INTERSTATE MOVEMENT OF MOTOR VEHICLES: CERTIFICATE OF TITLE ACTS AND THE UNIFORM COMMERCIAL CODE

INTRODUCTION

A motor vehicle financed in one state is easily removed to another state where the debtor may sell the vehicle to a local purchaser who is unaware of any out-of-state liens. The secured party may eventually locate the removed collateral and bring an action against the purchaser to recover his interest in the vehicle. Whether he prevails depends on the protection afforded that security interest by the removal state. Uniform Commercial Code section 9-103 sets forth a scheme for ordering of the relationships in

1. The term motor vehicle is not defined by the Uniform Commercial Code [hereinafter UCC]. What constitutes a motor vehicle is to be defined by each state's motor vehicle code. The term may encompass automobiles, motorcycles, watercraft, airplanes, trucks, motor homes, mobile homes and semitrailers.

2. The removal problem is in some cases also applicable to creditors, as opposed to secured parties. Only the term secured party will be used to describe the individual who possesses some interest in the removed vehicle.


For the purposes of this article, “removal state” shall be defined as the state into which the vehicle is brought.

4. UCC 9-103 (1962 version) provides in part:

   (3) If personal property other than that governed by subsections (1) and (2) is already subject to a security interest when it is brought into this state, the validity of the security interest in this state is to be determined by the law (including the conflict of laws rules) of the jurisdiction where the property was when the security interest attached. However, if the parties to the transaction understood at the time that the security interest attached that the property would be kept in this state and it was brought into this state within 30 days after the security interest attached for purposes other than transportation through this state, then the validity of the security interest in this state is to be determined by the law of this state. If the security interest was already perfected under the law of the jurisdiction where the property was when the security interest attached and before being brought into this state, the security interest continues perfected in this state for four months and also thereafter if within the four month period it is perfected in this state. The security interest may also be perfected in this state after the expiration of the four month period; in such case perfection dates from the time of perfection in this state. If the security interest was not perfected under the law of the jurisdiction where the property was when the security interest attached and before being brought into this state, it may be perfected in this state; in such case perfection dates from the time of perfection in this state.

   (4) Notwithstanding subsections (2) and (3), if personal
this multistate conflict of interests. This article examines the application of section 9-103 of the UCC, section 9-302 of the UCC, which determines whether filing is necessary to perfect a security interest, and the various state certificate of title acts in multistate transactions involving consumer motor vehicles. It is the interaction of these statutory schemes which determines the outcome in a contest between a foreign secured party and a local purchaser.

**UCC 9-103**

The UCC envisions a middle approach between absolute protection and no protection. Under most pre-code systems, if the secured party had perfected in accordance with the law of the "situs" state, he was not required to perform any additional acts in the removal state. However, the "situs" rule, in affording virtually absolute protection to the out-of-state secured party, produced harsh

property is covered by a certificate of title issued under a statute of this state or any other jurisdiction which requires indication on a certificate of title of any security interest in the property as a condition of perfection, then the perfection is governed by the law of the jurisdiction which issued the certificate.

The first two subsections of 9-103 provide rules for the perfection of security interests in accounts or contract rights, or in goods normally used in more than one jurisdiction, respectively. These sections have little import as to consumer interests in motor vehicles. However, see In re Brown, 5 UCC REP. SERV. 401 (W.D. Mich. 1968) where the bankruptcy court applied 9-103(2) in determining the rights of the parties in a certificate of title situation.

5. See notes 28 to 37 and accompanying text infra.

6. A certificate of title is "any document issued under state authority on which notation of security interests is either required or permitted." 1 G. GILMORE, SECURITY INTERESTS IN PERSONAL PROPERTY, § 520.8 at 567 (1965) [hereinafter cited as GILMORE]; See also notes 24 to 27 and accompanying text infra. See, e.g., KY. REV. STAT. ANN. §§ 186.040, 186.045 which provide for noting of liens on owner's certificate of "registration."


8. Situs state refers to the place where the property was when the security interests attached. Ward at 251; Rohner at 1178.


However, if the secured party consented to the removal of the collateral, he had to perfect in the removal state. If he failed to do so, his interest became subordinate to any subsequent purchasers. 1 GILMORE, § 22.4 at 605-06, and Comment, Section 9-103 of the UCC: Its Present Problems and Future Prospects as Redrafted by the Review Committee for Article 9, 18 WAYNE L. REV. 737, 739 (1972), [hereinafter cited as Present Problems and Future Prospects].
results for local purchasers or creditors who could not learn of the foreign lien.\textsuperscript{10}

The code does incorporate the basis of a "situs" rule.\textsuperscript{11} The determination of perfection is based on the law of the jurisdiction where the collateral was located when the security interest attached.\textsuperscript{12} However, protection may be limited to a specific period of time at the expiration of which the security interest ceases to be perfected in the removal state.\textsuperscript{13} Protection may also demand compliance with local certificate of title statutes, which require notation of security interests as a condition of perfection.\textsuperscript{14} Section 9-103 governs perfection of security interests in multistate transactions and tells the secured party what must be done to preserve the interest in the removed collateral.\textsuperscript{15}

UCC 9-103(3) and (4): An Overview

Section 9-103 operates in conjunction with local statutes and other relevant UCC sections. Local law determines whether the vehicle movement is between title or filing states,\textsuperscript{16} while 9-302 interrelates the various certificate of title acts to the UCC.\textsuperscript{17}

Subsection (3) of 9-103 provides that if a security interest in a motor vehicle is perfected by means other than notation on a certificate of title in state A and the vehicle is removed to state B that interest remains perfected for a period of four months.\textsuperscript{18} If the secured party perfects in the removal state (B) during the four months, perfection relates back to the time of entry.\textsuperscript{19} If the secured party perfects after four months, perfection dates from the

\textsuperscript{10} Ward at 252. Consequently, some courts developed exceptions to the rule, while some states abolished the rule entirely. See Leary, Horse and Buggy Lien Law and Migratory Automobiles, 96 U. Pa. L. Rev. 455 (1948) and Present Problems and Future Prospects at 739.

\textsuperscript{11} See UCC 9-103(3) and 9-103, Comment 7; 1 Gilmore § 22.8 at 624; and Present Problems and Future Prospects at 740.

\textsuperscript{12} Id.; see also UCC 9-103, Comment 1 (1972 version).

\textsuperscript{13} See UCC 9-103 (3) and UCC 9-103, Comment 7.

\textsuperscript{14} UCC 9-103 (4) and UCC 9-103, Comment 7.

\textsuperscript{15} UCC 9-103, Comment 7.


Title states are those states which have enacted certificate of title acts, which are subdivided into categories of "exclusive" and "non-exclusive". See note 25 and accompanying text infra. Filing states or non-title states have no certificate of title acts and perfection can only be achieved by compliance with Article 9 filing provisions.

\textsuperscript{17} See notes 28 to 37 and accompanying text infra.

\textsuperscript{18} UCC 9-103(3) and UCC 9-103, Comment 7.

\textsuperscript{19} Id.
time of that perfection with no relation back to time of entry.\textsuperscript{20} Four months is considered sufficient time for the secured party to locate the removed collateral.\textsuperscript{21}

Subsection (4) of 9-103 governs a motor vehicle covered by a certificate of title issued under a statute which requires notation as a condition of perfection.\textsuperscript{22} If 9-103(4) governs perfection, the secured party is generally afforded unlimited protection in the removal state.\textsuperscript{23} An understanding of 9-103(4) is necessarily dependent on a reading of state certificate of title acts and 9-302(3) and (4).

All states have adopted some form of a certificate of title act.\textsuperscript{24} Those acts fit adequately into a dual classification of “exclusive” and “non-exclusive.”\textsuperscript{25} Under exclusive systems, perfection is achieved by notation of the security interest of the certificate.\textsuperscript{26}

\begin{footnotesize}
\begin{enumerate}[\itemsep=3pt]
\item \textsuperscript{21} UCC 9-103(3) and UCC 9-103, Comment 7.
\item \textsuperscript{22} The procedures for noting a security interest on a certificate vary from state to state and a secured party must therefore look to the respective state’s certificate of title act to determine the procedure for notation of the security interest.
\item \textsuperscript{23} UCC 9-103(4), by its terms, displaces subsections (2) and (3) when a vehicle is perfected in accordance with its provisions. UCC 9-103, Comment 7.
\item \textsuperscript{24} See In re White, 266 F. Supp. 863 (N.D.N.Y. 1967); notes 119 to 122 and accompanying text infra.
\item \textsuperscript{25} See notes 25 to 27 and accompanying text infra.
\item \textsuperscript{26} Additional breakdowns can be achieved by classifications based on the time of perfection: for example, whether an interest is perfected at the time of application for a certificate or at the point of actual notation. These subtle distinctions are readily ascertainable by examination of the certificate of title acts. The primary consideration remains whether the notation scheme is the exclusive method of perfection. See Ward at 258-59.
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Non-exclusive certificate of title acts are those which require some other act to perfect, either filing of a financing statement or a com-

*Indicates those states which have adopted, in substance, the language of the perfection sections of the Uniform Motor Vehicle Certificate of Title Act.
**Nebraska and Ohio permit perfection by possession of the Manufacturer's (or importer's) certificate of origin. This method is expressly provided for in their UCC § 9-302(3) (b) exclusions; however, through the operation of 9-302(4), possession is eliminated as a method of perfection. See Ward at 256 n.14.
New Mexico provides an example of an exclusive title act.
§ 64-5-1
-A. A security interest in a vehicle of a type required to be titled and registered in New Mexico is not valid . . .
bination of filing and notation. A non-exclusive system may permit or even require notation; however, that notation is not by itself perfection.

Section 9-302 requires the filing of a financing statement to perfect an Article Nine security interest. Filing exemptions are provided unless perfected as provided by this section.

-C. Upon receipt of a title application, the department shall file it and issue a new certificate of title showing the owner's name and all liens existing against the vehicle.

§ 64-5-2
-A. The issuance of a new certificate of title constitutes constructive notice of all security interests in the vehicle described in the application.

Kentucky provides an example of a non-exclusive title act.
§ 186.045
(1) Financing statements relating to vehicles required to be registered in Kentucky by the county clerk shall be filed in the office of the county clerk.
(2) A financing statement is presented to a county clerk for filing, such clerk shall also immediately note information required by the department relative thereto on the owner's copy of the registration.

28. Section 9-302. When Filing Is Required to Perfect Security Interest; Security Interests to Which Filing Provisions of This Article Do Not Apply.
(1) A financing statement must be filed to perfect all security interests except the following:
(a) A security interest in collateral in possession of the secured party under Section 9—305;
(b) a security interest temporarily perfected in instruments or documents without delivery under Section 9—304 or in proceeds for a 10-day period under Section 9—306;
(c) a purchase money security interest in farm equipment having a purchase price not in excess of $2500; but filing is required for a fixture under Section 9—313 or for a motor vehicle required to be licensed;
(d) a purchase money security interest in consumer goods; but filing is required for a fixture under Section 9—313 or for a motor vehicle required to be licensed;
(e) an assignment of accounts or contract rights which does not alone or in conjunction with other assignments to the same assignee transfer a significant part...
vided under two alternative methods, 9-302(3)(b) (A) or (B). Alternative A provides a filing exemption in those states which re-
of the outstanding accounts or contract rights of the assignor;

(f) a security interest of a collecting bank (Section 4-208) or arising under the Article on Sales (see Section 9—113) or covered in subsection (3) of this section.

(2) If a secured party assigns a perfected security interest, no filing under this Article is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(3) The filing provisions of this Article do not apply to a security interest in property subject to a statute

(a) of the United States which provides for a national registration or filing of all security interests in such property; or

Note: States to select either Alternative A or Alternative B.

Alternative A—

(b) of this state which provides for central filing of, or which requires indication on a certificate of title of, such security interests in such property.

Alternative B—

(b) of this state which provides for central filing of security interests in such property or in a motor vehicle which is not inventory held for sale for which a certificate of title is required under the statutes of this state if a notation of such a security interest can be indicated by a public official on a certificate or a duplicate thereof.

(4) A security interest in property covered by a statute described in subsection (3) can be perfected only by registration or filing under that statute or by indication of the security interest on a certificate of title or a duplicate thereof by a public official.


The following states have adopted, in substance, Alternative A:
Alaska, ALASKA STAT. § 45.05.734 (1962).
Maryland, MD. ANN. CODE art. 95b § 9-302 (1964).
quire notation of a security interest on a certificate of title. Alternative B provides a filing exemption in those states which permit notation of security interests on a certificate of title. Alternative A is a mandatory scheme and is suggested for adoption by those states with exclusive certificate of title acts, while Alternative B involves a permissive system and is proposed for those states with non-exclusive acts.

Irrespective of which alternative is adopted, 9-302(4) provides: “A security interest in property covered by a statute described in [9-302(3)] can be perfected only by registration or filing under that statute or by indication of the security interest on a certificate of title or a duplicate thereof . . . .” Subsection (4) theoretically produces the same result whether Alternative A or B is adopted. The intent of Alternative B and subsection (4) is to elevate non-exclusive statutes to exclusive systems. However, variations in state statutes and differing judicial interpretations of the UCC have

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South Dakota, S.D. COMPIL. LAWS ANN. § 57-37-7 (1967).
The following states have adopted, in substance, Alternative B:
Utah, UTAH CODE ANN. § 70A-9-302 (Replacement 1968).
The following states have adopted their own variations:
California, CAL. COMM. CODE § 9-302 (West 1964).
Nebraska, NEB. REV. STAT. § 9-302 (1971).
Ohio, OHIO REV. CODE ANN. § 1309.21 (Baldwin 1971).
29. UCC 9-302(3) (b) Alternative A and UCC 9-302, Comment 8.
30. UCC 9-302(3) (b) Alternative B and UCC 9-302, Comment 8. Some states with exclusive title acts have adopted Alternative B. However, this should have no impact and the act should remain exclusive.
31. 1 GILMORE § 20.8, at 572-74.
32. Id. at 575.
33. UCC 9-302(4). The comments provide that perfection of a security interest can only be attained by compliance with the notation provisions. Filing would not be an acceptable alternative. UCC 9-302, Comment 8. See also WARD at 254-57.
34. 1 GILMORE § 20.8 at 575-76 and WARD at 254-57.
35. Id.
disallowed any uniform effect. 36 Accordingly, the proposed 1972 Amendments to the UCC urge the abolition of the “alternatives” and would allow each state to specify “its statutes intended to be applicable as it adopts the revised Article Nine.” 37

Section 9-103(3) generally governs security interests in motor vehicles perfected in non-exclusive states. Case law under 9-103(3) has been concerned primarily with perfection in a “filing” state prior to removal of the vehicle. 38 However, there are no longer any true “filing” states but rather title states with non-exclusive certifi-


37. See UCC 9-302, Reasons for Change, (1972 version). Revised version UCC 9-302 provides in part:

(3) The filing of a financing statement otherwise required by this Article is not necessary or effective to perfect a security interest in property subject to
(a) a statute or treaty of the United States which provides for a national or international registration or a national or international certificate of title or which specifies a place of filing different from that specified in this Article for filing of the security interest; or
(b) the following statutes of this state; [list any certificate of title statute covering automobiles, trailers, mobile homes, boats, farm tractors, or the like, and any central filing statute*]; but during any period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, the filing provisions of this Article (Part 4) apply to a security interest in that collateral created by him as debtor; or
(c) a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection (subsection (2) of Section 9-103).

38. See, e.g., Community Credit Co. v. Gillham, 191 Neb. 198, 214 N.W.2d 384 (1974) [hereinafter cited as Gillham].
cate of title acts.\textsuperscript{39} The rules applicable to perfection by filing apply equally to perfection under a non-exclusive scheme; under either system notation is not the means of perfection.\textsuperscript{40}

While all states have some form of certificate of title statute, not all motor vehicles have certificates of title. Motor vehicles purchased prior to the operative date of any particular state certificate act may not be subject to a certificate of title.\textsuperscript{41} Depending on the life of any given motor vehicle, 9-103(3) will continue to govern security interests in motor vehicles removed from certificate of title states. Therefore, careful attention must be given to that section of any certificate act which defines the class of motor vehicles covered in order to determine the applicability of 9-103(3).

Section 9-103(4) operates primarily on security interests perfected in exclusive states, protecting those interests required to be noted as a condition of perfection.\textsuperscript{42} Section 9-302(3)(b) in turn provides a filing exemption for property covered by a certificate of title.\textsuperscript{43} Section 9-302(4) adds the positive rule that any property covered under 9-302(3)(b) can only be perfected by notation of the interest on a certificate (or by filing under the statute).\textsuperscript{44}

\textbf{UCC 9-103(3)}

\textbf{Perfection in a Non-exclusive State Prior to Removal:}

\textbf{"Absolute Protection"}

A motor vehicle, in which a security interest was perfected in Kentucky,\textsuperscript{46} a non-exclusive state, is removed from that state to Nebraska,\textsuperscript{48} an exclusive state. During the four months allowed under 9-103(3) the debtor sells the vehicle to a consumer who is unaware of the Kentucky interest. The secured party is unable to locate the collateral until the sixth month after removal, at which time he brings an action against the local purchaser to recover the

\textsuperscript{39} See notes 25 to 27 and accompanying text supra.

\textsuperscript{40} Ward at 270; see generally Comment, Uniform Commercial Code; Section 9-103(3): An Analysis of the Four Month Period, 32 U. Pitt. L. Rev. 614 (1971).

\textsuperscript{41} See, e.g., VT. STAT. ANN. tit. 23, § 2013 (Cum. Supp. 1974) which provides: "(a) Except as provided in section 2012 of this title, the provisions of this chapter shall apply to all motor vehicles . . . except for vehicles of 1971 model year or older."

\textsuperscript{42} UCC 9-103(4). See notes 22 to 27 and accompanying text supra.

\textsuperscript{43} UCC 9-302(3)(b). See notes 28 to 32 and accompanying text supra.

\textsuperscript{44} UCC 9-302(4). See notes 33 to 37 and accompanying text supra.

\textsuperscript{45} KY. REV. STAT. § 186.045 (1973).

\textsuperscript{46} NEB. REV. STAT. § 60-110 (Reissue 1974).
vehicle. The secured party generally prevails over the good faith purchaser in this factual setting.47

The courts have provided secured parties with four months of absolute protection.48 Perfection ends only upon the expiration of the four-month period.49 A buyer who purchased after four months would take a superior title.50 "But, a prior purchaser who had purchased during the four-month period of statutory protection is not retroactively given a superior title."51

Judicial authorities rely on the comments to 9-103(3) as an interpretive guide to reach a result of "absolute" protection.52 The comments provide that a security interest perfected in one state "continues perfected for four months and also thereafter if ... perfected in this state."53 The suggested implication of the phrase "continues perfected ... for four months" is one of absolute protection.

Two recent courts have rejected the notion of absolute protection and held that the four-month period is a period of grace which is forfeited if the secured party does not re-perfect within the four months.54 These courts also rely on the comments to 9-103(3), which provide that if the secured party fails to perfect within four months, there is no relation back.55 The courts viewed the four-month period as "an attempt to insure a definite cut-off period for the determination of rights and priorities of liens ... [O]therswise, years after the four-month period the original secured party would be able to maintain his lien against innocent purchasers ad infinitum if the collateral had been sold during the four-month period."56

48. Stamper at —, 225 A.2d at 169.
49. Id.; See Present Problems and Future Prospects at 752-53.
50. Stamper at —, 225 A.2d at 169.
51. Id.
52. Stamper at —, 225 A.2d at 170, Gillham at 202-05, 214 N.W.2d at 388-89.
53. UCC 9-103, Comment 7.
55. UCC 9-103(3), Comment 7.
56. Arrow at —, 532 P.2d at 558.
A denial of any absolute protection is perhaps the better reasoned approach; and the 1972 Amendments to the UCC are in accord.57

“CLEAN” CERTIFICATE

Assume further that Nebraska issues a clean certificate of title prior to the “within four months” sale. In an action between purchaser and secured party, purchaser argues that the issuance of the certificate of title makes 9-103(4) govern perfection. The law of Nebraska requires notation as a condition of perfection.58 Therefore, the failure to note the secured party’s lien on the Nebraska certificate would allow the purchaser to take a superior title. The secured party urges that the four-month rule of 9-103(3) governs this transaction.

In General Motors Acceptance Corp. v. Manheim Motor Auction,59 a Pennsylvania county court accepted the foregoing argument of the purchaser. The court held that Pennsylvania law governed and absent any notation of the foreign party’s security interest on the Pennsylvania certificate, the subsequent purchaser prevails.60

The Pennsylvania Superior Court accepted the argument of the secured party and impliedly overruled Manheim in Casterline v. General Motors Acceptance Corp.61 Subsequently, the New York Appellate Division in Churchill Motors, Inc. v. A.C. Lohman, Inc.62 cited Casterline for the proposition that 9-103(4) did not apply to a security interest in an automobile perfected in a filing state and subsequently removed to a state which requires notation as a condition of perfection.63

57. See notes 73 to 75 and accompanying text infra.
58. See note 46 supra.
60. Id. at 393-394.
61. 195 Pa. Super. 344, 171 A.2d 813, 817 (1961). [hereinafter cited as Casterline]. The Casterline decision follows Manheim by only a few months. Casterline accepts the argument of the secured party and provides him with four months of protection. Thus, Casterline stands directly opposed to Manheim. The New York court in Churchill Motors, Inc. v. A.C. Lohman, Inc., 16 App. Div. 2d 560, 229 N.Y.S.2d 570 (Sup. Ct. 1962), concludes that Manheim must be deemed to have been overruled. Id. at 579. See also Al Maroone Ford, Inc. v. Manheim Auto Auction, Inc., 205 Pa. Super. 154, 158 A.2d 290 (1965). However, see Rohner at 1184, which suggests that Casterline and G.M.A.C. v. Manheim are distinguishable.
63. Id. at —, 229 N.Y.S.2d at 578-79.
The purchaser's argument was rejected by the New Jersey Superior Court in *First National Bank of Bay Shore v. Stamper* where the court determined:

[S]ubsection (4) does not have application to an automobile which was sold in a state which does not require indication on a certificate of title of any security interest in the property as a condition of perfection and which was subsequently brought into a state which had such a requirement.

*Stamper* has been followed by most courts. A recent Nebraska decision, *Community Credit Corporation v. Gillham*, held that:

... [U]nder the provisions of 9-103 U.C.C., the holder of a security in an automobile which was perfected pursuant to the laws of a non-title state, who had no knowledge of its removal to this state, has priority over the Nebraska purchaser without knowledge of the security interest who purchases the automobile with a clean Nebraska title within four months of its arrival in Nebraska.

However, the Texas Supreme Court has re-asserted the earlier *Manheim* position in the case of *Phil Phillips Ford, Inc. v. St. Paul Fire and Marine Insurance Co.* The Texas court indicated that if it were not for technical defects which rendered the sale void as between debtor and purchaser, it would have held for the purchaser over the foreign secured party. The Texas court found support in the comments of the 1970 Review Committee for Article Nine of the UCC. Those comments provide that “more protection should be given to the local ‘clean’ certificate of title than was accorded in

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64. 93 N.J. Super. 150, 225 A.2d 162 (1966).
65. Id. at —, 225 A.2d at 170. The court relies on the UCC Comments to 9-103(4). “[S]ubsection (4) is new to avoid the possible necessity of duplicating perfection in the case of a vehicle subject to a certificate of title law requiring compliance therewith to perfect security interests. The certificate of title law requirements are adopted as the test for perfection.” Id. In addition the court finds support in the New Jersey Study Comments to 9-103, which suggest that “subsection 4 restates the law of New Jersey as it existed prior to the adoption of the Code.” Id. The prior law of New Jersey protected the foreign secured party. Id.
68. Id. at 205, 214 N.W.2d at 389.
69. 465 S.W.2d 933 (Texas 1971). [hereinafter cited as *Phil Phillips Ford*].
70. Id. at 937.
. . . Stamper,” and this protection is afforded to the local purchaser under the 1972 amended version of 9-103.72

1972 AMENDMENTS TO 9-103

The 1972 Amendments to 9-10373 deal specifically with the judicially developed concept of absolute protection under the four-

72. Id.; see also Phil Phillips Ford at 936.
73. 1972 Amended UCC 9-103:
(1) Documents, instruments and ordinary goods.
   (a) This subsection applies to documents and instruments and to
goods other than those covered by a certificate of title de-
described in subsection (2), mobile goods described in subsection
(3), and minerals described in subsection (5).
   (b) Except as otherwise provided in this subsection, perfection
and the effect of perfection or nonperfection of a security in-
terest in collateral are governed by the law of the jurisdiction
where the collateral is when the last event occurs on which
is based the assertion that the security interest is perfected or
unperfected.
   (c) If the parties to a transaction creating a purchase money se-
curity interest in goods in one jurisdiction understand at the
time that the security interest attaches that the goods will be
kept in another jurisdiction, then the law of the other jurisdic-
tion governs the perfection and the effect of perfection or non-
perfection of the security interest from the time it attaches
until thirty days after the debtor receives possession of the
goods and thereafter if the goods are taken to the other jurisdic-
tion before the end of the thirty-day period.
   (d) When collateral is brought into and kept in this state while
subject to a security interest perfected under the law of the
jurisdiction from which the collateral was removed, the secu-

rity interest remains perfected, but if action is required by part
3 of this article to perfect the security interest
   (i) if the action is not taken before the expiration of the period
of perfection in the other jurisdiction or the end of four months
after the collateral is brought into this state, whichever period first
 expires, the security interest becomes unperfected at the end
of that period and is thereafter deemed to have been unper-

fected as against a person who became a purchaser after re-
moval;
   (ii) if the action is taken before the expiration of the period spe-
cified in subparagraph (i), the security interest continues per-

fected thereafter;
   (iii) for the purpose of priority over a buyer of consumer goods
(subsection (2) of section 9-307), the period of the effective-
ness of a filing in the jurisdiction from which the collateral
is removed is governed by the rules with respect to perfection
in subparagraphs (i) and (ii).
(2) Certificate of title.
   (a) This subsection applies to goods covered by a certificate of
title issued under a statute of this state or of another jurisdic-
tion which requires indication of a security interest on the cer-
tificate as a condition of perfection.
   (b) Except as otherwise provided in this subsection, perfection
and the effect of perfection or nonperfection of the security in-
terest are governed by the law (including the conflict of laws
rules) of the jurisdiction issuing the certificate until four
months after the goods are removed from that jurisdiction and
month rule and the general preference of 9-103(3) over 9-103(4) in a "clean" certificate problem.

Any concept of absolute protection is eliminated in the amendments. Amended section 9-103(1) (d) (i)\(^7\) provides that if re-perfection is not achieved during the four-month period, the security interest becomes unperfected at the end of that period and is thereafter deemed to have been unperfected as against a person who became a purchaser after removal.\(^7\) Thus, in the case where the secured party failed to perfect until the sixth month, the purchaser would take a superior title if he purchased during the four-month period.

thereafter until the goods are registered in another jurisdiction, but in any event not beyond surrender of the certificate. After the expiration of that period, the goods are not covered by the certificate of title within the meaning of this section.

(c) Except with respect to the rights of a buyer described in the next paragraph, a security interest, perfected in another jurisdiction otherwise than by notation on a certification of title, in goods brought into this state and thereafter covered by a certificate of title issued by this state is subject to the rules stated in paragraph (d) of subsection (1).

(d) If goods are brought into this state while a security interest therein is perfected in any manner under the law of the jurisdiction from which the goods are removed and a certificate of title is issued by this state and the certificate does not show that the goods are subject to the security interest or that they may be subject to the security interest is subordinate to the rights of a buyer of the goods who is not in the business of selling goods of that kind to the extent that he gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest.

The following states have adopted the 1972 amendments to 9-103 and 9-302:

Arizona, L. 1975 ch. 65 (CCH SEC. TRANS. Rep. ¶ 650A) [effective January 1, 1976].
Kansas, L. 1975 S.B. No. 27 (CCH SEC. TRANS. Rep. ¶ 650A) [Effective January 1, 1976].
North Carolina, L. 1975 ch. 862 (CCH SEC. TRANS. Rep. ¶ 650) [Effective July 1, 1976].
74. UCC 9-103(1) (d) (i) (1972 version).
75. UCC 9-103, Comment 7 (1972 version).
Non-professional buyers, such as consumers, relying on a "clean" certificate issued by the removal state are protected against undisclosed foreign liens under revised section 9-103(2)(d).76 This section provides protection for buyers who rely on a certificate which "does not show that the goods are subject to the security interest or that they may be subject to security interests not shown on the certificate."77

States which provide for the placement of the phrase "may be subject to security interests not shown on the certificate" on certificates issued to foreign vehicles or on duplicate titles would preclude the protective rule of revised 9-103(2)(d).78 States which employ the phrase "this is a duplicate certificate and may be subject to the rights of a person under the original certificate" on duplicate titles would also bar consumer reliance.79

76. UCC 9-103(2) (d) (1972 version).
77. Id.
78. Id. See also UCC 9-103, Comment 4 (1972 version); MINN. STAT. ANN. § 168A.27 (Cum. Supp. 1974).

If a certificate of title is lost, stolen, mutilated or destroyed or becomes illegible, the first lienholder or, if none, the owner or legal representative of the owner . . . shall promptly make application for and may obtain a duplicate . . . .

The duplicate when issued may contain either (1) the legend, "This is a duplicate and may be subject to the rights of a person under the original certificate," or (2) the word, "Duplicate."

The following states mark their duplicates with the legend (or words similar to) "This is a duplicate and may be subject to the rights of a person under the original certificate:"

Illinois, ILL. ANN. STAT. ch. 95½, § 3-111 (Smith-Hurd 1971).
Maryland, MD. ANN. CODE art. 66½, § 3-111 (1970).
Michigan, MICH. COMP. LAWS ANN. § 257.229 (1967).
CERTIFICATE OF TITLE

The mandate of the UCC is to determine whether the local purchaser or the foreign secured party will take a superior title. The policy of revised 9-103 tends to protect the purchaser if he has no actual knowledge or has not been put on notice as to the existence of foreign liens.

Some jurisdictions provide for the application of the term “duplicate” on any second title issued. However, it does not appear that this term would be sufficient to place any subsequent purchaser or creditor on notice that a prior security interest may exist. Revised section 9-103(2)(d) indicates that the information contained on the title controls. The consumer should probably not rely on verbal assurances by the debtor as to the absence of any security interest. Any doubt as to the “clean” status of the title should be resolved against purchasing the vehicle.

Secured parties or professional buyers, such as used car dealers, receive protection only to the extent that purchasers after removal prevail over the secured party who fails to perfect within the four months. The comments provide no answer to the disparity in treatment for dealers as opposed to consumers, but dealers are perhaps more aware and more capable in the use of methods available to ascertain outstanding liens. Experience gained from dealing with undisclosed foreign liens should place the dealer in a better position to avoid purchasing an encumbered vehicle. The failure of any dealer to protect against undisclosed liens must perhaps be borne as one additional cost of doing business.

UCC 9-103(4)

Since all fifty states have adopted certificate of title acts, 9-103

80. The following states mark their duplicate certificates with the word, “Duplicate”:
   Florida, FLA. STAT. ANN. § 319.29 (1968).
   Indiana, IND. CODE § 9-1-3-9 (1973).
   Ohio, OHIO REV. CODE ANN. § 4505.12 (Baldwin 1971).
   Utah, UTAH CODE ANN. § 41-1-56 (1953).
   See also Texas, TEX. REV. CIV. STAT. ANN. art. 6687-1, § 36 (Supp. 1975) marking it “Certified Copy.”
82. UCC 9-103(2)(c) (1972 version).
84. See Comment, Certificates of Title and 9-103: Some Problems Solved, Others Left Unresolved, 46 TEMPLE L. REV. 90, 103-09 (1972).
(4), and not 9-103(3), will be applied to multistate situations in the future. Subsection (4) states the choice of law rules for all property covered by certificates of title. Ideally, once a security interest has been noted upon a certificate, the security interest should be recognized as perfected in all code states, and should remain perfected indefinitely upon removal. However, subsection (4) was quickly written and failed to clearly define its terms or to establish adequately principles to govern the interstate movement of vehicles which has led to problems in interpreting 9-103(4).

WHEN MOTOR VEHICLE COVERED

The code fails to determine at what time a motor vehicle is covered by a certificate of title; whether it is at the time at which the certificate is applied for by an authorized party or at the time when the certificate is issued by the state administrators. For 9-103(4) to apply, the vehicle must be covered, and if not covered, then 9-103(3) would govern which state's law is applicable.

In defining "covered," one must assume that the certificate of title was issued by a jurisdiction which had the power to do so. Section 1-105 provides that the UCC will apply to transactions bearing an appropriate relation to the state; however, Article Nine fails

85. See notes 22 to 27 & accompanying text supra.
86. 1 GILMORE, § 22.7 at 622.

However, in those states which have adopted the Uniform Motor Vehicle Certificate of Title Act [Alabama, Connecticut, Maine, Massachusetts, Minnesota, New Hampshire, Rhode Island and Vermont], the choice of law provisions may supplant UCC § 9-103. See, e.g., N.Y. VEH. & TRAF. LAW §§ 2118, 2123 (McKinney Cum. Supp. 1974). Louisiana has not adopted the UCC, however it has a certificate of title act. LA. REV. STAT. ANN. § 32:701 et seq. (Supp. 1975).

87. Only § 9-103(2) and (3) governed the perfection of motor vehicle security interests in the initial draft of the code. At this time many states had already adopted certificate of title acts. The code draftsmen originally considered including certificate of title provisions in the code, but abandoned this idea in favor of a uniform act then being promulgated. The draftsmen in turn adopted the "alternative" scheme to integrate the certificate of title acts with the code. Fearing, however, that certificates might not be given extraterritorial effect, the draftsmen proposed subsection (4) in 1958 to assure the recognition of foreign certificates and to encourage their use. Rohner, supra note 7, at 1183.

88. "Subsection (4) was a last minute addition to Article 9; it appears to have been imperfectly thought through and clearly defective in its drafting." 1 GILMORE § 10.10 at 328. "Poor draftsmanship has caused problems for courts attempting to apply subsection (4)." Note, Interstate Movement of Motor Vehicles Subject to Security Interests: A Case for Repealing UCC § 9-103(4), 54 CORNELL L. REV. 610, 615 (1969). "That the above language [9-103(4)] lacks the clarity desirable in a statute may well be admitted." In re White, 266 F. Supp. 863, 865 (N.D.N.Y. 1967).
89. UCC 1-105.
CERTIFICATE OF TITLE

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to deal explicitly with the problems of requisite jurisdictional au-

thority. The issuance of a certificate by a forum with no authority
do so will create the problem of two existing certificates of title.90

In this situation, the draftsmen seemingly intended that 9-103
should be read as a whole.91 Section 9-103(4) would only apply
if the security interest had been properly perfected by notation in
an appropriate state, that is, in a state which is proper under 9-

103(2) or (3).92

Whether there are sufficient “contacts” with the state, such as
control over the owner or property, to confer jurisdiction may be
governed by the certificate of title acts.93 Most title acts provide
that every motor vehicle operated on the state’s highways must
have a certificate of title.94 Unless a state has some theoretical basis
for jurisdiction, any certificate of title issued by it should be treated
as invalid.95

The time of the “issuance” of the title certificate should deter-
mine if a vehicle is “covered”. Certificate of title statutes vary as
to when a security interest is perfected: either the time of filing the
application or the time of issuance.96 Some courts have held that
the certificate of title must have been issued at the time the vehicle
entered the state.97 In those cases, the cars were purchased and re-

90. Professor Gilmore has dubbed a certificate issued by a state with
no authority to do so a “Lichtenstein certificate”: —that is, a certificate
issued by that State covering a vehicle which had never been operated there
and whose owner’s principal place of business was in the United States.
1 GILMORE § 10.10 at 327.
92. The state or county where the debtor’s principal place of business
is located is the proper place in which to file under § 9-103(2). Section
9-103(3) by its terms, indicates where the secured party must perfect.
94. See, e.g., MICH. COMP. LAWS ANN. § 257.216 (1974), which provides
“[e]very motor vehicle . . . when driven or moved upon a highway shall
be subject to the registration and certification of title provisions of this act.
. . .”
95. In re Canter, 8 UCC REP. SERV. 252, 256 (E.D. Tenn. 1970). See
In re Van Leeuwen, 15 UCC REP. SERV. 507 (D.R.I. 1974), where a bank-
ruptcy referee held that a trustee prevailed over a creditor who had per-
fected his interest in an automobile in Massachusetts. The facts showed
that the purchaser was a Rhode Island resident, the forms were Rhode Is-
land forms, and the car was brought into Rhode Island. The referee applied
the 30-day rule of 9-103(3) and held that Rhode Island law governed. The
secured party who had failed to perfect in Rhode Island thus lost his pre-
ferred status.
96. Welsh, Security Interest in Motor Vehicles Under Section 9-302
97. In re Erwin, 8 UCC REP. SERV. 1399 (D. Me. 1971) [hereinafter
cited as Erwin]; In re Zimmardi, 8 UCC REP. SERV. 1396 (D. Me. 1971)
[hereinafter cited as Zimmardi].
moved before the certificates were issued. The "situs" states had
certificate of title acts which provided that the mere application
perfected the security interests. However, the courts held that
the validity of the security interest did not depend upon its perfec-
tion in the state of origin but upon its enforceability between the
parties themselves. When the vehicles entered the removal state
they were not "covered" and 9-103(4) was held inapplicable.
Thus, applying 9-103(3), the secured party's interest was deemed
unperfected since he had failed to perfect in the removal state.

A bankruptcy referee in In re Canter, in determining that a
Virginia certificate of title was issued by a state with requisite au-
thority to do so, never dealt with the problem of whether the vehi-
cle was covered when it entered Tennessee. A vehicle (in this case
a mobile home) was purchased in February and removed within
three weeks, yet a certificate was not applied for until mid-April
and not issued until April 30. Applying the rules established by the
Maine cases, the vehicle was not covered; but the referee applied
9-103(4) which gave protection to the secured party. Unless so
interpreted, a secured party would be under a severe burden in ob-
taining the certificate before the vehicle could be removed. The
problem should be recognized as a "contacts" issue, and where the
secured party knows or has reason to know that the vehicle will be
removed, he should perfect in the removal state.

A motor vehicle should continue to be covered by a title certifi-
cate even though errors appear on the document. Many pre-code
courts strictly interpreted the filing provisions of certificate of title

98. See, e.g., Wash. Rev. Code Ann. § 46.13.095 (1970), which pro-
vides "[a] security interest in a vehicle . . . is perfected only by compliance
with the requirements of this section:

(1) A security interest is perfected only by the department's receipt of:
(a) The existing certificate, if any, and (b) an application for
a certificate of ownership containing the name and address of the
secured party and (c) tender of the required fee. (2) It is per-
fected at that time of its creation: (a) if the papers and fees re-
ferred to in [subsection (1)] are received within eight department
business days . . . or (b) if the secured party's name and address
appear on the outstanding certificate of ownership; otherwise, as
of the date on which the department has received the papers and
fees.

99. Erwin at 1402-03.
100. Id. at 1403-04; Zimmardi at 1398.
101. Erwin at 1404; Zimmardi at 1398.
103. Id. at 256.
104. This was the situation in Erwin and Zimmardi, where the parties
knew that the vehicles would be removed immediately after the sales.
105. The proper place in which to file would be the removal state under
the 30-day rule of 9-103(3).
acts requiring undeviating adherence. With the adoption of the UCC, this strict approach should be abandoned since 9-402 implements "notice filing." Under this scheme, a financing statement or certificate of title which substantially meets the requirement of 9-402 should be effective even if it contains minor errors. Until the certificate becomes seriously misleading, it should put a prospective purchaser on inquiry notice of any possible adverse interests.

Minor omissions and errors on title certificates are not treated as non-compliance with the provisions of the title acts. Where there is a non-compliance with the transfer provisions, the vehicle should not be regarded as covered.

**DUAL TITLE SITUATIONS**

The dual title situation, where a party through fraudulent procurement or administrative error obtains two certificates, is not explicitly dealt with by the code. However, reading the certificate of title acts and the UCC together suggests that there shall exist a distinctive certificate to establish title to a vehicle and to reflect the security interests held in it. "It [should be] one upon which all may rely to ascertain the title to and encumbrances on the vehicle.

The concept of a single certificate appears in the singular wording of 9-103(4) which contemplates the existence of but one certificate at a time. It provides that when a certificate exists, the law of the forum which issued it shall govern the determination of the perfection of the security interests held in the vehicle. But 9-103(4) has application only so long as the foreign certificate remains extant. Once the removal state issues a new certificate, that state becomes the state "which issued the certificate" and its law will govern perfection. Thus, the new certificate will be superior.
Where an automobile was removed from a certificate of title state to a filing state, the secured party’s interest would normally continue to be perfected by the notation of the lien on the certificate. However, a bankruptcy referee held in In re Singleton that the vehicle was no longer covered following the surrender of the Ohio certificate to Kentucky officials upon application for a Kentucky registration. When the secured party failed to record his lien in Kentucky, his interest became unperfected and subject to a claim of the trustee. Although this case concerned a title state to filing state removal, the rule which states that the surrender of the certificate extinguishes its effectiveness can be applied in title to title state removals.

TITLE TO TITLE STATE REMOVALS

A motor vehicle, in which a security interest is perfected by notation in Iowa, an exclusive state, is removed to Minnesota, also an exclusive state. The debtor-owner sells the vehicle. The purchaser would take subject to the noted security interest and 9-103 (4) would normally afford unlimited protection. If the debtor, prior to a sale, applies for and receives a Minnesota certificate, the security interest noted on the Iowa certificate should normally be transferred to the new certificate. Problems arise in the time period while the application is being processed and before the certificate is issued, or after a “clean” certificate is issued.

Although there are no more filing states, the principles developed by the courts in title to filing state removals still have importance. The courts of the removal states (the filing states) by applying 9-103(4) determined that a secured party had unlimited absolute protection in the removal state. As long as their inter-

115. See note 122 & accompanying text infra.
117. Id. at 196.
118. This very idea is adopted by the 1972 amendments to 9-103. See note 154 & accompanying text infra.
121. See notes 122 to 126 & accompanying text infra.
ests were noted on the certificate, they remained perfected in the forum without the necessity of filing.

The language of 9-103(4) was intended to provide that where a statute of a foreign jurisdiction required notation as a condition of perfection, the provisions of 9-103(3) were not applicable. If the security interest was perfected by notation in the foreign jurisdiction, any attack upon its perfection must be based upon the law of the state which issued the certificate. Applying that law, the secured party’s interest was perfected and continued to be perfected, limited only by possible durational provisions. Unless 9-103(4) is so construed, it would have little or no meaning, except as a repetition of 9-103(3).

Although the principle of absolute unlimited perfection was developed in title to filing state removals, it is equally applicable to the title to title state removal situation. Although exclusive title to exclusive title removal will not adversely affect a secured party’s interest, the fraudulent procurement of duplicates and clerical errors have allowed parties to acquire clean certificates which are subsequently used to defraud prospective buyers and secured parties. In these situations a court is then faced with choosing between two innocent parties with the probable absence of the wrongdoer.

123. UCC 9-103(4); UCC 9-103, Comment 7.
124. In re White, 266 F. Supp. 863, 866 (N.D.N.Y. 1967). In re Osborn, 389 F. Supp. 1137 (N.D.N.Y. 1975), presents a “mirror” factual situation of In re White, supra. In In re Osborn, the vehicle was removed from a title state to a non-title state. A clean certificate of title was issued in Ohio; however, the secured party perfected in New York by filing. The bankruptcy judge applied 9-103(4) and held that the perfection would be governed by the law of Ohio—the state which issued the title certificate. Since the secured party failed to perfect in Ohio by notation, his interest was vulnerable to the claim of the bankruptcy trustee. 389 F. Supp. at 1139.
126. In re White, 266 F. Supp. 863, 866 (N.D.N.Y. 1967). However, in so construing subsection (4), a severe burden is put upon prospective buyers or debtors in the removal state (a filing state) to discover whether the vehicle is encumbered. See Deposit Nat'l Bank v. Chrysler Credit Corp., 263 So. 2d 139, 141 (Ala. Ct. of Civil App. 1972).
128. See text at note 87 supra.
129. Lord Mansfield described the role of the wrongdoer in this problem area when he declared: “Both these bills were forged by one Lee, who
The case law has presented the following solutions to the dual certificate situation: (1) apply 9-103(4) which would give priority to the last issued certificate (a “clean” certificate); or (2) apply the state certificate of title act which would give priority to the original secured party. Applying the former solution, a bona fide purchaser would be given protection since he relied upon a clean certificate when purchasing the vehicle. Applying the latter solution, a bona fide purchaser would not be allowed to defeat the interest of the secured party. A fraudulently obtained clean certificate is not anticipated by the secured party when his interest is created, and courts should not allow the debtor's action in this situation to defeat the secured party's expectations.

In *General Motors Acceptance Corporation v. Birkitt T. Williams Co.*, the Ohio Court of Common Pleas in a title to filing to title removal applied the Ohio certificate of title statute in solving the fraudulently obtained certificate problem. The plaintiff creditor contended that the four-month rule of 9-103(3) should govern, which seems to have been the approach of other courts which faced this problem. However, the Ohio court ruled that 9-103(3) has since been hanged. Price v. Neal, 3 Burr. 1354 (K.N. 1762). 1

130. The 1972 amendments to 9-103 have also presented a solution. See notes 158 to 161 & accompanying text infra.

131. Some cases maintain that the fraudulently procured clean certificate held by an innocent party (which may be the last certificate issued) should control. See *In re Singleton* at notes 116 to 118 supra. See J. White & R. Summers, Handbook of the Law under the Uniform Commercial Code 860 (1972).

132. The better view seems to be that in cases of fraud, the UCC should not be used, but that the state's certificate of title act should control. 1 Gilmore § 22.7 at 623.


134. 46 Ohio Opin. 311, 243 N.E.2d 822 (1969).

135. A dual situation arises in the title to filing to title state removal. The vehicle is purchased in a title state where it is perfected by notation. It is then removed to a filing state with or without the consent of the secured party and with or without perfection in the filing state. The vehicle is then again removed to a title state where a “clean” certificate is issued based upon the registration forms of the filing state which indicated no liens and upon the verified application of the debtor.

136. In two cases involving this situation, state courts applied the four-month rule of 9-103(3). In *Pascack Valley Bank and Trust Co. v. Ritar Ford, Inc.*, 6 Conn. Cir. 489, 276 A.2d 800 (1970), the secured party had perfected his interest in the filing state, making the next removal similar to the *Stamper* situation, (see note 64, supra). Thus the Connecticut court ignored the certificate first issued and applied 9-103(3). However, in *Morris v. Seattle-First Nat'l Bank*, 10 Wash. App. 129, 516 P.2d 1055 (1973), the secured party never filed (perfected) in the filing state (New York). In applying 9-103(3) the Washington court used the date the vehicle entered...
was not applicable to motor vehicles covered by certificates of title in Ohio (which is an exclusive title state). \(^{137}\)

Using the rule established by the Ohio Supreme Court in *Hardware Mutual Casualty Co. v. Gall*\(^{138}\) which held that under the certificate of title act a thief could not convey a valid title, the Ohio court analogized that a swindler also could not convey a good title. The decision denied protection to the bona fide purchaser who had relied upon the "clean" certificate. The initial certificate governed and the secured party's interest continued perfected.\(^{139}\) The Ohio court had looked to the transfer provisions of the title act\(^{140}\) in order to determine the perfection or non-perfection of the security interest.

**NON-EXCLUSIVE TO EXCLUSIVE**

Where the removal is from a non-exclusive state to an exclusive state, there should be no problems if the security interest is noted on the certificate. The removal state should note the security interest on the newly issued certificate, but its perfection or non-perfection prior to removal will be governed by the law of the first forum. However, a non-exclusive certificate may not indicate every lien or encumbrance which attaches to the vehicle. Thus, where there is no lien noted, the creditor must file to perfect in the first forum and will be in the situation analogous to the *Stamper* case.\(^{141}\) Upon any removal he will be forced to perfect in the new forum.

**EXCLUSIVE TO NON-EXCLUSIVE**

The secured party's security interest is perfected by notation in the first forum in a removal from an exclusive state to a non-exclusive state. Upon the issuance of the new certificate the security interest should be noted thereon. However, the notation alone will

the second title state as the date of removal. It thus applied the four-month rule to a certificate of title situation and apparently cut short the original secured party's period of unlimited protection. Rather than giving effect to the certificate which initially covered the vehicle, these courts applied the four-month rule in situations where 9-103(4) should have been applied.

\(^{137}\) 46 Ohio Opin. 311, —, 242 N.E.2d 882, 887 (1969). See notes 112 to 114 & accompanying text *supra*.

\(^{138}\) 15 Ohio St. 2d 261, 240 N.E.2d 502 (1968). This case overruled the classic pre-code decision, Commercial Credit Corp. v. Pottmeyer, 176 Ohio St. 1, 197 N.E.2d 343 (1964), which gave a bona fide purchaser protection regardless of the source of his title.


\(^{141}\) See notes 45 to 57 & accompanying text *supra*. 
not perfect the secured party's interest in the removal state.\textsuperscript{142} He will be forced in this situation to check the certificate of title statute of the removal state to ascertain the necessary filing provisions.

In Associates Discount Corp. v. Reives,\textsuperscript{143} the Oklahoma Court of Appeals applied 9-103(3) in exclusive to non-exclusive removal. A truck was removed from Florida where a security interest in it had been perfected by notation.\textsuperscript{144} Upon removal to Oklahoma, a new certificate which failed to indicate the Florida secured party's lien was obtained. The truck was then sold to a bona fide purchaser who relied upon the clean certificate. Applying the four-month rule of 9-103(3) the court ruled that the creditor had not "re-perfected" in Oklahoma and gave protection to the purchaser.\textsuperscript{145}

It appears that 9-103(4) should have been applied in this situation. Since the Oklahoma statute does not require notation as a condition of perfection, the Oklahoma court should have held that Florida law governed perfection in this dual title situation. The Oklahoma appellate court, however, achieved through judicial decision the compromise of interests prescribed by the 1972 Amendments to 9-103.\textsuperscript{146}

**RE-PERFECTION IN THE REMOVAL STATE**

Since most secured parties retain possession of the certificate of title until the agreement has terminated, the problem of a surrender without the secured party's knowledge will not often be present.\textsuperscript{147} Yet the problem of re-perfection is present where a new certificate is issued by the foreign jurisdiction. Most certificate of title acts make application for a certificate the action of the consumer owner,\textsuperscript{148} thus the secured party who no longer has possession of the certificate will be forced to seek an injunction to compel the debtor to surrender the certificate, in order to note the lien

\textsuperscript{142} In re Wolf, 9 UCC REP. SERV. 177, 179 (E.D. Mich. 1971); In re Edwards, 6 UCC REP. SERV. 1124, 1126 (E.D. Mich. 1969).
\textsuperscript{143} 13 UCC REP. SERV. 709 (1973). Oklahoma is a non-exclusive state. See note 27 supra.
\textsuperscript{144} The fact that a certificate of title was issued in Florida is not indicated by the court in its opinion. However, an editor's note declares this to be the case. Id. at 710.
\textsuperscript{145} Id. at 714.
\textsuperscript{146} It is noted that this lower court decision is not to be regarded as precedent or authority by direction of the Supreme Court of Oklahoma and that it is not to be published in the Pacific Reporter. Id. at 710 (editor's note).
\textsuperscript{147} UCC 9-103, Comment 4 (1972 version).
\textsuperscript{148} See, e.g., Md. ANN. CODE art 66½, § 3-104 (1970), which provides: "The owner of every vehicle for which a certificate of title as required hereunder shall apply."
thereon.\textsuperscript{149} One solution for the secured party is to include in the original agreement a clause making removal without consent a ground for default;\textsuperscript{150} thus, he can re-perfect by repossessing the vehicle,\textsuperscript{151} or by the threat of repossession gain access to the certificate.

1972 AMENDMENTS

In amending 9-103, the review committee completely restructured the section and certificates of title are now covered under subsection (2). Where a security interest is perfected by notation, the validity of its perfection will be controlled by the certificate itself rather than by the law of the state where the security interest attached.\textsuperscript{152} This subsection also adopted the rule of \textit{In re Singleton}\textsuperscript{153} where the period of perfection is cut short by the surrender of the certificate.\textsuperscript{154}

The wording of the 1972 amendments seems to indicate that they were written with the problems caused by filing state removals in mind. This may lead to some confusion in interpretation. In a title to filing or non-exclusive removal, and a title to title removal, the perfection of a security interest is normally limited to four months or until the certificate is surrendered.\textsuperscript{155} With a title to filing removal as its basis, the perfection of a security interest is limited to four months and thereafter until the vehicle is re-registered.\textsuperscript{156} The code fails to define either in 9-103 or by cross-reference “re-register.” It could be interpreted as applying to title to filing removals exclusively. However, to give the section uniform application it should be interpreted as meaning re-registering and applying for a title certificate, therefore covering both central filing and certificate situations.\textsuperscript{157}

The result of the normal four-month limitation could also be attained by reading old 9-103(3) in conjunction with 9-103(4).\textsuperscript{158}

\textsuperscript{149} Headrick, \textit{The New Article Nine of the Uniform Commercial Code: An Introduction and Critique} 34 Mont. L. Rev. 218, 244 [hereinafter cited as Headrick].
\textsuperscript{150} Id.
\textsuperscript{151} See UCC 9-501 et seq.
\textsuperscript{152} UCC 9-103, Comment 4(a) (1972 version).
\textsuperscript{153} 2 UCC Rep. Serv. 195 (E.D. Ky. 1963); See notes 116 to 118 & accompanying text supra.
\textsuperscript{154} UCC 9-103(2)(b) (1972 version).
\textsuperscript{155} Id. See Headrick at 244-45.
\textsuperscript{156} See Headrick at 245.
\textsuperscript{157} \textit{Present Problems and Future Prospects} at 764-65.
this were done the period of absolute perfection afforded a noted certificate would be eliminated.

The section again failed to deal explicitly with the dual certificate situation. Although the review committee recognized the problem\textsuperscript{159} and did provide protection to the consumer purchaser,\textsuperscript{160} no protection was granted to the professionals, i.e., secured parties and used car dealers, who relied upon a clean certificate. To solve the problem of conflicting security interests, one commentator suggests that "a certificate" in revised 9-103(2)(a) must mean "at least one" which assures the applicability of the subsection.\textsuperscript{161} He then states that one must carefully read revised 9-103(2)(b) twice: once as if the phrase "the certificate" meant the one issued by the first state and then as if it meant the one issued by the removal state.\textsuperscript{162}

Applying this idea, one first discovers whether the secured party has priority in the first state and then whether the vehicle is still covered in the removal state. If the interest is superior to all others and the vehicle is covered, then the removal state should recognize this notation. It thus seems that revised 9-103(2) may create problems for secured parties and the courts.

**CONCLUSION**

Section 9-103(3) is limited in its application to the problems of interstate movement of encumbered vehicles. There are five "non-exclusive" jurisdictions in which 9-103(3) would govern the rights of the parties. If all the states adopted "exclusive" certificate of title acts, then the Stamper problem and the applicability of 9-103(3) would be eliminated.

Section 9-103(4) will govern all title to title removals as all motor vehicles become subject to the certificate statutes. However, the definitional uncertainty of 9-103 will continue to create problems. The draftsmen should specifically address the problem of defining "covered." The code and the revised code fail to adequately deal with dual or duplicate title transactions.

Revised 9-103(1) affords greater protection to a purchaser and that section in conjunction with revised 9-103(2) substantially protects the consumer. However, dealers are not granted the same measure of protection, nor are the secured parties granted the same protection in the "clean certificate-dual title situation."

\textsuperscript{159} UCC 9-103, Comment 4(b) (1972 version).
\textsuperscript{160} UCC 9-103(2)(d), 9-103(1)(d)(i) (1972 version).
\textsuperscript{161} Coogan, The New UCC Article 9, 86 Harv. L. Rev. 477, 549 (1973).
\textsuperscript{162} Id. at 549-50.
Although legislatures can do little to prevent the fraudulent procurement of duplicate titles, they can minimize the possibility of consumer loss by adopting a provision for making a duplicate with the legend warning that the vehicle may be subject to a security interest. The passage of certificate of title acts in all fifty states, the general adoption of exclusive systems, and the adoption of the proposed amendments to the UCC will eliminate many problems in this area. However, there are problems to be resolved before this area of secured transactions is truly uniform in its application.

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