

# PPSA SCAFFOLD

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## 1) Does the PPSA apply?

### Definition of personal property

Pursuant to s10, the (goods) will be construed as personal property.

### Exclusions

However, under s8, an arrangement may be excluded from being classed as a “security interest”.

- Refer to legislation

## 2) Security interest

### “In substance”

Under s12(1), a security interest is an interest in personal property provided for by a transaction that secures payment or performance of an obligation.

Apply facts:

- **Transactions:** lease agreement, loan agreement, purchase on credit, hire agreement, sale, contract for sale

### “Deemed”

If not, is it a “deemed” security interest?

Refer to s12(3) examples.

### Is it a PMSI?

The facts indicate that the security interest could be a purchase money security interest (PMSI) as:

- Security interest taken in collateral, to the extent that it secures all or part of its purchase price: s14(1)(a)
- Security interest taken in collateral by a person who gives value for the purpose of enabling the grantor to acquire rights in the collateral, to the extent that the value is applied to acquire those rights: s14(1)(b)
- Interest of lessor/bailor of goods under a PPS lease: s14(1)(c)
- Interest of a consignor who delivers goods to a consignee under a commercial consignment: s14(1)(d)

### Inventory

As the secured party has provided goods to be held by the grantor as inventory, perfection by registration must occur before either grantor obtains possession or attachment occurs, and the financing statement must state it is a PMSI as per item 7 of s153. The facts indicate \_\_\_\_\_.

## Non-inventory

Perfection by registration must occur within 15 days before grantor obtains possession/attachment occurs, and the financing statement must state it is a PMSI as per item 7 of s153. The facts indicate \_\_\_\_\_.

## 3) Perfection

Under s21(1)(b), a security interest will be perfected if it attaches to the collateral (s19), is enforceable against 3<sup>rd</sup> parties (s20) and is perfected by either registration, control or possession (s21(2)).

### Attachment: s19

A security interest will attach once the grantor has rights in the collateral or power to transfer rights and either value is given for the security interest or the grantor does an act by which the security interest arises (s19(2)).

Apply facts:

- Grantor has rights/power to transfer rights:
  - Possession, ownership
  - Refer s 19(5) examples
- Value is given
  - Consideration to support a contract
  - Providing a loan on the value of the security
- Grantor does an act
  - Most common: execution of a security agreement

### Enforceability against 3<sup>rd</sup> parties: s20

A security interest will be enforceable against 3<sup>rd</sup> parties once either the secured party has possession of the collateral, perfected the interest by control, or a security agreement has been executed in accordance with subsection (2) (s20(1)(b)).

Apply facts:

- The facts indicate that \_\_\_\_\_, the secured party, has possessed the (collateral).
- The facts suggest the secured party \_\_\_\_\_ has perfected their interest by control (bank accounts???)
- It can be assumed that a security agreement has been executed.

### Perfection: s21

#### Registration

It can be assumed that the contents of the financing statement \_\_\_\_\_ registered on (date) was in accordance with s153. Under s21(2)(a), registration will have perfected the security interest.

#### Defective registration

As (one of below), this will result in a defective registration under (statute).

- \_\_\_\_\_ can be considered a seriously misleading defect: s164(1)(a)

- Collateral required to be described by serial number e.g. VIN does not show up on register (e.g. when entered incorrectly): s165(a)
- Collateral not required to be described by serial number: no search of the register regarding the grantor's details could disclose the registration: s165(b)
- The financing statement states the security interest is a PMSI, but the it is not actually a PMSI: s165(c)
- Circumstances in relation to the data related to registration as prescribed by the regulations: s165(d)

## **Control**

Under s21(2)(c)(X), \_\_\_\_\_'s control of the

- (i): ADI accounts
- (ii): intermediated securities
- (iii): investment instruments
- (iv): letters of credit
- (v): uncertified negotiable instruments

will perfect the security interest.

Apply facts:

- ADI account: refer to s25
- Intermediated securities: refer to s26.
- Investment instruments: refer to s27
- Letters of credit: refer to s28
- Uncertified negotiable instruments: refer to s29.

## **Possession**

Under s21(2)(b), possession will perfect the security interest.

(Secured party) took exclusive possession of the (collateral) (s24(1)).

- If the facts indicate there is a break in possession: it will not be in contention that this possession was continuously perfected (s56(1)).

(Grantor/debtor) took exclusive possession of the (collateral) (s24(2)).

- If the facts indicate there is a break in possession: it will not be in contention that this possession was continuously perfected (s56(1)).

Apply facts if relevant:

- Timing rule where goods are transported by common carrier: s24(3)
- Certain negotiable instruments: s24(4)
- Chattel paper that is evidenced electronically: s24(5)
- Investment instruments: s24(6)

## **Where perfection has failed + grantor is bankrupt/winding up:**

As (secured party) has failed to perfect their security interest, and:

- A winding up order is made of the grantor's company/body corporate: (s267(1)(a)(i))

- An administrator has been appointed to the grantor's company/body corporate (s267(1)(a)(ii))
- The grantor's company/body corporate executes a deed of company arrangement (s267(1)(a)(iii))
- A sequestration order has been made against the grantor (s267(1)(a)(iv))
- The grantor has become bankrupt by force of s55, s56E or s57 of *Bankruptcy Act 1966* (s267(1)(a)(v))

The security interest will vest in the grantor. Therefore, secured party will not be able to enforce the interest.

**Discuss other potential security interests in the collateral (go back to steps 2 & 3), and then move onto priority.**

#### 4) Priority

Earlier		Later	Outcome	Statute
Unperfected SI	v	Unperfected SI	First to attach prevails	S55(2)
Perfected SI	v	Unperfected SI	Perfected SI prevails	S55(3)
Unperfected SI		Perfected SI	Perfected SI prevails	S55(3)
Perfected SI	v	Perfected SI	First perfected prevails*	S55(4)
SI perfected by control	v	SI perfected otherwise (by possession, registration or by force of the act)	SI perfected by control prevails	S57
SI perfected by control	v	SI perfected by control	First perfected prevails	S57(2)
PMSI	v	Non-PMSI	PMSI prevails; has 'super priority' subject to section 57 (perfected by control) and other qualifications in section 62	S62(1)