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Buyer-Secured Party Conflicts and Automobiles: A New Facet to an Old Problem

The automobile's unique combination of mobility, high resale value, and ready acceptability as collateral frequently renders it the subject of fraudulent transactions. A common example of such fraud occurs when a person buys an automobile for a small down payment, removes it to another state, sells it to a good faith purchaser, and promptly defaults on his car payments. The resulting controversy between the secured creditor and the innocent buyer has been frequently addressed by courts and commentators alike.

The 1972 revisions to U.C.C. section 9-103 removed many ambiguities in the Code's treatment of this problem. One addition is subsection 9-103(2)(d), which provides that a consumer buyer who relies on a clean local certificate of title takes the automobile free of a foreign perfected security interest.

1. This scenario is commonly referred to as the "skip-state" problem.
3. Revised Article 9 has been adopted in twenty-five states: Arizona, Arkansas, California, Colorado, Connecticut, Georgia, Hawaii, Illinois, Iowa, Kansas, Maine, Michigan, Minnesota, Mississippi, Nevada, New York, North Carolina, North Dakota, Ohio, Oregon, Texas, Utah, Virginia, West Virginia, and Wisconsin. Where the 1972 version of a U.C.C. section differs materially from the previous version, the textual reference will be to either the "revised section . . . ." or "unrevised section . . . ." All textual references to unrevised sections will be made in the past tense for clarity, even though many states have not adopted revised Article 9. All references to the revised Code will be made in the present tense.
4. U.C.C. § 9-103(2)(d) (1972 version) reads:

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 security interest not shown on the certificate, the security interest is subordinate to the rights of a buyer of the goods who is not in the business of selling goods of .
sumer buyer creates an inconsistency since nowhere in the Code is such a buyer protected from a security interest perfected within the same state.

This article will trace the development of non-Code law in the "skip state" situation, and will examine changes made by the U.C.C. in the law governing secured transactions in automobiles covered by title certificates. Then, an effort will be made to reconcile within the Code the apparent conflict in revised Article Nine. Finally, policy justifications will be advanced in favor of affording consumer good faith purchasers under clean titles in single state transactions the same protection as that given to similar purchasers in multi-state transactions under 9-103(2)(d).

THE PROBLEM

Suppose Dealer A in State X sells a car to B for his personal use. A accepts a small down payment, and retains a security interest in the car for the remainder of the purchase price. In compliance with the laws of State X, A has the interest noted on the title certificate which he retains in his possession. B, however, takes the car into State Y, also a "full title" state, and fraudulently procures a certificate which does not reflect Dealer A's interest. B then sells the car to C, a consumer purchaser who knows nothing of A's interest, and relies on the clean title issued by his own state. The secured party A discovers the removal, traces the car, and attempts to repossess it from the consumer buyer. In a suit between A and C, which of the two innocent parties has the better claim to the car? U.C.C. revised section 9-103 is clear: the non-professional purchaser in good faith will prevail.

Given the same facts with the exception that B does not remove the automobile from the state, but obtains a second, clean certifi-
cate from the same state which issued the first, 9-103 no longer applies, and the Code apparently dictates an opposite result. The general rule is that a security interest in collateral continues despite a fraudulent sale by the debtor.\textsuperscript{8} Section 9-307 embodies an exception to this rule. It provides that certain purchasers will take free of a perfected security interest, and among those buyers so protected are consumer purchasers in casual, second-hand sales from other consumers.\textsuperscript{9} A secured party may prevent the operation of this provision by filing a financing statement, or as the Official Comments indicate, by compliance with the state's certificate of title legislation.\textsuperscript{10} Therefore, in the intrastate context, since Dealer A properly noted his security interest on the certificate of title of State X, his security interest continues as against subsequent good faith purchasers.\textsuperscript{11}

**Multi-State Transactions**

*Non-Code Law*

Automobile registration statutes were initially passed to produce new revenue.\textsuperscript{12} Their value for tracing stolen vehicles, however, was quickly perceived, and registration receipts soon evolved into title documents.\textsuperscript{13} In addition, the pre-Code chattel recording system became increasingly ineffective when applied to motor vehicles,\textsuperscript{14} so title legislation often provided for notation of security interests on the certificate.\textsuperscript{15} Title acts therefore developed as multi-purpose statutes, and among the aims of such legislation were: 1) to compel payment of sales taxes, 2) to prevent fraud and theft of motor veh-

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\textsuperscript{8} U.C.C. § 9-306(2); U.C.C. § 9-201.

\textsuperscript{9} U.C.C. § 9-307(2) provides:

In the case of consumer goods, a buyer takes free of a security interest even though perfected if he buys without knowledge of the security interest, for value and for his own personal, family or household purposes unless prior to the purchase the secured party has filed a financing statement covering such goods.

This section has been construed to require that the goods be consumer goods in the hands of the seller as well as the buyer. New England Merchants Nat'l Bank v. Auto Owners Fin. Co., 355 Mass. 487, 245 N.E.2d 437 (1969); Everett Nat'l Bank v. Deschuiteneer, 109 N.H. 112, 244 A.2d 196 (1968).


\textsuperscript{11} U.C.C. § 9-301 names the interests to which an unperfected security interest is subordinate, and includes certain purchasers without knowledge of the security interest. By negative implication, the interests listed in 9-301 are in turn subordinate to a perfected security interest. U.C.C. § 9-301, Comment 4.

\textsuperscript{12} Gilmore, supra note 2, at 552.

\textsuperscript{13} Id.; A New Chassis, supra note 7, at 995.

\textsuperscript{14} See Leary, supra note 2.

\textsuperscript{15} A New Chassis, supra note 7, at 995.
icles, 3) to lend stability to the business climate surrounding the sale of cars, 18 4) to prevent trafficking in stolen automobiles, 17 and 5) to provide a ready means for ascertaining ownership without recourse to circumstantial evidence. 18

Before all the states had enacted title laws, 19 courts in full title states considered numerous conflicts between foreign secured parties from non-title or incomplete title states, and local purchasers with clean local certificates. 20 If the secured party had not complied with his own state's filing laws, he was unperfected and the local purchaser would take free of the foreign lien. 21 If, however, the foreign lienor had properly recorded his interest in the appropriate state or county office, a conflict of laws arose. The resolution of this conflict involved a choice between two innocent parties, the buyer who had relied on a clean title, and the foreign secured party who had diligently complied with the law of his own state.

The principle invoked to solve these cases was the doctrine of comity, which required recognition of a perfected foreign lien in the absence of express statutory provision to the contrary. 22 Despite the
almost universal acceptance of this rule, exceptions evolved which sometimes resulted in decisions for the local good faith purchaser. Courts looked beyond the rule of comity to consider such factors as the secured party's consent to removal, the lienor's lack of diligence after knowledge of the removal, the secured party's having clothed the defrauder with indicia of title, and even his negligence in extending credit to the debtor in the first place.

Each of these exceptions to comity is a variant of the estoppel maxim that "when one of two innocent persons must suffer through the fraud of a third person, the one who made it possible for the fraud to be perpetrated must bear the loss." One problem with this approach is that the use of an estoppel theory is in effect a criticism of another state's standards of perfection. Furthermore, the doctrine of estoppel is only useful in cases where one party is essentially at fault and is thus not "innocent." Its applicability is questionable in situations where the secured party has perfected his lien by notation on the title, and the debtor fraudulently obtains a clean certificate to resell the car. In this setting, where both parties are truly innocent, the comity-estoppel approach fails to provide a framework within which the conflicting interests may be assessed.

Motor Inv. Co. v. Breslauer, 64 Cal.App. 230, 221 P. 700, 703 (1923). For thorough discussions of comity as applied to security interests in motor vehicles, see Leary, supra note 2, and California Used Car Dealer, supra note 2.

23. Gilmore, supra note 2; California Used Car Dealer, supra note 2.


29. Furnish, supra note 2, at 296. In theory comity applies only when the foreign security interest is perfected. Id. But see First Nat'l Bank v. Sprigg, 209 Cal.App.2d 258, 25 Cal.Rptr. 838 (1962) (court evaded the question of perfection in Kansas and awarded the car to the good faith purchaser on the basis of estoppel).

30. California Used Car Dealer, supra note 2, at 557. The author notes that the maxim is self-contradictory in that if one party is responsible for the occurrence of the fraud, he cannot be innocent. Conversely, where both parties are innocent, neither is in any way to blame and estoppel is inapplicable.
In a dual certificate case, a court must weigh the divergent goals of protecting retail transactions, and stabilizing credit operations, so that these controversies may be equitably and consistently decided.

The Unrevised Article Nine

The pre-Code combination of title legislation with the common law doctrines of comity and estoppel was inadequate to deal effectively with the "skip state" problem involving one, much less two, certificates of title. The Uniform Commercial Code as initially promulgated represented little improvement. One aim of Article Nine was "to provide a simple and unified structure within which the immense variety of present-day secured financing transactions can go forward with less cost and with greater certainty." Ironically, the drafters' decision to defer to state title acts increased the uncertainty and confusion already existing in the area of motor vehicle secured transactions, and did nothing to promote uniformity. The security aspects of many title acts forced courts to reconcile U.C.C. provisions and title act requirements which were apparently contradictory. Most courts concluded that the U.C.C. provisions controlled. For example, Rattan Chevrolet, Inc. v. Associates

31. Id., at 554-55. These goals are divergent because both cannot be satisfied in buyer-secured party conflicts. If retail transactions are to be absolutely protected, the buyer of a used automobile will never be divested of possession. On the other hand, if credit operations are to be stable, the secured party should always be able to repossess collateral which has been fraudulently sold to a good faith purchaser. When both the buyer and the secured party are innocent, a balance must be struck between these two goals, since the controversy cannot be resolved by placing blame on either party.

32. GILMOR, supra note 2; LEARY, supra note 2; California Used Car Dealer, supra note 2.


36. One of the underlying purposes of the Uniform Commercial Code is "to make uniform the law among the various jurisdictions." U.C.C. § 1-102(2)(c).

37. These security aspects are those provisions in title acts which relate to the creation, perfection and priorities of security interests. See, e.g., Uniform Motor Vehicle Certificate of Title and Anti-Theft Act § 20, which provides that "a security interest in a vehicle of a type for which a certificate of title is required is not valid against creditors of the owner or subsequent transferees or lienholders of the vehicle unless perfected as provided in this act."

38. In reconciling the U.C.C. and title acts, several courts applied the "substantial compliance" standard for minor errors in financing statements to title act requirements which formerly had been strictly construed. In re Hollis, 301 F.Supp. 1 (D.Conn. 1969); In re Pollack, 3 U.C.C.Rptr. 287 (D.Conn. 1966). Cf. In re Littlejohn, 519 F.2d 356 (10th Cir. 1975) (Kansas law required purchasers to make application for title; court gave the secured party priority over the bankruptcy trustee even though purchasers never applied for title and thus bank's security interest was never perfected by notation on the certificate of title.)
Discount Corp.,39 involved a conflict between the Code and the Texas certificate of title act. Rattan had purchased three automobiles from a dealer whom Associates financed. When Associates sought to foreclose against the cars, Rattan asserted that it was a buyer in the ordinary course of business under U.C.C. section 9-307(1) and thus the finance company's lien was ineffective.40 Associates argued that the title act governed, and that since it had retained the manufacturer's certificates of origin, it had effectively prevented Rattan from acquiring the cars free of liens and encumbrances.41 The Texas Court of Civil Appeals construed the U.C.C. and the title act as being in pari materia.42 Furthermore, the court concluded from the legislative intent of the U.C.C. that the Code should control.43 Rattan Chevrolet thus gave full effect to the drafters' intent that the U.C.C. be a "unified coverage of the subject matter,"44 and was a salutory step toward uniformity despite the Code deference to state title laws.

Although courts usually resolved conflicts with title acts in favor of the U.C.C., uncertainty remained because of ambiguities in the unrevised choice of law provisions, particularly 9-103.45 When a car

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40. Id., at 362.
41. Id., at 364.
44. U.C.C. § 1-104.
45. Because of the ambiguities in the choice of law provisions of the unrevised Code, courts were forced to use title legislation and the common law to resolve controversies. Furnish, supra note 2, at 293; see generally Rohner, supra note 2; Comment, Uniform Commer-
had been removed from a non-title state to another non-title state, 9-103(2) or (3) clearly governed, depending respectively on whether the vehicle was used for business or consumer purposes. The addition of 9-103(4) caused confusion over whether the presence of a certificate requiring notation suspended operation of 9-103(2) and (3).

A number of cases held section 9-103(4) completely inapplicable when a car was removed from a non-title state to a title state. In *First National Bank v. Stamper,* the debtor Stamper bought an automobile in New York under a contract giving the seller a security interest, which the seller assigned to the plaintiff bank. Stamper then moved to New Jersey, where he obtained a certificate of ownership which did not reflect the bank's security interest. On the basis of this certificate he sold the car to Sharp, who had no knowledge of the New York lien. In the ensuing contest between the bank and Sharp, the court held that the bank had perfected in New York, a non-title state, and that unrevised 9-103(4) was inapplicable. Instead, the court applied 9-103(3), and held that it gave a secured party absolute perfection during the first four months after removal. Since all events had occurred within four months, 9-103(3)
protected the New York secured party as against the New Jersey good faith purchaser.

When the automobile was moved from a title state into another title state, unrevised section 9-103 was even less helpful. If no certificate had been issued in the second state, 9-103(4) was fairly clear that the law of the state from which the automobile was removed controlled the issues of perfection and its effect as against subsequent purchasers. The section, however, did not cover the case where there was more than one certificate outstanding. Therefore in an interstate, dual certificate situation, courts interpreting the unrevised section 9-103 were again forced to apply non-Code law. In *GMAC v. Birkett L. Williams Co.*, the court would have given priority to a Texas security interest properly perfected by notation on the certificate of title, or it could have protected a local purchaser who relied on the clean Ohio title. Because of the problems in interpreting 9-103, the court reverted to non-U.C.C. cases to resolve the issue, and held that the Ohio certificate of title did not, absent estoppel, provide protection against a properly perfected foreign security interest.

Although unrevised section 9-103(4) exhibited a preference for title certificates, its ambiguity led to decisions which instead demonstrated a preference for foreign perfected security interests despite issuance of a local clean certificate. Furthermore, as the *Williams* case exhibits, the section's failure to encompass multiple certificate situations prompted judicial reliance on pre-Code law, which was inadequate to resolve dual certificate cases. This tendency to return to non-Code law frustrated the Code's attempts at uniformity in the area of interstate security interests in motor vehi-

52. Furnish, supra note 2, at 300.
53. *GMAC v. Whisnant*, 387 F.2d 774 (5th Cir. 1968). The same reasoning is applicable when the car moves from a title state into a non-title state.
54. *See Repealing § 9-103(4)*, supra note 45, at 615; *Certificate of Title Acts and the UCC*, supra note 2, at 393.
56. Although both Texas and Ohio were full title states at the time, the car had apparently been "washed" in Rhode Island, then a non-title state, before being brought to Ohio. *Id.*, at 883.
57. *Id.*, at 889.
58. Furnish, supra note 2, at 299.
61. *See* notes 22-31 *supra* and accompanying text.
cles, and actually complicated matters by adding one more element, the U.C.C., to an already chaotic body of law.

The Revised Code

Revised section 9-103 has been called a "band-aid on a crippled limb," but it resolves at least some of its predecessor's ambiguities. For example, the revised 9-103 clearly makes the four-month period of protection a grace period for reperfecting in the second state, rather than an absolute period of perfection. Thus, lapse of the grace period without reperfection means that purchasers during the four months after removal take free of the security interest.

In addition, the 1972 section 9-103 includes a sub-section applying to goods covered by a certificate of title. Sub-section (2) does not explicitly address the multiple certificate problem, but at least as to consumer good faith buyers, 9-103(2)(d) provides the same result whether the goods were originally perfected by filing or by notation on a certificate of title. Furthermore, 9-103(2)(d) protects the

62. Rohner, supra note 2, at 1193.
63. See generally Furnish, supra note 2; Rohner, supra note 2; Resolving Conflicts, supra note 45.
64. See note 51 supra and cases cited therein.
65. U.C.C. § 9-103(1)(d)(i); Final Report, supra note 7, at 236.
66. U.C.C. § 9-103(2) reads as follows:
   (a) This subsection applies to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection.
   (b) Except as otherwise provided in this subsection, perfection and the effect of perfection or non-perfection of the security interest 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 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 certificate 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 security interests not shown on the certificate, 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.
consumer buyer against the foreign secured party who has perfected by notation even when the original certificate remains outstanding. The provision thus appears to be a simple guarantee that a person who buys on the basis of a clean local certificate will not be subject to the rights of a foreign perfected secured party.\(^6\)

Section 9-103(2)(d) is subject to two qualifications. First, since sub-section (2)(d) speaks only in terms of a certificate issued by “this” state, the buyer is protected only if he relies on a certificate of the state in which he buys.\(^6\) If the title has been “washed” in another state, and the buyer relies on a clean certificate of that state, he is not protected by 9-103(2)(d) although he is no less defrauded.\(^7\) Second, if the buyer relies on a title which bears a legend stating that the vehicle may be subject to an undisclosed lien, the buyer will take subject to a perfected foreign security interest.\(^7\) This warning, though, hardly constitutes notice to the average consumer.\(^7\) Even if such language places the buyer on constructive notice, he rarely has the means to protect himself.\(^7\) Notwithstanding these limitations, section 9-103(2)(d) is an improvement over both non-Code law and the unrevised U.C.C. in that it gives clear protection in many instances to a consumer buyer who relies on a clean certificate of title, without resort to the uncertain application of estoppel.

**DUAL TITLES IN THE SINGLE STATE CONTEXT**

The primary difference between the single and the multi-state situations is that the existence of non-title states and the lack of uniformity among title acts have made interstate fraud easier than fraud within a single state.\(^4\) Nevertheless the possibility that a

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68. The Review Committee for Article Nine affirmed this conclusion when it stated that “consumer buyers who give value and take delivery without knowledge of the security interest in situations like *Stamper* should be protected in their reliance on local clean certificates of title.” Final Report, supra note 7, at 241.

69. See Resolving Conflicts, supra note 45, at 998.

70. The fact that the title is out-of-state, however, may be sufficient to place the buyer on constructive notice.

71. Final Report, supra note 7, at 241. The Uniform Motor Vehicle Certificate of Title and Anti-Theft Act provides for such a legend to be placed on a certificate of title when the department is not satisfied there are no undisclosed interests. Uniform Motor Vehicle Certificate of Title and Anti-Theft Act § 50. This kind of warning typically appears when an automobile is moved from an “incomplete” or non-title state into a full title state. Thus, as more and more states become full title states, the seeming necessity for the legend will disappear.

72. The language probably means no more than “other obtuse form language encountered by laymen.” Resolving Conflicts, supra note 45, at 999.

73. Id.

74. See generally Leary, supra note 2; Rohner, supra note 2; Note, The Near-Absolute Rights of the Holder of an Ohio Motor Vehicle Certificate of Title, 15 W. Res. L. Rev. 785.
debtor will be able to procure two certificates for one automobile cannot be dismissed in either the multi-state or the intrastate setting. Even if the secured party retains possession of the original title, fraud can occur resulting in issuance of a clean duplicate. Mistakes can be made, the motor vehicle department may maintain inadequate records, or the clerk may fail to, or be bribed not to, check records that would reveal the existence of an outstanding lien.

Although the chances of obtaining two title certificates for one car are greater in the multi-state situation than in the single state context, the intrastate controversy presents the harder case for two reasons. First, although the "skip state" case usually involves two innocent parties injured by a third, the dual certificate context includes another party, the motor vehicle department which issued the clean certificate. Dual certificates may issue from different states because of the lack of uniformity among title acts. In the single state case, however, no such excuse exists, and the buyer and secured party should be able to rely on their state motor vehicle department to issue a clean duplicate only when the car is unencumbered.

Second, title acts were drafted on a theory of one title for each car, and both the U.C.C. and the acts suggest that there should be one title on the basis of which all may rely to ascertain ownership.

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75. The facts in several cases demonstrate that although interstate fraud may be easier, car owners have been able to obtain duplicate titles from the same state in a number of ways. E.g., Doherty v. Obregon, 6 Ariz.App. 401, 433 P.2d 52 (1967) (defrauder obtained a duplicate before car was encumbered, then used original to secure loan and duplicate to sell car); Commercial Credit Corp. v. Associates Discount Corp., 246 Ark. 118, 436 S.W.2d 809 (1969) (lienholder retained original, but dealer forged a release and received clean duplicate); May v. Citizens Nat'l Bank, 100 So.2d 651 (Fla.Dist.Ct.App. 1958) (debtor received clean original by mistake, then got clean duplicate by fraudulently stating he had mistakenly destroyed original); Vannoy Chevrolet v. Baum, 260 Iowa 1011, 151 N.W.2d 515 (1967); First Nat'l Bank v. Provident Fin. Co., 176 Neb. 45, 125 N.W.2d 78 (1963) (defrauder, by stating original had been lost, obtained clean duplicate even though original showed encumbrance); Yarwood v. DeLage, 91 N.E.2d 272 (Ohio App. 1949) (while first certificate was held by bank, owner sold car; buyer fraudulently stated he had built car from assembled parts and obtained second, clean certificate); South Texas Bank v. Renteria, 523 S.W.2d 780 (Tex.Ct.Civ.App. 1975) (owner obtained certified copy, using it to secure a loan, and then sold the car on the basis of the clean original).


77. Gilmore, supra note 2, at 564.

78. Rohner, supra note 2, at 1190.

79. See note 74 supra and accompanying text.
of and encumbrances on a given motor vehicle.\textsuperscript{80} When two state title acts are involved, the problem is to determine which state's laws apply. Once this conflict of laws is resolved, the question becomes simply whether that state will recognize interests not evidenced by its own title certificates. When the same state has issued both certificates, however, the central issue is not which law controls. Instead, the difficulty is that the applicable title act has no provision governing priority conflicts between innocent dual title holders. Thus the problem is not a conflict of laws, but a gap in the applicable law.

In a single state controversy between holders of original and duplicate titles,\textsuperscript{81} non-Code law apparently favors the party who first obtained an interest in the car.\textsuperscript{82} When the issuance of a duplicate results from theft, the courts are nearly unanimous that the owner's rights cannot be cut off by a good faith purchaser. This result is based on the traditional rule that a thief, because he has no title, cannot transfer title.\textsuperscript{83} In pre-Code cases where theft was not in-

\textsuperscript{80} GILMORE, supra note 2, at 557; Certificate of Title Acts and the U.C.C., supra note 2, at 393.

\textsuperscript{81} Issuance of a duplicate may result in one car having two certificates outstanding, each of which represents a separate interest. Therefore the practice of issuing duplicates necessarily undercuts the reliability of a state's titles. Nevertheless, this practice is justified by the fact that public convenience outweighs the possibility of harm caused by fraud. California Used Car Dealer, supra note 2, at 548 n.43.

A number of states attempt to enhance their titles through statutory provisions and/or cases to the effect that a certificate of title is \textit{prima facie} evidence of the facts appearing on it. \textit{E.g.}, Federico v. Universal C.I.T. Credit Corp., 140 Colo. 145, 343 P.2d 830 (1959); Capital Credit Co. v. Continental Credit Corp., 117 Ga.App. 451, 160 S.E.2d 836 (1968); Spaulding v. Peoples State Bank, 25 Ill.App.3d 118, 323 N.E.2d 143 (1975); \textit{COLO.REV.STAT.} § 42-6-107 (1973); \textit{ILL.REV.STAT.} ch. 951/2, § 3-107(c) (1977). In a dual certificate case, however, this evidentiary force is of little effect. A title certificate is not conclusive and can be rebutted. \textit{E.g.}, Masterson v. Tomlinson, 424 S.W.2d 380 (Ark. 1968); Avis Rent-A-Car System v. Woelfel, 155 Colo. 207, 393 P.2d 551 (1964); Fischer v. Bernard's Surf, 217 So.2d 576 (Fla. Dist.Ct.App. 1969); Spaulding v. Peoples State Bank, 25 Ill.App.3d 118, 323 N.E.2d 143 (1975). Therefore when there are two certificates, each is defeated by the other.

\textsuperscript{82} See R.S. Evans Motors, Inc. v. Hanson, 130 So.2d 297 (Fla.Dist.Ct.App. 1961) (although no connection was shown between the Iowa certificates, two lienholders whose claims were based on the original certificate had priority over a bailee in possession whose bailor had been a good faith purchaser under the duplicate); May v. Citizens Nat'l Bank, 100 So.2d 651 (Fla.Dist Ct.App. 1958) (chattel mortgagee who held fraudulently obtained duplicate prevailed over good faith purchaser who later relied on clean original issued by mistake); Vannoy Chevrolet v. Baum, 260 Iowa 1011, 151 N.W.2d 515 (1967) (dealer under properly assigned original was entitled to possession over good faith purchaser under fraudulently obtained duplicate). This tendency to favor the first acquired interest in the car is contrary to the principle that he who first trusted the wrongdoer must bear the loss. See Mutual Fin. Co. v. Municipal Employees Union Local, 110 Ohio App. 341, 165 N.E.2d 435 (1960). \textit{See generally} Leary, supra note 2, at 468.

\textsuperscript{83} \textit{E.g.}, Bettis v. Manhattan Credit Co., 230 Ark. 686, 324 S.W.2d 352 (1959); Avis Rent-A-Car System v. Woelfel, 155 Colo. 207, 393 P.2d 551 (1964); Hardware Mut. Cas. Co. v. Gall, 15 Ohio St.2d 261, 240 N.E.2d 502 (1968); Allstate Ins. Co. v. Enzolera, 164 Neb. 38, 81
volved and where the person committing the fraud either owned the automobile or was the debtor in a secured transaction, a good faith purchaser similarly could not cut off the rights of a prior owner or perfected secured party. This result is in accord with U.C.C. section 9-306 which gives a secured party priority over a subsequent good faith purchaser.

The harshness of this approach has led states to require that duplicates should be marked as such, and should bear a legend stating that the car may be subject to the rights of a person holding the original. Such provisions suggest that the holder of the original will always prevail, and further, that these warnings place a prospective buyer on notice, thus preventing him from attaining the status of a good faith purchaser.

Controversies between the holder of an original and the holder of a duplicate bearing this kind of warning should not be decided by giving automatic priority to the original title. The legend does nothing to prevent fraud. A car owner can easily obtain both an original

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N.W.2d 588 (1957); Hertz Corp. v. Hardy, 197 Pa.Super. 466, 178 A.2d 833 (1962). Ohio for a time protected a local purchaser who relied on a clean Ohio title even when the car had been stolen from the foreign secured party's debtor. Commercial Credit Corp. v. Pottmeyer, 176 Ohio. St. 1, 197 N.E.2d 343 (1964), but Pottmeyer was subsequently overruled by Hardware Mutual Casualty Co. v. Gall, 15 Ohio St.2d 261, 240 N.E.2d 502 (1968). Because they are dependent on a thief's complete lack of title, theft cases may not be controlling when a good faith purchaser attempts to cut off the rights of a secured party. See notes 120-137 infra and accompanying text.

84. May v. Citizens Nat'l Bank, 100 So.2d 651 (Fla.Dist.Ct.App. 1958); see Doherty v. Obregon, 6 Ariz.App. 401, 433 P.2d 52 (1967); Federico v. Universal C.I.T. Credit Corp., 140 Colo. 145, 343 P.2d 830 (1959); R.S. Evans Motors Inc. v. Hanson, 130 So.2d 297 (Fla.Dist.Ct.App. 1961). In an Iowa case decided after the effective date of the Code in that state, the supreme court held that the holder of an original Iowa certificate was not defeated by a good faith purchaser whose claim was evidenced by a second certificate which had been obtained by assignment of a duplicate title issued on the basis of a false affidavit. Vannoy Chevrolet v. Baum, 260 Iowa 1011, 151 N.W.2d 515 (1967). (The Code went into effect in Iowa on July 4, 1966). The case did not involve a secured party, however, and was decided without mention of the U.C.C.

85. U.C.C. § 9-306 provides that a security interest continues despite a sale by the debtor. Section 9-307 allows a good faith purchaser to take free of the security interest, however 9-307 apparently does not protect such a purchaser in an intrastate dual title setting. See notes 96-107 infra and accompanying text.

86. E.g., Uniform Motor Vehicle Certificate of Title and Anti-Theft Act § 13.


88. See Certificate of Title Acts and the U.C.C., supra note 2, at 388-89. One court has even indicated that in a state which issues duplicates, a prospective buyer of a used automobile should make a check of official records when confronted with an original title. May v. Citizens Nat'l Bank, 100 So.2d 651, 653 (Fla.Dist.Ct.App. 1958). This approach seems backward, since an original title in no way gives notice that a duplicate has been issued, while a duplicate always indicates the possible existence of an original. The court reasoned, however, that since duplicates were the current state of the title, a check should be made before relying on an original.
and duplicate title, then encumber the vehicle using the duplicate, and resell the car to a good faith purchaser on the basis of the clean original. In addition, as long as legitimate reasons exist for the issuance of duplicates, they should be afforded the same reliability as originals. Third, making duplicate certificates serve as constructive notice of other claims impedes the free alienability of automobiles covered by such titles. Finally, the consumer buyer, who is most likely to place sole reliance on a certificate of title, is unlikely to comprehend the legal significance of a duplicate or a legend that the car may be subject to other interests.

A better approach would be for states to clearly articulate the extent to which one may justifiably rely on their clean certificates. Regrettably few courts have addressed this issue, and none have considered whether reliance on a duplicate may be justified. Moreover, the cases which hold that a clean title may be relied upon can usually be explained on other grounds.

89. A prospective creditor who at this time checks any official records will find that the owner has clear title.

90. GILMORE, supra note 2, at 563 n.1. South Texas Bank v. Renteria, 523 S.W.2d 780 (Tex.Ct.Civ.App. 1975), involved those facts almost exactly. The debtor had obtained a certified copy of the certificate of title, as well as the original. He then borrowed $3,000 from his employer, who in turn borrowed the same amount from the defendant bank. The title to the automobile was then transferred to the employer using the certified copy, and the Texas Motor Vehicle Division issued a new certificate showing the bank as lienholder. Meanwhile the debtor, who had retained possession of the automobile, sold it using the clean original. Without mention of the U.C.C., the court held that under the title act, “a title which emanates under an original certificate is superior to that which emanates under a certified copy . . . .” Id., 523 S.W.2d at 785.

91. See Certificate of Title Acts and the UCC, supra note 2, at 389. On the question whether a duplicate is sufficient to place a purchaser on notice, the author states, “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.” Id.

92. See note 72 supra and accompanying text. An additional reason against automatically granting priority to the holder of the original, is that such a rule is as arbitrary as deciding for the party who first obtained an interest in the car, and would undoubtedly be a rule riddled with exceptions.


94. For instance, in Ferraro v. Pacific Finance Corp., 8 Cal.App.3d 339, 87 Cal.Rptr. 226 (1970), the secured party never even had its lien noted on the certificate of title. Similarly, the decision in Commerce Union Bank v. Hunley, 10 U.C.C. Rptr. 1252 (Tenn.App. 1972), was based on estoppel: the court found that although the secured party did have a lien noted on the certificate, the bank had discharged that loan and the debtor had signed a new security agreement. The bank never had this new interest noted, thus a buyer at an execution sale who received a clean title by mistake took free of the bank’s interest. Finally, Spaulding v. Peoples State Bank, 25 Ill.App.3d 118, 323 N.E.2d 143 (1975), appears to hold squarely that “parties dealing with the vehicle described in [the] certificate may do so in reliance thereon.” Id., 323 N.E.2d at 145. However, the decision may actually be explained by the tradi-
The title system clearly does not protect the good faith purchaser of an automobile who relies on a clean certificate in the intrastate setting. This view comports with the traditional analysis in multistate cases that as long as the secured party perfected and did nothing to estop himself from asserting his lien, he would prevail. The 1972 revisions to section 9-103 altered this rule when the good faith purchaser is a consumer buyer who relies on a clean title issued by his own state which bears no legend indicating the possibility of other interests. Whether consistency within the Code would justify extending the same protection to a buyer in an intrastate case is the essential question.

**The Intrastate Dual Certificate Problem Analyzed Within the U.C.C.**

Section 9-307(2) apparently provides that a good faith buyer takes subject to the interest of a secured party who has noted his interest on the certificate of title. Other features of the Code, however, indicate that 9-307(2) does not necessarily control this situation. The practical difference between automobiles and other consumer goods is that a consumer has nothing like a title certificate on which he can rely in second-hand sales not involving cars. More importantly, a legal difference exists between automobiles and other consumer goods. A security interest in a motor vehicle must be perfected by compliance with the state's title legislation, but most

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95. See notes 62-73 supra and accompanying text. One commentator has even advocated that the Code should protect a good faith purchaser under a clean title whose possession derived from a thief. Furnish, supra note 2, at 301.

96. See notes 9-10 supra and accompanying text.

97. Although the text of § 9-307 does not mention certificate of title laws, the Official Comments indicate that compliance with such legislation has the same effect as filing. U.C.C. § 9-307(2), Comment 3. Both thus prevent a good faith buyer from taking free of the security interest under 9-307(2). The same result is obtained by equating filing and compliance with the state title act. U.C.C. § 9-302(4) (1972 version). See note 10 supra.

98. Goods are "'consumer goods' if they are used or bought for use primarily for personal, family or household purposes." U.C.C. § 9-109(1).

security interests in other consumer goods are perfected without any action by the secured party. This difference is important because it determines the applicability of section 9-307(2), which protects consumer good faith buyers in second-hand sales against perfected security interests. The section also provides that a secured party may by filing prevent such a buyer from taking free of the interest. Section 9-302(4) equates filing and compliance with title legislation, therefore notation on the certificate of title, as well as filing prevents a buyer from taking free of the secured party’s interest. Notation then, both perfects the security interest and defeats the buyer’s protection under 9-307(2), making any guarantee to consumer buyers against perfected security interests in motor vehicles totally illusory. Therefore, section 9-307(2) has no application whatever to automobiles covered by title certificates.

Since 9-307(2) fails to protect the consumer good faith purchaser of an automobile when the secured party has perfected by notation, the section does not control the intrastate dual certificate situation. Still the disparate results in the multi-state and the single state settings remain, except that the intrastate case is governed by general rules regarding the effect of perfection, and the continuity of security interests. These contradictory results thus exist due to the absence of a provision protecting the non-professional buyer under a clean title in the single state context, rather than by clearly conflicting sections.

Although the Code fails to protect the consumer good faith pur-

100. U.C.C. § 9-302(1) (a) & (d).
101. Professor Gilmore states unequivocally and correctly that “§ 9-307(2) does not apply to motor vehicles subject to licensing requirements (even if the motor vehicles are held as consumer goods . . . ).” G. GILMORE, SECURITY INTERESTS IN PERSONAL PROPERTY, § 26.12 (1st ed. 1965).
102. U.C.C. § 9-307(2).
103. Id.
105. See note 97 supra and accompanying text.
106. In other words, notation acts as a catalyst for the operation of 9-307(2) since a security interest must be perfected. Otherwise U.C.C. § 9-301(c) would apply, giving the buyer priority over an unperfected security interest. In addition, though, notation is the very act which defeats the buyer’s protection.
107. This conclusion is buttressed by a consideration of how 9-307(2) applies to interests in consumer goods which do not require any action by the secured party for perfection. Section 9-307(2) is meant to give “a measure of protection against such ‘secret liens’ to certain types of buyers.” G. GILMORE, SECURITY INTERESTS IN PERSONAL PROPERTY, § 26.12 (1st ed. 1965). By allowing the secured party to do more (i.e. file) than what is required for perfection, the Code provides a method for giving public notice of such a perfected lien. Thus, only when such notice is not necessary for perfection does 9-307(2) serve a purpose.
chaser in the intrastate setting, the U.C.C. contains some support for allowing such a purchaser to take free of a prior security interest perfected by notation. For example, there is a difference between perfection by filing and perfection by notation. Although the Code provides that compliance with certificate of title laws is the equivalent of filing, a closer examination of revised section 9-103(2) reveals that notation is not always exactly equal to filing.

Under revised section 9-103(2), a secured party who perfects by notation does not always receive the same protection as one who perfects by filing. The secured party who perfects by notation has more protection in multi-state transactions because perfection is "governed by the law ... of the jurisdiction issuing the certificate until four months after the goods are removed from that jurisdiction and thereafter until the goods are registered in another jurisdiction, 

110. U.C.C. § 9-302(4) (1972 version) provides:
Compliance with a statute or treaty described in subsection (3) is equivalent to the filing of a financing statement under this Article, and a security interest in property subject to the statute or treaty can be perfected only by compliance therewith except as provided in Section 9-103 on multiple state transactions. Duration and renewal of perfection of a security interest perfected by compliance with the statute or treaty are governed by the provisions of the statute or treaty; in other respects the security interest is subject to this Article.

The statutes referred to are to include "any certificate of title statute covering automobiles ... ." U.C.C. § 9-302(3)(b) (1972 version). The unrevised version of these subsections read:

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

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 duplicate thereof by a public official.

U.C.C. § 9-302(3) (1958 version). Alternative A was meant for states with exclusive or complete title acts, while Alternative B was designed to pick up the non-exclusive acts and make them exclusive. U.C.C. § 9-302, Comment 8; Gilmore, supra note 2, at 573-76. Subsection 4 is a variant of the same principle, that the security interest is perfected by notation in compliance with the certificate of title act, and not by Article 9 filing. Gilmore, supra note 2, at 576.

111. See generally Final Report, supra note 7; Coogan, The New UCC Article 9, 86 Harv. L. Rev. 477 (1973); Funk, The Proposed Revision of Article 9 of the Uniform Commercial Code, Part 2, 27 Bus. Law. 321 (1971); Furnish, supra note 2; Resolving Conflicts, supra note 45.
An interest noted on the certificate of title may then remain perfected past the initial four month period following removal, as long as the car is not registered in another state. On the other hand, the secured party who perfects otherwise than by notation is subject to the four month rule of revised section 9-103(1)(d), and must take affirmative action to reperfect within that period or he will lose all priority after removal. Thus if the security interest is perfected by notation, the secured party may be protected indefinitely after removal without any action, although a security interest perfected by filing will lose priority unless the secured party takes steps to reperfect.

The secured party who has perfected through compliance with title laws has less protection than one who has filed, since if he has not retained the certificate, the period of continuous perfection may be reduced by "surrender of the certificate." Even if he somehow reperfected within the four months, he may not have priority as against someone who purchased after surrender of the certificate.

The language of 9-103(1)(d)(iii) indicates that if the holder of a purchase money security interest in consumer goods wishes to continue his added protection against good faith purchasers, he must refile. See Final Report, supra note 7, at 236.

"Purchaser" here is used in the Code sense of "taking by sale, discount, negotiation, mortgage, pledge, lien, issue or re-issue, gift or any other voluntary transaction creating an interest in property." U.C.C. § 1-201(32).
These differences under revised section 9-103 do not affect resolution of dual certificate conflicts. Nonetheless the differences are significant since they suggest that filing is not necessarily equal to compliance with certificate of title laws in all situations. Therefore, perfection by notation should not necessarily have the same consequences in the intrastate context as perfection by filing, just as the two do not have the identical effect in multi-state transactions.

Article Two provides further support for preferring the good faith purchaser under a clean title. Section 2-403, the Code provision dealing with good faith purchasers of goods, guarantees that such a purchaser may obtain good title from a person with voidable title. The Code defines neither title nor voidable title, therefore it is debatable whether a debtor has voidable title by which he could pass good title to a good faith purchaser under 2-403. A security interest does not "attach," however, until the debtor "has rights in the collateral." Although the U.C.C. does not explain what is meant by having rights in the collateral, it is submitted that these rights are sufficiently analogous to the concept of voidable title to

118. Note that § 9-103(2)(d), which controls such conflicts, does not distinguish between perfection by notation and perfection by filing, and thus makes it clear that even in the nonor incomplete title to title context, a consumer good faith purchaser who relies on a local clean title which requires notation of security interests will prevail over the foreign secured party. In the intrastate setting, of course, there won't be such a context. Therefore, the failure of 9-103(2)(d) to differentiate between the two methods of perfection does not affect the argument that because 9-103 provides different consequences for perfection by notation and perfection by filing, perhaps the intrastate section protecting purchasers, 9-307, should distinguish between filing and notation as well.

119. Note that this conclusion contradicts U.C.C. § 9-302(4) (1972 version), which states that filing and compliance with title legislation are equivalents.

120. U.C.C. § 2-403(1) provides:

(1) A purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though

(a) the transferor was deceived as to the identity of the purchaser, or
(b) the delivery was in exchange for a check which is later dishonored, or
(c) it was agreed that the transaction was to be a "cash sale", or
(d) the delivery was procured through fraud punishable as larcenous under the criminal law.

For a general discussion of the applicability of § 2-403 to Article 9, see Dugan, Buyer-Secured Party Conflicts Under Section 9-307(1) of the Uniform Commercial Code, 46 U. Colo. L. Rev. 333, 335-37 (1975) [hereinafter cited as Dugan].

121. The Code's failure to define these concepts means that § 2-403 is not precluded from application to Article 9 by an inflexible definition of title.

warrant application of 2-403. 123 It is not suggested that 2-403 should affect priorities in all cases between Article Nine secured parties and good faith purchasers of collateral, 124 but when Article Nine itself is not clear, 125 "extending [other] code provisions by way of analogy and extrapolation" is preferable to resort to non-Code law. 126 Since section 9-103(2)(d) protects good faith purchasers under clean titles only in multi-state transactions, and 9-307(2) does not control the intrastate buyer-secured party conflict, section 2-403 may be applied to protect the good faith purchaser. 127

Finally, the Code provides that it may be supplemented by principles of law and equity. 128 For example, in Muir v. Jefferson Credit

123. Support for this analogy between the concepts of title on the one hand, and security interests and the debtor's counterpart, "rights in the collateral," on the other, may be found in the definition of a security interest. "The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer . . . is limited in effect to a reservation of a 'security interest.'" U.C.C. § 1-201(37); see U.C.C. § 2-401 (1). Furthermore, since the validity and enforceability of a security interest as between the parties does not depend on title, (see note 122 supra), neither should rights as against third parties. Whether the debtor actually has voidable title under the particular security agreement, then, should not determine whether a good faith purchaser of an automobile under a clear title may defeat the rights of a perfected secured party in the same state. Finally, § 2-403 states that "[w]hen goods have been delivered under a transaction of purchase the purchaser has . . . power to transfer good title to a good faith purchaser." Therefore at least when the secured party is also the seller, the debtor purchaser probably has voidable title, if not in other secured transactions as well.

124. Indeed, several Code provisions appear to preclude application of 2-403 to buyer-secured party disputes. E.g., U.C.C. § 9-306(2) (which provides that a security interest continues despite a sale, "[e]xcept where this Article provides otherwise") (emphasis added); U.C.C. § 2-402(3) ([n]othing in this Article shall be deemed to impair the rights of creditors of the seller" under Article 9); U.C.C. § 2-403(4) ("[t]he rights of other purchasers of goods and of lien creditors are governed by the Articles on Secured Transactions . . . ."). But see U.C.C. § 9-201 ("[e]xcept as otherwise provided by this Act a security agreement is effective . . . against purchasers of the collateral . . . .") (emphasis added).

125. The lack of clarity is evidenced by the basic conflict between 9-103(2)(d) in the multi-state setting and the result which appears to be mandated by a combination of 9-201, 9-301, 9-306(2), and 9-307(2) (and the Official Comment thereto) in the single state context. See notes 7-11 supra and accompanying text.

126. Hawkland, Article 9 Methodology, 9 WAYNE L. REV. 531, 532 (1963). Professor Hawkland notes,

Standard code methodology utilizes analogy to fill gaps, an approach designed to give the enactment comprehensiveness and to implement legislative design by extending the underlying reasons, purposes and policies of the various provisions to their analogues. The approach also steers the court from error by keeping it from resorting to rules and principles which have become obsolete or have been defeated by competing policies.

Id., at 535.

127. See Dugan, supra note 120, wherein the author states that the "interarticle ordering provisions," see note 124 supra, "preclude the application of Article 2 only when the facts of the conflict are sufficiently covered by one of the Article 9 exceptions to the secured party's basic priority." Id., at 336 (emphasis added). Section 9-307(2) does not really apply to motor vehicles, see text accompanying notes 96-107 supra. Therefore, § 2-403 provides a strong basis for protecting a good faith purchaser under a clean title in the intrastate setting.

128. "Unless displaced by the particular provisions of this Act, the principles of law and...
the secured party perfected by notation, and the subsequent good faith purchaser bought from the dealer to whom the debtor had sold the car after he had forged a satisfaction of the secured party’s lien. Section 9-307(1) did not apply because the interest had not been created by the purchaser’s immediate seller, and 9-307(2) did not protect the purchaser because the car was not “consumer goods” in the hands of the seller. The court then held that despite the failure of 9-307 to protect the purchaser, he was entitled to the car because the secured party was estopped for its failure to retain the certificate in its possession, and for its failure to act reasonably to protect its interest. This approach provides a basis for extending protection to such a purchaser under a clean duplicate, despite a perfected security interest. Nonetheless, it is inadequate because the decision is essentially a return to chaotic pre-Code law. A better approach would exist if Article Nine clearly determined the fate of a good faith purchaser under a clean title. The Code’s failure to resolve these controversies mandates an examination of the policy grounds favoring the consumer good faith purchaser.

**POLICY CONSIDERATIONS**

The revised Code changed the traditional rule favoring the secured party in the multi-state context, to one favoring the consumer buyer who relies on a clean local certificate. The only reason given for the change was the policy that the local buyer under such circumstances is deserving of protection. One problem with the approach of the common law and the unrevised U.C.C. to multi-state transactions was the failure to assess the conflicting policies. In either the multi-state or the intrastate setting, this conflict can be characterized as a question of whether it is “fairer and more in accord with commercial reality” to protect the secured party who has done all that the law requires of him to make his interest good against third parties, or “to give an expanded kind of bonafide purchaser status to [one] who deal[s] with the vehicle” on the basis of a clean certificate.

equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions.” U.C.C. § 1-103.

130. Id., at 36. See note 98 supra.
131. Jefferson placed the blame on the motor vehicle division for delivering the title to the debtor. Id., at 38. The court noted, though, that although Jefferson had almost immediate awareness that it had not received the certificate, its efforts to obtain it were minimal, and it made no attempt to repossess the car until long after the fraud was committed. Id., at 38.
133. Rohner, supra note 2, at 1181.
The Uniform Commercial Code usually resolves this conflict in favor of a non-professional buyer in the multi-state transaction.\textsuperscript{134} Consistency within the Code is one cogent reason for extending the same protection to such a buyer in a single state controversy. Furthermore, a preference for one holding a clean certificate of title enhances the reliability of certificates as notice instruments,\textsuperscript{135} and promotes free alienability of used motor vehicles.\textsuperscript{136} Increased reliability of title certificates in turn means greater certainty in the sales of used automobiles.\textsuperscript{137}

As between the perfected secured party and the consumer good faith buyer, the equities lie on the consumer's side. On the basis of risk allocation alone, the lender should bear the risk as a cost of doing business.\textsuperscript{138} Furthermore, protective measures are not equally available to creditor and purchaser.

Secured parties are deserving of some protection, but they are also in the best position to prevent the fraudulent transaction from ever occurring. They are generally large enough to engage in a certain amount of tracing, and they also voluntarily choose to deal with the person who commits the fraudulent act. Secured parties could prevent many of the frauds from ever occurring by diligently checking the recipients of their credit. If a secured party chooses to deal with a high credit risk customer, he should insulate himself against fraud by purchasing insurance, efficiently tracing... vehicles, or increasing rates to all customers in order to absorb losses.\textsuperscript{139}

A purchaser, on the other hand, can hardly be expected to question his own state's certificate of title,\textsuperscript{140} and is probably unaware of means other than the certificate to ascertain title.

Finally, the difference between a consumer purchaser and a professional buyer justifies extending protection only to the former. A

\textsuperscript{134} See notes 67-73 supra and accompanying text.
\textsuperscript{136} Id. Motor vehicles are a significant part of commerce in the United States. In 1977 net purchases of used automobiles totalled $17.9 billion, almost one third of all automobile purchases. Survey of Current Business, May 1978, at 8.
\textsuperscript{137} There is a corresponding decrease in the certainty of financing transactions in motor vehicles, which contravenes the policy of Article 9 "to provide a simple and unified structure within which the immense variety of present-day secured financing transactions can go forward with less cost and with greater certainty." U.C.C. § 9-101, Official Comment. If this goal is deemed outweighed by the interest of a consumer good faith purchaser who relies on a clean title in a multi-state transaction, there is no reason why the aim is not also overridden by such a purchaser in the intrastate context.
\textsuperscript{138} See Rohner, supra note 2, at 1185-86; Resolving Conflicts, supra note 45, at 1002.
\textsuperscript{139} Resolving Conflicts, supra note 45, at 1002.
\textsuperscript{140} Rohner, supra note 2, at 1181.
CONCLUSION

The Review Committee when redrafting section 9-103 made a clear policy choice to protect a non-professional purchaser of an automobile under a clean title, despite the existence of a foreign perfected security interest. Yet Article Nine also suggests that the secured party will be protected in the analogous intrastate context. Policy considerations, as well as consistency within the Code, indicate that Article Nine should be clarified to give protection to consumer buyers under clean titles in both the single and the multi-state settings.

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142. Id.