

S may elect public sale (auction, with notice to general public) or private sale (all others). S is allowed to purchase property only at public sale unless fair price is capable of objective determination.

#### *Post-sale*

- Proceeds allocated in order to expenses, debt to S, debt to other SPs, surplus to D.
- Consumer goods: S must provide written accounting to D.

### **Action for deficiency**

If proceeds of sale are insufficient for expenses & debt to seller, seller may bring action for \$ owed (“action for deficiency”).

#### *Essential elements:*

- ~S gave D proper written notice of disposition of property
- ~Sale was conducted in CRM
- ~Amount of remaining debt

#### *Defense*

Failure to conduct CR sale → Rebuttable presumption that value of property was at least equivalent to amount of debt.

### **D’s Remedies for Creditor’s Violation of Rules**

- 60% Rule: action for conversion
- Any actual damages debtor is able to prove
- Consumer goods: liquidated damages of not less than total finance charge plus 10% principal
- Treble damages if B proves unfair or deceptive practice
- \$500 penalty for
  - ~Creditor who refuses to provide statement of amount owed or list of collateral securing debt in response to written request, or
  - ~Creditor who fails to account for proceeds of sale and who has a pattern of noncompliance.

## **Rights of Third Parties**

**SP may be able to repossess property from 3<sup>rd</sup> parties if SP has a *perfected* security interest.**

*Perfection may occur in four ways:*

- By filing financing statement with Secretary of State.
- A purchase money security interest is automatically perfected.
- In the case of motor vehicles, by filing a lien with DMV.
- Creditor retains possession of property (e.g., pawnbroker)

*Priority rules for perfected security interests:*

- Purchase money security interest prevails over all others.
- First to perfect wins otherwise.
- Perfected interest wins over unperfected interest.

*Special rule for consumer goods*

A “good faith purchaser” of consumer goods who purchases from a buyer takes free of a security interest in the goods if

- The GFP did not know there was a security interest in the goods;
- The GFP paid for the goods;
- The goods were for the GFP’s personal use; the goods before a financing statement was filed.
- The GFP bought the goods before a financing statement was filed.



## PROBLEMS ON RECOVERING POSSESSION OF PERSONAL PROPERTY

1. Womble Furniture Co. instituted a civil action on July 1, 2014 to recover a dining room table, six chairs, one couch, a cocktail table and an upholstered wing chair. At the trial, Womble introduces a written security agreement signed on April 5, 2012 in which defendant agreed that the items listed would be collateral for the extension of credit for their purchase on that day from Womble. Womble indicates that the defendant defaulted on March 1, 2014 and asks for judgment to recover all of the items listed. Defendant does not contest that he defaulted, but states that he only owes \$300 and the items Womble seeks to recover are worth more than \$300. He wants you to limit your judgment to recover the dining room table and chairs only since they are worth more than \$300. How do you rule and give your reasons.
2. Fantastic Furniture Co. brings an action to recover possession of a dining room suite sold to Samuel and Sarah Sand. At the trial the manager of Fantastic Furniture Co. testifies that he sold the furniture and that the Sands entered into an oral agreement to use furniture as collateral for the debt. He then introduces his account record, which shows a default by the Sands. How do you rule and why?
3. ABC Appliance Co., a secured party, brings an action to recover possession of a refrigerator against Simon Sampler. The magistrate entered a judgment in favor of ABC Appliance Co. Two months later ABC Appliance Co. brings an action to recover deficiency indebtedness. Simon Sampler counterclaims against ABC Appliance Co. for failure to conduct sale in a commercially reasonable manner. At the trial ABC Appliance Co. proves that upon recovering refrigerator, he sold it to an employee for \$150. ABC Appliance proves that \$200 was owed on the debt when the refrigerator was repossessed and that the company's expenses in selling the refrigerator was \$50. ABC Appliance asks for a judgment of \$100.

Simon Sampler says that ABC Appliance gave him notice by calling him two hours before the sale was to take place and that the sale was not held in a commercially reasonable manner. He asks for \$90 damages (10% of the principal amount of the loan plus the interest charges) for failure to conduct the sale in a commercially reasonable manner.

How do you rule and why on ABC's claim and Simon's counterclaim?

4. Abe Barker calls Sam's Heating and Cooling and asks to have them deliver and install a window unit. Sam's Heating and Cooling comes out to his house installs the unit and then sends a bill to Barker for \$300, the cost of the unit and installation. Barker does not pay the bill; Sam's Heating and Cooling brings an action to recover possession of the air conditioning unit as a nonsecured plaintiff. At the trial Sam's proves the facts stated above; Barker is not present. How do you rule and why?
5. Easy Credit Appliance Co. filed a civil action on July 1, 2014 to recover a refrigerator purchased on June 1, 2008; a clothes dryer purchased on June 1, 2009; a VCR purchased on June 1, 2010; a television set purchased on June 1, 2011, and a washing machine purchase on June 1, 2012. As each item was purchased, the buyer signed a security agreement listing the item just purchased and all the items previously purchased as security for the debt. The buyer defaulted on his payments on March 5, 2014. Easy Credit asked for a judgment to repossess all of the items listed as collateral. The defendant argued that he had been paying \$75 on the contract since 2008 and he believed Easy Credit was not entitled to recover all of the items listed since he must have paid off some of the first items purchased. What would you do and what statute would you rely on?

