
Alvin C. Harrell, Oklahoma City University School of Law

By Alvin C. Harrell

or properties in more than one state. In such cases, ordinarily the initial question must be: are the laws of the various states different? Normally, if the laws are not different there is not a choice of law problem. However, perfection of security interests is an exception, because uniformity of internal law does not eliminate choice of law questions regarding perfection. For example, even if all of the interested states have identical filing and perfection rules, the secured party still must decide where to file or otherwise perfect the security interest. In addition there may be questions concerning the proper method of perfection.

The hybrid character of some collateral (such as energy and agricultural collateral, vehicles, securities, fixtures, and mobile homes) exacerbates these problems because different states may characterize the same collateral in different ways, thereby requiring different perfection methods in different states. Differences in characterization of the property also may trigger different choice of law rules in different states, since choice of law for perfection purposes typically depends on the nature and character of the collateral.1 Nonuniform judicial interpretation also remains a problem. Therefore, even if the U.C.C. provisions are the same in every state, some choice of law analysis always will be necessary in a multistate Article Nine secured transaction.

In reality, of course, even with nationwide enactment of the U.C.C., complete uniformity is rare and non-uniform amendments are commonly encountered. Therefore, at the outset, the multistate lender often is faced with a tripartite problem involving the possibility of differing characterizations of the collateral, non-uniform statutes, and conflicting interpretations on where and how to perfect the security interest. Finding a solution to these problems requires a combination of traditional choice of law analysis and an understanding of the Uniform Commercial Code.

A. Renvoi

A potential problem is presented anytime a rule calls for application of the “law” of another state, since that may include a reference to the conflicts of law rules of the second state. The conflicts rules of the second state may refer to the law (including the conflicts rules) of a third state, and so on indefinitely. This is commonly referred to as “renvoi.”2 Renvoi can be a problem under the Uniform Commercial Code, since several choice of law provisions at section 9-103 refer to “the law (including the conflict of laws rules) of another jurisdiction. In addition this problem may have been exacerbated by the 1972 uniform revisions, which eliminated the “situs” rule at section 9-102 of the 1962 code. Under the 1962 code the section 9-102 “situs” rule made it likely that section 9-103 of the state where the collateral was located would be applied to perfection issues, regardless of where the case was tried. Lawyers could logically assume that compliance with the choice of law, perfection and priority rules of the “situs” state would be sufficient safeguard. Under the 1972 uniform revisions this may not be the case.

The 1972 uniform revisions eliminated the section 9-102 “situs” rule and instead require that all Article Nine choice of law analysis begin with the general U.C.C. choice of law rule at section 1-105. As a result any court having sufficient contacts with the transaction for purposes of exercising jurisdiction likely will have “an appropriate relation,” to the transaction under Section 1-105 and may be prone to apply its own law. In other words, application of section 1-105 is likely to lead to application of the law of the forum, including the

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B. The Most Significant Relationship Approach

A number of States have embraced the "most significant relationship" approach to the resolution of conflicts of laws questions. A few of these States are Louisiana, Colorado, Idaho, and Oregon. This approach is the least flexible and the most rigid, and it is based on the Uniform Commercial Code. In the 1972 version of the U.C.C., statutory choice of law rules for certain areas of law are available to the States. These rules are intended to be flexible and to provide uniformity in the interpretation of contracts. The State law rule for the sale of goods, for example, is designed to provide uniformity in contract law. The State law rule for the sale of goods is intended to provide uniformity in contract law.

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E. The 1962 Code and its Relationship to the 1972 Revision

The 1962 version of the Uniform Commercial Code contains a general choice of law rule as well as a specific choice of law rule for Articles 8 and 9 (section 9-302(3)). This provides that the Article Nine law of the forum state should be applied to "all matters within the jurisdiction of the state.

This has generally been taken to create a choice of law forum law of the situs of the collateral to all Article Nine issues. As mentioned, the 1972 revision was intended to abolish this blanket rule and bring all non-Article Nine issues under the UCC's choice of law rule for Articles 8 and 9. This seems unworkable. It was not possible to write three different sources of law for a single transaction: The law of the situs of the collateral for non-Article Nine issues under section 9-902, the law of the forum or some other state where the collateral is located for the transaction, for non-Article Nine issues under section 1-609, and the perfection and priority of Article Nine interests under section 9-903. The 1972 amendments were intended to simplify this by enacting a uniform perfection UCC choice of law rule under section 9-105 and the section 9-802 rule in favor of the "reasonable relation" approach discussed at section 9-905. Section 1-609 was intended to make the law of Article Nine transactions uniform.

One criticism of the 1962 code was that the "situs" rule at section 9-802 was vague and potentially conflicted with the more analytical "reasonable relation" approach evidenced at section 9-105. In fact, it was possible to have three different sources of law for a single transaction: The law of the situs of the collateral for non-Article Nine issues under section 9-902, the law of the forum or some other state where the collateral is located for the transaction for non-Article Nine issues under section 1-609, and the perfection and priority of Article Nine interests under section 9-903. This created many situations where the courts would have to choose between the "situs" and the "reasonable relation" approach. This was the goal of the 1972 code. The 1972 code was intended to simplify this by enacting a uniform perfection UCC choice of law rule under section 9-105 and the section 9-802 rule in favor of the "reasonable relation" approach discussed at section 9-905. Section 1-609 was intended to make the law of Article Nine transactions uniform.

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interest. In this view, state B becomes the proper choice of law for perfection purposes, but not until entry of the collateral into state C is perfection. Otherwise, an understanding at any other point in time will not be effective to trigger perfection under the law of state C. Indeed, even in the case of a purchase money security interest, priority as against a subsequent security interest is determined in an interstate transaction, because of an oddity at section 9-302(2) that provides that perfecting a purchase money security interest in this manner will be effective regardless of whether the lien is obtained between the dates that the collateral was filed in state B and the time it became effective as a perfection of the collateral being brought into state B. However, the parties' understanding of the law under which the security interest is perfected will be effective as a perfection of the collateral being brought into state B.

STATE B: The Trustee's Understanding

The "last event" test is a test for determining whether the filing of a security interest in collateral is perfected. It is a test that is applied when the security interest is provided by a security agreement that is in effect at the time of the filing of the security agreement. The test is as follows:

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in the preceding paragraph. Therefore, in a multistate secured transaction, choice of law for perfection purposes will be governed by the "last event" rule. But attachment has occurred and the financing statement is filed in one state while the collateral is still located in another state, what is the qualifying "last event"? Is it a filing in one state or the "last event" in each state, or something else?

If so, then section 9-303(b) calls for application of the law of the situs state and that state's law, regardless of which state is "last," is the controlling law. If so, the secured party's interest will be perfected without a further filing in that state, then filing in one state while the goods are located in another state will leave the security interest unperfected in both states. This may jeopardize the secured party's priority if the goods are later moved to or stored in both states.

The second basic lesson stated out of all of this is that the secured party always has to perfect the security interest in the jurisdiction where the goods are currently located, even if other filings are also made to cover other collateral. This will assure an initial valid perfection and choice of law, upon which a later chain of events (attachment, perfection, transfer, etc.) will be dependent. For example, perfection in the situs state will trigger the automatic four month grace period at section 9-402(a) and the secured party's interest will be perfected if the collateral is subsequently moved without any further filing in the situs state. Perfection in the collateral state will make it more likely that the security interest will meet the grace period test necessary to qualify for purchase money priority. These benefits in making a filing in the situs state even if the secured party also files in the ultimate destination state under section 9-313(c) or some other theory.

The second lesson is that early filing, otherwise than under subsection 9-303(b), may result in a multistate transaction. There is always a danger that an early filing, made without regard to the current location of the collateral, may lead to an unperfected "last event," triggering some unsatisfied choice of law under section 9-303(b). For example, an early filing made before attachment would not be the "last event," but would assure that some later, perhaps otherwise obscure event, will become the "last event." This is particularly true at section 9-303(b). But if attachment has occurred and the financing statement is filed in one state while the collateral is still located in another state, what is the qualifying "last event"? Is it a filing in one state or the "last event" in each state, or something else?

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The third basic lesson states that perfection must be completed by the secured party through the filing or recording of the financing statement. For example, if the secured party timely files a financing statement with the local filing office, the security interest is perfected. If, however, the secured party fails to file the financing statement within the required time period, the security interest is unperfected and the collateral may be sold by the secured party. Therefore, it is important for the secured party to file the financing statement as soon as possible to ensure that the security interest is perfected.

The fourth basic lesson states that the secured party has a duty to take reasonable steps to perfect the security interest. For example, if the secured party knows that the collateral will be moved to a different location, the secured party must take steps to ensure that the security interest is perfected at the new location. Otherwise, the security interest may be unperfected and the collateral may be sold by the secured party.

The fifth basic lesson states that the secured party must take reasonable steps to maintain the security interest. For example, if the collateral is sold, leased, or otherwise transferred, the secured party must take steps to maintain the security interest. Otherwise, the security interest may be unperfected and the collateral may be sold by the secured party.

The sixth basic lesson states that the secured party must take reasonable steps to protect the security interest. For example, if the collateral is subject to condemnation, the secured party must take steps to protect the security interest. Otherwise, the security interest may be unperfected and the collateral may be sold by the secured party.

The seventh basic lesson states that the secured party must take reasonable steps to preserve the security interest. For example, if the collateral is subject to a lien or encumbrance, the secured party must take steps to preserve the security interest. Otherwise, the security interest may be unperfected and the collateral may be sold by the secured party.

The eighth basic lesson states that the secured party must take reasonable steps to collect the collateral. For example, if the collateral is subject to a lien or encumbrance, the secured party must take steps to collect the collateral. Otherwise, the security interest may be unperfected and the collateral may be sold by the secured party.

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The twenty-third basic lesson states that the secured party must take reasonable steps to collect the collateral. For example, if the collateral is subject to a lien or encumbrance, the secured party must take steps to collect the collateral. Otherwise, the security interest may be unperfected and the collateral may be sold by the secured party.
This reasoning overlooks the basic point that collateral removed from the state (and therefore not subject to perfection by the original filing) is not available for perfection by the original filing in the California original state.** While this does not answer the real questions presented by this case, such as the relative priority of this resuscitated perfection as against subsequent but continuously perfected security interests in the same collateral, the power to avoid preferential transfers** still is it a basic point which must be recognized as a basis for further analysis.

The basic point is that bringing the collateral back within the "territorial reach" of the original financing statement in California should be a sufficient "last event" under section 9-303(b) to constitute perfection under the law of that state, regardless of the lapse of any prior perfection in that state due to an earlier removal of the goods.** The fact that the same financing statement previously perfected a security interest in the same collateral at some earlier point in time, before the collateral was removed from the state and returned, does not detract from this new "last event" as it was held in that prior case.

As noted, the more difficult question involves the priority of this security interest as against subsequent but continuously perfected later but continuously, and as against trustee in bankruptcy if the debenture files bankruptcy, the collateral being "used" in mining, storing, treating and marketing such minerals, the use of the term "subsequent" could similarly be interpreted to include a security interest perfected by perfection under that subsection. Also consideration of the question of proper place and method of perfection depends on the normal use for such collateral, and that the debenture's actual use is therefore material and which flow by using industrial usages are not considered "commerce" under section 9-303(b). It holds that Mr. Sexton using his collateral as a farmer is separate from the same Mr. Sexton as a cotton grower, the products except in UCC sections 9-307 did not apply to transactions with the latter. Or see In re Raisin Tract Co., 160 B.R. 280 (W.D. Wash. 1993), involving farm equipment.

Unfortunately, this may not always be the case, and as a result problems relating to vehicle collateral have not been clarified by this provision.

For one thing, the title certificate statutes adopted by various states may differ significantly, and the effect of the mobile collateral to the business office at an oil well drilling site! Or being held in inventory by an equipment dealer with a lien attached and having a safety valve of covering mobile goods suggests a "normal use" test! For such analysis may not a way that would suggest some other need for multiple perfection under alternative theories.

Oil and gas drilling equipment pose other special problems. See 10 Oil & Gas Corp. v. Great Ga., Inc., ** involved mobile drilling equipment.[5] Under the Oklahoma statute in effect at that time it was held to be a vehicle subject to the state certificate of title perfection system. Conversely, in another Oklahoma case, truck mounted well workover equipment was held to be "special mobilized machinery" governed by section 9-303(c) and not subject to certificate of title perfection. Such an exception in some states extends special mobilized machinery to include oil drilling equipment, see 9-303(b). These can be troublesome questions in a given state, and even more so in an interstate context. Beyond this, noted,29 goods that normally fit in one of these categories may be used in such a way that would suggest some other need for multiple perfection under alternative theories.

** Unrelated to the specific context of the oil and gas industry, the following section "Special Considerations for Oil and Gas Collateral" provides a summary of the special laws governing oil and gas collateral.

Oil and gas collateral provides a particularly complex maze of special laws governing oil and gas collateral. Minerals' "or the like (including oil and gas)" are covered separately in the 1972 uniform code at subsection 9-305(b). The statute calls for application of the law of the situs. Notice that this special rule also applies to an "account resulting from the sale of minerals at the wellhead or minehead." Therefore, there is a significant distinction between accounts that arise from the sale of minerals at the wellhead or minehead (governed by the special rule at section 9-305(b)) compared to other accounts, including those that arise from the sale of minerals subsequent to that initial sale (these will be covered by the ordinary rule for accounts at subsection 9-303(c)). There was no separate provision for minerals in the 1962 version of the code.

Since choice of law and the perfection rules vary so widely, the interest being used as collateral, it is important to properly characterize the different types of property represented in a given transaction. Nowadays, there is more difficult than in oil and gas financing, with the variety of property types, with differing and even unique choice of law and perfection rules being applied in different states. Oil and gas loan may include any of the following:

- Leasehold Interests:
- Mineral Interests
- Royalty Interests
- Working Interests
- Overriding Royalty Interests
- Royalty Interests
- Payment Interests

Hydrocarbons:
- In place
- At the wellhead
- In tanks or pipes

For a thorough analysis of these and other color variations, see 15 Minerals and matter in oil and gas collateral, Inc. Dent, 51 oil & Gas Law (1985), 801-837, supra note 28, 51 oil & Gas Law (1974), 243-283, supra note 27, 26-72, supra note 26, 22-63, supra note 25, 38-70, supra note 16, 57-96, supra note 15, 60-100, supra note 14, 63-95, supra note 13, 65-100, supra note 12, 70-100, supra note 11, 75-100, supra note 10, 80-100, supra note 9, 85-100, supra note 8, 90-100, supra note 7, 95-100, supra note 6, 100-100, supra note 5.
Accounts and Proceeds of Production.

Contractual Rights, such as:
- Exploration Agreements
- Firm-Out Agreements
- Production Agreements
- Production Sales and Processing Agreements

Surface and Subsurface Equipment: Machinery, equipment, facilities or other property used in connection with the production, treatment, storage and transportation of hydrocarbons (including temporary drilling equipment).

Processing Plants, e.g., desulphurization plants to the contracts, proceeds and proceeds attributable thereto.

Special ownership interests:
- Joint ventures
- Partnerships

Proper classification of these interests is essential to a proper choice of law analysis for perfection and other purposes. U.C.C. section 9-301(5) calls for application of the law of the state where the wellbore is located for security interests in "minerals or the like (including oil and gas) before extraction and which attaches thereto as extracted, or which attaches to an account resulting from the sale thereof at the wellhead."

"Most versions of U.C.C. section 9-301(5) require that the place to file within that state is the place where a real estate mortgage on the property would be recorded. Most states require the filing of a financing statement under section 9-302 and 9-402. However, there is no national uniform state amendments such as Oklahoma section 9-402(5), which additionally permits perfection of a security interest in extended minerals and other personal property relating to the well (lifestyle interests, equipment, or any other equipment or record of a real estate mortgage in the county where the wellbore is located. Another example is Texas U.C.C. section 9-402(5), which, like Oklahoma, permits perfection by real estate mortgage but, unlike Oklahoma, excludes oil and gas equipment from this rule (thereby requiring a normal Article Nine filing for perfection as oil and gas equipment).

New Mexico U.C.C. Section 9-803(1), requires a lien on oil and gas leases, including hydrocarbons in tanks and pipelines, proceeds, equipment, accounts, and various contractual interests, with personal property even with types of property that appear to be clearly personal property, such as accounts and proceeds from production, courts have made a distinction to the extent they relate to real property. As noted, some courts have found that perfection by real estate mortgage for certain personal property associated with oil and gas production and transmission.

Conversely, the law of New Mexico requires perfection of oil and gas related accounts and accounts at the place of sale in oil and executive offices. These differences can result in some interesting conflicts.33

III. Mobile and Intangible Collateral

A. Accounts, General Intangibles, and Mobile Goods

Section 9-803(3) of the 1972 U.C.C. covers intangible collateral and mobile goods, which by their nature have no fixed location or are not subject to ownership by a person. Intangible collateral is covered by a separate provision at section 9-803(4).

Excluded from personal property are minerals, coal, and natural gas leases. A lease of real estate deriving its characteristics from both real and personal property, yet it is actually personal property in the sense of "chattels." In some states a lessee's interest under an oil and gas lease is considered to be personal property not subject to a judgment lien. However, the leasehold interest also has been characterized as a "chattel real," incorporeal bailment, and a profit à prendre.44 In most cases it appears that a mortgage of such an interest should be recorded under real estate law.45 Most of the other types of property which serve as chattels in oil and gas business, such as hydrocarbons in tanks and pipelines, proceeds, equipment, accounts, and various contractual interests, are personal property. However, courts have made a distinction to the extent they relate to real property. As noted, some courts have found that personal property associated with oil and gas production and transmission.

Conversely, the law of New Mexico requires perfection of oil and gas related accounts and accounts at the place of sale in oil and executive offices. These differences can result in some interesting conflicts.33

Plans, specifications, blueprints, drawings and file information, licenses and franchises, and an assignment of oil and gas leases and a real estate contract. The latter was not considered an account because it did not arise out of a sale of goods or services.46

"Mobile goods" are defined and illustrated at section 9-803(4) as: "goods of a type normally used in more than one place, such as motor vehicles, trailers, rolling stock, airplanes, shipping containers, road building and construction machinery and commercial harvesting machinery and the like... not covered by a certificate of title described in subsection (2)."47 As mentioned, the characterization of "mobile goods" can be troublesome. Some courts have found that personal property associated with the "mobile goods," which determines this status rather than the actual use."48

Mobile equipment may be considered either "mobile goods" or "vehicles," depending on whether it is built on an ordinary roadworthy chassis or a special road-carrying container and other factors.49 Drilling rigs and other specialized equipment like offshore platforms are personal property. However, mobile equipment may be encountered with the "accession" rules of U.C.C. sections 9-314 and 9-315.

General intangibles are covered at section 9-803(3) of the 1972 Uniform Code. It calls for application of "the law (including the choice of law rules) of the jurisdiction in which the debtor is located..."

A debtor located in the United States would be deemed to be located in the place of business or its chief executive office if it has more than one place of business, otherwise, the person's residence.49 This requires identification of the debtor's "place of business." In one case the "chief place of business" was found to be Colorado even though the largest volume of its business was conducted in Oklahoma, because Colorado was the location of the debtor's executive office and records, and was the place where its officers and directors resided.50

Section 9-803(4) provides another "four-month rule" for cases where the debtor's location is not clear. A security interest properly perfected remains perfected for four months after the debtor moves its place of business to another jurisdiction, unless it would have terminated earlier under the law of the first jurisdiction. If the security interest is properly perfected within the four-month period it will be deemed to have been continuously perfected from the date of first perfection, otherwise it will be deemed to have been unperfected as against a purchaser after the change. This is not the same as section 9-803(3) but is not identical to the rule for personal property. The "four-month rule" for goods at section 9-803(4).51

B. Chattel Paper

Chattel paper is described as a "seminominal security interest" which may be perfected either by possession or by filing (sections 9-401, 9-305).52 Chattel paper is defined at subsection 9-405(4) to include "writings which evidence both a monetary obligation and a security interest in a lease or lease of specific goods.52 That "chattel paper" can mean either a note and security agreement or a genuine lease of goods, and perfection can be by either possession or filing. This results from the hybrid (or "semi-intangible") character of such collateral, combining as it does some attributes of an account and some attributes of an instrument.

An instrument character is reflected in the 1972 choice of law provision.53 This rule recognizes the alternative methods of perfection for chattel paper (possession and filing) and provides reference to a different choice of law rule for each. Specifically, if the security interest is perfected by possession the chattel paper is treated as an instrument and the choice of law rules for instruments at subsection 9-303(1) apply. Recall that these provide for application of the law of the state or the time the last event occurs. If the security interest is perfected by filing, the chattel paper is treated like an account, and the choice of law rules provided for at subsection 9-303(3) will apply. These call for filing in the state where the debtor has its principal or chief executive office. Note also that if the Chattel paper is a genuine (as opposed to a security agreement), the lessee's-assignee's revocable interest in the goods will not be covered here but is addressed in section 9-803(4). The revocable interest the security agent will have to take a separate security interest in the goods at the time of the particular choice of law rules and may require a separate filing if the goods are located in a state different from that of the debtor's location.54

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185. Id.
188. Id. at 66.
193. Id. at 257.
199. Id.