description of the collateral in a security agreement in order for the creditor's security interest to attach to the collateral); BLOOMBERG L., FINANCE, DRAFTING GUIDE—COLLATERAL, PLEDGE & SECURITY AGREEMENTS, Bloomberg Law Practical Guidance, https://www.bloomberglaw.com/document/X4SL76U4000000 [https://perma.cc/6G9P-WACN] (explaining that debtors and creditors must identify collateral in the security agreement for a secured transaction). Collateral is the property that a debtor grants a creditor a security interest in to secure a loan. U.C.C. § 9-102(a)(12).

[91] *See, e.g.*, U.C.C. § 9-314 (only allowing creditors to perfect security interest in deposit accounts by control).

[92] *See Chapter 5 Classification of Collateral*, *supra* note 74 (explaining that collateral can be tangibles, pure intangibles, or semi-intangibles (also known as quasi goods)). A semi-intangible collateral is a type of collateral, usually in the form of paper, that represent intangible rights. EDWIN E. SMITH, BANKING AND COMMERCIAL LENDING LAW—2001 SUMMARY OF REVISED UCC ARTICLE 9 (2000), at 4 (2001), LexisNexis, https://plus.lexis.com/document/?crid=07df2e90-c6c1-465d-ac1b-d05eab0a0bc7&pddocfullpath=%2Fshared%2Fdocument%2Fanalytical-materials%2Furn:contentItem:44NK-FHH0-00CP-04D3-00000-00&pdsourcegroupingtype=&pdcontentcomponentid=220800&pdmfid=1530671&pdisurlapi=true [https://perma.cc/4SCW-JTFZ]. For example, chattel paper (a paper evidencing a right to payment) is a type of semi-intangible collateral. *Id.* at 4–5; U.C.C. § 9-102(a)(11); *Basic Uniform Commercial Code: Semi-Intangible*, MATTHEW MINER, https://matthewminer.name/law/outlines/3L/1st+Semester/LAW+637-001+–+Basic+Uniform+Commercial+Code/Semi-Intangible [https://perma.cc/2HJW-5J64].

[93] *See e.g.*, U.C.C. § 9-313(a) (allowing perfection of a security interest through possessing the collateral if it is tangible or semi-tangible); *id.* § 9-327(1) (allowing secured creditors with control over a debtor's deposit account to have priority over other parties with security interest in the event of default).

[94] *Compare id.* § 9-310(a) (allowing a creditor to perfect security interest in inventory by filing a financing statement), *with id.* § 9-301(3)(A) (allowing a creditor to perfect security interest in fixtures by filing a fixture filing).

[95] *Id.* § 9-203(b)(3)(A).

creditor risks losing the ability to recover the collateral in the event the debtor defaults.[96]

2. Attaching a Security Interest to Collateral

For a security interest to attach to collateral, a creditor must give value in exchange for rights that a debtor has in the collateral.[97] To solidify the debtor's grant of a security interest, a creditor and debtor can enter into a security agreement outlining the terms and conditions of the security interest.[98] Debtors and creditors must strictly follow Article 9 rules in order for security interest to properly attach to collateral.[99]

Article 9 requires a valid security agreement to be in writing and to bear the debtor's signature.[100] The security agreement should also include a description of the collateral that is sufficient to allow the creditor to identify the collateral with reasonable certainty.[101] This can become an issue when describing collateral that is intangible—such as a commercial tort claim—because creditors may need to describe such claims in security agreements before they exist.[102] Additionally, there are unique rules governing the execution of security

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[96] *See id.* (requiring creditors and debtors to properly describe collateral in a security agreement for creditors to be able to enforce security interest against other parties with security interest in the same collateral).

[97] *Id.* § 9-203(b). Under Article 9, security interest attaches to collateral when it becomes enforceable against the debtor. *Id.* § 9-203(a). For a creditor to be able to enforce security interest, the creditor must give value to the debtor, the debtor must have rights in the collateral, and the debtor usually must authenticate a security agreement that has an accurate description of the collateral. *Id.* § 9-203(b). Although creditors complete all steps for attaching security interest to collateral, there are instances where the attachment does not actually occur. *See, e.g.*, C.I.T. Fin. Servs. v. First Nat'l Bank, 344 So. 2d 125, 126 (Miss. 1977) (ruling that the security interest did not attach because the debtor did not have rights in the collateral described in the security agreement).

[98] Fishman, *supra* note 21. The security agreement can include information such as the rights in collateral the agreement grants, the obligations of both parties, and the remedies available in the event of default. *Chapter 6—UCC Security Agreements*, FULLERTON & KNOWLES, https://fullertonlaw.com/ucc-security-agreements#_Toc11006786 [https://perma.cc/Y49T-RJPM]. If there is no security agreement in a secured transaction, creditors can submit documents that provide evidence of debtors granting security interest in the collateral as an alternative. Steven O. Weise & Stephen L. Sepinuck, *Personal Property Secured Transactions*, 72 BUS. LAW. 1143, 1145 (2017). This is known as the composite document rule. *Id.*

[99] *See Chapter 6—UCC Security Agreements*, *supra* note 98 (outlining the security agreement requirements); Nathan & Banker, *supra* note 15 (explaining that any mistake in the security agreement can ruin the creditors secured status). For a security agreement to be valid and enforceable, it must be signed by the debtor, sufficiently describe the collateral, and clearly show that the debtor wishes to grant the creditor security interest in the collateral. *Chapter 6- UCC Security Agreements*, *supra* note 98.

[100] Fishman, *supra* note 21.

[101] *Id.*; U.C.C. § 9-203(b).

[102] *See* Boehm & Fox, *supra* note 28 (noting that creditors can only describe commercial tort claims properly after the tort has occurred). Unlike more tangible forms of collateral, like inventory or equipment, which are easily describable, commercial tort claims are contingent on future legal actions or disputes, making them more difficult to identify and describe in the security agreement. *See id.*

agreements for certain types of collateral.[103] For instance, when looking to execute a security agreement where a consumer good is collateral, creditors must fully describe the item rather than simply mentioning "consumer good" in the agreement.[104] Creditors also have the option of establishing a security interest in collateral that the debtor owns and will own after they execute the security agreement.[105]

3. Perfecting Security Interest in Collateral

It is in every secured creditor's best interest to perfect their security interest in their debtor's collateral.[106] By perfecting a security interest, a creditor ensures that their security interest has priority over other creditors' security interests if the debtor defaults.[107] Perfection makes a creditor's security interest

(explaining that a commercial tort claim can only be describable after the series of events leading to the tort have occurred, making it difficult for lenders to draft security agreements where they use commercial tort claims are collateral).

[103] *See, e.g.*, U.C.C. § 9-108(e) (requiring security agreements to have more thorough descriptions for commercial tort claims and consumer goods).

[104] *Id.* § 9-108(e)(2). In the event a consumer buys a good for household purposes, it is illegal for lenders or retail sellers to take security interest in the good unless the consumer places the purchased good in the lender or seller's possession or the consumer purchased the good using credit extended by the lender or seller. 16 C.F.R. § 444.2(a)(4) (2025). The FTC has noted that household goods include items such as clothing, furniture, linens, kitchenware, and appliances. *Back to Basics, Continued—So, Just What Are Household Goods That May Be Taken for Collateral Under the FTC Credit Practices Rule?*, DENTONS (Jan. 22, 2020), https://www.dentons.com/en/insights/newsletters/2020/january/22/consumer-finance-report/what-are-household-goods-that-may-be-taken-for-collateral-under-the-ftc-credit-practices-rule#:~:text=So%2C%20backing%20up%20for%20a,a%20purchase%2Dmoney%20credit%20transaction [https://perma.cc/F68P-988Y].

[105] U.C.C. § 9-204(a). Debtors can grant security interest in collateral that they have in the future by adding an "after-acquired" clause in the security agreement. *Id.*; *see also* Alexandra Twin, *After-Acquired Clause: Meaning, Pros and Cons, FAQs*, INVESTOPEDIA, https://www.investopedia.com/terms/a/afteracquiredclause.asp#:~:text=This%20clause%20is%20used%20as,bond%20indentures%20and%20mortgage%20agreements [https://perma.cc/Q2TD-AD7Q] (Mar. 4, 2021) (explaining that having an after-acquired clause in a security agreement allows creditors to have security interest in assets purchased after the security agreement has been completed). For example, if a debtor goes to a bank for a loan, and the bank wants to secure the loan using equipment that the debtor currently has and will acquire after the bank executes the loan, the bank will add an after-acquired clause in the security agreement stating that the debtor grants them security interest in its current and after-acquired equipment. *See* U.C.C. § 9-204(a) (allowing the creditor to establish security interest in after-acquired collateral using the security agreement).

[106] *See* Weiss & Krillova, *supra* note 21 (explaining that when a creditor perfects security interest in collateral, others will have notice of the debtor granting the creditor security interest and the creditor will have priority over other creditors that have unsecured claims).

[107] *Id.*; *Attachment: Your Security Interest Isn't "Perfect" Without It*, BAKER DONELSON (May 1, 2011), https://www.bakerdonelson.com/Attachment—Your-Security-Interest-isnt-Perfect-Without-it-05-01-2011#:~:text=The%20process%20of%20%22perfecting%22%20a,%2C%20fourth%20priority%20interest%2C%20etc [https://perma.cc/C99L-HDHR].

effective against third parties because it provides third parties with public notice of the granted interest.[108]

To have a perfected security interest, the creditor must ensure that the security interest has attached and that they, along with the debtor, complete any additional requirements—known as applicable steps.[109] The applicable step can be filing a financing statement, taking possession of the collateral, or controlling the collateral.[110] Creditors typically file a financing statement to perfect a security interest.[111] It is also important for creditors to ensure they have followed the correct federal and state laws for the transaction.[112]

The purpose of filing a financing statement is to provide public notice of the creditor's security interest in collateral and establish priority over other creditors.[113] Filing allows the creditor to seize and sell the collateral in the event of a debtor's default to satisfy debt.[114] A financing statement differs from a security

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[108] U.C.C. § 9-308(a).

[109] *Id.*; Fishman, *supra* note 21; Eric M. Sherman, Note, *Chasing Perfection: Collateral Indications and Ambiguous Debtor Names on Financing Statements Under Article 9*, 61 B.C. L. REV. 2229, 2238 (2020).

[110] Fishman, *supra* note 21. Certain types of collateral, such as tangible property that is in the possession of the creditor, can be perfected if the creditor takes physical possession of the property. *Chapter 15 Perfection by Possession (Including Documents of Title)*, CALI, https://www.cali.org/lessons/web/ct11/chapter_15.htm [https://perma.cc/PR3C-SP3Y] (Aug. 22, 2011). This method is typically used for tangible personal property like inventory or equipment. *Id.* In some cases, creditors can also perfect security interest by controlling intangible assets like deposit accounts or investment property. *Chapter 21 Perfection as to Investment Property*, CALI, https://www.cali.org/lessons/web/ct11/chapter_21.htm [https://perma.cc/DF9R-7QV4] (Aug. 22, 2011); *Chapter 22 Perfection as to Deposit Accounts, Letter of Credit Rights and Electronic Chattel Paper*, CALI, https://www.cali.org/lessons/web/ct11/chapter_22.htm [https://perma.cc/RR4K-TJVP] (Aug. 22, 2011).

[111] *See Chapter 12 Perfection Generally*, CALI, https://www.cali.org/lessons/web/ct11/chapter_12.htm [https://perma.cc/34BM-CF3T] (Aug. 22, 2011) (stating that filing a financing statement is the most common way that creditors perfect their security interest in collateral); Bruce Nathan & Eric Chafetz, *Less Is More When Perfecting a Security Interest*, BUS. CREDIT, Apr. 2017, at 18, 18 (noting that creditors frequently file financing statements to perfect their security interest).

[112] *See* Permanent Ed. Bd. for the Unif. Com. Code, *PEB Commentary No. 24: Scope of Article 9 Choice-of-Law Rules Regarding Characterization of Transactions (Aug. 12, 2022)*, 79 BUS. LAW. 465, 466 (2024) (stating that determining the state's laws that apply to a transaction is important). The UCC states that completing an applicable step is not necessary for perfection if there is a federal public notice system for a type of collateral that supplants Article 9. U.C.C. § 9-311(a)(1). For example, if a creditor wishes to perfect security interest in a registered copyright, the creditor will have to follow the rules for perfecting security interest in the Copyright Act, allowing the creditor to record the transfer of interest to the Copyright Office to perfect the security interest. 17 U.S.C. § 205(a). Regarding state laws, § 9-503(a) of the UCC provides states the option of choosing one of two alternatives mentioned for setting out the requirements for filling in the names of debtors that are individuals on financing statements. *See* U.C.C. § 9-503(a) (listing the alternatives).

[113] Paul Hodnefield, *UCC Financing Statement Debtor Name Fundamentals*, A.B.A.: BUS. L. TODAY (Jan. 4, 2023), https://www.americanbar.org/groups/business_law/resources/business-law-today/2023-january/ucc-financing-statement-debtor-name-fundamentals/ [https://perma.cc/LJR9-FW2L].

[114] *See* Dori Yona, *Creditors and Subordination: Understanding Priority When Closing Your Business*, SIMPLECLOSURE (July 7, 2023), https://simpleclosure.com/blog/posts/creditors-subordination-

agreement because it provides public notice of a creditor's rights in collateral, whereas a security agreement establishes those rights.[115] If a creditor files a financing statement to perfect their security interest but fails to properly complete a security agreement, the creditor will not have a perfected security interest.[116]

4. Proceeds Resulting from Collateral

Proceeds are the cash or property that result when a debtor sells, exchanges, or otherwise disposes of collateral.[117] Under Article 9, proceeds include anything acquired after the selling of collateral, such as insurance payments, payments from the liquidation of the collateral, or any personal property gained from either the sale or the use of the collateral.[118] The rules of proceeds are critical because they can allow a security interest in the original collateral to automatically extend to anything derived from it.[119] If the rules were different, a debtor could simply sell the collateral for money, leaving the secured creditor with no collateral to recover their loan.[120] In turn, this would leave lenders and borrowers with less certainty—precisely what Article 9 was drafted to prevent.[121]

If a secured creditor has a perfected security interest in collateral, then Article 9 automatically grants the creditor a perfected security interest in any pro-

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closing-business/ [https://perma.cc/JQ4W-N4CM] (noting that when a debt is not paid, collateral goes to the secured creditor with the highest priority).

[115] *Compare* Hodnefield, *supra* note 113 (explaining that the purpose of filing a financing statement is to give notice to others about the creditor's security interest in collateral), *with* Fishman, *supra* note 21 (stating that a security agreement outlines that a debtor is granting a creditor security interest in its assets as collateral for a loan).

[116] *See* U.C.C. § 9-308(a) (requiring attachment, which can be done by completing a security agreement, and an applicable step, which can be done by filing a financing statement, to be complete in order to perfect security interest).

[117] *Id.* § 9-102(a)(64); Cindy Chernuchin, *Security Interests in Proceeds of Collateral*, A.B.A.: BUS. L. TODAY (Jan. 13, 2016), https://businesslawtoday.org/2016/01/security-interests-in-proceeds-of-collateral/ [https://perma.cc/V2PH-SQSJ].

[118] *See, e.g.*, Anthony Cianciotti, *Insurance Policies and Proceeds as Collateral: The UCC May Not Be the Key*, LINKEDIN (Aug. 21, 2019), https://www.linkedin.com/pulse/insurance-policies-proceeds-collateral-ucc-may-key-anthony-cianciotti#:~:text=The%20Uniform%20Commercial%20Code%20("UCC,as%20proceeds%20of%20such%20collateral [https://perma.cc/VK6G-NDA8] (explaining that any payments made to debtors under insurance policies covering collateral are proceeds of the collateral).

[119] *See* U.C.C. § 9-203(f) (explaining that for the security interest to flow from the original collateral to something derived from it, the interest must have been properly attached to the collateral).

[120] *See Chapter 9 The Specifics of Enforceability—After-Acquired Collateral, Future Advances, Transferred Collateral and Proceeds, and the New Debtor Problem*, CALI, https://www.cali.org/lessons/web/ct11/chapter_9.htm [https://perma.cc/Q2QN-K9Y8] (Aug. 22, 2011) (explaining that prior to Article 9, creditors had issues establishing security interest in cash the debtor received for the debtor selling the collateral, leading to the debtor keeping the cash).

[121] *See* Stover, *supra* note 66 (noting that the standardization of secured transactions laws provide certainty for lenders).

ceeds derived from that collateral.[122] Perfection of a security interest in proceeds lasts for twenty days after the sale or transfer of the collateral.[123] On the twenty-first day, the creditor's security interest will become unperfected unless the creditor takes the required further actions to maintain perfection within the twenty-day automatic perfection period.[124]

5. Priority of Security Interests

The Article 9 rules outline who would be able to seize collateral in the event of a debtor's default.[125] Generally, the party that either first files a financing statement or first perfects their security interest in the collateral has priority over other parties with competing perfected security interests.[126] This rule, however, is subject to a number of exceptions, such as special rules that apply to purchase money security interests.[127] There are many parties that may have competing security interests in collateral, such as judgment creditors or lien creditors.[128] The UCC's priority rules provide guidance for navigating such circumstances.[129]

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[122] U.C.C. § 9-315(c).

[123] *Id.* § 9-315(d); *The Significance of a Security Interest in Proceeds*, JEFFER MANGELS BUTLER & MITCHELL LLP (July 14, 2014), https://articles.jmbm.com/2014/07/14/significance-security-interest-proceeds/#:~:text="Proceeds"%20is%20defined%20as%20whatever,of%20several%20conditions%20is%20met [https://perma.cc/5J2T-EGZ6].

[124] U.C.C. § 9-315(d); *The Significance of a Security Interest in Proceeds*, *supra* note 123.

[125] *Secured Transactions: An Overview*, NAT'L AGRIC. L. CTR., https://nationalaglawcenter.org/overview/secured-transactions/#:~:text=Determining%20the%20priority%20of%20a,an%20earlier%20perfected%20security%20interest [https://perma.cc/DJ3X-HV46]. The priority rules are one of the most important rules in Article 9. *See id.* (noting that the ability to determine priority of security interests in collateral is important).

[126] U.C.C. § 9-322(a)(1). Certain transactions, such as when buyers purchase collateral in the ordinary course of business, can cut off security interest. *Id*. § 9-320(a).

[127] *Secured Transactions: An Overview*, *supra* note 125; Herman, *supra* note 70. A creditor establishes a purchase money security interest (PMSI) when they lend money to a debtor to purchase specific goods, and in exchange, the debtor provides the creditor with a security interest in the purchased goods. CT Corp. Staff, *What Is a Purchase Money Security Interest (PMSI)?*, WOLTERS KLUWER (Feb. 17, 2022), https://www.wolterskluwer.com/en/expert-insights/what-is-a-purchase-money-security-interest [https://perma.cc/L423-TLU2].

[128] Mark Williams, *Different Types of Liens Provide Creditors with Different Rights*, WOLTERS KLUWER, https://www.wolterskluwer.com/en/expert-insights/different-lien-types-provide-creditors-with-different-rights [https://perma.cc/2E96-MB5A] (Feb. 26, 2024).

[129] *See* U.C.C. § 9-317(e) (explaining how to determine who has priority between a creditor with PMSI and a creditor without PMSI); *id.* § 9-322(a) (describing how to evaluate the highest-ranking security interest between two parties that have security interest).

6. Bankruptcy's Impact on Secured Transactions

Secured transactions are unquestionably intertwined with bankruptcy law.[130] While Article 9 of the UCC governs how security interests are created, perfected, and enforced outside of court, bankruptcy law determines how those interests are treated when a debtor can no longer meet their financial obligations.[131] As such, the effectiveness of a creditor's security interest in collateral is often tested most meaningfully in the bankruptcy context.[132]

Bankruptcy offers a distressed debtor the opportunity to halt creditor enforcement actions and seek a financial reset.[133] Upon filing for bankruptcy, the debtor benefits from an automatic stay that immediately suspends all collection activities, including repossession, foreclosure, and lawsuits.[134] Additionally, all assets belonging to the debtor transfer to an estate created for the bankruptcy proceedings.[135] A bankruptcy judge also appoints a trustee to oversee the bank-

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[130] *See The Intersection of Bankruptcy and the UCC*, FIN. POISE (June 8, 2023), https://www.financialpoise.com/on-demand-video-webinars/the-intersection-of-bankruptcy-and-the-ucc-2023/ [https://perma.cc/QSN4-7CHL] (noting that the debtor–creditor relationship Article 9 governs lies at the core of bankruptcy proceedings); *see, e.g.*, George W. Kuney, John D. Ayer, Michael L. Bernstein & Jonathan Friedland, *The Intersection of Chapter 11 and UCC Article 9*, AM. BANKR. INST. J., July–Aug. 2006, at 20, 72 (arguing that Article 9's rule of making an unperfected security interest subordinate to a lien made through judicial action is relevant to the Bankruptcy Code).

[131] *See* Hayes, *supra* note 13 (noting that Article 9 governs the creation and enforcement of security interests); JEFF LINGWALL, *Secured Transactions and Bankruptcy* (explaining that bankruptcy law decides how a bankruptcy court handles creditor interests in bankruptcy proceedings when debtors are insolvent), *in* BUSINESS LAW: A RISK MANAGEMENT APPROACH 497, 511 (2022), https://boisestate.pressbooks.pub/buslaw/chapter/secured-transactions-and-bankruptcy/ [https://perma.cc/YK7P-P599].

[132] *See, e.g.*, Arch Ins. Co. v. FVCbank, 881 S.E.2d 785, 792 (Va. 2022) (ruling that an insurer's security interest in a deposit account was not perfected, so it lost priority to a bank that had perfected security interest); *In re* Cantu, 238 B.R. 796, 797 (B.A.P. 8th Cir. 1999), *aff'd*, 221 F.3d 1341 (8th Cir. 2000) (ruling that a credit union's security interest in a vehicle was valid and enforceable during a bankruptcy proceeding).

[133] *Bankruptcy Is Not the End of Your Financial Life, but a New Beginning*, WADHWANI & SHANFELD (Nov. 3, 2023), https://www.wslaw.com/blog/2023/november/bankruptcy-is-not-the-end-of-your-financial-life-but-a-new-beginning/ [https://perma.cc/HL8Q-8HYU].

[134] 11 U.S.C. § 362; *Bankruptcy Is Not the End of Your Financial Life, but a New Beginning*, *supra* note 133. For creditors, the automatic stay and subsequent bankruptcy process can significantly alter the enforceability of their rights. *See* Paul R. Hage, *Border Control: The Enforceability of Contractual Restraints on Bankruptcy Filings, Part 1*, A.B.A.: BUS. L. TODAY (Dec. 13, 2019), https://businesslawtoday.org/2019/12/border-control-enforceability-contractual-restraints-bankruptcy-filings-part-1/ [https://perma.cc/AAB6-G6RR] (stating that bankruptcy law contains provisions that can invalidate contractual terms once a debtor files for bankruptcy); *see, e.g.*, *Discharge in Bankruptcy—Bankruptcy Basics*, U.S. CTS., https://www.uscourts.gov/court-programs/bankruptcy/bankruptcy-basics/discharge-bankruptcy-bankruptcy-basics#:~:text=The%20discharge%20constitutes%20a%20permanent,for%20violating%20the%20discharge%20injunction [https://perma.cc/26Y6-SSZE] (explaining that bankruptcy law allows for discharge, releasing a debtor from its obligation to pay off certain debts, regardless of whether a creditor is secured).

[135] Cara O'Neill, *What Is a Bankruptcy Estate?*, NOLO, https://www.nolo.com/legal-encyclopedia/bankruptcy-estate.html [https://perma.cc/M4MY-ZSFN].

ruptcy estate and distribute its assets.[136] These mechanisms not only pause the chaos of individual collection efforts but also centralize the process of resolving claims in a structured and equitable forum.[137]

II. COMMERCIAL TORT CLAIMS

The introduction of commercial tort claims as collateral in Article 9 of the UCC brought forth a distinct and often complex aspect of secured transactions.[138] In order to perfect a security interest in these claims—arising from tort actions in a commercial context—lenders must follow very specific rules.[139] Due to the specificity surrounding the rules of commercial tort claims, creditors sometimes struggle with perfecting security interest in these claims.[140] Section A of this Part outlines the background of commercial tort claims in Article 9.[141] Section B of this Part details the rules creditors and debtors must follow to have perfected security interest in commercial tort claims.[142] Finally, Section C of this Part then explains the issues that arise when creditors try to establish security interest in commercial tort claims.[143]

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[136] *Id.*; *see Trustee, What Is Their Role in a Bankruptcy Case?*, U.S. BANKR. CT. CENT. DIST. OF CAL., https://www.cacb.uscourts.gov/faq/trustee-what-their-role-bankruptcy-case [https://perma.cc/3JG8-73RM] (explaining that a bankruptcy judge orders the appointment of a trustee in various types of bankruptcy filings, with a general responsibility of overseeing the handlings of the debtor's property).

[137] *See, e.g.*, *STOP! STOP! STOP! Making Sense of the Automatic Stay*, U.S. BANKR. CT. E. DIST. OF MO., https://www.moeb.uscourts.gov/sites/moeb/files/Automatic_Stay_flyer.pdf [https://perma.cc/RB4C-AS6Q] (Aug. 2021) (noting the benefits of the automatic stay rule in bankruptcy). Although the automatic stay broadly halts most creditor actions upon the filing of a bankruptcy petition, it is subject to several exceptions. *Bankruptcy and the Secured Creditor*, FINDLAW, https://corporate.findlaw.com/finance/bankruptcy-and-the-secured-creditor.html [https://perma.cc/K4EG-D9ZZ] (Mar. 26, 2008). These include criminal proceedings, actions to collect post-petition domestic support obligations, and governmental efforts to enforce regulatory or police powers. *Id.* The stay also does not apply to post-petition transactions or certain acts to perfect security interests under § 546(b) of the Bankruptcy Code. *Id.* Generally, the stay protects only the debtor, not third parties such as affiliates, partners, or guarantors—though some courts have extended it to non-debtors in rare circumstances. *Id.* The stay continues with respect to estate property until that property leaves the estate (e.g., through abandonment under § 554 of the Bankruptcy Code), and otherwise ends upon case dismissal, discharge, confirmation of a plan, or court order. *Id.* Violating the stay can render actions void and expose creditors to sanctions, including actual and punitive damages under § 362(k) of the Bankruptcy Code. *Id.* Secured creditors, however, may seek relief from the stay by motion. *Id.* Judges typically grant relief for "cause," such as a lack of adequate protection for the creditor's lien, or when the debtor lacks equity in the collateral and it is not essential to reorganization. *Id.*

[138] *See* Boehm & Fox, *supra* note 28 (outlining the various issues surrounding commercial tort claims in secured transactions).

[139] *See id.* (outlining the rules that creditors must follow).

[140] *See, e.g.*, *infra* notes 171–190 and accompanying text (explaining a case where a creditor was unsuccessful in establishing and perfecting security interest in commercial tort claims).

[141] *See infra* notes 144–152 and accompanying text.

[142] *See infra* notes 153–164 and accompanying text.

[143] *See infra* notes 165–208 and accompanying text.

A. The Development of Commercial Tort Claims in Article 9

Commercial tort claims are claims for damages arising from a debtor's business or its business operations.[144] These claims typically involve a wrongful act that causes economic injury to the business, such as fraud, unfair competition, and defamation.[145] A key feature that differentiates a commercial tort claim from a personal tort claim is that in a commercial tort claim, the claimant is a business or commercial entity suffering economic harm.[146] Personal tort claims, on the other hand, usually involve an individual that is experiencing personal loss unrelated to business operations.[147]

Historically, Article 9 did not allow creditors to establish a security interest in commercial tort claims.[148] When the UCC drafters first enacted the UCC, the drafters explicitly excluded commercial tort claims from the list of eligible collateral for security interests.[149] The drafters believed that commercial tort claims were beyond the scope of Article 9 because they intended Article 9 to cover only commercial financing.[150] In 1992, the Article 9 Study Committee of the Permanent Editorial Board for the UCC released a report recommending that commercial tort claims be included in Article 9 because the claim holders

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[144] U.C.C. § 9-102(a)(13) (A.L.I. & UNIF. L. COMM'N 2022). Commercial tort claims cannot arise out of breach of contract. *Business Torts: What Are They and How Do You File (or Defend Against) a Tort Claim?*, EDELBOIM LIEBERMAN (June 23, 2023), https://elrolaw.com/blog/business-torts-what-are-they-and-how-do-you-file-or-defend-against-a-tort-claim/#:~:text=A%20business%20tort%20is%20a,not%20have%20a%20contractual%20relationship [https://perma.cc/6JL4-6V7Z].

[145] *See Business Torts: What Are They and How Do You File (or Defend Against) a Tort Claim?*, *supra* note 144 (outlining the types of commercial tort claims).

[146] *Compare Commercial Tort Claim*, CORNELL L. SCH.: LEGAL INFO. INST., https://www.law.cornell.edu/wex/commercial_tort_claim#:~:text=A%20commercial%20tort%20claim%20is,the%20death%20of%2C%20an%20individual [https://perma.cc/C6YZ-FDZW] (explaining that commercial tort claims involve the claimant being an organization or individual that suffers a tort during the course of their business or profession), *with What Is a Tort Claim?*, WOLF & PRAVATO, https://wolfandpravato.com/what-is-a-tort-claim/#:~:text=In%20short%2C%20tort%20claim%20definition,as%20various%20other%20applicable%20damages [https://perma.cc/DB3U-5BMP] (stating that tort claims involve actions that harm an individual's wellbeing and infringe on their rights).

[147] *What is a Tort Claim?*, *supra* note 146 (explaining that a tort claim typically includes actions pertaining to events threatening an individual's wellbeing and/or infringing upon their rights).

[148] *See* U.C.C. § 9-104(k) (A.L.I. & UNIF. L. COMM'N 1965) (excluding commercial tort claims from the 1965 version of the UCC). The drafters did not allow security interest because they believed it was not standard to use commercial tort claims as collateral for a commercial transaction. PERMANENT ED. BD. FOR THE UNIF. COM. CODE, PEB STUDY GROUP UNIFORM COMMERCIAL CODE ARTICLE 9, at 58–59 (1992).

[149] U.C.C. § 9-104(k) (A.L.I. & UNIF. L. COMM'N 1965).

[150] *See* 1 GRANT GILMORE, SECURITY INTERESTS IN PERSONAL PROPERTY § 10.7, at 316 (1965) (stating that commercial torts were outside the scope of a statute dedicated to commercial financing); Harold R. Weinberg, *They Came from "Beyond the Pale": Security Interest in Tort Claims*, 83 KY. L.J. 443, 444 n.2 (1995) (explaining that the drafters decided to explicitly note that commercial tort claims were not under the scope of Article 9 because of a recommendation they received from the New York Law Revision Commission to make Article 9 clearer and more precise).

can assign the claims to third parties under non-UCC Law.[151] Subsequently, in 1998, the UCC drafters issued a new version of the UCC that included commercial tort claims as collateral under the scope of Article 9.[152]

B. Perfecting Security Interest in Commercial Tort Claims

To create a valid security interest in a commercial tort claim, a creditor must first enter into a security agreement with the debtor.[153] The security agreement for a commercial tort claim must meet all the basic Article 9 requirements of a security agreement, including being an authenticated record that provides an adequate description of the collateral.[154] The collateral description must be specific enough to allow a third party to understand the specific claim that is mentioned in the security agreement. [155] While Article 9 allows for broad descriptions for most types of collateral, commercial tort claims

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[151] Permanent Ed. Bd. for the Unif. Com. Code, *supra* note 112; Weinberg, *supra* note 150, at 444 n.2. Many jurisdictions have state laws that allow an entity to transfer or assign their rights to a tort cause of action and their interest in the settlement or judgement from that tort claim to third parties. Harold R. Weinberg, *Tort Claims as Intangible Property: An Exploration from an Assignee's Perspective*, 64 KY. L.J. 49, 49 (1975); *see* Rowan Weaver & Norton Rose Fulbright, *Can a Cause of Action Be Assigned in a Corporate Transaction?*, MONDAQ (Dec. 13, 2016), https://www.mondaq.com/canada/contracts-and-commercial-law/552630/can-a-cause-of-action-be-assigned-in-a-corporate-transaction [https://perma.cc/8QXK-8KLC] (explaining how there were exceptions to the general rule that commercial tort rights were non-transferrable). The Permanent Editorial Board believed that because this was possible, it was only right to allow interest to be transferred to creditors under the UCC as well. *See* Permanent Ed. Bd. for the Unif. Com. Code, *supra* note 112 (stating that the board saw little reason to continue to exclude tort claims). The Permanent Editorial Board for the UCC consists of members from the ALI and the ULC, as well as a Director of Research. *Permanent Editorial Board for Uniform Commercial Code*, UNIF. L. COMM'N, https://www.uniformlaws.org/committees/community-home?CommunityKey=ffaa1a04-3d69-40f5-95bd-7adac186ef28 [https://perma.cc/99M7-HTS4]. The board oversees ongoing drafting efforts related to the UCC and is responsible for preparing commentaries. *Id.* Additionally, it provides guidance to its member organizations on potential amendments or updates that may be necessary for the UCC. *Id.*

[152] Mark J. Volow & C. Mark Laskay, *Revised Article 9: What Banks Need to Know*, AKIN GUMP (Feb. 2001), https://www.akingump.com/a/web/902/9VkVx/72.pdf [https://perma.cc/2XBY-ZBX4]. The UCC drafters intended for the 1998 UCC version to be made uniform across the United States on July 1, 2001. *Id.* The drafters also revised the former version of the UCC to allow creditors to take advantage of the value in collateral related to information technology. *See* Jonathan C. Lipson, *Financing Information Technologies: Fairness and Function*, 2001 WIS. L. REV. 1067, 1094 (explaining that the revision makes it much easier to establish security interest in informational technologies).

[153] U.C.C. § 9-203(b)(3)(A) (A.L.I. & UNIF. L. COMM'N 2022).

[154] Cindy J. Chernuchin, *Understanding the Terms of Security Agreements*, PRAC. LAW., June 2011, at 39, 40, https://www.willkie.com/~/media/Files/Publications/2011/06/Understanding%20The%20Terms%20Of%20Security%20Agreements/Files/UnderstandingTheTermsOfSecurityAgreements pdf/FileAttachment/Understanding-The-Terms-Of-Security-Agreements.pdf [https://perma.cc/CTR5-44PC].

[155] Boehm & Fox, *supra* note 28. Describing a commercial tort claim as "all commercial tort claims" in a security agreement is insufficient under Article 9. *Commercial Tort Claims as Collateral*, REED SMITH (Oct. 22, 2012), https://www.reedsmith.com/en/perspectives/2012/10/commercial-tort-claims-as-collateral [https://perma.cc/TXB6-TSNQ].

require particular attention to ensure that the security agreement clearly identifies the claim pledged.[156] A creditor simply referencing "all commercial tort claims" in a security agreement is using a description that is too vague to allow a security interest to attach.[157]

Once a creditor's security interest in a commercial tort claim has attached, to have priority, the creditor must perfect the security interest.[158] To perfect a security interest in a commercial tort claim, a creditor must file a financing statement with the appropriate filing office.[159] A financing statement places third parties on notice that a creditor has a security interest in a debtor's commercial tort claims.[160] Creditors must clearly describe the claim using specific language that identifies them.[161]

A creditor with a perfected security interest in a commercial tort claim has priority over unperfected or unsecured creditors.[162] Priority between creditors with perfected security interests in a commercial tort claim, however, is more complicated.[163] In such situations, priority is generally given to the creditor who first filed a financing statement or first perfected their security interest.[164]

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[156] U.C.C. § 9-108(e)(1).

[157] Sepinuck, *supra* note 27.

[158] *See Perfection of a Security Interest—Module 2 of 5*, LAWSHELF, https://www.lawshelf.com/videocoursesmoduleview/perfection-of-a-security-interest-module-2-of-5 [https://perma.cc/TC8F-7MEA] (noting that creditors must perfect security interest in collateral after establishing it in order to have priority over other creditors); *Understanding Security Accounts in Banking Systems: Perfecting Your Security Interest*, LUCOSKY BROOKMAN (Jan. 30, 2024), https://www.lucbro.com/news/blogs/detail/10523/understanding-security-accounts-in-banking-systems#:~:text=Attachment%20and%20Perfection,filing%20in%20a%20priority%20dispute [https://perma.cc/FC87-NHTY] (explaining that perfecting security interest is the next step to take after establishing security interest in collateral).

[159] U.C.C. § 9-310(a); GEORGE E. ZOBITZ, PAUL H. ZUMBRO & CHRISTOPHER J. KELLY, CRAVATH, SWAINE & MOORE LLP, *Country Q&A: United States*, *in* FINANCE HANDBOOK 2011 (2011), https://www.cravath.com/a/web/381/3280210_1.pdf [https://perma.cc/W5LH-PJQP]. If the collateral is associated with real estate, then a creditor must file the financing statement in the office the state has designated for real estate transactions. U.C.C. § 9-501(a)(1). For most other collateral, it is appropriate to file the financing statement in the filing office the state has designated for UCC files. *Id.* § 9-501(a)(2).

[160] Wolters Kluwer Compliance Sols. Staff, *What Is a UCC Filing? Learn the Basics*, WOLTERS KLUWER, https://www.wolterskluwer.com/en/expert-insights/what-is-a-ucc-filing#:~:text=In%20fact%2C%20it%20is%20sometimes,a%20loan%20or%20a%20lease [https://perma.cc/3WTZ-K5FQ] (Aug. 26, 2022).

[161] U.C.C. § 9-504(1).

[162] *Id.* § 9-322(a)(2); *see Perfection of a Security Interest—Module 2 of 5*, *supra* note 158 (explaining that creditors with a filed financing statement can have priority over other creditors).

[163] AMIT D. RANADE, HILLS CLARK MARTIN & PETERSON P.S., UCC-9: CREATION, ENFORCEMENT, PERFECTION, AND PRIORITY OF UCC SECURITY INTERESTS, https://www.hcmp.com/uploads/pdf/reducedsizeadrclematerialsucc9creationenforcementperfectionandpriorityofuccinterests.pdf [https://perma.cc/9DFZ-YG4X] (explaining the various rules associated with priority under Article 9). For example, there may be instances where multiple banks have perfected security interest in the same commercial tort claim belonging to a debtor. *See* SCOTT W. DALES, PATRICK E. MEARS & PAUL R. HAGE, *Chapter 5: Priority of Security Interests* (noting that there may be priority competitions between secured parties over collateral), *in* MICHIGAN SECURITY INTERESTS IN PERSONAL PROPERTY

C. Special Rules of Commercial Tort Claims

Since the addition of commercial tort claims as collateral under Article 9, drafters and legal practitioners have encountered numerous issues when applying the rules for commercial tort claims in practice.[165] Subsection 1 of this Section outlines the issues associated with section 9-108(e)(1) of the UCC and its requirement of a specific description of commercial tort claims in security agreements.[166] Subsection 2 of this Section describes the problems that have occurred because of section 9-204(b)(2) of the UCC's prohibition of secured parties from using security agreements to establish security interest in commercial tort claims that a debtor acquires after signing the security agreement.[167]

1. UCC Section 9-108(e)(1)'s Description Requirement

Section 9-108(e)(1) of the UCC specifies that in order to create a valid security interest in a commercial tort claim, the security agreement must include a specific description of the claim.[168] While this rule allows parties to identify the exact commercial tort claims offered as collateral, it has caused many creditors to experience problems when trying to perfect a security inter-

(Inst. for Continuing Legal Educ. 2010), https://www.icle.org/modules/books/chapter.aspx?chapter=5&book=2010551105&lib=business&partdisplayed=2&from=store [https://perma.cc/85SL-T42D] (Dec. 12, 2025).

[164] U.C.C. § 9-322(a)(1); *see* RANADE, *supra* note 163 (noting that creditors with competing security interests can win priority by perfecting the security interest or filing a financing statement first).

[165] *See* Boehm & Fox, *supra* note 28 (describing various issues that are associated with commercial tort claims under Article 9).

[166] *See infra* notes 168–193 and accompanying text.

[167] *See infra* notes 194–208 and accompanying text.

[168] U.C.C. § 9-108(e)(1); Boehm & Fox, *supra* note 28. Unlike other forms of collateral, such as accounts or inventory, which creditors can describe broadly, this provision requires that a commercial tort claim be identified with particularity. U.C.C. § 9-108(e)(1); Bruce S. Nathan & Michael Papandrea, *The Importance of a Proper Collateral Description in a UCC Financing Statement*, BUS. CREDIT, Nov.–Dec. 2019, at 1, 3, https://www.lowenstein.com/media/5260/bc-novdec19-nathan.pdf [https://perma.cc/24EP-RMNY]. Creditors can describe almost all other collateral in financing statements and security agreements by simply mentioning the type of collateral. *See* U.C.C. § 9-108(b)(3) (providing the general rule for defining collateral). For example, describing a debtor's inventory used as collateral as "all inventory" in a security agreement or financing statement is sufficient to establish and perfect security interest in the debtor's inventory. *See id.* (stating that describing collateral by collateral type in security agreements and financing statements is permissible). The purpose of identifying collateral in security agreements and financing statements is to ensure the debtor and creditor clearly understand the collateral used, and to put third parties on sufficient notice of the collateral's status. *See* Alana Katz, *No Security by Obscurity: The Importance of Clearly Identifying Collateral*, WEIL RESTRUCTURING (Mar. 2, 2015), https://restructuring.weil.com/secured-claims/no-security-by-obscurity-the-importance-of-clearly-identifying-collateral/ [https://perma.cc/74W3-M3LR] (highlighting that creditors and debtors must sufficiently describe collateral to ensure the debtors, creditors, and third parties understand the collateral in which the creditors are gaining security interest).

est in such claims.[169] This is because in many cases, creditors are not properly granted a security interest in commercial tort claims when their security interests in the claims are contested in court.[170]

For instance, in 2011, in *City Sanitation, LLC v. Allied Waste Services of Massachusetts, LLC (In re American Cartage, Inc)*, the U.S. Court of Appeals for the First Circuit held that a creditor did not have a security interest in a debtor's commercial tort claims despite the debtor granting the creditor a security interest in all its personal property in their security agreement.[171] American Cartage—a waste disposal company—borrowed money from Financial Federal Credit (FFC), and granted FFC a security interest in all its assets to secure the loan.[172] American Cartage then filed for bankruptcy in 2003 to restructure the company's finances.[173] Upon American Cartage's filing for bankruptcy, the Massachusetts Bankruptcy Court appointed a U.S. Trustee to oversee the matter and transferred American Cartage's assets to a newly created bankruptcy estate.[174] The bankruptcy court also granted replacement liens for FFC and other creditors to protect their interests.[175] After American Cartage failed to complete all the requirements for restructuring, however, the U.S. Trustee asked the bankruptcy court to either dismiss the case or liquidate the company.[176] To give a best effort at restructuring the company, the bankruptcy court appointed a reorganization

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[169] *See infra* notes 171–190 and accompanying text (explaining a case where the court found that a creditor did not establish security interest in a commercial tort claim because it was not described in the security agreement).

[170] *See infra* notes 171–190 and accompanying text (same).

[171] 656 F.3d 82, 88 (1st Cir. 2011).

[172] *Id.* at 85.

[173] *Id.* American Cartage filed for Chapter 11 bankruptcy. *Id.* Chapter 11 bankruptcy is a court-managed process that helps businesses reorganize their debts. Jessica Gibson, *Chapter 11 Bankruptcy: What's Involved, Pros & Cons of Filing*, INVESTOPEDIA, https://www.investopedia.com/terms/c/chapter11.asp [https://perma.cc/HFU7-HV2L] (Mar. 14, 2025). Often referred to as "reorganization" bankruptcy, it allows the company to restructure while continuing its operations. *Id.* Numerous major U.S. companies have utilized Chapter 11 to remain operational during financial difficulties. *Id.*

[174] *City Sanitation*, 656 F.3d at 85.

[175] *Id.* When there is a threat to creditors recouping the money they loaned to the debtor, courts may grant the creditors liens in the debtor's other assets to compensate for the potential loss the creditors would have on the original collateral. *Chapter 11—Bankruptcy Basics*, U.S. CTS., https://www.uscourts.gov/court-programs/bankruptcy/bankruptcy-basics/chapter-11-bankruptcy-basics [https://perma.cc/5S2L-B45Z]; *When a Borrower Files a Chapter 11 Bankruptcy: What Lenders Should Know*, HODGSON RUSS (Nov. 11, 2020), https://www.hodgsonruss.com/newsroom/publications/When-a-Borrower-Files-a-Chapter-11-Bankruptcy-What-Lenders-Should-Know [https://perma.cc/KH4Y-5DH4]. This is known as providing the creditor with adequate protection. *Chapter 11—Bankruptcy Basics*, *supra*.

[176] *City Sanitation*, 656 F.3d at 85. The U.S. trustee is involved in a bankruptcy case to oversee the proceedings and the handling of the debtor's assets. *Office of the U.S. Trustee*, U.S. BANKR. CT. S. DIST. OF FLA., https://www.flsb.uscourts.gov/office-us-trustee [https://perma.cc/VED3-R8HL].

trustee to restructure the company.[177] Despite the reorganization trustee's work, restructuring efforts still failed, so the court liquidated the company.[178]

During the liquidation, FFC received consent from the court to take possession of all American Cartage's assets in which it held security interest and to sell those assets to Todesca Equipment Co. (Todesca) to recover the debt.[179] Todesca then resold those assets to City Sanitation, LLC.[180] Additionally, a consultant of the trustee hired Allied Waste Services of Massachusetts, LLC (Allied Waste) to manage American Cartage's customer accounts.[181]

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[177] *City Sanitation*, 656 F.3d at 85–86. The bankruptcy court appointed John Burdick as the Chapter 11 trustee. *Id.* In a Chapter 11 bankruptcy, the debtor usually maintains control of their business and its reorganization, functioning as the debtor-in-possession. BLOOMBERG L. BANKRUPTCY, OVERVIEW—CHAPTER 11 TRUSTEE, Bloomberg Law Practical Guidance, https://www.bloomberglaw.com/document/XFCDBH54000000 [https://perma.cc/Q4Q2-BRJR]. Nevertheless, the court can appoint a trustee if there are valid grounds, such as fraud, dishonesty, or mismanagement. *Id.* Either the U.S. Trustee, creditors, or other interested parties can file a motion to request the court appoint a trustee. *Id.* The court may approve this motion if it finds sufficient cause or if it serves the best interests of creditors. *Id.* Courts consider appointing a trustee an exceptional measure and do so only after careful consideration. *Id.* When a trustee is to be appointed, the U.S. Trustee will consult with relevant parties to select a suitable individual. *Id.* The trustee's role includes managing the debtor's reorganization, overseeing business operations, and selling assets if needed. *Id.* The trustee also has the power to file a plan to convert a debtor's Chapter 11 bankruptcy to a Chapter 7 bankruptcy or dismiss the bankruptcy case entirely. *Id.* Creditors may also request the judge to appoint a trustee with specific industry knowledge. *Id.* The appointed trustee must file a bond to guarantee their performance. *Id.* The overall aim of this process is to safeguard the interests of creditors while ensuring effective management of the debtor's restructuring efforts. *See id.* (outlining the process).

[178] *City Sanitation*, 656 F.3d at 85. The court liquidated the company under Chapter 7 bankruptcy. *Id.* In a Chapter 7 bankruptcy, a trustee gathers all a debtor's assets, sells them, and uses the money from these sales to pay any outstanding balances the debtor had with creditors. *Chapter 7—Bankruptcy Basics*, U.S. CTS., https://www.uscourts.gov/court-programs/bankruptcy/bankruptcy-basics/chapter-7-bankruptcy-basics#:~:text=A%20chapter%207%20bankruptcy%20case,provisions%20of%20the%20Bankruptcy%20Code [https://perma.cc/NH8N-ZPUF].

[179] *City Sanitation*, 656 F.3d at 86.

[180] *Id*. During a bankruptcy, creditors can sell collateral to recoup the outstanding funds for their debtors' loans. *363 Sale*, CORP. FIN. INST., https://corporatefinanceinstitute.com/resources/valuation/363-sale/ [https://perma.cc/6558-RXDN]. This is known as a 363 Sale. *Id.* The creditor usually sells the collateral at an auction, and the court must approve the plans surrounding the sale before the creditor can auction the collateral. *What Is a Section 363 Bankruptcy Sale and How Does the Process Work?*, TROUTMAN PEPPER LOCKE, https://www.troutman.com/a/web/67kGkcEwP6ziyAkJntPKpQ/tp_creditors-rights-toolkit_what-is-a-section-363-bankruptcy-sale.pdf [https://perma.cc/PU5N-WKMD]. Purchasers of items from a 363 sale are usually able to obtain the items at discounted prices. CORP. FIN. INST., *supra*. During the auction, debtors have the opportunity to participate in the auction by selecting a bidder that will set the minimum amount for bidding, preventing others from bidding for the collateral at a lower price. Will Kenton, *Stalking Horse Bid: Definition, How It Works, and Example*, INVESTOPEDIA, https://www.investopedia.com/terms/s/stalkinghorsebid.asp#:~:text=A%20stalking%20horse%20bid%20is,t%20underbid%20the%20purchase%20price [https://perma.cc/SAS7-7EMM] (Feb. 27, 2025). This is known as a stalking horse bidder. Scott H. Hogan, *Understanding the 363 Bankruptcy Sale: High-Value Opportunities for Strategic Investors*, FOSTER SWIFT (Oct. 21, 2024), https://www.fosterswift.com/communications-understanding-363-bankruptcy-sales-opportunities-strategic-investors.html [https://perma.cc/668S-AD7E].

[181] *City Sanitation*, 656 F.3d at 86. In 2008, Allied Waste merged with its competitor Republic Services Inc. Scott Malone & Jessica Hall, *Republic to Buy Allied in $6 Billion Waste Deal*, REUTERS

After liquidation and closure of the case, City Sanitation filed a tort action against Allied Waste and the consultant, asserting standing as the "debtor's successor in interest . . . ."[182] City Sanitation claimed that Allied Waste and the consultant "converted assets, interfered with contractual relationships, breached fiduciary duties, and conspired to commit these acts."[183] The U.S. Trustee intervened and moved to reopen the bankruptcy case.[184] The bankruptcy court consequently reopened the case and ruled that City Sanitation's claims were commercial tort claims that belonged to the estate, not to the debtor, because they were not adequately described in the security agreement between American Cartage and FCC.[185] City Sanitation appealed, and the district court affirmed the bankruptcy court's ruling.[186]

(June 23, 2008), https://www.reuters.com/article/world/republic-to-buy-allied-in-6-billion-waste-deal-idUSN23459259/ [https://perma.cc/KU3G-325X]. This merger allowed Republic Services to become the second largest trash hauling company in North America. Stewart Bailey, *Allied Waste Is Sold to Republic Services*, WORCESTER TELEGRAM & GAZETTE (June 24, 2008), https://www.telegram.com/story/news/local/north/2008/06/24/allied-waste-is-sold-to/52367173007/ [https://perma.cc/G8VJ-UMCZ].

[182] *City Sanitation*, 656 F.3d at 86. City Sanitation claimed that because it had purchased all of the assets in which American Cartage granted Financial Federal Credit (FFC) a security interest, it acquired American Cartage's legal rights and could therefore pursue causes of action on behalf of the debtor. *Id.*

[183] *Id.*

[184] *Id.*

[185] *In re* Am. Cartage, Inc., No. 03–44308–JBR, 2009 WL 4780972, at *4–5 (Bankr. D. Mass. Dec. 11, 2009), *aff'd sub nom.*, City Sanitation, LLC v. Burdick (*In re* Am. Cartage, Inc.), 438 B.R. 1 (D. Mass. 2010), *aff'd sub nom.*, *City Sanitation*, 656 F.3d. at 86–87. This meant that FFC never received security interest in the claims and it instead remained with the debtor until it was transferred to the estate upon the filing of the bankruptcy. *Id.* at *5.

[186] *Burdick*, 438 B.R. at 14. In recent years, the Southern District of New York and the District of Delaware have handled most Chapter 11 bankruptcy cases. Samuel M. Andre, *The Southern District of Texas: The Next Big Venue in Commercial Bankruptcy?*, FREDRIKSON (Oct. 10, 2018), https://www.fredlaw.com/the-restructuring-report/the-southern-district-of-texas-the-next-big-venue-in-commercial-bankruptcy [https://perma.cc/J6JC-P3QW]. This is due to a multitude of reasons, such as speediness in bankruptcy proceedings and expertise in handling commercial matters. *See id.* (noting that many debtors chose to file for bankruptcy in the Southern District of New York and the District of Delaware due to the courts' experience in handling complex commercial matters); *Delaware Bankruptcy: What Makes It Different?*, WENOKUR RIORDAN (Apr. 28, 2025), https://www.wrlawgroup.com/blog/delaware-bankruptcy-what-makes-it-different [https://perma.cc/LQS3-C4W4] (noting that many companies choose to file for bankruptcy in the District of Delaware because the district has a reputation for handling commercial bankruptcies with speed and efficiency); KEVIN M. LEWIS, CONG. RSCH. SERV., LSB10063, CONGRESS CONSIDERS MAKING IT HARDER TO FILE FOR BANKRUPTCY IN NEW YORK OR DELAWARE 2 (2019), https://www.congress.gov/crs-product/LSB10063#:~:text=According%20to%20supporters%20of%20the,any%20other%20connections%20to%20Delaware." [https://perma.cc/364G-7WJD] (explaining that companies prefer the high level of efficiency and expertise of the bankruptcy judges in the Southern District of New York and the District of Delaware in comparison to other districts). The Southern District of Texas, however, has become popular for companies filing Chapter 11 bankruptcies due to the increased predictability, convenience, and expertise in the district. Andre, *supra*. The District of New Jersey has also seen an upsurge in corporate bankruptcy filings. Kimberly Redmond, *Going for Broke: NJ a Top Venue for Corporate Bankruptcy Filings*, NJBIZ

City Sanitation eventually appealed to the First Circuit.[187] Despite the fact that American Cartage granted FFC security interest in all its assets, the First Circuit affirmed the district court's affirmation that the commercial tort claims belonged to the estate because American Cartage did not properly grant FFC security interest in these claims.[188] The circuit court based its ruling on the fact that the security agreement did not specifically describe the commercial tort claims against Allied Waste, as required by section 9-108(e)(1) of the UCC, and that the claims did not exist when the debtor signed the security agreement.[189] Because the commercial tort claims were property of the estate, only the trustee had standing to pursue the claims.[190]

The *City Sanitation* case highlights the impact of UCC section 9-108(e)(1) on commercial tort claims and secured creditors.[191] It illustrates the challenges that creditors face in asserting control over such claims once a bankruptcy filing occurs.[192] Even if a creditor, like FFC, has security interest in all a debtor's assets, they may not receive security interest in the debtor's commercial tort claims if the creditor fails to properly describe them in the security agreement.[193]

2. UCC Section 9-204(b)(2)'s Restriction on After-Acquired Commercial Tort Claims

Creditors are generally allowed to establish security interests in assets that a debtor acquires after executing the security agreement by including a clause covering after-acquired collateral in the agreement.[194] Commercial tort claims and consumer goods are the only exceptions to this rule.[195] Section 9-204(b)(2) of the UCC states that creditors cannot establish a security interest in commercial tort claims that arise after the debtor completes the security agreement.[196] This rule is significant because it stops creditors from being able to perfect

(Oct. 9, 2024), https://njbiz.com/going-for-broke-nj-a-top-venue-for-corporate-bankruptcy-filings/ [https://perma.cc/9857-C24U].

[187] *City Sanitation*, 656 F.3d at 87.

[188] *Id.* at 88.

[189] *Id.*

[190] *Id.*

[191] *See id.* (showing that a creditor was unable to recover funds for an outstanding balance from the debtor because they did not properly describe commercial tort claims in the security agreement).

[192] *See id.* (deciding whether a security agreement secured a creditor's security interest in a commercial tort claim).

[193] *See id.* (ruling that a creditor did not have security interest in a commercial tort claim because it did not explicitly describe the claim in question).

[194] *Chapter 9 The Specifics of Enforceability—After-Acquired Collateral, Future Advances, Transferred Collateral and Proceeds, and the New Debtor Problem*, CALI, https://www.cali.org/lessons/web/ct11/chapter_9.htm [https://perma.cc/C4PB-X37U].

[195] *See* U.C.C. § 9-204(b) (A.L.I. & UNIF. L. COMM'N 2022) (listing the exceptions).

[196] *Id.* § 9-204(b)(2); *Chapter 9 The Specifics of Enforceability—After-Acquired Collateral, Future Advances, Transferred Collateral and Proceeds, and the New Debtor Problem*, *supra* note 194.

their security interests in claims that may emerge in the future, leading to issues in recovering the funds they loaned to the debtor.[197]

For example, in 2024, in *In re Main Street Business Funding, LLC*, the U.S. Court of Appeals for the Third Circuit held that a creditor did not have a security interest in a commercial tort claim that arose after the debtor signed the security agreement despite having a security interest in all the debtor's property and the proceeds thereof.[198] In 2016, John Lane purchased a promissory note from Main Street Business Funding (Main Street) and secured it with a security interest in all of Main Street's current and after-acquired assets.[199] Later, Main Street filed a lawsuit alleging that a former consultant had embezzled money that it borrowed under the company's name.[200] Lane, along with other creditors, filed a petition leading Main Street to file for bankruptcy and liquidate the company.[201] When the Delaware Bankruptcy Court approved the settlements of the embezzlement claim Main Street filed, Lane moved to have the settlement funds transferred to him, claiming they were part of his collateral as proceeds of Main Street's lawsuit.[202] The bankruptcy court ruled that Lane did not have a security interest in the embezzlement litigation because it was a commercial tort claim, it was not specifically described in the security agreement, and it arose after the debtor executed the agreement.[203]

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[197] *See, e.g.*, *In re* S-Tek 1, LLC, 635 B.R. 860, 866 (Bankr. N.M. 2021) (ruling that a creditor did not have a security interest in commercial tort claims because security interest does not attach to commercial tort claims acquired after the debtor executed the security agreement); Helms v. Certified Packaging Corp., 551 F.3d 675, 681 (7th Cir. 2008) (ruling that a creditor could not establish security interest in commercial tort claims because the claims arose after the debtor signed the security agreement, in accordance with UCC § 9-204(b)(2)).

[198] No. 23-2430, 2024 U.S. App. LEXIS 22551, at *3–4 (3d Cir. Sep. 5, 2024).

[199] *Id.* at *2. A promissory note is a written document containing a promise to pay a party. Miles Almadrones, *What Is a Promissory Note? Definition, Examples, and Uses*, LEGALZOOM, https://www.legalzoom.com/articles/what-is-a-promissory-note [https://perma.cc/QSY3-6DR7] (Sep. 23, 2024). Promissory notes usually contain all the details of the transaction, including the payment schedule, principal debt amount, interest rate, and the maturity date. Adam Barone, *Promissory Note: What It Is, Different Types, and Pros and Cons*, INVESTOPEDIA, https://www.investopedia.com/terms/p/promissory note.asp#toc-promissory-note-repayment [https://perma.cc/V47K-HGDT] (July 27, 2025).

[200] *In re Main St. Bus. Funding*, 2024 U.S. App. LEXIS 22551, at *2. Main Street claimed that the former consultant had embezzled $620,000 after borrowing $700,000 under the company's name. *Id.*

[201] *Id.* Main Street was in a Chapter 7 bankruptcy proceeding. *Id.*

[202] *Id.*

[203] *Id.* The court used the "gist of the action" doctrine from Pennsylvania state law to determine that the embezzlement litigation was a commercial tort claim. *Id.* at *3. The gist of the action doctrine is used to stop tort claims from progressing in court when they are fundamentally linked to a contract. Alex A. Tsiatsos, *The Gist of the Action Doctrine: Lessons from Pennsylvania's Search for Cause of Action Essences*, 119 W. VA. L. REV. ONLINE 1, 2 (2016), https://wvlawreview.wvu.edu/west-virginia-law-review-online/2016/05/14/the-gist-of-the-action-doctrine-lessons-from-pennsylvania-s-search-for-cause-of-action-essences# [https://perma.cc/UG9H-Z5N9]. It applies if the tort claim arises from, is based on, or is dependent on the contract, or if it closely mirrors a breach of contract claim. *Id.* Rather

Lane appealed.[204] The Third Circuit ultimately upheld the district court's decision affirming the bankruptcy court's finding that the embezzlement litigation was a commercial tort claim that was not described in the security agreement.[205] The circuit court also noted that based on section 9-204(b)(2) of the UCC, a security agreement cannot be used to grant a creditor security interest in commercial tort claims that a debtor acquires after signing the agreement. [206] Thus, the security agreement could not be used to give Lane a security interest in the embezzlement litigation.[207] Because Lane did not have a security interest in the commercial tort claim, he could not establish an interest in its settlement funds.[208]

III. RULES FOR COMMERCIAL TORT CLAIMS MUST CHANGE

The UCC plays a crucial role in securing transactions by providing a consistent framework for creditors to protect their interests in a debtor's property.[209] Yet, sections 9-108(e)(1) and 9-204(b)(2) of the UCC pose significant challenges for creditors seeking to obtain security interests in commercial tort claims.[210] UCC section 9-108(e)(1) mandates that a security agreement must clearly identify a commercial tort claim with adequate specificity. UCC section 9-204(b)(2) prohibits creditors from taking a security interest in after-acquired commercial tort claims.[211] These provisions limit the efficacy of secured transactions and can lead to unjust outcomes for creditors.[212]

Section A of this Part argues that UCC drafters should remove section 9-108(e)(1) and section 9-204(b)(2) because they cause undue burden on creditors.[213] Section B of this Part then argues that UCC drafters should remove

than focusing on specific language in the contract, the court evaluates the overall nature of the claim to determine whether its core is rooted in contract or tort. *Id.*

[204] *In re Main St.*, 2024 U.S. App. LEXIS 22551. at *3.

[205] *Id.* at *3–4.

[206] *Id.* at *4.

[207] *Id.*

[208] *Id.*

[209] *See Secured Transactions Law & the UCC*, JUSTIA, https://www.justia.com/business-operations/docs/secured-transactions/ [https://perma.cc/5VFD-7YMH] (Oct. 2025) (noting that the UCC governs secured transactions and that all states in the United States as well as the District of Columbia, Guam, and the U.S. Virgin Islands have adopted it).

[210] *See supra* notes 165–208 and accompanying text (illustrating how UCC sections 9-108(e)(1) and 9-204(b)(2) can make it difficult for creditors to have security interest in commercial tort claims).

[211] U.C.C. § 9-204(b)(2).

[212] *See Commercial Tort Claims as Collateral*, *supra* note 155 (explaining that creditors may have to force debtors to report on new commercial tort claims in order for them to establish security interest in these claims after the debtor has executed the security agreement); Boehm & Fox, *supra* note 28 (noting that creditors need debtors to consent and cooperate with them if they want to change their security agreement to establish security interest in new commercial tort claims).

[213] *See infra* notes 215–222 and accompanying text.

section 9-204(b)(2) because it is inconsistent with the framework and other rules set out in Article 9.[214]

A. The Special Rules for Commercial Tort Claims Create Heightened Difficulties for Creditors

One of the most significant problems caused by UCC section 9-108(e)(1) is that it forces creditors to describe commercial tort claims that may not be fully realized at the time the debtor executes the security agreement.[215] The exact details of a potential claim are often indeterminate or unpredictable.[216] A requirement to describe a commercial tort claim with such particularity at the outset of a secured transaction puts an unrealistic burden on creditors, who may not have access to the facts or foresee the circumstances under which such claims will arise.[217]

Additionally, the purpose of a security interest is to protect creditors' rights, but the specificity requirement under section 9-108(e)(1) inadvertently hampers this goal by increasing the risk of creditors being unable to properly establish a security interest in commercial tort claims.[218] Allowing more flexibility in describing commercial tort claims in security agreements would not only better protect the security interests of creditors but would also bring the rules surrounding commercial tort claims more in line with those governing most other types of collateral under Article 9.[219] This will simplify the process for creditors looking to establish security interests in commercial tort claims and subsequently encourage commerce.[220]

UCC section 9-204(b)(2)'s requirements can deny some creditors the ability to secure the full spectrum of assets that may arise from the debtor's opera-

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[214] *See infra* notes 223–237 and accompanying text.

[215] *See* Boehm & Fox, *supra* note 28 (stating that creditors can only properly describe commercial tort claims after they have occurred).

[216] *See* Catharine P. Wells, *A Pragmatic Approach to Improving Tort Law*, 54 VAND. L. REV. 1447, 1449 (2001) (explaining that tort claims naturally involve unexpected injuries); Boehm & Fox, *supra* note 28 (noting that it is hard to describe commercial tort claims before they have occurred due to the nature of commercial tort claims).

[217] *See, e.g.*, Sepinuck, *supra* note 27 (arguing that creditors cannot properly describe a commercial tort claim in a security agreement unless they have all the facts concerning the claim).

[218] *See* City Sanitation, LLC v. Allied Waste Servs. of Mass., LLC (*In re* Am. Cartage, Inc.), 656 F.3d 82, 88 (1st Cir. 2011) (holding that a creditor does not have security interest in a debtor's commercial tort claims, despite the debtor granting the creditor security interest in all its assets, because the creditor did not describe the commercial tort claims using the guidelines in UCC section 9-108(e)(1) in the security agreement); Herman, *supra* note 70 (explaining that security interest gives creditors the ability to retrieve funds for a defaulted loan by having security interest in collateral).

[219] *See Commercial Tort Claims as Collateral*, *supra* note 155 (noting that unlike most other types of collateral under Article 9, creditors must describe commercial tort claims with specificity in security agreements).

[220] *See An Overview of the Uniform Commercial Code*, *supra* note 51 (recognizing that legal certainty in business transactions benefits both businesses and consumers by fostering commerce).

tions, undermining the principle of fairness.[221] This results in unequal access to security, disproportionately harming creditors who are unable to anticipate or fully identify potential commercial tort claims at the time of the transaction.[222]

B. UCC Section 9-204(b)(2) Is Inconsistent with the Majority of Article 9's Rules

UCC section 9-204(b)(2) creates an inconsistency within the broader framework of secured transactions.[223] Under the UCC, a creditor can take a security interest in all a debtor's after-acquired property except commercial tort claims.[224] The fact that a creditor can secure interests in virtually every other type of collateral that a debtor acquires after signing the security agreement, but not in commercial tort claims, is inconsistent with the UCC's goal of providing a clear, comprehensive, and flexible system of secured transactions.[225]

The 2022 revision of the UCC further reinforces the argument for removing section 9-204(b)(2).[226] The 2022 revision introduces section 9-204(b.1)(2),

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[221] *See, e.g.*, *In re* Main St. Bus. Funding, LLC, No. 23-2430, 2024 U.S. App. LEXIS 22551, at *3–4 (3d Cir. Sep. 5, 2024) (ruling that a creditor did not have security interest in commercial tort claims that materialized after the debtor completed the security agreement).

[222] *See id.* (explaining how a creditor was unable to establish security interest in a commercial tort claim because the claim arose after the debtor finalized the security agreement and it was hard for the creditor to describe it before it occurred).

[223] *See* U.C.C. § 9-204(b)(2) (A.L.I. & UNIF. L. COMM'N 2022) (allowing creditors to establish security interest in after acquired collateral for all collateral types apart from commercial tort claims).

[224] *Id.*

[225] *See* MELISSA RANDALL & CMTY. COLL. OF DENV. STUDENTS, FUNDAMENTALS OF BUSINESS LAW ch. 11 (2020), https://pressbooks.ccconline.org/fundamentalsofbusinesslawCCD/chapter/chapter-11/ [https://perma.cc/VES9-P5MT] (mentioning that the UCC allows flexibility, encouraging business transactions by making them more formulaic).

[226] *See infra* note 227 and accompanying text (discussing how in the 2022 revision of the UCC, drafters added a provision allowing creditors to have security interest in a commercial tort claim if the claim resulted from collateral that has been mentioned in the security agreement, even if the claim arises after the debtor completes the security agreement). Over fifty percent of the states and territories in the United States have enacted the UCC's 2022 amendments. *See UCC, 2022 Amendments to*, UNIF. L. COMM'N, https://www.uniformlaws.org/committees/community-home?CommunityKey=1457c422-ddb7-40b0-8c76-39a1991651ac [https://perma.cc/XLB2-AHQU] (showing that twenty-nine out of fifty-three U.S. states and territories have enacted the UCC 2022 amendments). In this amendment, a large focus was on Article 9 and the creation of a new article, Article 12. *See* Sandra Feldman, *UCC Adds Article 12 and Other Amendments to Address Emerging Technologies*, WOLTERS KLUWER (Mar. 27, 2024), https://www.wolterskluwer.com/en/expert-insights/uniform-commercial-code-ucc-amended-to-address-emerging-technologies [https://perma.cc/55FT-UA4Y] (highlighting amendments to Article 9 and the addition of Article 12). Article 12 governs "controllable electronic records" (CERs)—a category that includes virtual currencies, NFTs, and other digital assets that an owner or secured party can control. *Id.* Control, in this context, is akin to physical possession of tangible property. *Id.* Article 12 clarifies when a buyer of a CER takes it free of third-party claims. *Id.* If a qualifying purchaser—someone who acquires control for value, in good faith, and without notice of competing claims—buys a CER, they take it free of prior property interests. *Id.* Additionally, when a CER is linked to a controllable account or payment intangible, those rights transfer with the CER, similar to how a promissory note operates. *Id.* Because of the addition of Article 12, the drafters

allowing creditors to have security interest in commercial tort claims that are proceeds from collateral mentioned in a security agreement.[227] Under the 2022 revision, creditors can take a security interest in commercial tort claims that are proceeds of collateral they already have security interest in at any time, yet they cannot rely on an after-acquired property clause to assert an interest in those same claims if they arise after the security agreement is executed.[228] Eliminating section 9-204(b)(2) would align the law with the logic of the 2022 UCC revision and provide a more coherent and unified approach to securing rights in commercial tort claims.[229]

Some may argue that eliminating the requirement for specificity in describing commercial tort claims and allowing creditors to take security interests in after-acquired claims could lead to creditors over-reaching because they may declare interest in claims that debtors did not intend to encumber.[230] If creditors establish security interests in vague, future commercial tort claims, they may attempt to exert influence over any claim of their choosing and delay dispute resolution.[231] The existing mechanisms surrounding secured transactions, however, already mitigate these risks.[232] For instance, commercial tort claims that creditors can have security interest in are required to either have a business for a claimant or, if an individual, have a sufficient connection to the

amended Article 9 to integrate CERs and related digital assets into existing collateral categories. *Id.* CERs are treated as general intangibles; controllable accounts and payment intangibles are classified as accounts and payment intangibles, respectively. *Id.* Creditors can perfect these security interests by filing or control, but control provides priority—even if established after filing. *Id.* This framework promotes certainty and efficiency in digital asset financing without overhauling existing UCC principles. *Id.*

[227] U.C.C. § 9-204(b.1)(2). For example, if a creditor has a security interest in a debtor's deposit account, and the debtor files a commercial tort claim for fraud based on the deposit account, the bank can take security interest in the claim and any settlement that results from it even though the claim arose after the debtor executed the security agreement. *See id.* (allowing creditors to establish security interest in proceeds of collateral they have security interest in).

[228] *Compare id.* (allowing creditors to have security interest in commercial tort claims if they are proceeds of collateral mentioned in the security agreement), *with* U.C.C. § 9-204(b)(2) (prohibiting creditors from having security interest in commercial tort claims when they are original collateral that materialize after the debtor completes the security agreement).

[229] *See supra* notes 226–228 and accompanying text (emphasizing that UCC section 9-204(b)(2) does not align with the 2022 version of the UCC).

[230] *See, e.g.*, *In re* Main St. Bus. Funding, LLC, No. 23-2430, 2024 U.S. App. LEXIS 22551, at *2–3 (3d Cir. Sep. 5, 2024) (explaining that a creditor tried to claim interest in a commercial tort claim even though the debtor and creditor did not mention or describe any commercial tort claims in the security agreement).

[231] *See, e.g.*, City Sanitation, LLC v. Allied Waste Servs. of Mass., LLC (*In re* Am. Cartage, Inc.), 656 F.3d 82, 86 (1st Cir. 2011) (noting that the judge had to reopen the case because the creditor sought security interest in a commercial tort claim).

[232] *See, e.g.*, *infra* notes 233–234 and accompanying text (explaining how there are requirements and systems in place to ensure that the handling of commercial tort claims in secured transactions is fair).

course of the individual's business, naturally preventing overreach.[233] Furthermore, courts have developed ways to assess and interpret security agreements, ensuring that creditors cannot abuse the system by taking security interest in speculative or unrelated claims.[234]

The UCC's primary purpose is to foster commercial efficiency and certainty.[235] Theoretically, UCC section 9-204(b)(2) and section 9-108(e)(1) are grounded in a conception of certainty and specificity in secured transactions, but these provisions fail to consider the dynamic and unpredictable nature of modern business.[236] Removing these provisions will allow creditors to better navigate the complexities of today's commercial environment, promoting more transactions in the commercial sector.[237]

CONCLUSION

In 2001, the UCC drafters introduced commercial tort claims as collateral in which creditors could establish a security interest. The rules surrounding commercial tort claims, particularly sections 9-204(b)(2) and 9-108(e)(1), have introduced significant complications in the secured lending landscape. The requirement for creditors to specifically identify commercial tort claims in security agreements and the restriction on securing after-acquired commercial tort claims have created unnecessary barriers that limit the ability of creditors to fully protect their interests. These provisions not only create legal and practical challenges for creditors but also undermine the UCC's overarching goals of efficiency and flexibility in commercial transactions. UCC drafters should remove sections 9-204(b)(2) and 9-108(e)(1) from Article 9 so that the UCC can be a more equitable and predictable system for securing interests in commercial tort claims. Removing these sections would allow creditors to better manage the risks associated with such claims, while aligning the law with modern business realities. Ultimately, the reform of sections 9-204(b)(2) and 9-108(e)(1) would enhance the coherence of the UCC and provide both credi-

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[233] *See* U.C.C. § 9-102(a)(13) (stating that a commercial tort claim must have either a business or an individual with a claim that resulted from the individual's business as the claimant).

[234] *See, e.g.*, Tsiatsos, *supra* note 203, at 2 (noting that courts use the "gist of the action" doctrine to determine whether claims that creditors are looking to establish security interest in are commercial tort claims or contract claims).

[235] *See* Harshdeep Rapal, *Navigating the Uniform Commercial Code: A Comprehensive Guide to UCC and Contract Law*, LEGITT (Apr. 2, 2024), https://legittai.com/blog/uniform-commercial-code [https://perma.cc/CVD8-H6UT] (explaining that the UCC, from a legal standpoint, seeks to make commerce more straightforward).

[236] *See, e.g.*, Sepinuck, *supra* note 27 (noting that UCC section 9-108(e)(1) can harm creditors because if a commercial tort claim exists that the debtor is unaware of at the time the debtor completes the security agreement, the creditor will not be able to establish security interest in the claim because they will not have the necessary details).

[237] *See supra* notes 209–237 and accompanying text (explaining the drawbacks of §§ 9-204(b)(2) and 9-108(e)(1)).

tors and debtors with a clearer, more efficient framework for securing assets and conducting business in an increasingly complex commercial landscape.

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