

COMMERCIAL PAPER & SECURED TRANSACTIONS
11 February 1998

COMMERCIAL PAPER

I. INTRODUCTION TO COMMERCIAL PAPER

A. Special Type of Property

- It is neither cash nor a tangible piece of real property
- Ownership status may depend on whether holder in due course or not

B. The Rule

- When a Negotiable Instrument is **duly negotiated** to a **holder in due course**, the holder in due course **takes the instrument FREE of All Claims to it, FREE of All Personal Defenses to its enforcement, and SUBJECT only to Real Defenses**

II. TYPES OF NEGOTIABLE INSTRUMENTS

A. Promissory Note

- *for Example:* “On DEMAND I PROMISE to PAY to the ORDER of Paul Payee \$50 /s/ Mary Maker
- Promise = I PROMISE to pay
- Parties:
 - *Promisor* = MAKER
 - *Promisee* = PAYEE

B. Draft

- *for Example:* “PAY to the ORDER of Paul Payee \$50. Baybank. /s/ Donna Drawer”
- Order: Pay to the Order of
- Parties:
 - *Drawer* = Person GIVING THE ORDER (check writer)
 - *Drawee* = ORDERED to do the PAYING (Bank)
 - *Payee* = Beneficiary of the Order (whom the check is made out to)
 - **Check:** Special Draft wherein the DRAWEE is a BANK
 - **Indorser:** Both Notes & Drafts: Signs on the BACK of the Instrument

III. CONTRACT OR SIGNATURE LIABILITY

- Every **Signature** is a PROMISE to Pay
- **Maker** (promisor) – Maker Gets sued on the Promise in the PROMISSORY note
- **Indorser:** If the Check or Note Bounces AFTER the Indorser Signs, and the Indorser gets **Notice** of the Bounce, then the Indorser is **LIABLE**
- **Drawer:** Just like an Indorser: If BOUNCE + NOTICE = Liable
- **Drawee:** DOES NOT SIGN anything, ergo NO Contract or Signature Liability
- **Without Recourse:** Means NO PROMISE: Indorser NOT LIABLE if bounce

IV. WARRANTY OR TRANSFER LIABILITY

- Which Defendants are Liable for a Breach of Warranty?
 - ANY Defendant who **SOLD** the Paper is Liable (if gifted paper away, not liable)
- Which Plaintiffs may sue the Defendant for Breach of Warranty?
 - *If Defendant Indorses*: ANY plaintiff in possession of the paper may sue. The Warranties RUN with the Paper
 - *If Defendant does NOT Indorse*: ONLY the Defendant's IMMEDIATE TRANSFEREE may sue. The Warranties do NOT run with the paper unless indorsed.
- 5 Warranties Made by the Defendant
 1. *Has GOOD TITLE to the Instrument* (Bad Title = Breach of Warranty)
 2. *All SIGNATURES are GENUINE & AUTHORIZED* (Forgery = Breach of Warranty)
 3. *The Instrument has NOT Been ALTERED* (Tampering = Breach of Warranty)
 4. *No Defense or Claim of any Party is Good Against him* (if Unenforceable, the paper is Worthless and it is a breach of warranty)
 5. *No Knowledge of any Insolvency Proceeding against Maker, Drawer, or Indorser*

V. WHAT IS A NEGOTIABLE INSTRUMENT?

- Fact Pattern will give you a writing. The Issue is whether the Writing is a CONTRACT or a NEGOTIABLE INSTRUMENT. To be a Negotiable Instrument, it must Satisfy all the requirements. Otherwise, it is just a Contract.
- If it is a Contract, it is ORDINARY Property and the Plaintiff is an Ordinary ASSIGNEE (will lose most actions). However, the Negotiable Instrument is SPECIAL Property with a Special Plaintiff. **REQUIREMENTS**:
- Writing: No ORAL Negotiable Instruments are recognized. If oral, may be a contract though.
- Signed by Maker (note) or Drawer (Draft)
 - Non-technical requirement. A Signature is the PRESENT SENSE Impression to Identify a mark as a signature. Can be virtually any mark on any part of the paper
- Unconditional Promise or Order
 - If the Promise or order is *Conditional*, then it is a CONTRACT
 - Express Conditions: will be in the writing, ergo instantly recognized as **Contract**
 - Implied Conditions: Are not in writings, and may be part of a **Negotiable Instrument**
 - Instrument Stands Alone: It may not Incorporate anything Else
 - Bad Words: if See *governed by, subject to, incorporate by reference*, that means the document does NOT stand alone and thus is a **Contract**
 - Good Words: if See *as per* that is a Mere Reference, and document **STILL STANDS Alone** and is a **negotiable instrument**

- Payment not Restricted to a Particular Fund: Can't say "I'll only pay income from my tax refund". That is a CONTRACT & a Conditional Promise. Note, OK for a Draft to come from a particular draft account at a bank
- Sum Certain: How to Tell if it is a Sum Certain?
 - Amount Due is ASCERTAINABLE from the WRITING
 - *For Example*:
 - "\$75,000 with interest from date at 10%". *Ascertainable from writing*. Thus a Negotiable Instrument. Statute Assumes Simple Interest
 - "\$75,000 with Interest from Date". *Ascertainable from writing*. Thus a Negotiable Instrument. Use the Judgment Rate of Interest given by Legislature and that is Ascertainable from the Writing.
 - "\$75,000 with interest from date at 10% plus costs of collection including a reasonable attorney's fee". *Ascertainable from writing*. Thus, a Negotiable Instrument.
 - "\$75,000 at the going rate of interest". *Not Ascertainable*. "*Going Rate*" = *Ambiguous*. Therefore it is a CONTRACT
 - "\$75,000 at the prime rate of interest." *Not Ascertainable*. "*Prime Rate*" is *Ambiguous*. Therefore it is a CONTRACT
 - "\$75,000 at the prime rate of interest at Last Manhattan Bank." *Not Ascertainable*. *Writing ITSELF does not show an ascertainable sum certain since one must obtain other evidence from the Last Manhattan Bank to determine the Sum Certain*. Therefore, it is a Contract
- Money
 - The Negotiable Instrument MUST be Paid in MONEY, meaning ANY CURRENCY, Dollars, Lira, whatever. However, if it is Payable in a Commodity, it is a CONTRACT. (note, Bar will fuck you by saying "franks" instead of "francs". The latter is the French Currency, the former is a hot dog)
- No Additional Promises or Orders
 - 2 Promises = Contract, 1 Promise = Negotiable Instrument
 - Exceptions: Certain Instruments are STILL Negotiable although they contain additional Information
 - References to Security: Even if add a promise about separate security, still negotiable
 - Waivers (even with some waivers, which are additional promises, still negotiable)
 - EXEMPTIONS: Property which the Creditors can't touch (Defendant may waive this and still have Negotiable instrument)
 - TRIAL/CONFESSION OF JUDGMENT CLAUSE: Defendant can waive this and still have a valid Negotiable instrument
 - PRESENTMENT, PROTEST, & NOTICE OF DISHONOR: Defendant may waive this and still have a Negotiable Instrument

- **Payable ON DEMAND or AT DEFINITE TIME**
 - On Demand: payable on demand; words such as “on demand”, “at sight”, “on presentation”
 - If NO Time for Payment is STATED, will be a DEMAND. Silence is Payable on Demand
 - Definite Time
 - Payable on a SPECIFIC DATE
 - *For Example*:
 - “On December 1, 1998” DEFINITE TIME – Negotiable
 - “On or Before December 1, 1998” DEFINITE TIME – Negotiable
 - “90 Days After December 1, 1998” DEFINITE TIME – Negotiable
 - “On December 1, 1998, but this becomes Immediately due & payable if prior to that time Jim Bakker regains control of the PTL Club” This is an ACCELERATION CLAUSE and they are Valid for Negotiable Instruments
 - “When my First Grand-child is born” NO Definite Time or on DEMAND, therefore, Since it is conditioned upon an event, it is a CONTRACT
- **Payable to ORDER or BEARER**
 - Order: The Writing is Payable to Order IF IT USES the Word **Order** or the word **Assigns** in Connection with the **Payee’s Name**
 - *For Example*:
 - “Pay to the Order of Barney Fife”: Order, Negotiable
 - “Pay to the Assigns Barney Fife”: Order, Negotiable
 - “Pay to Barney Fife or his Order”: Order, Negotiable
 - Bearer: If the Instrument is NOT Payable to the Order, It must be Payable to the BEARER to be Negotiable
 - *For Example*
 - “Pay to Bearer”: Bearer, Negotiable
 - “Pay to the Order of Bearer”: Bearer, Negotiable
 - “Pay to Barney Fife or Bearer”: Bearer, Negotiable
 - “Pay to Cash”: Bearer, Negotiable
 - “Pay to the Order of Cash”: Bearer, Negotiable
 - “Pay to the Order of a Hunk of Burning Love”: Bearer, Negotiable (not Order because nobody is named)
 - Neither Order nor Bearer, ergo Non-Negotiable
 - If the Instrument is Payable NEITHER to Order NOR Bearer, then it will be a non-negotiable CONTRACT
 - *For Example*: “**Pay to Barney Fife**”

VI. DUE NEGOTIATION

- When the FACTS Describe the Transfer in the Essay, do the following Analysis
- A. Proper Transfer
 - Due Negotiation means PROPER Transfer; the Transferee is a HOLDER and May be a Holder in Due Course. If the Transfer is IMPROPER, then the Transferee is a mere ASSIGNEE
- B. Payable to Order
 - If Payable to Order, then the PAYEE Must INDORSE (if forged by non-payee, then it is a bad transfer and the transferee is an assignee and NOT a holder)
- C. Payable to Bearer
 - No Indorsement Required (like Cash)
- D. Characteristics of Indorsements
 - Special Indorsement: Names Another Payee and therefore requires that other payee's signature to be a proper transfer (i.e., Pay to Order of Andy. Andy then makes a Special Indorsement to Barney. Require Barney's Signature before a proper transfer)
 - Blank Indorsement: Does Not Name Anybody Else. With a BLANK Indorsement, the Instrument becomes Payable to BEARER
 - Restrictive Indorsement: attaches a condition, like "For Deposit Only". If Bank nonetheless cashes the check, rather than depositing it, the bank will be liable to the Indorser-payee for CONVERSION.
 - Non-restrictive Indorsement: No condition. As soon as Indorse, becomes Bearer Paper

VII. HOLDER IN DUE COURSE

- When the Facts in the Essay Describe the Plaintiff
- A. Value
 - The Plaintiff MUST BUY PAPER, Give Value for it. A Gift is not sufficient to establish Holder in Due Course (unless Shelter Rule). But Giving VALUE for the Instrument is not necessarily the same thing as Giving Consideration for it.
 - A mere Promise is NOT Value. Though a promise is Sufficient Consideration, it is NOT Value for purposes of establishing Holder in Due Course Status
 - Old Value is Good Value: Although past acts are not valid consideration, they may be good enough to establish value for Holder in Due Course Status.
- B. Good Faith
 - Pure Heart & Empty Head. What he Actually Knew. Subjective Standard
- C. Without Notice
 - The Plaintiff Must Acquire the Instrument Without Notice of Several things:
 - Defense Against its Enforcement
 - Appearance of the Instrument Gives Notice. If Says "PAID" or "VOID", that is Notice of a defense to its enforcement and thus the Plaintiff may not obtain Holder in Due Course Status
 - NOTICE that the Obligation of Any Party is Voidable means No HDC status. However, even if there is a Personal Defense against the enforcement of the Instrument (like Fraud in the inducement), as long as NO Knowledge of it and No Notice, can be a HDC

- Competing Claims
 - An HDC must NOT have Notice that the Instrument is Lost or Stolen. If he knows the instrument is lost/stolen, then he knows of competing claims and can't be an HDC
 - An HDC must NOT have Notice that the Instrument was Negotiated by a *Fiduciary* who Breached his Fiduciary Duty. If don't know of the breach of fiduciary duty, may still be HDC
- Overdue
 - *Payable at Definite Time*: If payable on specific date and obtain it after, Plaintiff cannot be an HDC
 - *Principal in Arrears (given in facts)*: No HDC Status if on Notice of Principal in Arrears
 - *Interest in Arrears*: Even if have Notice of Interest in Arrears, can still be HDC
 - *Payable on Demand*: Reasonable Time. Fact Specific. Hard to be overdue.
- Dishonored
 - No HDC if Know it has already bounced or been dishonored

VIII. SHELTER PRINCIPLE

- Focus on Plaintiff, again
- ***Effect***: Plaintiff has All the Rights of HDC even though Plaintiff is a DONEE or TOOK with NOTICE. This Doctrine takes an undeserving Plaintiff and makes him a Holder in Due Course
- ***Origin***: Old Common Law. Transferee GETS what the Transferor HAD. If the Transferor had HDC status, then the Transferee ought to have HDC Status
- ***2-Step Analysis***
 - ***1. Is the Plaintiff a Holder in Due Course?*** If yes, Shelter Principal is inapplicable. Just do a Regular HDC Analysis. However, if NO, step 2
 - ***2. Is there a Predecessor in Title who WAS a Holder in Due Course?*** Was the Previous Holder a HDC? If NO, then the Plaintiff will be a MERE ASSIGNEE, if YES, then plaintiff will be a HOLDER IN DUE COURSE

IX. RIGHTS OF A HOLDER IN DUE COURSE (& SHELTERED RIGHTS)

A. Takes Title FREE of All CLAIMS to the Instrument

- HDC owns it no matter what, and the true owner will lose to the HDC

B. Takes FREE of all PERSONAL DEFENSES to its Enforcement

- HDC sues Defendant (signor): Even with a Personal defense, the HDC will win
- Fraud in Inducement

C. Takes SUBJECT to all REAL DEFENSES

- HDC Does NOT always win. HDC will lose to a REAL DEFENSE

- **Infancy**: < 18

- **Incapacity**: Adjudicated Incompetence

- **Duress**: Threat. The promise is Void. Must be Extreme.

- **Illegality**: Illegal Transactions such as Gambling. Promise is Void. Extreme.

- **Fraud in the Factum**: Misrepresentation about the INSTRUMENT. Usually Require a Lie + Excuse (since duty to read what you sign). Excuse of Not Speaking English is OK. Note: *Fraud in the Inducement* is a Personal Defense as it is a Misrepresentation about the DEAL. HDC takes free of the personal defense of fraud in the inducement (i.e., pay \$20 for Bronze Medallion of Abe Lincoln)

- **Discharge in Bankruptcy**: Federal Law, not generally tested.

- **Any other Discharge of which the plaintiff has NOTICE when take**: On a Promissory note with lots of Indorser Signatures. If the Signature of 1 indorser is scratched out, the Taker is ON notice of the discharge of that indorser. May still be HDC and go after every other signature-indorser-payee on the instrument, but not the indorser whose signature was scratched out.

- **Forgery**: A Forged Signature is NOT a PROMISE and is a Real Defense and Defendant-non-forgery is Not liable. Exception; negligent forgery. If left signature out to the public.

- **Material Alteration**: Defendant writes a Check to Payee for \$100. Payee changes it to \$100,000. Defendant is liable to HDC only to extent of the \$100. Exception: negligence. By Leaving Blanks or lots of space in the instrument or wrote the instrument in pencil.

- **Statute of Limitations**. Since this is a Civil Proceeding, Statute of Defense is a Real Defense. Not often part of a Negotiable instrument essay.

SECURED TRANSACTIONS

I. INTRODUCTION TO SECURED TRANSACTIONS

A. Creditor Bargains for 2nd Remedy

- Debtor purchases a piece of personal property and signs a Promissory note for the balance of the purchase price (over the down payment). Suing on the Promissory Note is the Creditor's 1st Remedy. That is Negotiable Instruments & Contracts. But, there is usually a 2nd Remedy, which is the right to Re-possess the personal property to satisfy the promissory note if the consumer does not pay. Secured Transactions is the study of the 2nd Remedy.

B. Second Remedy is Personal Property

- If the Loan is Secured by Real Property, then the Law of Real Property and Mortgages Applies. Only if the Loan is Secured by Personal Property does Article 9 of the UCC apply

C. Article 9 of the UCC

II. PRELIMINARY MATTERS: SCOPE OF ARTICLE 9 & DEFINITIONS

A. Basic Transaction

- Extension of Credit – Loan or Sale – And Creditor Bargains for the 2nd Remedy in Personal Property

B. Definitions

- Debtor: Owes the money, usually has a possessory right to the personal property while the money is outstanding
- Secured Party: the Creditor
- Security Agreement: Contract between the Debtor and the Secured Party
- Security Interest: A Remedy for breach of the Security Agreement (re-po)
- Collateral: object, the property the secured party can use to collect

III. CREATING AN ENFORCEABLE SECURITY INTEREST

A. Synonymous with Attachment

- An ATTACHED = ENFORCEABLE **Security Interest**, & vice-versa
- Bar Examiners use both terms interchangeably

B. Meaning of Enforceability & Attachment

- Look at the Transaction between the Debtor and the Secured Party and ask, Did the Secured Party do it Right?
- If NOT, there is NO Enforceable Security Interest (or Attached Security Interest)

C. Requirements (VCR)

- **Value** Given by Secured Party. There must be a LOAN or SALE by the Secured Party
- **Contract**: It is Called the Security Agreement and there must be one. IF the Secured Party is in *possession* of the Collateral, then the contract/security agreement MAY be ORAL. If the Debtor is in *possession* of the Collateral, then the Contract/Security Agreement MUST be in WRITING with a REASONABLE DESCRIPTION of the COLLATERAL
- **Rights in Collateral**: Collateral in Debtor's Property ONLY (not another's) – include After Acquired Property Clauses

IV. PERFECTION OF SECURITY INTEREST

A. Meaning of the Term: Perfection

- Focus on the Strength of the Secured Party's RIGHTS in the Property when 3rd Parties also claim rights in the same property
- If unperfected, will lose to a 3rd Party, if perfected, might win over unperfected 3rd party (depending on ordering)

B. Three Methods of Perfection

1. Automatic Perfection: a Purchase Money Security Interest in Consumer Goods

- Automatic means VCR Requirements are Sufficient
- Consumer Goods: Debtor uses the goods for PERSONAL and not Commercial purposes
- Purchase Money Security Interest: The Security Interest Enables the DEBTOR to Purchase the Property
 - A **SELLER's** Security Interest is ALWAYS a PMSI. (*Agree to purchase a car by paying \$1,000 in cash, and promising to pay the seller \$100 per month for the next 5 years. Also sign the security agreement.* That will be a PMSI)
 - The Security Interest of a **LENDER** who furnishes the Actual Funds Used to PAY the Seller is Always a PMSI (*Agree to purchase the car by paying \$1,000 down & taking out a loan with GMAC and sign a Security Agreement giving GMAC a security interest in the car.*) That will be a PMSI

2. Perfection by Secured Party Taking Possession of Collateral

- As soon as the Secured Party takes possession of the Collateral, the Interest becomes PERFECTED

3. Perfection by Filing NOTICE of the Security Interest in the Public Record

- What gets Filed?
 - *Security Agreement*: may be filed, but rarely is because it discloses too much
 - *Financing Statement*: Typically filed. Very Simple Document whose ONLY purpose is to provide INQUIRY NOTICE to the outside world
- Contents of Financing Statement
 - *Name & Address of Debtor & Secured Party* (Real Names, not Trade names)
 - *Debtor's Signature*
 - *Reasonable Description of the Collateral*
- Where is it Filed? Depends
 - **Consumer Goods**: Local Filing at Clerk of Town of Debtor's Residence
 - **Farm Collateral**: Clerk of Town of Debtor's Residence
 - **Fixtures**: (real estate): Where Mortgage is Recorded
 - **Everything Else**: Central Filing at Secretary of State & if PPB in 1 town, clerk of the Town as well

V. PRIORITY

A. Concept of Priority

- 3rd Parties ALSO Claim the Collateral. How does the Secured Party's Claim Rank? Priority Law Ranks the Interests of Various Creditors

B. Unperfected Security Interest

- Unperfected Security Interests are WEAK and will rank low & behind 3rd Parties
- ONLY parties OVER WHOM an Unperfected Security Interest Holder has PRIORITY over are:
 - *Another Unperfected Security Interest*: SENIORITY wins (1st to VCR)
 - *The Debtor*

C. Perfected Security Interest

- BASIC RULE: 1st in Time, 1st in Right. It is a PURE RACE
 1. Perfected Security Interest v Levying or Attaching Creditor
 - FACTS: The Security Interest is Perfected and then the Sheriff levies on or attaches the property
 - The Perfected Security Interest wins because it was Perfected BEFORE the Sheriff Acted
 2. Perfected Security Interest v Another Perfected Security Interest
 - FACTS: There are 2 perfected security interests in the Same Property
 - Whether by **Possession** or **Filing, Whoever Perfects 1st WINS**
 - FILING before closing the deal is OK. 1st to PERFECT (file or possess) WINS, regardless of WHO closes the deal 1st.
 - Exceptions: Certain Commercial PMSI holders will have Priority over a previously filed & perfected security interest holder. For PMSI-Inventory or PMSI-Equipment, they will have priority over a Bank or other Security Interest Holder IF :
 - PMSI-Inventory: prior to delivery to debtor, File & Notify other Security Interest Holder (bank)
 - PMSI-Equipment: FILE within 20 days after debtor gets possession
 3. Perfected Security Interest v Buyer of Collateral
 - RULE: 1st in Time, 1st in Right. Usually the perfected secured party wins and buyer gets encumbered title
 - Exceptions: Buyer Wins and gets Unencumbered Title
 - *Sale was Authorized by Secured Party*: implied waiver to security interest
 - *Buyer IN ORDINARY COURSE of BUSINESS takes FREE of PERFECTED Security Interest in the SELLER'S INVENTORY*

VI. FORECLOSURE: CREDITOR 2ND REMEDY

A. Default

- A type of Breach (pre-requisite to this remedy)
- 1st a party breaches, then in default, then foreclose
- Statute does not define default, but missing a payment is a Breach/Default

B. Step 1: the Secured Party Gets Possession

1. **Self-Help Repossession**; Secured Party Must NOT Breach the Peace

- Secured party may re-possession the personal property that is the collateral on his own so long as he does not breach the peace.
- There is No Statutory Definition of Breaching the Peace, but Secured Party CAN'T do *anything LIKELY to cause violence* (whether violence actually occurs is irrelevant. Just Likely to cause violence)
- Going in to the **HOME** of the Debtor is LIKELY to Breach the Peace (cause violence) UNLESS there is *Voluntary & Contemporaneous Consent*
- Property **outside the home** can be re-possessioned by the Secured Party unless the Secured Party *Sees the Debtor Objecting*

2. **Repossession by Judicial Action**

- If the Secured Party Can't or Doesn't Want to use Self-help Re-possession, he/she MUST get a **Writ** from the Court Ordering the Sheriff to Obtain Possession of the Property & Deliver it to the Secured Party. In MA, this writ is called a **WRIT of REPLEVIN**

C. Redemption

- After the Secured Party has POSSESSION of the Collateral, the Debtor has a *limited* right to REDEEM the Collateral (i.e., get it back from the secured party)
- DEBTOR **must redeem** BEFORE *Foreclosure* is Completed. After Foreclosure, Redemption is NO Longer Possible
- To Redeem, the Debtor must pay the **FULL BALANCE DUE + SECURED Party's Expenses** (ergo, rarely used since if can't pay a bill likely can't pay the balance or find another lender)

D. Step 2: Using the Property to Collect the Debt

1. **Strict Foreclosure**

- Strict Foreclosure occurs when the Secured Party retains the Collateral and CANCELS the Debt
- Consumer Goods: *the 60% Rule*: If the Collateral is Consumer Goods and the Debtor has paid 60% of the loan or 60% of the cash price (if the security interest is PMSI) STRICT FORECLOSURE IS **Not Permitted**. Secured Party Must Sell that property within 90 days or be liable for Conversion.
- To do a Strict Foreclosure: Secured Party MUST send a Written Proposal to Retain the Collateral in Satisfaction of the Debt:
 - *Consumer Goods*; Notice is Sent to Debtor
 - *Other Collateral*: Notice is sent to DEBTOR + OTHER CREDITORS who have NOTIFIED the Forecloser that they claim an interest, too
- Right to Object Within 21 Days After Notice Sent:
 - Anyone who receives Notice may OBJECT to Strict Foreclosure within 21 days after the Notice is MAILED. Timely Objection stops Strict Foreclosure and Forces a SALE.

2. Foreclosure by Sale

- The Secured Party may sell the Collateral and Apply the Proceeds to the Debt
- Secured Party CHOOSES the Type of Sale; public or private
 - Public Sale: public Auction
 - Private Sale: any non-public auction sale
- Every Aspect (time, place, etc.) of the Sale **must be commercially reasonable**
- Advance Notice of the Sale: The Secured Party MUST send advance notice of the Sale:
 - Who?: Same rules as strict foreclosure. Consumer Goods -> debtor, other Collateral -> Debtor + other creditors who notified the forecloser of their interest in the property
 - What does it Say?: Depends on the Type of Sale
 - *Public Sale*: Notice States TIME & PLACE of the Sale
 - *Private*: Notice States TIME AFTER WHICH THE SALE WILL BE MADE “*After August 1, I will sell it*”
 - When: Must be sent a Reasonable Time in Advance
- Secured Party: May BUY at a PUBLIC AUCTION, but NOT at a Private Sale (self-dealing is never permitted)
- Deficiency: The Debtor will still be liable for any deficiency. (i.e., debt of \$100,000 & sell at auction for only \$60,000. Debtor still liable for that \$40,000). Secured Party may sue the debtor for the Deficiency in ***An Action for a Deficiency Judgment***

End of Bar Review..... Now Study like a Hound.