
Marc L. Roark
The law of fixtures under the Uniform Commercial Code (UCC) is helplessly tied to the various state laws dictating real estate. The natural impact of explicitly tying a UCC doctrine to multiple state law variations is loss of uniformity. At the center of the fixtures discussion in the UCC is a definition that does not define, and more importantly, does not limit doctrinal extension. Because the UCC offers a nondefining definition, this Article considers the function of the fixtures definition.

Specifically, this Article argues that the fixtures definition in UCC Section 9-102(a)(41) performs a function just as important as defining—it narrates. This Article argues that the drafters in deciding on a definition of fixtures isolated themes of commonality and described those themes in a concise, but useful description of the fixture. This Article argues that the narration accomplished by the UCC allows for uniformity, not by mandatory uniformity, but by synchronic dialogue—allowing the themes to create images and the images to compel instinctive beliefs. This Article argues, however, that the description provided by the drafters should be reunited with the substantive provisions relating to fixtures because each are tied to the other’s understanding.
I. INTRODUCTION

Calling the definition of fixtures in Article 9 a "definition" is misleading. Definitions do more than the string of words in Uniform Commercial Code (UCC) Section 9-102(a)(41) accomplish. In reality, the "definition" of fixtures in Section 9-102(a)(41) is little more than an ironic tease. The section tells us that a fixture is "goods that have become so related to particular real property that an interest in them arises under real property law." 1 The tease is that this definition merely points to state law for defining "a fixture"; the irony of course is that its definition alludes uniformity.2 Perhaps including a definition, albeit replete of meaning, provides an illusion of certainty; but illusion is all that is there. Indeed, forty-six years after the initial adoption of the UCC, and two revisions later, courts, lenders, and private parties still struggle with the central question—"What is a fixture?" 3 As one court in the early twentieth century said, "we [continue to find ourselves] groping along in the twilight zone between things real and things personal." 4

2. White and Summers state the matter best: "[T]he general definition in 9-102(a)(41) is no more than a cross reference to state case law and state real estate statutes." See 4 JAMES J. WHITE & ROBERTS S. SUMMERS, UNIFORM COMMERCIAL CODE §33-5, at 297 (5th ed. 2002). White and Summers demonstrate this point with the following example:

Goods cross the line from pure goods to fixtures when they become sufficiently related to the real estate that they would pass in a deed under the local real estate law. What passes by deed in Minnesota may not pass in Wisconsin, and what is sufficiently related to a real estate interest in New York might not be sufficiently related in Georgia.

Id.


Definitions should resolve questions of dimension and depth. Instead, the current definition of fixture affords little more than speculation, in the form of imprecise descriptions. For example, commentators like White and Summers attempt to provide an image of “the fixture” by describing scenarios in which one could decide that something becomes a fixture. For example, they say that “anything which could be moved more than a half inch by one blow with a hammer weighing not more than five pounds and swung by a man not more than 250 pounds would not be a fixture.”

Also, “anything would be deemed a fixture unless one could loosen the item from the floor or wall with a screwdriver and a crescent wrench within one hour.” In a similar fashion, Steven Knippenberg offered: “You take the world, you shake it, and everything that doesn’t fall off is [a fixture].” These definitions, inexact as they may be, point to a discreet problem—the law of fixtures is hard for lawyers and professors to describe without reverting to colloquialisms and analogies.

The problem with analogies, at least in codified arenas, is that they avoid the certainty that codification promises. As Cass Sustein pointed out:

For analogical reasoning to work well, we have to say that the relevant, known similarities give us good reason to believe that there are further similarities and thus help to answer an open question. Of course this is not always so. At most, analogical thinking can give rise to a judgment about probabilities, and often these are of uncertain magnitude.

Analogizing about fixtures demonstrates how difficult creating a common analogy is without reaching such vagaries that the analogies become unhelpful or too imprecise. More to the point, it demonstrates how treacherous the area of fixtures has become when trying to find uniformity across the states.

Like other areas of the UCC, the fixtures question shares a rich common law background. For much of the common law, the determination of whether a good became a fixture related to real property was a strict question of attachment to the realty. But in 1853,

5. JAMES J. WHITE & ROBERTS S. SUMMERS, UNIFORM COMMERCIAL CODE 1056 n.66 (2d ed. 1980).
6. Id.
the analysis completed a gradual change. In *Teaff v. Hewett*, the Supreme Court of Ohio applied a three-prong test for determining when goods attached to the land remained as fixtures to the realty. The court said that finding that a good became a fixture required (1) attachment to the property; (2) adaption for the use of the realty; and (3) intent to attach the good to the property permanently. Since 1853, this three-prong description of fixtures has prevailed as the test for most American courts faced with the question of “what is a fixture.”

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10. 1 Ohio St. 511, 529–30 (1853).
11. Id. at 530.
Louisiana, which does not recognize fixtures as distinct from real property.\(^\text{13}\) The three prongs presented by *Teaff* in reality coalesce into an assortment of attachment, objective intent, and subjective intent, with none being sufficient to conclude a fixture exists. Thus showing that a good is attached to the realty is not sufficient to conclude that a fixture exists, without either showing objective intent (concluding that one intended to attach a good permanently by its attachment) or subjective intent (some representation that the attaching party intended to attach the good).\(^\text{14}\)

This analysis becomes cumbersome, particularly where parties’ subjective and objective intents are not the same. Thus, even though courts might categorize intent according to the nature of the good, that intent is subject to different interpretations according to the parties’ actual, subjective intentions.\(^\text{15}\) Planting rose bushes on the property does not always mean that the planting party intended them to stay forever—particularly where the planting party says so.\(^\text{16}\) Likewise, historically there was not a state where one could say with certitude that unattached objects would not be deemed fixtures.\(^\text{17}\) The Supreme Court

\(^\text{13}\) See *LA. CIV. CODE ANN.* art. 463 (2008) (“Buildings, other constructions permanently attached to the ground, standing timber, and unharvested crops or ungathered fruits of trees, are component parts of a tract of land when they belong to the owner of the ground”).

\(^\text{14}\) See e.g., *WSFS v. Chilhibilly’s, Inc.*, 57 U.C.C. Rep. Serv. 2d (CBC) 692 (Del. Super. Ct. 2005) (stating that an attached good is a fixture based on the intention of the party making the annexation); *F.R. of N.D. v. First Nat’l Bank of Williston (In re F.R. of N.D., Inc.)*, 54 B.R. 645, 648 (Bankr. D.N.D. 1985) (suggesting that a security agreement identifying “fixtures” was insufficient to create a security interest in “trade fixtures”).

\(^\text{15}\) See 4 *WHITE & SUMMERS*, supra note 2, §33-5, at 297 (“Most courts start from the proposition that status of goods as a fixture depends on the intention of the parties. Of course, ‘objective manifestations of intentions’ are the windows through which we view actual intent.” (footnote omitted)). White and Summers then suggest that several inquiries might balance the objective/subjective line of intent: “What did the parties say in their agreement? How did they attach goods to the realty? What is the relation between the parties? How is the operation of the goods related to the use of the real property?” *Id.*

\(^\text{16}\) See *In re Flores De New Mexico*, 151 B.R. at 574 (deciding whether rose bushes were “equipment” or fixtures); see also Alphonse M. Squillante, *The Law of Fixtures: Common Law & Uniform Commercial Code* (pt. 1), 15 *HOFSTRA L. REV.* 191, 258 (1987) (stating that an article “may be considered a chattel by the conditional seller and the buyer, but considered a fixture and part of the realty between the buyer who is also a mortgagor and the buyer’s mortgagee. Likewise, the affixed article, as between the conditional seller of the article and the purchaser, may be considered personality, but between the same seller and the owner of the realty, the article may be considered realty.” (footnote omitted)).

\(^\text{17}\) In Pennsylvania, the courts approved and expanded what became known as the integrated plant doctrine, in which certain unattached things were considered fixtures that remained with the realty. A related concern is constructive attachment in which things necessary to the real property are deemed attached to the real property. For example, keys to a house are deemed to be constructively attached to
of Maine offered the best statement of the law in 1866 in *Strickland v. Parker*:

> It is not to be disguised that there is an almost bewildering difference and uncertainty in the various authorities, English and American, on this subject of fixtures. . . . One thing is quite clear in the midst of the darkness; and that is, that no general rule, applicable to all cases, and to all relations of the parties, can be extracted from the authorities. \(^{18}\)

In short, determining whether a good is attached for UCC purposes is complicated and not at all dependent on the UCC itself.

Some analysts suggest that the inability to isolate the definition of "fixture" in a uniform test creates a lack of predictability and therefore is inefficient. For example, Alphonse Squillante points to the lack of certainty created by various modes of interpreting intent under the common law:

> Chattel which falls within the gray area between "pure" real property could be classified as a fixture under any one of a variety of theories: Attachment, Intent, Integration, Institutional Doctrine, Assembled Plant Doctrine. . . . Additionally, the determination of fixture status may depend on the expectations of an ordinary person under particular circumstances. \(^{19}\)

Similarly, Robert Loyd in his 1993 treatment of fixtures noted that an informal survey of practicing attorneys and lenders revealed the most challenging aspect of Article 9 to be determining whether a good has become a fixture. \(^{20}\) To be clear, this lack of predictability derives mostly from the inclusion of intent as a defining element of a fixture. Considering intent removes the bright line measuring stick that economists and lenders look for in assessing whether goods actually become fixtures. Most of the time, a definitional threshold question does create the certainty that different interest holders want. In fact, much of the UCC is built around the concept of limitation by definition and then application. For example, the UCC tells us that goods by definition are consumer goods, farm products, inventory, or equipment, with each definitional paradigm having specific consequences for the specific good at issue. \(^{21}\) The UCC fixtures definition, in contrast, is

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19. Squillante, *supra* note 3, at 538 n.7 (citations omitted).
21. The UCC’s definitional structure defines each component part separately from the definition.
referential only, explaining that the definition of fixture is found not in the confines of the UCC itself, but in the depths of state law. In other words, the definition does not perform a gate-keeping function that guards the interests of parties, or that creates certainty.

That the drafters of the UCC crafted a definition that does nothing is significant. Definitions, by their nature, limit doctrines. Definitions allow courts and parties to rely on bright line rules for understanding how they should relate to a particular item. This raises questions about the significance of a definition that purports to not define. In other words, why did the drafters not simply say in Section 9-102(a)(41): “Fixture: consult applicable state law doctrine of fixtures”? Even a definition that retreats like this one creates too many gaps; we know this because in 1962, the first version of Article 9 expressly punted the definition of fixtures to state law. After the 1962 draft, the drafters realized the need to define fixtures, but failed to do so in a way that served the purposes of a definition.

In a perfect world, the drafters might have created a unitary definition of fixtures that joined the real estate and personal property systems together, thereby maximizing certainty and efficiency towards measurable market impacts. This was my first inclination in writing this Article—to argue against the common law definition of fixtures, and invite courts to treat the Section 9-102(a)(41) definition of fixtures as an inference of attachment. For all the advantages of brevity and clarity that this definition might allow, this Article instead offers a concession and a critique on the state of fixtures under the UCC.

First, the concession is that the UCC law of fixtures is irrevocably tied to state real estate law and the politics that surrounds changes that might impact real estate transactions. The political climate underscores the tensions that third-party interests present when conflated across multiple systems. Most of these tensions are created at the definitional level and continue to present certain anomalous results, which the Code

of “goods.” Goods are simply defined as “all things that are moveable when a security interest attaches.” U.C.C. § 9-102(a)(44) (1999). Consumer goods are “goods that are used or bought for use primarily for personal, family, or household purposes.” Id. § 9-102(a)(23). Farm products are “goods . . . with respect to which the debtor is engaged in a farming operation” and which satisfy other criteria. Id. § 9-102(a)(34). Inventory are “goods, other than farm products,” which are held by a debtor for sale, lease, production, or use in contract of service. Id. § 9-102(a)(48). Finally, the definition of equipment provides the unifying structure of “goods” within the UCC; equipment is “goods other than inventory, farm products, or consumer goods.” Id. § 9-102(a)(33).

22. See id. § 9-102(a)(41).

23. Though slightly antagonistic, it should be recalled that the original version of Article 9 contained a similar retreat away from defining. See U.C.C. § 9-313 (1962).

24. Id. (“The law of this state other than this Act determines whether and when other goods become fixtures”).
cannot resolve. But understanding the political climate behind the UCC’s fixtures provisions also explains why the definition maintains a symbolic, rather than substantive place in the UCC. Part II provides this background.

The critique is that the definition of fixtures should be reallocated as a descriptive element of the substantive provisions of fixtures. A consequence of not really defining fixtures is that the current official definition performs a function that most definitions do not—it describes fixtures without binding the states to a committed boundary. In doing so, the fixtures provision actually performs a function more akin to narrating themes rather than defining—a function just as important for uniformity sake. The narrating of these themes provided by the “definition” is more than mere analogy, such as those suggested by White and Summers; importantly, the definition does not purport to explain what a fixture is “like.” Rather, the definition provides straightforward references that allow courts (and more important lenders) to make initial judgments as to whether something may be a fixture. Specifically, the definition reminds us that fixtures joins personal property law and realty law; and that fixtures law is, and has been since the mid-nineteenth century, about sorting out interests. Part III argues, however, that the imaging provided by Section 9-102(a)(41) interacts better when associated directly with the general provisions affecting fixtures under the Code.

PART II: THE CONCESSION: THE POLITICS OF REAL ESTATE DICTATE THE LAW OF FIXTURES

Uniformity in fixtures, though noble in its pretences, is a cause surrendered long ago by the drafters of the UCC. Starting in the early twentieth century, uniform law drafters attempted to resolve some of the ambiguity between the fixtures test and third party interest holders. In 1962, the National Conference of Commissioners for Uniform State Laws (NCCUSL) together with the American Law Institute (ALI) proposed comprehensive legislation dealing with security interests in personal property; Article 9 merged the two prevailing forms of security in goods—chattel mortgages and conditional sales—into one act. 25 That

25. See id. § 9-101 cmt. ("This Article sets out a comprehensive scheme for the regulation of security interests in personal property and fixtures. It supersedes existing legislation dealing with such security devices as chattel mortgages, conditional sales, trust receipts, factor's liens and assignments of accounts receivable."); 1 GRANT GILMORE, SECURITY INTERESTS IN PERSONAL PROPERTY § 9.2, at 290 (1965) (describing the historical convergence of multiple security devices under Article 9); see also id. § 9.1, at 288 ("Article 9 of the Uniform Commercial Code is an attempt at such synthesis. However, revolutions, in law as in politics, merely record what has imperceptibly already taken place."); Millard
original provision, though addressing fixtures, explicitly left determination of what is a fixture to state law.26 Early on, Article 9’s principle drafters realized that leaving the important question defining a fixture solely to state determination was too ambiguous. So in 1972, they jointly proposed an amendment to the fixtures provisions of Article 9, including a reformulated “definition” of fixtures: a fixture is goods that are “so related to particular real estate that an interest in them arises under real estate law.”27 While this definition was a distinct textual departure from the prior version in 1962, which expressly left the fixtures question to state law, the new text was not a substantive departure.28 Despite the significant change in language, nothing substantial changed in the fixtures analysis,29 and courts continued to interpret fixtures as if nothing changed.30 And nothing much did change.

This sounds odd. Traditional legislative interpretation suggests that if language is changed, the new language by default does something different. Sometimes, it is just clarifying the Code’s language to match the prevailing law; usually these types of changes are accompanied by a


27. U.C.C. § 9-313(1)(a) (1972). The overall impact of the new fixtures formulation was very successful. So much so that the 1972 version was reincorporated into the 1999 remake of Article 9 with no substantive changes. In both the 1999 act and the 1972 act, the definition of a fixture remained constant: Compare id., with U.C.C. § 9-102(a)(41)(1999).

28. Compare U.C.C. § 9-313(1) (1962) (“The law of this state other than this Act determines whether and when other goods become fixtures”), with U.C.C. § 9-313(1)(a) (1972) (stating that goods become fixtures “when they become so related to particular real estate that an interest in them arises under real estate law.”).

29. See Diane Karp, Cable Television Financing: Perfecting the Security Interest, 18 J. MARSHALL L. REV. 593, 599 (1985) (“Article 9 neither precisely defines the term nor states any test to determine when goods become fixtures.”); Mark S. Scarberry, How Not to Amend a Uniform Act: California’s Misleading U.C.C. Article 9 Fixture Provisions, 23 LOY. L.A. L. REV. 681, 750 (1990) (in a slightly different context, state legislators in California also debated whether to invoke a more definitive definition of fixture, considering, size, manner of affixation, and intentions of the party); Lloyd, supra note 20, at 618 (noting one bothersome problem of the Article 9 revision as the lack of a meaningful definition).

30. Comming Bank v. Bank of Rector, 576 S.W.2d 949, 952–53 (Ark. 1979) (“[T]he basic rules for determining whether an article remains a chattel or becomes a fixture ... are (1) real or constructive annexation to the reality in question; (2) appropriation or adaptation to the use or purpose of that part of the reality with which it is connected; and (3) the intention of the party making the annexation to make a permanent accession to the reality, this intention being inferred from the nature of the chattel, the relation and situation of the party making the annexation, the structure and mode of annexation and the purpose for which the annexation has been made.”); Wyo. State Farm Loan Board v. Farm Credit Sys. Capital Corp., 759 P.2d 1230, 1234 (Wyo. 1988) (incorporating the three factors of Teaff v. Hewett as the primary modus for determining a fixture); see also Metro. Life Ins. Co. v. Reeves, 389 N.W.2d 295, 296–97 (Neb. 1986); Media Real Estate Co. v. Recycling Research, Inc., 38 Pa. D. & C. 3d 84, 89 (Pa. Ct. Com. Pl. 1983).
drafters' disclaimer that "there is no change in the law." It is rare, however, that the language of legislation intentionally becomes more ambiguous and is accompanied by the same disclaimer. That is what happened between 1962 and 1972 with the UCC definition of fixtures.\textsuperscript{31} In effect, the drafters took a clear statement of the defining quality of fixtures and made it more ambiguous.

\textit{A. The 1972 Definitional Changes}

One thing is patently clear. The definition of fixtures in 1972 is more opaque than the drafters originally conceived in 1962. The reasons for making the definition more ambiguous in 1972 are tied to the drafters’ concerns that uniformity could never be achieved with such an expressly divergent definition. In short, the drafters believed that the definition only caused serious problems if it prevented applying substantive provisions that would reconcile un-uniform results.

For example, if the state law definition of fixtures included a tenant’s attachments as fixtures, then the uniform applications of Article 9 would never apply, despite the earnest belief that Article 9 should apply to tenant property. Addressing this issue directly, Homer Kipke responded:

Now suppose, however, that the chattel security interest was created by an ordinary tenant in the real estate, say, a drug store that bought its paneling, wall cabinets, and soda fountain on conditional sale contract. Is Section 9-313 applicable to resolve a conflict between the conditional vendor and the holder of a mortgage on the real estate executed by the fee owner? Is real estate notification under Section 9-401 required to protect the conditional vendor?\textsuperscript{32}

In answering these questions, Professor Kripke said, “No one can be sure of the answers to these questions under the present Code, because the Code does not make clear whether ‘fixtures’ includes tenants’ fixtures or ‘trade fixtures.’”\textsuperscript{33} Despite the invocation of state law for determining what is a fixture (which would presumably include all of the prior doctrine on trade fixtures), the question remained unresolved, largely due to the high stakes involved.\textsuperscript{34}

\textsuperscript{31} See supra note 28 (describing changes between 1962 and 1972 versions of UCC fixtures provisions).

\textsuperscript{32} Homer Kripke, \textit{Fixtures Under the Uniform Commercial Code}, 64 COLUM. L. REV. 44, 66 (1964).

\textsuperscript{33} Id.

\textsuperscript{34} Peter Coogan expressed his disappointment in the fixtures provisions on a number of occasions, most saliently:
These problems became even more difficult in sophisticated transactions. For example, in *Karp Bros. Inc. v. West Ward Savings & Loan Ass’n. of Shamokin*, the debtors executed a “bailment lease” or a factoring agreement. The lease provided that title to the goods vested in a trustee, separate from the debtor’s right to possess and use the goods. In ascertaining what the real property mortgagor West Ward’s interest in the goods could be, the court said:

The only interest, which West Ward had, is a real property interest. Therefore, if the property in question remained personal property and never became a part of the realty, West Ward would have gained no interest therein as purchaser at the sheriff’s sale. The lower court did not see fit to make any finding as to whether the goods ever became part of the realty, but for the reasons that follow, we deem such a determination is unnecessary to a disposition of the case.

This invocation of state law did not necessarily serve a derivative effect. To demonstrate, look back at Kripke’s hypothetical. If the “attached goods” were not fixtures, would a fixture filing in the conveyance records be sufficient to protect the vendor’s interests against other filers? Conversely if the attached goods were fixtures, would a regular financing statement be sufficient to protect the vendor’s goods against encumbrancers? This question demonstrated one of the deficiencies of the early UCC recording provisions—that a filed record

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It is now clear that mistakes occurred when, for supposedly “practical” reasons, the draftsmen swallowed whole some supposedly satisfactory body of pre-Code law. This happened with respect to fixtures, where most of the Code’s fine analytic mechanism was not used because it would have disturbed some supposedly satisfactory fixture law (which turned out almost not to exist in some states), and this led to similar problems in the area of accounts receivable financing.

Peter F. Coogan, *Intangibles as Collateral Under the Uniform Commercial Code*, 77 Harv. L. Rev. 997, 998 (1964); see also Peter F. Coogan, *Fixtures—Uniformity in Words or in Fact?*, 113 U. Pa. L. Rev. 1186, 1191 (1965) (noting the conflict between the fixtures rules of Article 9 and state law definitions); Peter F. Coogan, *A Suggested Analytical Approach to Article 9 of the Uniform Commercial Code*, 63 Colum. L. Rev. 1, 1 (1963) (“Although some of the new terms are less useful than they might be, the wisdom of abandoning the old is amply proved by the one major instance in which an old term has been carried over—the old term ‘fixtures’ left undefined, presents more problems than any new term.”); Peter F. Coogan, *Security Interests in Fixtures Under the Uniform Commercial Code*, 79 Bank. L. J. 829, 829 (1962) (“In leaving the definition of a fixture to non-Code law . . . the Code allows non-Code law to foreclose the operation of its rules”). Grant Gilmore joined Coogan in his belief that a more precise definition was necessary because of the variety of approaches to the definition employed by the states. *See* Grant Gilmore, *The Purchase Money Priority*, 76 Harv. L. Rev. 1333, 1394–96 (1963).


36. *Id.*

37. *Id.* at 495.
in the wrong office was a completely ineffective record. Particularly perplexing was certain real estate filing officers refusing to accept fixture filing records. One impact of incorporating fixtures into the real estate property system was that it was uncertain what information would be necessary for filing to qualify as sufficient. For instance, the Ohio attorney general was asked whether filed records should be accepted if they did not identify the debtor’s status as either owner or lessee. Similarly, the Minnesota attorney general was asked to comment whether records identifying fixtures should be filed in both the real estate office and the chattel security office of the register of deeds.

This confusion was summarized by Kripke’s acknowledgement of the uncertainty in the Code whether a fixtures determination required filing in the real estate office, the secretary of state’s office, or both. Thus, third parties who either guessed wrong, decided against the duplicate filing, or were refused by the filing office who did not believe it to be authorized to accept a filing, were without a security interest when the real estate law deemed the attached good to be a fixture. Of course, few believed that the vendor or lender could somehow trump a prior encumbrancer’s interest by virtue of a real estate filing. But they did believe that the creditor who failed to file in the proper office lost any claim against a like-situated creditor that filed by correctly perceiving the chattel’s quality. Thus, commentators like Kripke believed that the
fixture filing itself was not necessary for perfection purposes particularly where a party filed in the real estate conveyance offices.\textsuperscript{45} As the drafters reconsidered the role of fixtures, the two primary questions discussed above (definitional and filing) played an important role in the new Section 9-313.\textsuperscript{46} Importantly, these two questions were tied to each other by the more important question of what a third party creditor must do to perfect on items that become fixtures.

First, the drafters reverted to the vague concept of relation in defining fixture. In doing so, the drafters clarified the role of filing, particularly for third-party interests.\textsuperscript{47} Specifically the drafters adopted an approach advocated by Peter Coogan, to tie the definition of the fixture closer to the physical relation of the good to the reality, rather than the material damage removal of such a fixture would cause.\textsuperscript{48} Thus, the first provision of the new Section 9-313 announced that goods were “‘fixtures’ when they become so related to particular real estate that an interest in them arises under real estate law.”\textsuperscript{49}

This new definition was significant for third-party creditors and third-party derivative creditors. First, it made clear that the commercial law of fixtures was irrevocably tied to real estate interests as the controlling interests. In doing so, the drafters embraced the concept of the encumbrancer as the default real estate security interest that the fixture interest interacted with as either subordinate or superior, depending on the timing and type of interest.\textsuperscript{50} By tying the interest of fixture filers to encumbrancers, the drafters made clear that the fixtures interest related to real property interests, not just because of the place of filing, but because of the definitional relation to real property concepts.\textsuperscript{51}

\begin{itemize}
  \item \textsuperscript{45} Kripke, \textit{supra} note 32, at 60.
  \item \textsuperscript{46} \textit{Id.}
  \item \textsuperscript{47} \textit{Id.} at 60 (“There is, accordingly, no reason to require perfection by ordinary filing as a prerequisite to the rules giving fixture security interests priority over real estate interests when there has been a fixture filing. The fixture filing under the writer’s suggestion is not a step in ‘perfection’ and any such terminology should be avoided.”).
  \item \textsuperscript{48} Peter F. Coogan, Peter F. Coogan, \textit{Fixtures—Uniformity in Words or in Fact?}, \textit{supra} note 34, at 1204 (“Unlike the 1915 and 1935 Pennsylvania statutes, section 9-313 directs the reader to look elsewhere to determine when its rules apply, and it reintroduces the question as to whether ‘loose goods related to the reality’ in a manner which does not constitute affixation are subject to fixture filing rules.”)
  \item \textsuperscript{49} U.C.C. § 9-313(1)(a) (1972).
  \item \textsuperscript{50} \textit{See generally} \textit{Id.} § 9-313.
  \item \textsuperscript{51} Recall that encumbrancers as a term of art was first used in the Uniform Chattel Mortgage Act (UCMA). The drafters revived the term in the 1972 version of Section 9-313 to make clear that all real estate interests form the starting point for understanding a fixtures relation and priority to the property. The encumbrancer’s role in 1972 was a new one. In fact, in the UCMA, the term “encumbrancer” first appears to describe one with some form of an interest in the real estate. This term appears in three of the four provisions in some form—the UCMA, 1962 UCC Section 9-313, and the 1972 UCC Section 9-313. Likewise, the interests of “owners” appears in the UCMA, the 1962 UCC
\end{itemize}
B. Commentary About the Change in 1972

After the 1972 change, many commentators wondered what changed. For example, Barkley Clark wrote:

Neither the 1962 nor the 1972 version of Article 9 contains a really helpful definition of the term “fixture.” There is no attempt at definition in the 1962 code and Rev. § 9-313(1)(a) merely sets forth the legal conclusion that goods are fixtures when “they become so related to particular real estate that an interest in them arises under real estate law.” This is another way of saying that there is no priority conflict between the financier of a piece of equipment that merely plugs into the wall and the lender holding a real estate mortgage on the land and buildings into which the equipment is placed.52

The final report of the permanent editorial board for the Code is awkwardly silent regarding the definition. The statement reads:

As the code came to be widely enacted, the real estate bar came to realize the impact of the fixture provisions on real estate financing and real estate titles. They apparently had not fully appreciated the impact of these provisions of Article 9 on real estate matters during the enactment of the Code, because of the commonly-held assumption that Article 9 was concerned only with chattel security matters.

The treatment of fixtures in pre-Code law had varied widely from state to state. The treatment in Article 9 was based generally on prior treatment in the Uniform Conditional Sales Act, which, however, had been enacted in only a dozen states. In other states, the word “fixture” had come to mean that a former chattel had become real estate for all purposes and that any chattel rights therein were lost. For lawyers trained in such states the Code provisions seemed to be extreme. Some sections of the real estate bar began attempting with some success to have Section 9-313 amended to bring it closer to the pre-Code law in their states. In some states, such as California and Iowa, Section 9-313 simply was not enacted.

Section 9-313, and the 1972 UCC Section 9-313, though not in the Conditional Sales Act. Similarly, the term “subsequent purchaser” was incorporated into the UCMA, UCSA, and the 1962 version of Section 9-313, but left out of the 1972 version of Section 9-313. See id.; see also Corning Bank v. Bank of Rector, 576 S.W.2d 949, 954 (Ark. 1979) (unable to locate a “legal” definition for the term “encumbrancer,” the court turned to Webster’s and Black’s Law Dictionary: “[Section 9-313] provides that a security interest, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate where the encumbrancer or owner has consented in writing to the security interest. . . . An encumbrancer is one who holds a burden, charge or lien on property or an estate to the diminution of the value of the fee, but which does not prevent the passing of the fee by conveyance.” (citing WEBSTER’S NEW INTERNATIONAL DICTIONARY (2d ed. 1961); BLACK’S LAW DICTIONARY 620, 908 (4th ed. 1951))).

Even supporters of Article 9 and of its fixture provisions came to recognize that there were some ambiguities in Section 9-313, particularly in its application to construction mortgages, and also in its failure to make it clear that filing of fixture security interests was to be in real estate records where they could be found by a standard real estate search. Section 9-313 and related provisions of Part 4 have been redrafted to meet the legitimate criticisms and to make a substantial shift in the law in favor of construction mortgages. The specific changes are described in the 1971 Comments to Section 9-313, and the Comments to several sections of Part 4.53

This statement leads to three reasonable conclusions. First, the drafters were concerned that real estate lawyers were pressing for a return to pre-Code fixture law; the Section 9-313 legislation is an attempt to head off further state action that would cause less uniformity among the states.54 Second, the drafters recognized that Section 9-313 created certain ambiguities in its original form that led to many of these criticisms. The drafters noted particularly the ambiguities regarding construction mortgages and whether Article 9 contemplated a different solution for such transactions.55

The third conclusion is that the drafters' intent as to the definition of fixtures remains unclear. On the one hand, one might argue that if the drafters intended substantial changes in the definition of a fixture they would have described that intention, just as they did with construction mortgages. On the other hand, extraneous records indicate that the issue is not so cut and dry. In fact, drafters were deeply divided on whether the Code should invoke a more concrete definition of fixture. These sentiments were expressed largely through the law reviews, where draftsmen such as Homer Kripke, Grant Gilmore, and Peter Coogan debated whether the UCC should impose a definitional structure on the states.

In the 1962 Harvard Law Review Peter Coogan wrote:

[A]s we have seen, the method by which a security interest in particular collateral may be perfected depends on which of the Code's three classes the collateral falls into. It would be highly desirable that the dividing lines between these three classes—personal property, fixtures, and realty—should be precise; in reality, neither the boundary between chattels and fixtures nor that between fixtures and realty is clear at all.56

54. Id.
55. Id.
56. Peter F. Coogan, Security Interests in Fixtures under the Uniform Commercial Code, 75
Several years later, Coogan commented in the Pennsylvania Law Review, "It is possible to establish a foundation by defining fixtures in their most minimal sense of something which is physically affixed to the realty, but not incorporated therein in the manner [of ordinary building materials]. Beyond that it is difficult, if not impossible, to state any valid positive definition."\textsuperscript{57} Coogan described a second alternative, a definition based on negatives, in 1965; that is, he proposed explaining what a fixture is not. Coogan noted that "[i]t is possible . . . to define fixtures as those items which are affixed but are neither incorporated into the structure nor straight chattels. In order for such a classification to function properly it would be necessary to draft tight and careful definitions for the two categories of nonfixtures."\textsuperscript{58} Either way, Coogan's comments reflect dissatisfaction with the 1962 version's imprecise definition of fixture. Like Coogan, Grant Gilmore also advocated for a more definitive description of fixtures for Section 9-313, considering the Ohio and Massachusetts rules as problematic examples of nondefinitions.\textsuperscript{59}

But not everyone thought that the 1962 formulation, leaving the determination of fixtures to state law, was problematic. The most outspoken supporter of the older formulation was Homer Kripke. In 1964, Kripke in the Columbia Law Review stated:

One can understand and indeed sympathize with Mr. Coogan's views. The concern for a tidy definition does not reflect merely the usual desire of the practicing lawyer for rules with which he can answer questions. This problem represents a very fundamental stumbling block to the increasingly prevalent phenomenon of interstate practice of law. The growth of nation-wide companies with far-flung plants and of nationwide distribution systems has created nationwide finance companies and large metropolitan banks which, in their reach for suitable loans and discounts, are engaging in chattel security transactions all over the country. Their lawyers feel competent to supervise these transactions without local advice. Not being encrusted with local traditions of real estate law and conveyancing, chattel security rules for every state concerned can be readily learned through publishers' services that collect and outline the statutes and through the spread of uniform statutes like the Code. This whole development is obstructed by the survival of variable local fixture rules steeped in local real estate tradition.

Yet it is submitted that this mechanical kind of approach would not help solve the fixture problem but would, in fact, aggravate it. Section 9-

\begin{thebibliography}{9}
\bibitem{Harv.L.Rev.1319,1344(1962)}
\textsuperscript{57} Peter F. Coogan, \textit{Fixtures—Uniformity in Words or in Fact?}, supra note 34, at 1225.
\textsuperscript{58} Id.
\textsuperscript{59} Gilmore, supra note 34, at 1356.
\end{thebibliography}
313 wrestles with the problem of what happens to the chattel security interest as against persons who, dealing with the real estate, reasonably think of the ex-chattel as part of the real estate. Thus, the scope of possible conflict is as broad as the particular state's conception of what would pass under a real estate conveyance. If, for instance, beer barrels and loose hand tools pass under a Pennsylvania plant mortgage, then conflict with a chattel security interest on the barrels or tools may arise. If Section 9-313 were to omit dealing with this conflict as a fixture problem, because it had more narrowly limited the concept of fixture by a definition, the Code would leave the problem without a rule of decision. . . . Thus, the simple appropriate test of "fixture" for Section 9-313 is anything that would pass by a real estate conveyance by the owner of the property, but excluding the sand, plaster, structural members, and so on, to which the rules of accommodation do not apply. 60

Kripke followed this discussion a few years later with another direct confrontation of attempts to define fixture within the context of the Code, this time with direct reference to the proposed language of the new Section 9-313. Kripke observed in his 1969 review of the redrafting process that the proposed language for the new Section 9-313 started with the limitation that "[t]his section governs the priority between a security interest in goods, including fixtures, and a real estate interest in the goods." 61 Notably, at least, by 1969, two years before the final draft was approved, the definition of fixtures that, though not yet incorporated into the preliminary drafts of the Code, was being considered. 62

Kripke continued his assault on attempts to further define fixture away from real property law:

The term is "intensely undefined" and reference is made in present 9-313(1) to other law of the state to determine its meaning. Perennially, not only outside critics of the drafting but also members of the drafting group have urged that the term be defined. The writer long argued that the term could not be defined because the scope of the term was defined by the conflict which it sought to mediate, namely, cases where right to a former chattel conflicted with real estate rights thereto. This would happen when the chattel became so related to real estate that it became a part thereof by accession so that it would pass under a real estate conveyance. The area in which this conflict arises may be different in each state depending on

60. Kripke, supra note 32, at 63–64.
that state’s rules as to when a former chattel will pass by a real estate conveyance.\textsuperscript{63}

Kripke’s incorporation of the eventual definition, relating to chattels that “became so related to real estate that it became a part thereof by accession so that it would pass under a real estate conveyance” and his continued fight against the definition, demonstrates the lack of consensus among the drafters.\textsuperscript{64}

Thus, it is uncertain what the drafters as a whole intended by the new 9-313 definition. On the one hand, the 1972 definition is clearly different from the 1962 approach of leaving to state law to determine what a fixture is. However, neither the language, official comments, nor the drafter’s discussions are persuasive towards a final legislative intent. The best we can offer is that the intent of the drafters was indecisive.\textsuperscript{65}

By orienting the fixtures question around the encumbrancer, the drafters recognized from the beginning that the question of fixtures interests will always relate to state real property law. In defining fixtures in 1972—but by not defining fixtures—the drafters conceded that uniformity can be accomplished without expressed consistency.\textsuperscript{66} I too concede this point.

\section*{PART III: THE CRITIQUE: PICTURING A FIXTURE}

Conceding that the definition of fixtures in Section 9-102(a)(41) does not, and perhaps should not, define does it do something else? I believe it does. One important aspect of the definition is the narration of the fixtures problem. That narration moves from the definition into the substantive provisions, and together, suggest a broader complexity than the single definition can accomplish. I believe that it was a mistake to remove the definition of fixtures from the substantive provisions dealing with fixtures in 1999. This Article argues three points in support.

First, the components of the definition narrate themes more than they delineate boundaries. Specifically, the definition provides three important facts about fixtures: (1) fixtures relate to goods, (2) those goods become related to real property, and (3) competing interests arise as a result. Subpart A describes the narration of the definition using these component parts.

\begin{footnotes}
\footnote{63. Kripke, supra note 61, at 304.}
\footnote{64. Id.}
\footnote{65. Id.}
\footnote{66. Peter Coogan summarized the fixtures project as a failure in 1978, calling the fixture provisions “one of the most serious failures to achieve uniformity.” See Peter F. Coogan, Article 9—An Agenda for the Next Decade, 87 YALE L. J. 1012, 1053 n.151 (1978).}
\end{footnotes}
Second, the definition actually interacts with the component parts in a way that suggests that the substantive parts actually do some of the heavy lifting that the definition fails to do. These provisions are a safe harbor and reveal that the drafters had in mind areas that they intended the UCC to govern in the fixtures question and areas that they did not. Because defining fixtures in such a way that runs afoul of state law was risky for adoption sake, the drafters created an extended gateway in the substantive provisions of Section 9-334 (previously Section 9-313). These safe harbors help create certainty without disturbing the definitional balance of real estate practice.

A. The Components of the UCC Fixtures Narration

The first advance of the definition in Section 9-102(a)(41) is that it provides an image for parties to understand a fixture. This is more than saying something akin to Justice Stewart’s truism about pornography; could it be that we know a fixture when we see it? If that were the case, there would be no need to define the parameters. Instead, the definition does provide concrete images by which we can begin to mark the boundaries of fixtures. Take the definition as written: A Fixture is a “good[] that [has] become so related to particular real property that an interest in them arises under real property law.”67 The definition draws upon three related images.

1. Goods

First, the definition tells us that a fixture is a “good.” A good is defined in Section 9-102(a)(44) as “all things that are moveable when a security interest attaches,” and specifically includes fixtures.68 Thus, the UCC definition in Section 9-102(a)(41) of fixtures and the definition of goods in Section 9-102(a)(44) confirm that a fixture is a subset of a larger category of property called goods. The fact that a fixture is a subset of goods is meaningful because we know that fixtures are things not naturally arising from the realty.

The definition also gives an explicit boundary by the cross reference of goods to fixtures, namely that fixtures are only fixtures if a security interest arises before they become fixtures.69 Take two examples. In the first example, a security interest is created in a good a few days before it is attached to the realty; in the second example, a security

68. Id. § 9-102(a)(44).
69. Id.
interest arises after the good is already attached. In either case, the
definition provides that only one is considered a fixture. The other, by
definition, is not a good and therefore must be treated as realty.

2. Interaction with Real Property

The second boundary that the definition in Section 9-102(a)(41) gives
is that there is a relation between moveable goods and immovable
property. That the drafters chose to use "relation" instead of
"attachment" is equally telling. It allows room for things that, though
not physically annexed, are deemed a part of the realty, like keys to a
door or equipment necessary to operate a farm.

The relation to real property usually included some form of
attachment—but not always. In Pennsylvania, the industrial plant
doctrine allowed the legal attachment of goods used in an industrial
plant, though not fixed to the ground. Prior to Teaff, Pennsylvania first
attempted to create realty based chattel financing in Voorhies v.
Freeman. In Pennsylvania prior to twentieth century, there was thus no
known way of financing using chattel property. Thus, in 1843, in
Voorhies v. Freeman, the Supreme Court of Pennsylvania allowed for
real property mortgages to include nonattached personal property as if it
were a part of the freehold. The Court in Voorhies suggested that all the
equipment used in connection with a "manufactory" could be financed
as if it were real property. In Voorhies, a set of rolls used in an iron
rolling mill, which were unattached to the realty in question were
nevertheless deemed to pass with the realty and be subject to the
mortgage holder's interest.

Similar to the unique problems in Pennsylvania was the more
common problems relating to heavy machinery and rolling stock.
Again, in both instances, the collateral related substantially to the real
property, though was not necessarily attached. The rolling stock cases

70. See Singer v. Redevelopment Auth., 261 A.2d 594, 596 (Pa. 1970) ("If the machinery,
whether fast or loose, is vital to the business operation of an 'industrial plant' and is a permanent
installation therein, it is to be considered part of the real estate."). As one author noted, "under the
'industrial plant doctrine,' the common law of Pennsylvania has long had a broad definition of real
property." J. Anthony Coughlan, Land Value Taxation and Constitutional Authority, 7 GEO. MASON L.


72. Id.

wrote:

The chief complication in the equipment field has been in working out the financing of
new machinery, fixtures or rolling stock in situations where all the assets of an enterprise
pitted the not-so-unusual circumstance of having things that were firmly attached to realty (the rail tracks) and things that were necessary to make the rail tracks usable (the rail cars). Because of the high value of the cars and the necessity to use land interests to leverage credit in purchasing the cars, the question arose whether rolling stock should be treated like fixtures or whether the purchase money priority of the lenders should take precedence.

Beginning with *Pennock v. Coe* in 1859, the U.S. Supreme Court held that railroad mortgages automatically extended to the railroad’s after-acquired property. Though not directly stating the special circumstances, the Court alluded to the fact that the rolling stock was necessary to make use of the tracks on the realty. Ten years later, Justice Bradley in denouncing a mechanics lien on a railroad based on its “after-acquired nature” said:

> [I]t is sufficient to state that, in our judgment, the first, second, and third deeds of trust, or mortgages, given by the Galveston Railroad Company to the trustees, estops the company, and all persons claiming under it and in privity with it, from asserting that those deeds do not cover all the property and rights which they profess to cover. Had there been but one deed of trust, and had that been given before a shovel had been put into the ground towards constructing the railroad, yet if it assumed to convey and mortgage the railroad, which the company was authorized by law to build, together with its super structure, appurtenances, fixtures, and

are subject to the lien of a prior real estate mortgage with an after-acquired property clause. It is clearly necessary, where the acquisition of new equipment must be financed, to subordinate the general lien of the prior mortgage to the special lien on the newly acquired equipment. This necessity has led to the preponderant use of devices which provide conceptually for the retention of title to the new equipment in vendor or financer-conditional sales, leases or trust arrangements. It is believed that the new-equipment lien can be made to prevail without phrasing it in terms of title theory. The real estate mortgage must be taken into account in deciding on the appropriate filing system; where fixtures and heavy machinery are concerned, filing will no doubt have to be in conjunction with real estate recordation, and the simplified system appropriate in inventory finance will not be adequate.

Id. at 782 (footnotes omitted).

74. Rolling stock is understood to be the cars that roll upon the rails, literally the rolling stock of equipment owned by the railroad company. See Michael Downey Rice, *Railroad Equipment Financing*, 18 TRANSPL. L. J. 85, 92 (1989).


76. 64 U.S. 117 (1859); see also GILMORE, *supra* note 25, §§ 28.1–28.4.

77. *Pennock*, 64 U.S. at 129 (“One of the covenants was, that the money should be faithfully applied to the building and equipment of the road; or if, after the road was put in operation, the company had undertaken to divert the rolling stock from the use of the road, a like interposition might have been invoked, and this in order to protect the security of the bondholders.”).
rolling stock, these several items of property, as they came into existence, would become instantly attached to and covered by the deed. To hold otherwise would render it necessary for a railroad company to borrow money in small parcels as sections of the road were completed, and trust-deeds could safely be given thereon. To hold otherwise would render it necessary for a railroad company to borrow money in small parcels as sections of the road were completed, and trust-deeds could safely be given thereon.  


79. See e.g., U.S. v. New Orleans Railroad, 79 U.S. 362 (1870). Bradley’s seemingly straightforward portrayal of rolling stock as falling within the bounds of a railroad mortgage in Galveston Railroad was supposedly challenged less than a year later. A closer inspection of the facts, however, reveals consistency with not only the previous rolling stock cases, but also the fixtures cases. In 1858 and 1860, the New Orleans and Ohio Railroad Company executed mortgages in favor of the United States covering all property of every kind, including after-acquired property. Id. at 362. After the mortgages were foreclosed on, the United States sold a portion of the rolling stock, including two locomotives and ten cars. Id. at 362–63. As a part of the sale, the company purchasing the rolling stock gave the United States a bond, wherein it was stipulated that the United States would hold a lien on the cars. Id. at 363. The question raised before the court by the original bondholders was whether the United States should have a superior equity in the rolling stock over the bondholders of the original mortgages. Id. Justice Bradley denounced the question as foolish and misguided: This . . . is an erroneous view of the doctrine by which after-acquired property is made to serve the uses of a mortgage. That doctrine is intended to subserve the purposes of justice, and not injustice. Such an application of it as is sought by the appellants would often result in gross injustice. A mortgage intended to cover after-acquired property can only attach itself to such property in the condition in which it comes into the mortgagor’s hands. If that property is already subject to mortgages or other liens, the general mortgage does not displace them, though they may be junior to it in point of time. It only attaches to such interest as the mortgagor acquires; and if he purchase property and give a mortgage for the purchase-money, the deed which he receives and the mortgage which he gives are regarded as one transaction, and no general lien impending over him, whether in the shape of a general mortgage, or judgment, or recognizance, can displace such mortgage for purchase money. Id. at 364–65.

Had the property sold by the government to the railroad company been rails, as in Galveston Railroad, or any other material which became affixed to and a part of the principal thing, the result would have been different. But being loose property, susceptible of separate ownership and separate liens, such liens, if binding on the railroad company itself, are unaffected by a prior general mortgage given by the company and paramount thereto. In short, Justice Bradley recognized that reuniting the property with the mortgage by foreclosure enabled property that was subject to removal (such as rolling stock but not rails) to be severed and treated separately. Such a rule simply recognizes the fiction of reuniting title with property.

80. See Booth v. Cent. Sav. Bank, 146 P. 240, 241 (Colo. 1915) ("We are of the opinion that the rolling stock, rails, ties, chairs, spikes, and all other material brought upon the ground of the company encumbered by the mortgage and designed to be attached to the realty, should be considered as a part of the realty, and encumbered by the mortgage as such. . . .") Farmers’ Loan & Trust Co. v. Hendrickson, 25 Barb. 484 (N.Y. Sup. 1857); Farmer’s Loan & Trust Co. v. St. Joseph & D.C. Ry. Co., 3 Dill. 412,
of its necessity to use the road.  

3. Interests

Third, the definition explains explicitly that the law of fixtures is about "interests" that arise by relation. Specifically, the law of fixtures is about a real property owner or encumbrancer (as stated in Section 9-334) claiming an interest to goods that the owner or encumbrancer did not attach to the realty against an owner's lender or tenant who claims an equal right to the thing attached. The strength of the various parties' claims to the good are based on the various ways the parties relate to the good. The real estate owner and encumbrancer hold an interest in the good largely as a result of having an interest in the realty. The secured party and tenant hold an interest in the good largely as a result of having a direct relationship to the goods. Importantly, the definition of fixtures does not try to determine which relationship is superior. But it does establish that the rules of fixtures involve more than hard line rules, like attachment or intent.

That the UCC drafters elected to identify the fundamental relationship between real estate and personalty as "interests" is not in itself significant. What is significant is the drafters' recognition that the problem of sorting interests is primarily the cause célèbre of Article 9.

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412 (Kan. Cir. Ct. 1875) ("[R]olling stock and other property strictly and properly appurtenant to the road, is part of the road . . ."); but see Booth, 146 P. at 241 (distinguishing other movable goods that do not qualify as fixtures: "but fuel, oil, and the like, which are designed for consumption in the use, and which may be sold and carried away, and used as well for other purposes as in the operation of the road, and when taken away have no distinguishing marks to show, that they were designed for railroad uses, cannot, we think, with any propriety, be treated or considered as anything but personal property").

81. See Palmer v. Forbes, 23 Ill. 301 (1860) ("The property of the road consisted of engines, tenders, passenger, freight and baggage cars, wood along the line of the road, tools, machinery, etc., etc. . . . The property was for use along the road, and necessary for the use of the road."); Morrill v. Noyes, 56 Me. 458 (1863) ("But, if the engines and cars are not fixtures, they are so connected to the railroad, and so indispensable to its operation, and so indispensable to its operation, and so indispensable to its operation, and so indispensable to its operation, that there is a clear distinction between them and other kinds of personal property.").

82. See U.C.C. § 9-102(a)(41) (1999) ("Fixtures' means goods that have become so related to particular real property that an interest in them arises under real property law.").

83. See id. § 9-334(c) ("In cases not governed by subsections (d) through (h), a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.").

84. See id. § 9-102(a)(41).

85. For example, the drafters of the 1962 version of Article 9 were not interested in the form of the transaction in as much as they were concerned whether the interest was creating security over a chattel. Thus, Article 9 neutered any distinctions that might have been prevalent between conditional sales and chattel mortgages by making clear that Article 9 seeks to sort out security interests in goods. As stated by Millard Ruud in 1966, "One of the major changes made in American secured transactions law by article 9 is the rejection of the form of the chattel security transaction as the basis for determining the rights of the parties." See Millard H. Ruud, Article 9 of the Uniform Commercial Code—Its
Indeed, sorting out interests may have been the original cause for the movement away from attachment as the single test for determining a fixture.

The context was that as American commercial activity grew, property structures had to adapt to meet the rising demand of capital investment—the so-called static to dynamic shifting of property in the nineteenth century. That shifting occurred in waves—first as between first property possessors (landlords and tenants); next between mortgage holders and land owners; and lastly between third-party creditors and encumbrancers. Development of the common law definitional rule of fixtures that continues in most states today was an expansion in light of emerging interests that were not necessarily tied to the real property; recall that the Supreme Court of Ohio in *Teaff v. Hewett* had to reconcile interests of not only a land owner, but also a real estate mortgage holder. But those interests did not remain static. Instead, new types of interests emerged, suggesting that the definition as a gateway to rights and privileges might not be efficient in determining parties’ interests in the chattels now attached to the realty. Thus, a major theme in the changes to Article 9 was deemphasizing form and transitioning towards the substance of the transaction.

That emphasis is towards the economic relationships of the parties who purport to hold an interest in the good now attached to the realty, whether that interest arises because of ownership of the land, holding a real estate mortgage, or possessing a security interest in the good itself. Prior to Article 9, the common law protected the rights of parties in fixtures by a definitional gateway: if the good was deemed a fixture, then one result was warranted, and if it was not a fixture, another

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*Structure and Applicability, 44 Tex. L. Rev. 683, 683 (1966).*

Another example of this notion overall in Article 9 is the effort Article 9 gives towards its emphasis on “risk alteration and efficient decision making.” In short, Article 9’s emphasis on establishing a first in time filing priority and then carving out several exceptions for that rule, emphasize that interests in Article 9 are protected best by the conscientious interest holders seeking to ensure their rights maintain priority. See Hideki Kanda & Saul Levmore, *Explaining Creditor Priorities*, 80 Va. L. Rev. 2103, 2122 (1994).

86. See generally *Teaff v. Hewett*, 1 Ohio St. 511 (1853), abrogated by *Kings Entm’t Co. v. Limbach*, 63 Ohio St. 3d 369 (1992).

87. For instance, the chattel mortgage and conditional sale emerged in the mid to late nineteenth century as a primary form of security for business lending; the trust receipt and factoring also continued to play a substantial role through the early twentieth century depending on the industry. See *Gilmore*, supra note 25, § 21, at 24. In short, the means of doing business continued to evolve, while the definition which reflected one stage of the evolution, did not. Id.

88. See *U.C.C. § 9-334(c)* (1999) (describing rights of owners and encumbrancers in relation to security interest holders); id. § 9-334(c) (describing exceptions to the rights of owners and encumbrancers by security interest holders).
result.99 This is the context of *Teaff v. Hewett*’s three-prong definition. That *Teaff*’s definition was expansive is largely lost on modern ears; prior to *Teaff*, attachment was the defining trait of a fixture.100 Indeed, the formulation of intent as a basis for determining whether a good has become a fixture was largely due to the dynamic nature of property and reflected the growing source of capital individuals held in things outside of realty. As the doctrine of intent became ingrained in the Supreme Court of Ohio’s jurisprudence the court began associating certain types of goods and transaction types with the mechanism of intent—categorizing the inquiry by analogy.91 This movement to analogy or description not only demonstrates the contextual background of Section 9-102(a)(41)’s use of imagery and analogy, but also demonstrates the shift in importance in the fixtures analysis from that of “ownership” to that of “interest.”

By focusing on economic interests as a contextual background, the definition in Section 9-102(a)(41) takes shape against a background of ideology and norms. During the eighteenth century, the law of fixtures went from a simple common law doctrine effecting real estate stakeholders to one that intertwined other interest holders. The problem was that as the American economy grew, property emphasis shifted. A growing commodification of goods-based property versus land-based property presented new challenges for the existing law, particularly where there was some question as to which priority scheme should apply—that of mortgages or of goods-based priority.92 For example, do tenants always intend that the things they attach are not permanent accessions to the realty? Should rolling stock of railroads be considered

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89. In *Teaff v. Hewett*, the Ohio Supreme Court notes as much: “The doctrine of fixtures, by which the nature and legal incidents of this property must be determined.” *Teaff*, 1 Ohio St. at 523.

90. The Supreme Court of Ohio noted that:

> It is an ancient maxim of the law, that whatever becomes fixed to the reality, thereby becomes accessory to the freehold, and partakes of all its legal incidents and properties, and cannot be severed and removed without the consent of the owner. *Quidquid plantatur, solo, solo cedit*, is the language of antiquity in which the maxim has been expressed. The term fixture, in its ordinary signification, is expressive of the act of annexation, and denotes the change which has occurred in the nature and the legal incidents of the property; and it appears to be not only appropriate but necessary to distinguish this class of property from moveable [property], possessing the nature and incidents of chattels. It is in this sense, that the term is used, in far the greater part of the adjudicated cases... .

Id. at 525.

91. See e.g., transactional groupings, trade fixtures, discussed infra, notes 101–112, and accompanying text; for chattel groupings, see infra notes 114-118, and accompanying text.

92. GILMORE, supra note 25, § 2.1, at 25 (noting that following the industrial revolution, the demand for fast credit and the fast moving economy made personal property, not real property the dominant repository of personal wealth).
legally attached to the realty so as to create a real right in the moveable cars? Should movable industrial equipment inside a plant be treated as integral to the plant’s operations so as to pass with the plant like realty? Courts lacked consistency in application for all these questions, but maintained consistency of thought.

As mentioned in the Introduction, in 1853 the Supreme Court of Ohio in Teaff v. Hewett dramatically changed the fixtures test by incorporating elements of subjective and objective intent into the analysis. Teaff v. Hewitt involved the execution of realty mortgages by plaintiffs against defendant. The debtor, Hewitt, executed both realty mortgages and chattel mortgages on personalty located on the property. At issue, was whether certain items became a part of the realty, and therefore were transferred with the mortgage, or remained the personalty of Hewett and therefore could be seized by the chattel mortgagors. And, as previously discussed, the court laid down the three-part test that courts commonly apply today.

One aspect that became troublesome for courts after Teaff is the degree to which objective intent and subjective intent must agree. Thus, courts tended to craft rules that would override objective intent, giving greater emphasis to the parties’ private expressions attaching the goods. Several courts undertook a streamlined reasoning to intent, some of which may not have been doctrinally sound. One error of reasoning was that all things alike should be treated alike. Thus, as Ron Polston suggests, this error of reasoning leads to the creation of a doctrine ill-prepared for a dynamic and changing property scheme:

> It is first of all a result of the supposed need for a single rule to govern the several situations, which have a common set of physical facts. They all involve an article of personal property which has been adapted to use in connection with real estate. By fixing the character of the property at the time of annexation, a single rule can supposedly be fashioned which will answer any questions that might thereafter arise between parties to any of the various relationships which may thereafter be entered into with respect to the property. The fallacy of this kind of thinking is the conclusion that these physical facts implicate the same policies and expectations in the various relationships in which they occur. That is, of course, not true.

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93. Teaff, 1 Ohio St. at 512
94. Id.
95. Id. at 522.
96. Id. at 529–30.
Such a streamlined approach led, in Polston's view, to the misapplication of the *Teaff* test from what the court actually intended. Instead of applying a subjective intent, Polston argues that the court's language indicates a move to objective intent, rather than the accepted subjective intent. As Polston notes, the prevailing thought among courts and early scholars was that individual actual knowledge was the relevant inquiry in deciding whether personality became realty. Joseph Bingham in the early part of the twentieth century said that "'[t]he intent of the landowner, actual or 'reasonably presumable,' was the thing which decisively made them part of the land; why should not the same important criterion settle the question whether or not the article shall not be treated as a separate thing?'"

By elevating the definition of fixtures to include these subjective and objective criteria, the law of fixtures made itself pliable to the economic demands of the times. This flexibility of intent is exemplified in three distinct areas that touch on fixtures: application of the fixtures definitions to the trade fixtures cases, the rolling stock cases, and the industrial plant cases. In each of these instances, the dynamism of American property and the push towards commodification played a more important role in shaping the definitions at hand than the doctrines that courts were plying.

But the intent criteria had to be applied. Courts often deferred to categorical proxies to determine a party's intent in establishing fixtures. One such proxy was the type of transaction involved. After *Teaff*, several courts began to associate the intent aspect of *Teaff*'s fixture test with trade fixtures as an objective finding of intent. The Supreme Court of Illinois said:

The rule as to trade fixtures between landlord and tenant arising from the presumption that their annexation was accessory to the trade or calling of the tenant and not to the land, is another illustration of the rule that the intention with which the annexation is made will control as to whether the article attached has become a permanent fixture or not.

Similarly, the Supreme Court of Nevada stated:

[Intention is a universal criterion and controlling test. For if, in order to constitute an article a fixture, it must appear that a permanent accession to the freehold was intended; and if, in cases arising between landlord and

98. Id.
99. Id.
101. Sword v. Low, 13 N.E. 826, 830 (Ill. 1887).
tenant, a presumption arises from the relation of the tenant to the property, that he did not intend to make trade fixtures erected by him a part of the realty, thus making a donation of them to the owner of the soil; it should follow, as these cases assume, that such trade fixtures retain their quality of chattels, and are no part or parcel of the realty. And likewise, the Supreme Court of North Carolina in 1890 determined:

There are cases arising generally between landlord and tenant, when the intent with which the articles were affixed to the freehold is a material inquiry. But those cases have no application here. As between landlord and tenant, if it appear that articles of personal property affixed to the freehold were so placed for the better temporary use of the realty, they may be treated as “trade fixtures.” The intent with which they were so placed then becomes material.

Other courts, such as the supreme courts of Mississippi, Indiana, Texas, Massachusetts, Pennsylvania, and the New

103. Horne, 11 S.E. at 374. The court juxtaposes the rights of vendees to fixtures, in which intent is irrelevant, with trade fixtures wherein only manifested “actual” intent is relevant. Id.
104. See Weathersby v. Sleeper, 42 Miss. 732, 741–42 (1869) (“Whether an article is personal property or a fixture, must be determined by taking into consideration its nature, mode of attachment, purpose for which used, and the relation of the party making the annexation, and other attending circumstances indicating the intention to make it a temporary attachment or a permanent accession to the realty.”). The Weatherby decision was followed again by the Supreme Court of Mississippi in 1910 and by the Fifth Circuit Court of Appeals as late as 1982. See Boone v. Mendenhall Lumber Co., 52 So. 584, 584 (Miss. 1910) (upholding the removal of trade fixtures since the requisite intent to create a permanent fixture was not present); Motorola Commc’ns & Elecs., Inc. v. Dale, 665 F. 2d 771, 773 (5th Cir. 1982) (finding that a tower erected by a tenant was personally due to the lack of intent to leave the tower as a permanent structure).

Notably, the Fifth Circuit also picked up on the nuance; in citing Richardson v. Borden, 42 Miss. 71, 76 (1868) another Supreme Court of Mississippi opinion and its similar language, the court said that “[t]he rule of construction ... is relaxed and liberal ... as between landlord and tenant,” presumably because it is not likely that the tenant intends to convert his personalty into the landlord's property.” Dale, 776 F.2d at 773 (ellipses in original).
106. Moody & Jemison v. Aiken, 50 Tex. 65 (1878) (“But when [an object is] erected for a mere temporary purpose, and with the express or [implied] agreement or intention that it shall not be a permanent annexation to the freehold, then, as to a trade fixture at least, for reasons of public policy, and in favor of trade and to encourage industry, it becomes a fixture removable against the will of the owner of the freehold, if effected at the proper time.”).
107. Wall v. Hinds, 70 Mass. (4 Gray) 256, 271 (1855) (suggesting that the intention of the parties in erecting a trade fixture determines whether the fixture is considered realty or personalty).
108. Watts v. Lehman, 107 Pa. 106, 110 (1884) (“When a tenant attaches to the land fixtures for his business the law in favor of trade presumes that he intended to remove them before the end of the
York Court of Appeals,\textsuperscript{109} similarly held that the question of intent could be resolved by deciding whether the trade fixtures doctrine applied.

But just as there were courts that found an objective basis for intent in the trade fixture, other courts balanced that finding by stating that trade fixtures could imply intent, but were not necessarily dispositive of the parties' intentions.\textsuperscript{110} For example, as the period progressed, there were instances in which tenants and landlords clarified their intentions as to the attached chattels,\textsuperscript{111} particularly where the intent inferred by their term; it is only on leaving them that the intention to make a gift to the landlord is imputed to him . . . .”\textsuperscript{112}).

109. The Globe Mills Co. v. Quinn, 76 N.Y. 23, 24–27 (1879) (machinery previously annexed by tenant to the realty did not by operation of law and without intent on his part become part of the realty; “[t]he intention with which the machinery was put up is the controlling test as to whether it became a part of the realty.”).

110. See, e.g., Lake Superior Ship Canal Ry. & Iron Co. v. McCann, 86 Mich. 106, 110–11 (1891); accord Wheeler v. Bedell, 40 Mich. 693, 696 (1879); Arlington Mill & Elevator Co., v. Yates, 77 N.W. 677, 679 (Neb. 1898) (“But, when an article is of an ambiguous character, —such that it may either remain personality or become attached to the freehold,— much depends on the intention of the parties. This is especially true of trade fixtures and of machinery for trade purposes, where they may be removed without substantially impairing, not the property, taking its value with them remaining, but the property considered separately”); accord Edwards & Bradford Lumber Co., v. Rank, 77 N.W. 765, 766 (Neb. 1899); Honeyman v. Thomas, 36 P. 636, 636 (Or. 1894); see also Fortescue v. Bowler, 38 A. 445, 446 (N.J. Ch. 1897) (holding that where the tenant expressed no intention as to the erection of a trade fixture, the court must determine the actual intent).

111. One issue that also caused dispute was the timing of tenants. The general common law rule had been that a tenant held the right of removal up to the time that the tenant was actually a tenant of the premises. Courts now faced the question that if the intent was to not make the “trade fixture” a permanent accession to the realty, so as to render the “trade fixture” personality, then should the tenant have the right to remove the tenant’s personality after the term of the lease. The overwhelming opinion was no. See Wright v. Du Bignon, 40 S.E. 747, 750 (Ga. 1902).

It is, however, claimed that at the time of the erection of the fixtures which the defendant in error asserted a right to remove he intended to remove them at the expiration of his term, and that, having been erected with such intention, his right to remove them is preserved. This proposition is not a sound one. The right to remove such fixtures is denied him by the law; and, no matter what his intention might have been at the time he erected them, such intention, in the absence of a contract with the owner of the land, would not avail to give him the right of removal.

\textit{Id.} (emphasis added); see also Albert v. Uhrich, 36 A. 745, 745 (Pa. 1897) (including the opinion of the prior court, which stated that ”plaintiff in this case is clearly in no better position than a tenant who has erected trade fixtures upon a leased property, and at the expiration of his term has left them in the landlord's possession. Indeed, we are of opinion that he would have had no right to remove the [fixtures]”); Shellar v. Shivers, 33 A. 95, 95 (Pa. 1895) (holding trade fixtures removable during the tenancy revert to ordinary fixtures at the termination of the tenancy if not removed); see also Advance Coal Co. v. Miller, 4 Pa. D. 352 (Pa. Ct. Com. Pl. 1895); Wright v. McDonell, 30 S.W. 907, 910 (Tex. 1895) (first recognizing the rule that parties could not remove a trade fixture after its tenancy, and then recognizing that parties could expand or contract the period of removal by express agreement); Treadway v. Sharon, 7 Nev. 37, 43 (1871) (“[W]e take the law to be, that trade fixtures do become part of the realty, whatever intention to the contrary on the part of the tenant erecting them may be inferred from his limited interest in the land. Although part of the realty, the law indulges the tenant with the right of removing them during his term.” (citations omitted)).

\textsuperscript{109} [Footnotes]

\textsuperscript{110} [Footnotes]

\textsuperscript{111} [Footnotes]
status ran opposite of their actual intent. Either way, most courts after *Teaff* began associating certain transactions and property types with one or both intent elements of the fixtures analysis. In doing so, courts flexed the economic dynamism of American property, finding that certain things were fixtures at times, and were not fixtures at other times.

In addition to transaction type as a basis for determining the parties’ intent, courts also looked at the type of chattel being attached as being definitive of parties’ intent. Courts could easily justify the reference to chattel type by concluding that appropriation of the goods to the property should be the same when similar items are attached. Likewise, if tearing down a chattel would cause substantial destruction to the property, then should it not follow that substantial destruction would occur every time that type of chattel was taken down? This was particularly easy in cases in which the chattel was specifically needed for the functional use of the property—a saw chain for a saw mill, equipment for a brewery, or farm equipment for the farm. The

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112. *See Edwards & Bradford Lumber Co., 77 N.W. at 766. Firth v Rowe* is a good example of Courts deferring to written agreements by the parties when one challenges the legal presumption afforded by the trade fixture status. 32 A. 1064, 1066 (N.J. Ch. 1895) (deferring to the lease agreement’s lack of statement regarding intent upon the accusation of opposite intent by the landlord); *see also Simpson Brick Press Co. v. Wormley, 61 Ill. App. 460, 463-64 (Ill. App. Ct. 1895); Carver v. Gough, 25 A. 1124, 1125 (Pa. 1893); Andrews v. Day Button Co., 30 N.E. 831, 832 (N.Y. 1892).*

113. *But see Missouri v. Marshall & Co., 4 Mo. App. 29, 33 (Mo. Ct. App. 1877) (“The intention with which the boilers were affixed... was not material. If the property would otherwise have been personal, it could not... have been made realty by the tenant’s intention to make it such.”); Schlemmer v. North, 32 Mo. 206 (1862) (in the absence of stipulation in the lease allowing their removal, or evidence showing any intention of the parties that they should be removed, buildings erected by a tenant upon the land become a part of the freehold).*

One should segregate certain cases that arise in which the trade fixture was deemed a part of the land until removed. For example, the Supreme Court of California held that a trade fixture remained a fixture until it was removed. In *Trabue Pittman Corp. v. Los Angeles County*, the court confronted the question of what of the real property is assessable for property taxes. The Court said that “It might be contended that a tenant who affixes a chattel to leased premises does not thereby intend permanently to improve the freehold, and, accordingly, a chattel so attached should not be considered a fixture... [The rule in California is] [i]f the chattel attached would be considered a fixture, were it attached by the owner of the realty, it is a fixture if attached by a tenant. Thereafter, the thing is considered as a part of the realty, the tenant retaining the privilege of removal under the trade fixture doctrine...” 175 P.2d 512, 519 (Cal. 1946) (quoting WILLIAM E. BURBY, BURBY ON REAL PROPERTY § 24 at 28 (1943). The majority rule, however, was that trade fixtures were not taxable to the landlord as realty. *See Frost v. Schinkel, 238 N.W. 659, 667 (Neb. 1931) (“Such trade fixtures are not taxable to the landlord as realty”).

114. *See Polston, supra note 97.*

115. *See e.g., Burnside v. Twitchell, 43 N.H. 390 (1861); Jackson v. State, 11 Ohio St. 104 (1860) (citing numerous saw mill decisions for the conclusion that a saw chain was a fixture).*

116. *See e.g., Scheifele v. Schmitz, 11 A. 257 (N.J. Ct. Err. & App. 1887) (machinery in a brewery held to be fixtures as between the mortgagee of the land and a subsequent judgment creditor of the mortgagor).*

117. *See, e.g., Farm Credit Bank of St. Paul v. First Interstate Bank of Wis., 477 N.W.2d 364*
analysis was far more difficult where the item was disassociated from
the natural use of the property. The result was the creation of steady
rules, which did not always match the actual equities of the transaction.
As one judge pointed out: "[R]ules established by [fixtures] decisions
upon the basis of which the claims of the parties must be adjusted are
simple enough. The application thereof to particular cases is not so
easy." \(^{118}\)

The definitional role of the land and attachment to land historically
was a contested matter. In the three examples provided above, the trade
fixtures cases, the rolling stock cases, and the intent cases, the
definitional question governs the outcome. In other words, prior to the
Code, decisions of interests and relation were decided as a threshold
question. \(^{119}\) Moreover, the line became blurred as things that were
clearly unattached were deemed attached for purposes of deciding the
legal interest. In all three instances, the cases represent legal rules that
seem to mold themselves around significant monetary expansion. They
crafted themselves around the current prominent definition of fixtures all
with a common vestige—in all three instances the courts shy away from
the theory of vested rights towards a more dynamic view of property.
As the nineteenth century came to a close, it became apparent that the
defining qualities of a fixture struggled to adapt to the changing
economy.

The lesson learned from history by the drafters was that the problems
of fixtures could not be solved by definition. Thus, the definition
acknowledges the various themes that have complicated fixtures but
does not offer a single "one size fits all" solution. Instead, the drafters
gave detailed treatment to the interests at stake by allowing the
substance to dictate priority.

B. The Drafters Were Not Trying to Define; They Were Trying to Create
Safe Harbors

Besides narrating the fixtures issues, the drafters were trying to
dictate policy for the security of goods that are deemed to be fixtures,
but the courts get the ultimate fixtures question wrong. \(^{120}\) Because the

\(^{118}\) Cornell Coll. v. Crain, 235 N.W. 731, 732 (Iowa 1931).

\(^{119}\) See GILMORE, supra note 25, § 11.1 at 333 (describing the role of types of transactions in the
jockeying for interests).

\(^{120}\) I have called this the safe harbor issue, largely because the Section emphasizes not the
determination of the fixture, but dictates the result "even if" the chattel is deemed to be a fixture. See
U.C.C. § 9-334(e) (1999). By calling the chattels "fixtures" but requiring a nonfixture solution to
definition performs no heavy lifting, the substantive provisions actually dictate the policies that the drafters sought to enforce. Thus large parts of Section 9-334 are “safe harbors,” in the event a court gets the ultimate definitional question wrong—namely, Sections 9-334(e), (f), and (g).

Subsection (e)(2)121 describes various exceptions to the fixture filing requirement according to the type of good involved. Thus, subsection (e)(2)(A) addresses factory or office machines; subsection (e)(2)(B) addresses equipment that is not primarily used or leased for use in the operation of the real property, and subsection (e)(2)(C) addresses replacements of domestic appliances that are consumer goods.122 Subsection (f) includes rights created by contract by the parties, such as leases, or agreements between encumbrancer or owners, as well as common law rights such as the trade fixtures doctrine.123 Finally, subsection (g) extends the rights that arise under (f) for a reasonable time after the debtor’s right to the realty ceases.124

Subsection (e)(2)(b)’s exceptions address intent in certain safe situations in which courts should not deem the goods to be attached as fixtures.125 Thus, courts in most jurisdictions recognize that the factory machines installed in a facility, though meeting the attachment test, are not intended to remain permanently as realty. Similarly, courts should generally deal with consumer appliances which were installed as replacements under the same rubric of intent—neither seller, creditor, nor buyer necessarily intended that consumer appliances would fall into the Article 9 filing process. If the courts get these questions wrong, Section 9-334(e) confirms that a fixture filing is not necessary for perfection.

Similarly, just as industrial equipment and consumer replacements of

121. Subsection (e) (2) provides:

A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(2) before the goods become fixtures, the security interest is perfected by any method permitted by this article and the fixtures are readily removable:

(A) factory or office machines;
(B) equipment that is not primarily used or leased for use in the operation of the real property; or
(C) replacements of domestic appliances that are consumer goods.

Id. § 9-334(e)(2).

122. Id.

123. See id. § 9-334(f).

124. See id. §9-334(g).

125. See id. §9-334(e)(2).
appliances should be deemed unattached as objective manifestations of intent, the drafters also provided for certain instances of subjective intent.\textsuperscript{126} Trade fixtures, lease agreements, and subordination agreements should confirm the subjective intent of the parties to not bind the good permanently; however, if the courts get the definitional question wrong, then subsection (f) prevents a miscarriage of the parties' reasonable expectations.

More importantly, the drafters narrowed the categories of fixtures to which Article 9 would apply. First, only interest holders that file a fixture filing prior to an encumbrancer’s interest are entitled to priority.\textsuperscript{127} An exception is made for purchase-money security interests, but even then, the interest must arise prior to attachment and within twenty days of the good becoming a fixture.\textsuperscript{128}

In a related manner, creditors that would ordinarily have a right to removal chattel under the trade fixtures doctrine because of the lack of intent, now find the same right without arguing about the status of the good.\textsuperscript{129} In this way, Article 9 continues the common law doctrines that deferred to the relations of the parties (trade fixtures doctrine preserves tenants rights in fixed chattels) without bickering about whether the chattel was a nonfixture or a fixture. Furthermore reading attachment as a basis of relation meaning underlying the definition in Section 9-102 validates the provisions of subsection (g) of Section 9-334,\textsuperscript{130} which implies that a tenant’s abandoned property inures to the owner of the realty—quite likely now as a part of the realty.

\textbf{IV. CONCLUSION}

The themes created by the UCC definition of fixtures is only part of the narration of interests. At the core of the Code’s treatment are

\textsuperscript{126} Subsection (f) provides:

A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) the encumbrancer or owner has, in an authenticated record, consented to the security interest or disclaimed an interest in the goods as fixtures; or
(2) the debtor has a right to remove the goods as against the encumbrancer or owner.

\textit{Id.} § 9-334(f).

\textsuperscript{127} See \textit{id.} § 9-334(e)(1)(A).

\textsuperscript{128} Id. § 9-334(d)(3).

\textsuperscript{129} Id. § 9-334(f).

\textsuperscript{130} Subsection (g) provides: “The priority of the security interest under paragraph (f)(2) continues for a reasonable time if the debtor’s right to remove the goods as against the encumbrancer or owner terminates.” \textit{Id.} § 9-334(g).
substantive provisions that regulate the definition of a fixture under the UCC more than the definition. Because this narration begins in the definition and ends in the substantive exceptions surrounding types of property, bargained for exchange, and significance of transaction, the UCC actually defines by limitation what is not a fixture, more than describes what is a fixture. In doing so, the UCC narrates a struggle between real estate interests and personalty, which, though it cannot be resolved by definition, might be aided by understanding the themes surrounding the interests at hand.

Nevertheless, the narration remains unsatisfactory on many levels. Despite my concession in the first part of the Article, the narration suggests that fixtures can be resolved in a more uniform way. The narration suggests that uniformity in fixtures is a half complete endeavor. Perhaps one day, the uniformity will transform from being unified in name, to being uniform in law and fact.