1994 Meetings Refine Proposed Article 9 Revisions

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By Alvin C. Harrell

A wide variety of proposed revisions to Article 9's Committee Chairman William M. Burke presided and both Revisions to Article 9 (Professors Steven L. Harris and Charles W. Maekney, Jr.) were present throughout these meetings. This article will report on the issues discussed at these meetings, which resulted in considerable refinement of the proposed Article 9 revisions. The issues discussed at the March, 1994 meeting are the focus of Parts II-VI, infra. The September-October 1994 meeting is the focus of Parts VII-XXVI, infra with concluding observations at Part X VI.

II. Article 9 Part 5 (Default and Remedies) and Scope of Basic Issues

A. Impact and Possible Revision of Section 9-105(c)-The Definition of "Debtor"

The proposed revision to section 9-105(c) would shift the definition of "debtor" into three categories, to specify that Article 9, Part 5 applies to an "obligor," including a person or party who owns rights in the collateral and has agreed to create the security interest but is not obligated to pay the debt, as well as the seller of an account, chattel paper or a general intangible (to the extent Article 9 applies). This definition revision was dealt with in conjunction with default and remedies because it primarily has relevance to the extent of notice required to be given to "the debtor" under Article 9, Part 5.

During the March, 1994 meeting questions arose regarding the wisdom of including within or excluding from this definition certain other parties (thereby entitling them to or depriving them of a right to the Article 9, Part 5 notices). For example, suppose the collateral is owned by a third party transferee who has not signed the security agreement and owes no obligation to repay the debt? What about a tradee on "paper only" who may have an unsecured, technical interest due to broad language in an uncoun ted assignment or security agreement (and whose interest may be unknown to all concerned), or a buyer outside the ordinary course of business, or an owner of other collateral securing the same debt?

The consensus was that none of these parties should (or would be entitled to) notice unless they gave notice of their interest to the secured party and were thereby entitled to notice under section 9-504. Furthermore, there was unanimous agreement that the debtor's trouble in bankruptcy would not fall within the definition of "debtor" and therefore should not be entitled to receive notices required to be given to the debtor.

B. Section 9-501 Definition of "Default"

The Article 9, Part 5 secured party's remedies (and obligations) are triggered by "default" under section 9-501, supra. Proposed section 9-501(a), and there has been some question as to what constitutes "default," in the absence of a definition in the security agreement. There was some discussion as to whether revised Article 9 should address this by providing a definition. One of the Reporters, Professor Harris, opined that the lack of a definition had not posed a problem because virtually all agreements contain default definitions with extensive definitional provisions. There emerged a consensus that no change in the statutory language was needed.

There were suggestions that the language at proposed section 9-501(c) be broadened to clarify that the default which triggers application of Article 9, Part 5 must be "with respect to the security interest." and that the term "debtor" be defined from the first line of proposed section 9-501(a) in order to clarify that any default by any party with regard to the secured obligation can trigger application of the Part 5 remedies. Most participants viewed this as the current law, and there was consensus that further clarification in the statutory language on this point was necessary.

C. Waiver and Other Miscellaneous Issues: Section 9-502

Amended section 9-502(c)(3) (like current section 9-502(3)) provides a list of provisions not subject to waiver by the parties. The proposal discussed at the first hearing to make such a list followed current section 9-502 by excluding section 9-503 from this list, apparently in order to exclude at section 9-503 permits self-help repossession without prior notice. There was much discussion as to whether or not such a list could be prepared and that further consideration was deferred to a later date.

In view of the divisive nature of the consumer issues, the consensus was that such issues should be addressed in Article 9, Part 5, and that it was argued that they should be segregated from other provisions by which reasonable standards may be measured. In effect, the purpose to preclude a contractual definition of "breach of the peace." The participants in the March Boston meeting voted to instruct the Reporters to specify this rather than merely omitting mention of section 9-503 altogether in section 9-502(c).

Questions were raised as to whether section 9-501(c) should prohibit "unreason able" attorney's fees. There was concern that a senior secured party and debtor might contract for an unreasonable level of attorney's fees, to the detriment of sub ordinate secured parties or lien endorser. After discussion, a consensus emerged that these are not Article 9 issues.

There was discussion of the term "uncompensated guarantors or other sureties" as used in proposed section 9-501(d)(ii), to be included among the parties who cannot waive their rights under the list of sections that follow. There was general agreement that this was intended to cover a natural person who is not a professional surety, but there was some disagreement as to how to achieve this result. A consensus developed that the concept should be linked to the definitions in Article 13 (Restatement (3d) Suretyship, Tentative Draft No. 2, section 21(3)(c) and 21(3)(e) (April 2, 1993), which is cited in the Reporter's Explanatory Notes to proposed section 9-501).

D. Should Consumer Issues Be De-Coupled?

At this point during the March, 1994 meeting, the basic question was raised (or had been at previous meetings) as to whether consumer issues should be separated and treated in a discrete part of Article 9, or integrated within the regular text. The reporting of consumer credit firms seemed to favor the former approach, while the consumer advocates favored the latter. There was much disagreement on this issue and further consideration was deferred to a later date.

To avoid complicating (and perhaps engendering) the enactment prospects in Congress, it was agreed that the Reporters should take a different approach to consumer protection (an area under law subject to extreme state law variation). There remains disagreement on this in part, as for example, argued by some of the consumer advocates that certain Article 9 consumer issues are so fundamental that the Article 9 provisions are intended to supersede otherwise state law. The provision at proposed section 9-501(c) allowing any right other than those specifically preserved at that section to be waived was mentioned as the way to proceed. However, it was then noted that this provision recognizes rights of waiver provided under other law. As a result, except for the preclusion specifically listed at proposed section 9-501(c), rights may be waived pursuant to rules elsewhere in Article 9 or other law outside Article 9.

E. Section 9-502-Attorney Fees

Proposed section 9-502(c) recognizes three classes of attorney's fees: Those charges for collection or transfer of the debt, and those charged in connection with an effort to enforce the security interest against the collateral. It was noted that the ability to contract for attorney's fees depends on a provision in the contract or other state law, while the latter can be additionally charged as an expense of the Article 9 enforcement efforts and deducted from the sales proceeds of the collateral, under section 9-502(d)(2), regardless of whether there is an authorizing provision in the security agreement or other contract. The Reporters were urged to specify this in a comment to section 9-502, so that there would be no negative implication that the absence of one right to attorney fees also bars the other.

F. Miscellaneous Issues Under Section 9-502

During the March, 1994 meeting the proposal was raised whether the secured party should have an obligation to give additional notice to the debtor when no...
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III. Section 9-504: Notice and Sale of the Collateral

A. Introduction

Section 9-504 is a very important provision that gives the debtor the right to give notice to the secured party to advance notice of the repossession sale. The discussion of section 9-504 at the March 1994 meeting is going to be brief review and the discussion of proposed language that would have required that notice of the repossession sale be given to the debtor. From that, they were taken to depict the effective to preclude any sale, by showing up to announce real or imagined procedural defects. The Reporters agreed to reconsider these points.

B. Notice of the Sale

Proposed section 9-504(g) would require notice that the repossession sale be given "after default and ten days or more before the sale, in lieu of the current notice requirement that a such notice be given a "reasonable" time before the sale. While it seems that the courts have done a generally satisfactory job of interpreting the current requirement, it has been found in less than ten days in a few circumstances while requiring more in others, some (including the consumer advocates present at the drafting sessions) have expressed a sense of time limit. The result was the proposed ten day notice requirement. At the first Boston meeting various consumer advocates sought a longer notice period, but others objecting that this would impose an unwanted and unneeded delay to the potential detriment of both lenders and debtors. The Reporters noted that these problems are the price to be paid for the precaution of a fixed time period in lieu of the more flexible current standard. The consumer was not that there are ten days providing an optimal compromise if a fixed standard were used, through the number of those present seemed to think that this is a matter of fixing something that is broken. The consumer representatives also argued that the sale date set in the notice should be at least ten days after the notice, so as to precisely the secured party from including an improperly early date in the notice, perhaps by holding the sale outside the ten day limit. This raised the question: must the sale actually be conducted on the date stipulated in the notice? The consumer was yes, if the sale is not conducted as provided in the notice, a new notice must be prepared.

Proposed section 9-504(h) provides a sample form that can be used to satisfy the notice requirement. The form is intended to provide for the most commonly used form, but Ed Hieser pointed out that the proposed language could be used to impute a burden on the secured party to demonstrate that the notice was reasonable. The consensus was that this is not intended, and the Reporters agreed to reconsider the language to clarify this point. It was also noted that the intention is to allow the secured party to add other information, as not included in the sample form, without destroying the validity of the notice.

IV. Section 9-505 and "Strict Foreclosure"

A. Introduction

Current section 9-505 permits a secured party to retain the collateral in satisfaction of the debt, subject to certain qualifications. This is called "strict foreclosure." The proposed revisions would change this in several ways, and some of these raised among the more contentious issues discussed at the March 1994 meeting.

B. Notice to Subordinate Lienor

Proposed section 9-505(a) would require the secured party proposing strict foreclosure to give at least 30 days prior written notice to any holder of a security interest in or lien that was perfected in the rejection of appropriate UCC records. During the discussion it was made clear that this is not intended to confer Article 9 security interest status on a lien creditor, even if notice of the lien is filed in the UCC records, and that it provides a right to notice only to lien creditors who have a lien on the property (pursuant to the law in some states). This would impose a new burden (to record the UCC records) on secured parties seeking strict foreclosure; under current law notice only need be given to those creditors competing who have provided notice of their claim to the foreclosing lender. This raised a fundamental issue: who should have the burden to furnish and notify the senior party proposing strict foreclosure or the junior creditor? There was much disagreement about this; on a subsequent vote 19 of those present (including five members of the Drafting Committee) favored a draft solution, while 12 (including four Drafting Committee members) favored 10 of the current rule. A decision was deferred.

C. Effectuating Strict Foreclosure

Another issue is whether the foreclosing secured party must take some overt action (at the end of the notice period) in order to effectuate the strict foreclosure, as opposed to some consent in advance. The notice period. Some argued that an overt act should be required, in part, apparently, in order to provide the foreclosing secured party the ability to defer or even rescind the proposed retention of collateral if, for example, environmental contamination or some other problem is discovered during the notice period. There was a consensus that the lender should perform its "due diligence" investigation before sending the notice. Professor Harris opined that the proposed retention can be revoked during the 21 day notice period (i.e., an unaccepted offer) but otherwise becomes automatically effective at the end of the 21 days. Others suggested that a secured party wishing to retain flexibility for a particular reason might condition the 21 day notice accordingly, stating for example that the strict foreclosure will become effective after 21 days or upon receipt of a "clean" title or environmental report. There was a consensus that this type of condition would be effective, but that otherwise no overt act or should be necessary.

D. Changes During the 21 Day Notice Period

What is the effect if the debtor objection, if any, to the proposed security charge, is the 21 day notice period? This was a consensus that, if the debtor objects, the secured party must cancel the proposed strict foreclosure. The proposed revision states that the secured party must then proceed to enforce the security interest under section 9-505 or 9-504. It was observed that these must not be the secured party's only alternatives, that the secured party should be able to walk away from the collateral and seek other remedies if desired. There was general agreement on this point.

If, however, the debtor gives notice during the 21 day notice period that it accepts the secured party's proposal to retain the collateral, does this constitute an acceptance of the secured party's offer that precludes a subsequent rescission of the secured party's proposal? There is no general agreement, although most agree that the debtor can rescind the proposed strict foreclosure during the 21 day period, even if the debtor has accepted the proposal, but rescission of the acceptance must be done by a vote, with 22 voting to allow the secured party to rescind its proposal (including 4 members of the Drafting Committee) and 14 voting that the secured party's proposal should become irrevocable (including 7 members of the Drafting Committee).

Again there was general agreement that a secured party wishing to condition its proposed retention of collateral on specific concerns could do so in its notice to the debtor, and that such conditions should be effective. Some suggested that the notice could be conditioned on the debtor's voluntary disposition by the secured party, but there was little discussion on this point. There was general agreement that a condition asserted or imposed by the debtor would constitute an objection.

E. Strict Foreclosure As Partial Satisfaction of Debt: Consumer Issues

In a significant change from prior law, proposed section 9-505 would permit a secured party to retain the collateral in partial satisfaction of the debt. Gail Hilebrand objected that this change, along with a provision entitling the secured party to propose strict foreclosure to subrogate the secured creditor's position in the debtor (the latter provision would not apply to consumer goods, pursuant to section 9-505(b), as unfair. She expressed concern that the proposed written notice might not be sufficient to alert the small business owner to the consequences of signing away the collateral and his debtor's possession, whereas in the case of repossession collateral the physical loss of the goods would be likely to impress
on the debtor the importance of the events in question.

Mr. Hinklebrand proposed as a solution that partial satisfaction be barred in strict foreclosure cases. Others responded that this could be viewed as barring partial satisfaction workouts and common law compromises involving the purchase of trust property. In response, Mr. Hinklebrand indicated that Article 9 should allow only consensual partial satisfaction workouts, not a statutory freeze on the mortgage action until foreclosure. One of the Reporters (Professor Harris) indicated some movement in his position toward this view, but the other Reporter (Professor Moorey) noted that the result would be the loss of a simple and clear solution: in favor of a more complex regime, seeking to provide different rules for partial and full satisfaction, with and without agreement, and for collateral before and after repossessions, with different rules for consumer and business collateral. Once again the search for perfect justice confronted the need for a workable improvement in the law. A vote was taken, with six members of the Drafting Committee voting that affirmative consent of the debtor should be required for partial, but not full satisfaction, and three Drafting Committee members voting to allow partial or full satisfaction without foreclosure upon notice to and objection from the debtor.

C. Other Issues

The requirement of a real estate description in a financing statement covering crops would be eliminated, along with the requirement for a local filing in the county where the crops are being grown.

The farm products excepted from the rule allowing a buyer in the ordinary course of business to take free and clear of a perfected security interest, would be retained. While this rule has been largely preempted by the federal Food Security Act, it retains some viability due to the broader scope of UCC section 9-307(1), which would remain separate sources of federal law.

III. Agricultural Security Interests

Steven C. Turner and David A. Landers appeared at the March 1994 meeting, to present a report from the American Bar Association Task Force on Agricultural Lending, noting a number of important areas, issues, and recommendations for consideration as part of the Article 9 revisions.

A. Statutory Lien

Under the Task Force proposal, creation of a statutory agricultural lien would be left to non-UCC state law, but the rules governing enforcement of a statutory lien would be brought into Article 9, a lienor would have to file an Article 9 financing statement in the UCC records in order to be perfected (although the requirement that the debtor sign would not be applicable—the lienor would have to send a copy of the debtor as notice of the filing). Priority would continue to be governed by the applicable state lien statute, even if the lien was perfected by a UCC filing. In the absence of a state law priority statute, the UCC first-in-time priority right would apply. Without a UCC filing the lien would lose its priority as against other, filed liens and perfected security interests.

This would not convert statutory liens into security interests, but would give the lienor access to the Article 9 for enforcement and remedies. There would be no tie-in to the federal agricultural trust fund statutes or the Food Security Act, which would remain separate sources of federal law.

B. Scope of Article 9

Article 9 would be recognized as the exclusive source of law governing a security interest in a crop. Congress holding that a mortgage recorded in the real estate records can encumber growing crops would be rejected.16 Perfection by possession would also be eliminated, restricting all agricultural perfection issues to the UCC filing system.

The Article 9 system would be expanded to cover new crops, crops that have been harvested, crops on the ground that is intended to be severed in the ordinary course of business (e.g., nursery stock, Christmas trees, turf and ornamentals and other "aquaculture" and "cold water" crops). Real estate claims to such collateral would be subordinated to Article 9 priorities.

Government program payments would be defined as "general intangibles" and would be treated as proceeds of the farmer's crop.

The Article 9 Drafting Committee recommended the Agriculture Task Force for crafting a fine product that deals nicely with a seemingly
VII. Sales of General Intangibles—Should Sales of General Intangibles Be Brought Within Article 97

The September-October, 1944 Boston meeting of the Commission endorsed a proposal for the July 1, 1944 tentative draft of proposed revisions. The meeting ended with a discussion of whether sales of general intangibles should be brought within the scope of Article 97. Currently Article 97 covers a security interest in general intangibles, but not sales of such.

The draft included numerous clauses for general intangibles, e.g., in the form of an obligation to pay mortgaged not evidenced by an instrument and not parting out of a sale of goods or services. A proposed clause in Article 97 was subject to the uniform code, the concept of “contract rights” into the definition of “accounts” at section 9-306. The definition of “contract rights” previously had included obligations to pay money not arising from a sale of goods or services, but the 1972 revisions concerning the definitions of accounts and contract rights excluded such obligations from the defining section of “account,” thereby constricting the scope to financial arrangements.

The benefit of bringing sales of such obligations within Article 97 would include:
1. Clarification of choice of law,
2. Clarification of the treatment of competing claims,
3. Expansion of public notice of claims, and
4. More efficient pricing of secured assets due to reduced legal uncertainties.

In the case of a credit card portfolio, some of the obligations sold may be accounts and other general intangibles, and with different legal treatment of each it may be difficult to sort out differences between the two aspects of the portfolio on an aggregate basis.

The difficulty with the proposal is in drawing the lines for the necessary exceptions.

V. VIII. Proceeds

A. Expansion of the Proceeds Concept

The July 1, 1944 draft of the proposed revisions would expand the definition of proceeds at section 9-306(1) to include property acquired upon lease or licensing of the collateral. It would also include proceeds.

The proposal would have the account of the collateral, “rights and claims” arising out of the collateral, and insurance proceeds from default or theft.

B. Identification and Tracing

There is widespread agreement that current section 9-306(4), substituting an artificial allocation formula for common law tracing rights upon the debtor’s insolvency, should be deleted as unsuitable.

This, however, will increase the importance of common law tracing, raising the question whether Article 9 should codify the “lowest immediate balance rule” (LIBR) or otherwise clarify or provide guidance regarding tracing and identification of proceeds.

Current Article 9 provides for continuation of a security interest in identifiable proceeds, but provides little guidance as to the method of tracing and identification of the proceeds.

D. Section 9-318

Proposed revisions to section 9-318 would specify that it applies to account debtors on general intangibles and not to account debtors on general intangibles.

C. Other Section 9-306 Changes

The July 1, 1944 draft would eliminate the current limitations, at section 9-306(3), that proceeds are subject to continuance perfection only if perfection was by filing. A new section 9-306(e) would provide that perfection by means other than filing would be valid as long as the secured party continues to hold the security interest in the original collateral becomes perfected. Several potential problems were noted, including the effect of perfected section 9-306(e) in the event of the original perfection being lost through no fault of the secured party.

Finally, section 9-306(2) would be revised (as new section 9-306(b)) to emphasize that an “authorized” sale of collateral is a sale free and clear of the security interest only if the buyer is authorized to sell so specified.

IX. Chattel Paper Section 9-308

The July 1, 1944 draft includes a completely rewritten section 9-308, eliminating the current bifurcated rule in favor of a unified rule covering all chattel paper. The unified rule would permit the purchaser to prevail as to the chattel paper (or instruments) and its proceeds if the paper was purchased for value and it is the purchaser’s business, without knowledge that the purchaser violates the rights of the secured party, and the purchaser takes possession.

A. Transfer of Cash Collateral

The July 1, 1944 draft includes a proposed new section 9-308A covering cases where cash collateral is pledged against the debtor’s check account in consideration of a new negotiable instrument. Under the draft, the law is that the recipient is protected if the funds are paid by instrument and the recipient qualifies as a holder in due
XI. Security Interests in Deposit Accounts

There was discussion of a proposed priority rule to track the rules governing similar issues in the 1994 revisions to UCC Article 8. Perfection would be allowed by filing or "control." "Control" would be defined essentially as in the 1994 Article 8 revisions, e.g., (1) if an account is held in the secured party's name it has control; (2) otherwise the bank automatically has control; or (3) if the bank agrees, then another secured party has control. Generally a secured party with control would prevail over a previously perfected secured party who filed, absent specific agreement to the contrary.

Control would always beat non-control. In some cases this could mean a "second in time" priority rule. Also, under a new section 9-312(a), competing security interests with "control" would always be ahead of "control" without any priority basis except on the first to gain control. This again would be based on the 1994 revisions to Article 8. The theory is to provide equal sharing of a catastrophic loss (e.g., a bank erroneously gives control to multiple parties), subject to a new subsection (g) (providing that bank control generally prevails over other control).

What about a competing security interest in a bank account as proceeds of a prior security interest (e.g., in bankruptcy) which is first in time? Alternative One would track proposed section 9-308A: to win the bank creditor would have to have "control" without earlier loan or because a bank has recognized third-party "control" does not mean it has agreed to subordination - this would require a specific subordination agreement.

Suppose one party is a bad actor, e.g., there is collusion to deprive others of rights in a wrongful manner. The Drafting Committee considered whether the solution should be a priority rule based on knowledge. Professor Fred Miller (Executive Director of the National Conference of Commissioners on Uniform State Laws) suggested following the Article 8 rule encompassed in the 1994 revision to the section 9-115 Official Comment, in a revised version that would avoid litigation. If the practical needs of the payments system suggest that a bank with "control" should win, then arguably knowledge should be eliminated as an impediment. The priority party still would recoup under other law, as in Article 8. Of course this would permit a later privative agreement (creating "control") to trump an earlier public filing. Under this regime filings would be made primarily to protect against a bankruptcy trustee. A bank that automatically claims a security interest and has "control" of the account would prevail over a prior inventory條e.g., perfection perfected by filing and tracing proceeds into the account. Compared to current law, the inventory lender is the loser.24 But should it make a difference if the competing security interest is in proceeds and the control party is not the bank? Absent considerations relating to public loss (e.g., where the security interest is in a system, the traditional first in time rule seems compelling. But can (or should) the two scenarios be divorced?

There are other difficult questions. For example as between two "control" parties, should the bank always win? The consensus was yes, unless the bank has a subordination agreement with the other party. In effect, the bank would always win unless it has agreed otherwise.25 Note this is slightly different from a radiator type of situation where the bank has recognized third-party "control" does not mean it has agreed to subordination - this would require a specific subordination agreement.

The consensus on the drafting committee seemed to favor the third and fifth options.

24. See UCC § 9-312(3)(g) & 9-312(b)(4)(B).

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The consensus on the drafting committee seemed to favor the third and fifth options.
With regard to some issues, there was a report prepared to be partial agreement: Providing a statutory right to reinspect,14 and an unconscionability rule. The remaining issues were not subject to any agreement as of October 2, 1994; moreover, upon further discussion it was not clear of the extent to which there is any agreement, even among members of the Task Force, as to any of the consumer issues.

Clearly there remains disagreement as to fundamental issues: For example, whether the Article 9 consumer protection provisions should be segregated in an optional "menu," or integrated into the regular text, or even whether Article 9 should be converted into a consumer protection law by including such provisions. As noted, another highly contentious issue is whether the commercially reasonable sale standard is sufficient or should be replaced with a "fair value" standard.15 Whether the notice of right of a right to bid remains an open question.16 Issues relating to "maintenance" collateral and overall collateral renegotiations remain but are subject to continued discussion.

Professor Fred Miller noted that these issues fall into three categories: Maintaining current debtor protections, expanding current Article 9 debtor protections, and introducing new consumer protections. The latter may conflict with the state law and hence be the most controversial, although Professor Mooney noted that in some instances including expanding a current debtor remedy (e.g., requiring a "fair value" standard for deficiency judgments) might be more controversial than introducing an entirely new debtor protection based on existing federal law (e.g., a prohibition on nonmonpiece, nonpossessory security interests in existing household goods).

The overall depth and quality of the process continues to impress this observer. The contrast to state and federal legislative processes is dramatic, so much so that it is quite illuminating to hold assumptions about the optimal form of law-making processes. The contrast to federal ad- ministered and regulated processes is even more dramatic, casting doubt on the basic public policy positions that have dominated federal regulatory policy since 1990. Of course, the quality of the process does not guarantee a superior product, but it seems a necessary ingredient and so far the process is entirely promising.

The product of a cure will not be perfect. Professor Mooney has tried periodically so as to reemphasize the search for perfect justice can become the enemy of a uniform, simple, and clear statute. Simplicity and clarity always must compete with the complex goal of improving the law. As Professor Mooney noted, if every potential reform is pursued in its logical extreme, the result will be a complex statute that only a lawyer under the Drafting Committee can understand. It is commendable that the Reporters have imposed on themselves a mandate to maintain the simplicity of Article 9 in the face of inevitable pressures to micromanage every conceivable problem. As a result, certain policy judgments are being made on a consistent basis. For example, as noted by the Reporters, the policy foundations for priority rules are being re-examined, but unless there is a compelling reason they are not being changed arbitrarily because there are countervailing arguments that might have yielded a different result if the drafters were writing on a clear slate. Change for the sake of change (always a temptation for a draftsman) is being avoided.

Micro-management has been eschewed in favor of clear, simple rules of general applicability. The result is evolution: It is a carefully crafted compromise between common law principles and a modern statute.