

**Permanent Editorial Board for the Uniform Commercial Code**

**PEB COMMENTARY NO. 20**

**CONSIGNMENTS**

**January 24, 2019**

---

© 2019 by The American Law Institute and the  
National Conference of Commissioners on Uniform State Laws.  
All rights reserved.

## PREFACE TO PEB COMMENTARY

The Permanent Editorial Board for the Uniform Commercial Code acts under the authority of the American Law Institute and the Uniform Law Commission (also known as the National Conference of Commissioners on Uniform State Laws). In March 1987, the Permanent Editorial Board resolved to issue from time to time supplementary commentary on the Uniform Commercial Code to be known as *PEB Commentary*. These *PEB Commentaries* seek to further the underlying policies of the Uniform Commercial Code by affording guidance in interpreting and resolving issues raised by the Uniform Commercial Code and/or the Official Comments. The Resolution states that:

A *PEB Commentary* should come within one or more of the following specific purposes, which should be made apparent at the inception of the Commentary: (1) to resolve an ambiguity in the Uniform Commercial Code by restating more clearly what the PEB considers to be the legal rule; (2) to state a preferred resolution of an issue on which judicial opinion or scholarly writing diverges; (3) to elaborate on the application of the Uniform Commercial Code where the statute and/or the Official Comment leaves doubt as to inclusion or exclusion of, or application to, particular circumstances or transactions; (4) consistent with U.C.C. § 1-102(2)(b),<sup>1</sup> to apply the principles of the Uniform Commercial Code to new or changed circumstances; (5) to clarify or elaborate upon the operation of the Uniform Commercial Code as it relates to other statutes (such as the Bankruptcy Code and various federal and state consumer protection statutes) and general principles of law and equity pursuant to U.C.C. § 1-103;<sup>2</sup> or (6) to otherwise improve the operation of the Uniform Commercial Code.

For more information about the Permanent Editorial Board for the Uniform Commercial Code, visit [www.ali.org](http://www.ali.org) or [www.uniformlaws.org](http://www.uniformlaws.org).

---

<sup>1</sup> Current U.C.C. § 1-103(a)(2).

<sup>2</sup> Current U.C.C. § 1-103(b).

**PEB COMMENTARY NO. 20**  
**CONSIGNMENTS**  
(January 24, 2019)

**INTRODUCTION**

Before the 1998 revision of Article 9 and its attendant revision of § 2-326, many believed that “[t]he Uniform Commercial Code’s provisions regarding consignments [were] not models of draftsmanship.”<sup>1</sup> Before the revision, most of the rules governing consignments were found in § 2-326. That section provided that goods that were sold on a “sale or return” basis were subject to claims of the buyer’s creditors while the goods were in the buyer’s possession. That provision, standing alone, would have no effect on consignments but for § 2-326(3), which indicated that, for purposes of determining the rights of creditors of the consignee in the consigned goods,<sup>2</sup> the goods were deemed to be “sale or return” and, thus, subject to claims of the consignee’s creditors. A consignor could avoid the application of the deemed-sale-or-return rule by complying with the filing provisions of Article 9.<sup>3</sup> Former § 9-114 added additional rules for these situations. This statutory scheme proved difficult for attorneys and judges to follow.

The 1998 revision rewrote the rules governing consignments and situated all of them in Article 9 (rather than continuing the bifurcation of the rules between Article 2 and Article 9). The purpose of the revised statute was to clarify these provisions, in most cases without changing the rights of the creditors of the consignee.<sup>4</sup> However, some reported cases and articles suggest that, despite this clarification, the law of consignments remains puzzling to some of the lawyers and judges who have grappled with it. In an effort to improve the understanding of these rules, this Commentary reiterates the proper legal treatment of consignments and explains where some commentators and courts have interpreted the statute in a manner inconsistent with the proper result.

The legal rules governing consignments can have a significant effect on the rights of the consignor and the rights of the other creditors of the consignee. A creditor generally has recourse only to the property rights that its debtor has. As explained below in part (1) of the Discussion, a consignee is a bailee. Under general legal principles, a consignee, like other bailees, would have only a special interest (or special property) in the consigned goods limited to the purposes of the bailment (consignment). Ownership of the bailed goods would be retained by the bailor (consignor) and could not be subjected to the claims of the bailee’s (consignee’s) creditors.<sup>5</sup> Article 9 significantly changes this result with respect to the consignments that it governs:

---

<sup>1</sup> In re State Street Auto Sales, Inc., 81 B.R. 215, 216 (Bankr. D. Mass. 1988).

<sup>2</sup> Former U.C.C. § 2-326 did not use the words “consignor” and “consignee.” Rather, it referred to situations in which “goods are delivered to a person for sale and such person maintains a place of business at which he deals in goods of the kind involved, under a name other than the name of the person making delivery.” Former U.C.C. § 2-326(3).

<sup>3</sup> Alternatively, a consignor could have (i) complied with an applicable law providing for a consignor’s interest or the like to be evidenced by a sign or (ii) established that the consignee was generally known by its creditors to be substantially engaged in selling the goods of others.

<sup>4</sup> U.C.C. § 9-319 cmt. 2.

<sup>5</sup> This Commentary assumes that the consignor was the owner of the goods when they were delivered to the consignee, as is typically the case.

Article 9 treats the consignor's interest in the goods as a "security interest"<sup>6</sup> and, therefore, contemplates that a creditor of a consignee will be able to reach the consignor's rights in consigned goods if the consignor's security interest is unperfected.<sup>7</sup> In that case a judicial lien that the creditor acquires on the consigned goods would be senior to the consignor's unperfected security interest.<sup>8</sup> To allow for this result, § 9-319(a) provides that "for purposes of determining the rights of creditors of, and purchasers for value of goods from, a consignee, . . . the consignee is deemed to have rights and title to the goods identical to those the consignor had or had power to transfer."<sup>9</sup> The consignee's creditors benefit from these deemed rights "while the goods are in the possession of the consignee."<sup>10</sup>

In the case of consignments not governed by Article 9, non-UCC law determines the rights of creditors of the consignee. The deemed-sale-or-return rule in former § 2-326 has been deleted.

## DISCUSSION

This Commentary focuses on three issues: (1) How to distinguish a "consignment" (as § 9-102(a)(20) defines the term) from other transactions; (2) Whether "generally known by its creditors," (as used in Article 9's definition of "consignment") refers to the knowledge of creditors generally or to the knowledge of a particular competing creditor; and (3) The effect of the limitation, "while the goods are in the possession of the consignee," in § 9-319(a).

### *(1) Distinguishing among types of transactions*

Although the term "consignment" is sometimes used to refer to other transactions, a consignment is properly understood to be a bailment, *i.e.*, a transaction in which one person (the bailor) delivers goods to another (the bailee) for a limited purpose.<sup>11</sup> As in every bailment, the consignor-bailor retains ownership of the delivered goods. The law governing a bailment depends on the limited purpose for which the goods are delivered. A consignment is a delivery of goods to a bailee for the purpose of sale, but is not a sale to the bailee. The person making delivery is a "consignor," and the person taking delivery is a "consignee."

---

<sup>6</sup> See U.C.C. § 1-201(b)(35) (defining "security interest" to include "any interest of a consignor . . . in a transaction that is subject to Article 9").

<sup>7</sup> U.C.C. § 9-319. Even a consignor that perfects its security interest may need to send a purchase-money notification pursuant to § 9-324(b) in order for its security interest to achieve priority over a conflicting security interest in the consigned goods after giving effect to U.C.C. § 9-319(a). See U.C.C. § 9-319 cmt. 2, ex. 3.

<sup>8</sup> U.C.C. § 9-317(a)(2); see U.C.C. § 9-102(a)(52) (defining "lien creditor" to include a person that has acquired a lien "by attachment, levy, or the like").

<sup>9</sup> U.C.C. § 9-319(a). This rule is subject to an important exception: Law other than Article 9 determines the rights of a creditor of the consignee if, under Article 9, "a perfected security interest held by the consignor would have priority over the rights of the creditor." U.C.C. § 9-319(b).

<sup>10</sup> U.C.C. § 9-319(a).

<sup>11</sup> Consignments that are bailments for sale often are called "true consignments," to distinguish them from non-bailment transactions that the parties refer to as "consignments." For example, the parties may refer to a transaction as a "consignment" when it actually creates a security interest that secures an obligation or when the person receiving delivery has agreed to pay for the goods.

Certain consignments are governed by Article 9.<sup>12</sup> They are the “consignments” defined in § 9-102(a)(20), which are sometimes referred to as “Article 9 consignments.”<sup>13</sup> An Article 9 consignment does not secure payment or other performance of an obligation. Nevertheless, for purposes of Article 9, the consignor’s ownership interest in goods that are the subject of an Article 9 consignment is treated as a purchase-money security interest in inventory.<sup>14</sup>

Consignments (*i.e.*, bailments for the purpose of sale) that fall outside the definition of “consignment” in § 9-102 are not governed by Article 9.<sup>15</sup> In these non-Article 9 consignments, the consignor’s ownership interest in the consigned goods is not an Article 9 security interest. Rather, these transactions are governed by non-UCC law, which typically is the common law, as modified by any applicable non-UCC statutes.<sup>16</sup>

Consignments, which are bailments for the purpose of sale, are different from other bailments, including bailments for hire (leases), which are governed by Article 2A; bailments for storage, as to which Article 7 or non-UCC law may apply; and bailments for processing, which are governed by non-UCC law.<sup>17</sup>

Consignments, in which the consignor retains its ownership interest in the goods after delivery, are different from sales, which are transfers of ownership.<sup>18</sup> In some sales, the parties agree that the seller retains an interest in the sold goods until the buyer pays the price. Regardless of whether the agreement characterizes the interest retained by the seller as a security interest or

---

<sup>12</sup> U.C.C. § 9-109(a)(4). Not all Article 9 rules apply to a consignment governed by Article 9. For example, as a general matter, Part 6 of Article 9 does not apply to consignments. U.C.C. § 9-601(g).

<sup>13</sup> U.C.C. § 9-102(a)(20) defines “consignment” to mean:

a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(A) the merchant:

(i) deals in goods of that kind under a name other than the name of the person making delivery;

(ii) is not an auctioneer; and

(iii) is not generally known by its creditors to be substantially engaged in selling the goods of others;

(B) with respect to each delivery, the aggregate value of the goods is \$1,000 or more at the time of delivery;

(C) the goods are not consumer goods immediately before delivery; and

(D) the transaction does not create a security interest that secures an obligation.

<sup>14</sup> U.C.C. § 9-103(d).

<sup>15</sup> Nor are they governed by Article 2’s “sale or return” rules discussed below.

<sup>16</sup> U.C.C. § 9-102 cmt. 14 (“A consignment excluded from the application of this Article by [§ 9-102(a)(20)(B) or (C)] may still be a true consignment; however, it is governed by non-Article 9 law.”). Non-Article 9 law may be provided by another statute or by a rule of common law. For example, many states have non-UCC statutes governing the relationship between artists and art dealers. *See, e.g.*, N.Y. Arts & Cult. Aff. Law §§ 12.01, 12.03 (McKinney 2011 & Supp. 2015). Some of these statutes govern all consignments within their scope, including those that are governed by Article 9.

<sup>17</sup> For an example of an opinion that fails to recognize that the law does not treat all bailments alike, see *In re Mississippi Valley Livestock, Inc.*, 745 F.3d 299 (7th Cir. 2014). Cattle were delivered to a cattle merchant that agreed to sell them on the owner’s behalf. Instead of analyzing the transaction as a consignment, the court erroneously treated the transaction as if it were a simple bailment for storage: “Had Mississippi Valley sent the very same cattle back to J & R (as when a theater-goer retrieves her own car from a parking garage after the show), the case would be easy.” *Id.* at 304.

<sup>18</sup> *See* U.C.C. § 2-106(1) (“A ‘sale’ consists in the passing of title from the seller to the buyer for a price . . .”).

as title, and regardless of whether the agreement purports to be a consignment, the seller's interest is limited to a security interest that secures an obligation, *i.e.*, the buyer's promise to pay.<sup>19</sup> As such, it is governed by Article 9 in the same manner as any other security interest that secures an obligation. It is not an Article 9 "consignment."<sup>20</sup>

Sometimes, when goods are sold and delivered to a buyer primarily for resale, the buyer and seller agree that that the buyer may return the goods even though they conform to the contract. A transaction of this kind is a "sale or return."<sup>21</sup> Although both a consignment and a sale or return may allow for the return of delivered goods, the transactions are fundamentally different and are mutually exclusive.<sup>22</sup> A consignment is a bailment, and the consignor remains the owner of the consigned goods. A sale or return is, as the name suggests, a sale, pursuant to which the buyer becomes the owner of the goods. Absent an agreement otherwise, the seller does not retain any interest in goods delivered to the buyer.<sup>23</sup> The buyer becomes the owner of the goods, even though it has a right to return the goods and to transfer ownership back to the seller.<sup>24</sup> A sale or return is not a consignment; a consignment is not a sale or return.<sup>25</sup> The link between these concepts in former § 2-326 was not carried forward in revised Article 9.

---

<sup>19</sup> U.C.C. § 1-201(b)(35) (defining "security interest"); U.C.C. § 2-401(1); U.C.C. § 9-109(a)(1). In these transactions, the buyer becomes the owner of the goods, even if the agreement designates the buyer as a "consignee."

<sup>20</sup> "[A] security interest that secures an obligation" is excluded from the definition of consignment. U.C.C. § 9-102(a)(20)(D). For example, if the consignee has the obligation to pay for the consigned goods that are not sold, the transaction would be a sale of the goods to the consignee with a retention or reservation of title by the consignor until payment and, hence, a security interest securing an obligation.

<sup>21</sup> "Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is . . . a 'sale or return' if the goods are delivered primarily for resale." U.C.C. § 2-326(1)(b).

<sup>22</sup> Some courts and commentators have missed this essential point. For example, in one case, a merchant took delivery of goods under a contract that provided that the merchant, "as the exclusive agent for Consignor, will offer [the consigned goods] for sale." *In re Morgansen's Ltd.*, 302 B.R. 784, 790 (Bankr. E.D.N.Y. 2003). The merchant's only written obligation was to pay to the consignor the net proceeds of sale, less a commission. *Id.* at 789. The court, however, mistakenly believed that a person who is considered a consignee is a "buyer" for resale." *Id.* Having found that the consignors failed to prove that the transactions were not excluded from the definition of "consignment" by § 9-102(a)(20)(A)(ii) and (A)(iii) (*i.e.*, that the merchant was not an auctioneer and was not generally known by its creditors to be substantially engaged in selling the goods of others), the court nevertheless found that the transactions were not "consignments" as defined in Article 9. Rather than applying the common law, the court erroneously turned to § 2-326 and concluded that "the goods consigned to the debtor clearly were delivered on a 'sale or return' basis." *Id.* See also Hilary Jay, Note, *A Picture Imperfect: The Rights of Art Consignor-Collectors When Their Art Dealer Files for Bankruptcy*, 58 Duke L.J. 1859 (2009) (proceeding on the erroneous premise that a consignment as defined in Article 9 can also be a sale or return).

<sup>23</sup> See U.C.C. § 2-401(1) (providing that "[a]ny retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest."); U.C.C. § 1-201(b)(35) (providing to the same effect).

<sup>24</sup> See U.C.C. § 2-326(1) cmt. 1 (stating that a sale or return "is a present sale of goods which may be undone at the buyer's option").

<sup>25</sup> Some of the confusion may have arisen from former § 2-326, whose caption included the words "Consignment Sales" and whose subsection (3) deemed certain goods that were delivered for sale (*i.e.*, that were the subject of a consignment) to be held on sale or return. To conform § 2-326 with Revised Article 9, the caption was amended and former subsection (3) was deleted.

(1) “Generally known by its creditors”

If the consignee is “generally known by its creditors to be substantially engaged in selling the goods of others,” the transaction is not an Article 9 “consignment.”<sup>26</sup> By its terms, the quoted language refers to the knowledge<sup>27</sup> of the consignee’s creditors generally. It makes no reference to the knowledge of a particular competing claimant.

The quoted language should be read in accordance with its terms. The Article 9 definition of “consignment” determines which bailments for sale are governed by Article 9’s perfection and priority rules and which are not. Consignments in which a consignee is “generally known by its creditors” to be substantially engaged in selling the goods of others are thus excluded from Article 9 and are governed by non-UCC law.<sup>28</sup>

Some authorities have misconstrued the condition contained in § 9-102(a)(20)(A)(iii) by interpreting “generally known by its creditors” to mean “known by the competing claimant.”<sup>29</sup> Under this misinterpretation, a given transaction would be a consignment subject to Article 9’s perfection and priority rules vis-à-vis creditors without knowledge that the person in possession is “substantially engaged in selling the goods of others” and would be excluded from Article 9 as to creditors with that knowledge. This anomalous result could lead to difficult priority disputes without promoting any Article 9 policy.

A proper reading of “generally known by its creditors” does not allow for such a result and is consistent with the Article 9 policy that limits the role of knowledge in priority disputes. The priority between competing security interests in goods (including purchase-money security interests) is not affected by what the competing claimants know,<sup>30</sup> nor is the priority between a security interest and a judicial lien.<sup>31</sup> Just as an unperfected security interest that secures an obligation is subordinate to the rights of a particular competing lien creditor or perfected secured party whether or not the lien creditor or perfected secured party has knowledge of the security interest, so an unperfected security interest held by a consignor is subordinate to the rights of a particular lien creditor or perfected secured party whether or not the lien creditor or perfected secured party has knowledge of the consignment.<sup>32</sup>

---

<sup>26</sup> U.C.C. § 9-102(a)(20)(A)(iii).

<sup>27</sup> “Knowledge” means “actual knowledge.” U.C.C. § 1-202(b).

<sup>28</sup> Under non-UCC law, the goods of a consignor typically would not be subject to the claims of the consignee’s creditors. *See* U.C.C. § 9-109 cmt. 6. This would be the case for a consignment that is excluded from Article 9, whether because the consignee is generally known by its creditors to be substantially engaged in selling the goods of others (§ 9-102(a)(20)(A)(iii)), the aggregate value of the goods is less than \$1000 (§ 9-102(a)(20)(B)), or the goods were consumer goods immediately before delivery (§ 9-102(a)(20)(C)). *See In re Haley & Steele, Inc.*, 20 Mass. L. Rptr. 204, 58 UCC Rep. Serv. 2d 394 (Mass. Super. 2005) (goods of consignor that were consumer goods before delivery to the consignee were not subject to the claims of the consignee’s creditors). The filing of a financing statement by a consignor whose consignment is excluded from Article 9 would be a meaningless act under Article 9.

<sup>29</sup> *See, e.g., Fariba v. Dealer Servs. Corp.*, 100 Cal. Rptr. 3d 219 (Cal. Ct. App. 2009) and authorities cited therein.

<sup>30</sup> *See* U.C.C. § 9-322(a) & cmt. 4 ex. 1 & 2; § 9-324.

<sup>31</sup> *See* U.C.C. § 9-317(a), (e).

<sup>32</sup> Knowledge may be relevant to the priority of buyers and lessees as against an unperfected security interest. *See* U.C.C. § 9-317(b), (c). But inasmuch as consigned goods are held for sale by a merchant that “deals in goods of that kind,” U.C.C. § 9-102(a)(20)(A)(i), a buyer of the goods almost invariably will qualify as a buyer in ordinary course of business and, as such, will take free of the consignor’s security interest, even if the buyer knows of its existence. *See* U.C.C. § 1-201(b)(9) (defining “buyer in ordinary course of business” to include only buyers that buy from “a

This is not to say that the knowledge of the competing claimant is irrelevant. In determining whether the consignee is “generally known by its creditors,” the competing creditor with knowledge would be included in the group of all creditors of the consignee.

(2) “*While the goods are in the possession of the consignee*”

As explained in the Introduction, for purposes of determining the rights of creditors of the consignee (and purchasers for value from the consignee), a consignee generally is deemed to have rights and title identical to those that the consignor had or had power to transfer, in which case creditors of the consignee have recourse to the consigned goods.<sup>33</sup> The general rule applies, and the consignee’s creditors benefit from these deemed rights and title, “while the goods are in the possession of the consignee.”<sup>34</sup> Upon returning the goods to the consignor, the consignee loses all deemed rights to the goods. After that time, the consignee cannot encumber the goods with a security interest, nor can the consignee’s creditors acquire a judicial lien on the goods.

The result differs when the consignee creates an enforceable security interest in consigned goods while they are in the consignee’s possession and then returns the unsold goods to the consignor. The fact that the goods no longer are in the possession of the consignee, which is no longer deemed to have the consignor’s rights and title, does not strip the consignee’s secured party of its security interest. Under § 9-319(a), while the goods were in the possession of the consignee the consignee was deemed to have had rights in and the power to transfer the consigned goods. Once the other requirements of § 9-203(b) were satisfied, the security interest became “enforceable against the debtor [the consignee] and third parties.”<sup>35</sup> If the consignee was then to sell the goods to a non-ordinary-course buyer, the security interest of the consignee’s secured party ordinarily would continue in the sold goods, even though the consignee would no longer have any deemed rights in, or deemed title to, them.<sup>36</sup> Likewise, if the consignee returns collateral (goods) to the owner, an enforceable security interest in the collateral would continue, unless the consignee’s secured party authorized the return free of its security interest.<sup>37</sup>

The same logic follows if the consignment is terminated. “‘Consignee’ means a merchant to which goods are delivered in a consignment.”<sup>38</sup> The termination of a consignment does not *ipso facto* cause a “consignee” to lose its status as such with respect to consigned goods

---

person, other than a pawnbroker, in the business of selling goods of that kind”); U.C.C. § 9-320(a). This result also follows from U.C.C. § 2-403(2).

<sup>33</sup> U.C.C. § 9-319.

<sup>34</sup> U.C.C. § 9-319(a).

<sup>35</sup> U.C.C. § 9-203(b).

<sup>36</sup> See U.C.C. § 9-315(a)(1) (providing that, with some exceptions, a security interest continues in collateral notwithstanding a sale or other disposition thereof). It is incorrect to read § 9-319(a) itself as cutting off the security interest of the consignee’s secured party after the security interest has attached, even if the goods are subsequently sold or otherwise disposed of by the consignee. As § 9-315(a)(1) provides, the security interest would be cut off if the secured party authorized the disposition free of the security interest or if the security interest was cut off under § 2-403(2) or another provision of Article 9, such as § 9-320(a).

<sup>37</sup> See U.C.C. § 9-315(a)(1). Any suggestion to the contrary, as in *Fariba*, *supra* note 29, is incorrect. This Commentary does not address whether in a particular case the secured party may have authorized the return free of the security interest.

<sup>38</sup> U.C.C. § 9-102(a)(19).

remaining in the possession of the consignee as against the consignee's creditors whose claims to the goods arose before termination.<sup>39</sup>

However, there may be circumstances in which the consignee lacks sufficient rights in consigned goods to create a security interest in them while they are in the consignee's possession. For example, if the consignor has perfected its security interest in the consigned goods such that the consignor would achieve priority over a competing secured party claiming a security interest in the after-acquired inventory of the consignee ("inventory secured party"), then under § 9-319(b) the rights of the inventory secured party with respect to the consigned goods are determined under other law. (This is the case despite § 9-319(a) because § 9-319(b) is an exception to § 9-319(a).) Other law may provide that the consignee has no rights in or power to transfer rights in the consigned goods. If so, no security interest granted to the inventory secured party by the consignee would attach to the consigned goods under § 9-203(b). Inasmuch as no security interest was created in favor of the inventory secured party, any return of the consigned goods to the consignor would not be subject to a security interest held by the inventory secured party.<sup>40</sup>

## AMENDMENTS TO OFFICIAL COMMENTS

With the discussion in this Commentary in mind the Official Comments are amended as follow.

Official Comment 4 to § 2-326 is amended to read:

4. The transactions governed by this section are sales; the persons to whom the goods are delivered are buyers. This section has no application to transactions in which goods are delivered to a person who has neither bought the goods nor contracted to buy them. See PEB Commentary No. 20, dated January 24, 2019. Transactions in which a non-buyer takes delivery of goods for the purpose of selling them are bailments called consignments and are not "sale on approval" or "sale or return" transactions. Certain ~~true~~ consignment transactions were dealt with in former Sections 2-326(3) and 9-114. These provisions have been deleted and have been replaced by new provisions in Article 9. See, e.g., Sections 9-109(a)(4); 9-103(d); 9-319.

Official Comment 14 to § 9-102 is amended by adding at the end the following new paragraph:

Under clause (iii) of subparagraph (A), a transaction is not an Article 9 "consignment" if the consignee is "generally known by its creditors to be substantially engaged in selling the goods of others." Clause (iii) does not apply solely because a

---

<sup>39</sup> This Commentary does not address whether the consignee loses its status as such with respect to creditors of the consignee whose claims to the goods arose *after* termination of the consignment and while the consigned goods were still in the possession of the consignee.

<sup>40</sup> A similar result would obtain if, as in Example 2 of comment 3 to § 9-319, other law provides that, as a bailee, a consignee has a special property in respect of consigned goods in its possession. SP-2's security interest could attach only to those limited rights and so would be of no practical value.

particular competing claimant knows that the goods are held on consignment. See PEB Commentary No. 20, dated January 24, 2019.

The final paragraph of Official Comment 6 to § 9-109 is amended to read:

This Article does not apply to a bailment for sale that falls outside of the definition of “consignment” in § 9-102. See PEB Commentary No. 20, dated January 24, 2019.

The first paragraph of Official Comment 2 to § 9-319 is amended to read as follows, with the second paragraph added:

2. **Consignments.** This section takes an approach to consignments similar to that taken by Section 9-318 with respect to buyers of accounts and chattel paper. Revised Section 1-201(b)(35) defines “security interest” to include the interest of a consignor of goods under many true consignments. Section 9-319(a) provides that, for purposes of determining the rights of certain third parties, the consignee is deemed to acquire all rights and title that the consignor had, if the consignor’s security interest is unperfected. The consignee acquires these rights even though, as between the parties, it purchases a limited interest in the goods (as would be the case in a true consignment, under which the consignee acquires only the interest of a bailee). As a consequence of this section, creditors of the consignee can acquire judicial liens and security interests in the goods while the goods are in the possession of the consignee.

The termination of a consignment does not *ipso facto* cause the consignee to lose its status as such with respect to the consignee’s creditors whose claims to the goods arose before termination. Return of the goods to the consignor causes the consignee to lose its deemed rights and title, but it does not discharge a security interest or judicial lien that attached while the consignee was in possession. See PEB Commentary No. 20, dated January 24, 2019.

...