Accessions and Accessories Under Pre-Code Law and U.C.C. Article 9

Steve H. Nickles *

Ordinarily, two theories support a secured party's claim of an Article 9 security interest in goods that have been installed in or affixed to his collateral. Security agreements typically cover not only the particular principal property described therein, but also "all replacements thereof and all accessories, additions, parts and equipment now or hereafter affixed thereto or used in connection therewith." On the basis of this language, a secured party can argue that the debtor explicitly granted him a security interest in accessor- rial goods and that this provision, like all others comprising their security agreement, is effective against the debtor and the rest of the world. Alternatively, a secured party may base his claim on the common law doctrine of accession and argue that even in the absence of an explicit agreement covering accessories and the like, his security interest in the principal property reaches by operation of law whatever goods have been installed in or affixed to the collateral.

"The law of accession, or acquisition of property by addition, had its origin in the civil law or Code of Justinian. From the beginning it has been regarded as the common law of England and so was transplanted into our jurisdiction."  

* Professor of Law, University of Arkansas School of Law.

1. Uniform Commercial Code Article 9 (1978 official version). All references and citations in this article to the text and comments of the Uniform Commercial Code, hereinafter referred to simply as the Code or the U.C.C., are to the 1978 Official Text with Comments, unless otherwise indicated.

2. "Except as otherwise provided by this Act a security agreement is effective according to its terms between the parties, against purchasers of the collateral and against creditors." U.C.C. § 9-201.

Blackstone’s restatement of the doctrine is that “if any given corporeal substance receive afterwards an accession by natural or artificial means . . . the original owner of the thing . . . [is] entitled by his right of possession to the property of it under such its state of improvement.” Thus “an owner of a whole, and one of them is an accessory of the other, the whole belongs to the owner of the principal thing.” Id. art. 510.

4. 2 W. Blackstone, Commentaries * 404-05. See also J. Kent, Commentaries * 360-65. This article focuses on accession or accessor or adjunct that “occurs when two or more things which can be distinguished are joined into one, the new product being identified with but one of the preexisting articles.” Arnold, The Law of Accession of Personal Property, 22 Colum. L. Rev. 103, 103 (1922) (emphasis in original). The term accession is also used in other senses, however. One is specificatio or “specification,” which comprehends the case of one who by his labor and skill, has created a new product out of another’s article, as where marble is carved into a statue or cloth made into a dress. It is frequently referred to as accession by skill or labor. Here none of the original article is found, and a nova species is created.” Id. (emphasis in original). For discussions of specificatio and how it differs from accessorio, see generally id. at 104-18; Cross, Another Look at Accession, 22 Miss. L.J. 138 (1951); Evans, Some Applicants of Title by Accession, 16 U. Cin. L. Rev. 267 (1942); Guest, Accession and Confusion in the Law of Hire-Purchase, 27 Mod. L. Rev. 505 (1964); Slater, Accessio, Specificatio and Confusio: Three Skeletons in the Closet, 37 Can. B. Rev. 597 (1959); Wickham, The Struggle for Title, 5 U.W. Aust. L. Rev. 472 (1960-62); Acquisition of Chattels by Alteration or Accession, 11 Alb. L.J. 329 (1875); The Law of Accession Viewed in its Relation to Personal Property, 2 (pt. 2) Colum. J. 374 (1886); Comment, 5 Sw. L.J. 80 (1951); 2 Va. L. Reg. 63 (1896). Confusion or confusion or commixtio suggests another sense in which the term accession is used. Commision of goods is “the intermixing of two similar things which cannot be distinguished, the new material being the same in kind as both the preexisting articles,” Arnold, The Law of Accession of Personal Property, 22 Colum. L. Rev. 103, 103 (1922) (emphasis in original), “as when A’s wheat becomes mixed with that of B. (In the civil law confusion was applied to liquids while commixtio applied to dry goods.)” Slater, Accessio, Specificatio and Confusio: Three Skeletons in the Closet, 37 Can. B. Rev. 597, 598 (1959) (emphasis in original). Article 9 has a few rules that govern problems which arise when collateral is commingled and confused with other goods. See U.C.C. § 9-315. Closely akin to the doctrine of title by accession is “fixation of a chattel to land [and not other goods] so that it becomes part of the realty.” Wickham, The Struggle for Title, 5 U.W. Aust. L. Rev. 472, 474 (1960-62) (emphasis added). Article 9 has a host of rules governing security interests in goods that become fixtures. See U.C.C. § 9-313.

The doctrine of title by accession “in fact embraces two quite distinct situations: first, accession by natural increase, and secondly, accession by the combination of two chattels belonging to two different persons into a single article.” Guest, Accession and Confusion in the Law of Hire-Purchase, 27 Mod. L. Rev. 505, 506 (1964). Thus, for example, on the basis of accession by natural increase, “the owner of the dam or mother [animal] generally owns the offspring as well. In this the English law follows the Roman rule: partus sequitur ventrem.” Slater, Accessio, Specificatio and Confusio: Three Skeletons in the Closet, 37 Can. B. Rev. 597, 598 (1959). American law follows
a chattel has title to lesser things united to that chattel" so that "[w]hen the goods of two different owners are incorporated together, the title to the resulting product goes to the owner of the principal goods." Applying the doctrine of accession in pre-Code secured transactions cases, the courts held that accessions to collateral inured to the benefit of the conditional vendor or chattel mortgagee (who often held title to the collateral) so that as against the debtor and other

this rule, too; as a result, pre-Code law held that a chattel mortgage or conditional sale contract covering an animal also covered automatically the offspring of the collateral. See, e.g., Elmore v. Fitzpatrick, 56 Ala. 400 (1876); Gundy v. Biteler, 6 Ill. App. (6 Bradw.) 510 (1880); Forman v. Proctor, 48 Ky. (9 B. Mon.) 124 (1884); Kellogg v. Lovely, 46 Mich. 131, 8 N.W. 699 (1881); Buckmaster v. Smith, 22 Vt. 203 (1850). But compare Thorpe v. Cowles, 50 Iowa 408, 7 N.W. 677 (1880); Winter v. Landphere, 42 Iowa 471 (1876); Enright v. Dodge, 64 Vt. 502, 24 A. 768 (1892). The precise, narrow focus of this article, however, is accessio by combination or artificial accession (adjudication), not accession by natural increase.


6. Id. § 6.3 at 52. See also F. Childs, Principles of the Law of Personal Property § 278 (1914); H. Smith, A Treatise on the Law of Personal Property § 41 (1893); Arnold, supra note 4, at 118. See, e.g., Kemp-Booth Co. v. Calvin, 84 F.2d 377 (9th Cir. 1936); Wm. H. Wise & Co. v. Rand McNally & Co., 195 F. Supp. 621 (S.D.N.Y. 1961); McVay v. McVay, 318 So. 2d 660 (La. App. 1975); Eaton v. Munroe, 52 Me. 63 (1862); Pulcifer v. Page, 32 Me. 404, 54 Am. Dec. 582 (1851); Hope Shoe Co. v. Advance Wood Heel Co., 89 N.H. 178, 195 A. 669 (1938); Gregory v. Stryker, 2 Kenio 628 (N.Y. 1846); Salant v. Pennsylvania R.R., 188 A.D. 851, 177 N.Y.S. 475 (1919); Dunn v. Oneal, 1 Sneed 106, 60 Am. Dec. 140 (Tenn. 1835).

7. "It is easy to say . . . that a conditional sale of personal property is one wherein possession of the chattels is delivered to the buyer, but the title to them is to remain in the seller until the purchase price is paid." 3 L. Jones, The Law of Chattel Mortgages and Conditional Sales § 914 at 16 (6th ed. R. Bowers 1933) (emphasis added). Yet "[i]n reality, the transaction amounts to an executory agreement of sale accompanied by a delivery of possession to the intending purchaser, to be held by him pending payment of the purchase price, the title remaining in the prospective vendor until that precedent condition has been met." Id. § 915 at 17 (emphasis added). "The retention of title by the seller, notwithstanding possession, use, and appearance of ownership by the buyer, is the characteristic feature of the conditional sale." 2A Uniform Law Annotated—G. Bogert, Commentaries on Conditional Sales 3 (1924). Also, see generally Glenn, The Conditional Sale at Common Law and as a Statutory Security, 25 Va. L. Rev. 559 (1939); Starr, Conditional Sales and Chattel Mortgages, 9 Wash. L. Rev. 143, 183 (1934). But in some states a seller's attempt to retain title to secure the purchase price of goods was ineffective to prevent the passing of title to the buyer; the effect was to create a lien on the goods in favor of the seller. See generally, e.g., Universal Credit Co. v. Fortinberry, 63 F.2d 71 (5th Cir. 1933); Clark v. Bright, 30 Colo. 199, 69 P. 506 (1902); Commercial Credit Corp. v. W.E. Caldwell Co., 279 S.W.2d 803 (Ky. 1955); Munz v. National Bond and Inv. Co.,
creditors with subordinate interests or none at all, the secured party was entitled to consider the accessions as part of his collateral. 8


Under the early common law theory of chattel mortgages, title to the collateral was in the creditor. According to this theory, "a chattel mortgage operates as a sale vesting legal title in the mortgagee subject to defeasance by performance of the conditions of the mortgage." 1 L. Jones, supra, § 1 at 3.

That view is maintained in many of our states, whose courts say that the chattel mortgage operates as "a present transfer of the title to the property mortgaged, subject to be defeated on payment of the sum or instrument it is given to secure", and in no sense of the term, whether as used in a statute or otherwise, is the chattel mortgage to be considered a "lien". Glenn, The Chattel Mortgage as a Statutory Security, 25 Va. L. Rev. 316, 329 (1939). See also Fox, Elementary Principles of Chattel Mortgages, 10 Marq. L. Rev. 65, 212 (1924-26). But some courts followed a different theory established by statute or in equity which treated "a chattel mortgage as security for a debt and as creating a mere lien on the property covered by its terms." 1 L. Jones, supra, § 1 at 3. See also Glenn, The Chattel Mortgage as a Statutory Security, 25 Va. L. Rev. 316, 331 (1939). See, e.g., Maxwell v. Moore, 95 Ala. 166, 10 So. 444 (1892); Adamson v. Fogelstrom, 221 Mo. App. 1243, 300 S.W. 841 (1927); Olean Milling Co. v. Tyler, 208 Mo. App. 430, 235 S.W. 186 (1921); Demers v. Graham, 36 Mont. 402, 93 P. 268 (1907); National Bond & Inv. Co. v. Haas, 124 Neb. 631, 247 N.W. 563 (1933); Musser v. King, 40 Neb. 892, 59 N.W. 744 (1894); Shoercoft v. Beard, 20 Nev. 182, 19 P. 246 (1888); Swank v. Elwert, 55 Ore. 487, 105 P. 901 (1910); First Nat'l Bank v. West Mortgage Co., 96 Tex. 636, 26 S.W. 488 (1894). "[A]lthough some jurisdictions nominally espouse the 'title' theory, there is little difference in the result arrived at." Gilmore & Axelrod, Chattel Security: I, 57 Yale L.J. 517, 530 (1948).

The possibility continues under Article 9 of acquiring a security interest in goods by accession, but the true theory that supports the claim of such an interest is somewhat convoluted. No provision of Article 9 expressly gives to a secured party by operation of law an interest in accessions. Nor can such an interest result from a traditional, theoretically pure application of the doctrine of accession. Today's secured party cannot be considered for Code purposes the collateral's owner in the sense of being the titleholder; title to the property is in the debtor. Thus an Article 9 secured


10. Priority rules that govern conflicting claims to goods installed in or affixed to collateral are collected in U.C.C. § 9-314, but this section does not explain when a security interest in principal goods will reach lesser goods attached thereto or provide that it happens automatically. See discussion accompanying notes 16-20, 47-53 infra.

11. Conceptually, this was not universally true under pre-Code law. See note 7 supra. But, today, when a debtor purchases property, "title passes to the buyer at the time and place at which the seller completes his performance with respect to the physical delivery of the goods, despite any reservation of a security interest." U.C.C. § 2-401(2). Any attempt by the seller to retain or reserve title "is limited in effect to a reservation of a security interest." U.C.C. § 2-401(1). If a debtor decides to use goods
party does not have title to the principal collateral in which can merge title to lesser accessions that are added to the collateral. Therefore, the traditional doctrine of accession cannot be squarely applied to give a secured party a claim to accessions.\textsuperscript{12} Nevertheless, an Article 9 security interest should extend automatically to goods that are installed in or affixed to collateral if these goods can be characterized as accessions under the common law definition. According to this definition, goods that are accessions become componential, integral parts of the principal collateral itself;\textsuperscript{13} and the description of the principal collateral in an Article 9 security agreement naturally and necessarily embraces the constituent goods that become a part of and comprise the collateral.

that he owns as collateral, he gives to the creditor an Article 9 security interest, in the property, not title to it. This is true despite who is said to have “title” or “ownership” of the property for other purposes under other rules of law which do not govern secured transactions. \textit{See generally} U.C.C. § 9-202; \textit{id.}, Comment. Thus, the creditor is a secured party, not in the strictest sense the title holder or “owner” of the collateral. \textit{But compare generally} People v. District Court, 619 P.2d 494 (Colo. 1980) (Article 9 secured party has only a lien and title reposes in the debtor yet the secured party has a “proprietary interest” in the collateral); Associates Fin. Serv. Co. v. O’Dell, 417 A.2d 604, 607 n.5 (Pa. 1980) (a secured party may be considered the owner of the collateral depending on the context in which the issue arises).

12. The pre-Code law in some jurisdictions was that a chattel mortgagee or a conditional vendor had only a lien, not title. \textit{See} discussion note 7 supra. \textit{The courts, however, seem never to have considered that application of the accession doctrine depended on whether the “title” or “lien” theory was followed with respect to the interest of the secured party as to the principal collateral. In several cases the courts applied the doctrine even though they expressly characterized the creditor’s interest as a lien. \textit{See, e.g.}, Davy v. State, 130 Okla. 91, 265 P. 626 (1928); Blackwood Tire & Vulcanizing Co. v. Auto Storage Co., 133 Tenn. 515, 182 S.W. 576 (1916). And the doctrine of accession was sometimes explained in terms that suggest its applicability in favor of creditors holding only liens and not title to the collateral. \textit{See, e.g.}, Goodrich Silvertown Stores of B.F. Goodrich Co. v. Pratt Motor Co., 198 Minn. 259, 269 N.W. 464 (1936).}

We think the general rule is quite well settled that, where the articles later attached to an automobile or other principal article of personal property become so closely incorporated with the principal article that they cannot be identified and detached therefrom without injury to the automobile or other principal article, such articles become a part of the machine or principal article to which they are so attached and will pass by accession to the one having a chattel mortgage or other lien upon the principal article.

269 N.W. at 465 (emphasis added). Yet the courts apparently did think that the accession doctrine’s application depended on whether or not the debtor had title to the accessorial goods. \textit{See} discussion accompanying notes 32-53 infra.

Yet not all goods installed in or affixed to collateral are accessions within the limits of the common law definition because they do not become an integral part of the whole; for this article's purposes, such goods—whether they be parts, additions, replacements, equipment or whatever—are lumped together in one category called "accessories."

The principal purposes of this article are two. One of them is to examine the circumstances under which a security interest may attach to goods installed in or affixed to the principal collateral on the basis of the doctrine of accession (or the concept of an accession under the common law) or on the basis of language in a security agreement explicitly covering accessorial goods. The other principal purpose of this article is to consider the priority of such an interest against the conflicting claims of third parties, principally the various claims that may be asserted by one who sells and installs accessorial goods on a motor vehicle. These issues cannot be explored and resolved without considering the relationship between Article 9's provisions and extraneous common law principles that governed pre-Code secured transactions and that may continue to apply today.14 Joe Barrett appreciated the significance of sources of law problems under the Code generally and the difficulties of defining the relationships among different sources in a particular case.15 The author laments that Mr. Barrett could not be consulted during the writing of this article as he and I had planned. Already, his wisdom and guidance are sorely missed.

14. Common law and equitable principles may supplement the Code unless displaced by its provisions. See U.C.C. § 1-103.

15. For example, he took an active part in the debate about when secured parties waive their interests in collateral on the basis of the common law doctrine of waiver so that no interest falls upon the debtors' disposition of them. See Brief Amicus Curiae in Support of Planters PCA (Submitted by Joe C. Barrett), Planters Prod. Credit Ass'n v. Bowles, 256 Ark. 1063, 511 S.W.2d 645 (1974). Regarding the issue of waiver or estoppel as the basis for finding that a security interest terminates under U.C.C. § 9-306(2), see Nickles, Rethinking Some U.C.C. Article 9 Problems—Subrogation; Equitable Liens; Actual Knowledge; Waiver of Security Interests; Secured Party Liability for Conversion under Part 5, 34 Ark. L. Rev. 1, 103-36 (1980).
1. WHEN ARE GOODS "ACCESSIONS" TO PRINCIPAL COLLATERAL SO THAT A SECURITY INTEREST ATTACHES TO THEM BY OPERATION OF LAW?

U.C.C. section 9-314 defines accessions as goods that are installed in or affixed to other goods. But this definition only establishes the scope of section 9-314 which is designed solely to solve certain priority disputes. The section exists "[t]o state when a secured party claiming an interest in goods installed in or affixed to other goods is entitled to priority over a party with a security interest in the whole;" it does not state when goods are accessions for the purpose of deciding whether an interest in the principal collateral reaches them, too, by operation of law. This determination depends on whether the goods are accessions under common law principles according to which, it is clear, goods are not accessions and part of the whole simply because they are installed in or affixed to the principal collateral. Therefore, section 9-314's scope as a priority provision includes conflicts over goods that are accessions under common law doctrine and, also, conflicts over goods that are not even though they are installed in or affixed to collateral, i.e., goods that are categorized as "accessories" for this article's purposes. But section 9-314 is totally irrelevant to the issue whether accessions or accessories, however defined, are subject by operation of law or otherwise to anyone's security interest.

The dogma of accession law is that the doctrine applies only when goods become an integral part of the principal

18. See discussion accompanying notes 21-27 infra.
19. See generally, e.g., Mills-Morris Automotive v. Baskin, 224 Tenn. 697, 462 S.W.2d 486 (1970) (by implication). See also discussion accompanying notes 82-94 infra regarding the resolution of priority disputes over accessorial goods.
thing to which they are attached, "only in those cases in which the additions have become so permanently united with the original materials as to form together but one article." According to the majority of courts, a sufficient integration occurs

where the article latter attached to . . . [the] principal article of personal property becomes so closely incorporated with the principal article that they cannot be identified and detached therefrom without injury to the . . . principal article . . . . [When they are so attached] such articles become a part of the machine or principal article to which they are so attached and will pass by accession to the one having a chattel mortgage or other lien upon the principal article, if the lien is enforced. But when the articles added can be readily identified and detached without injury to the principal machine or article, they do not pass by accession to the one having a prior chattel mortgage or lien on the principal article.  

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22. The Law of Accession Viewed in its Relation to Personal Property, 2 (pt. 2) Colum. Jurist 374, 375 (1886). The law declares "accessions to be goods of such a nature as to form an 'integral part' of the [principal goods] 'and are so attached to it that [they] are one and the same thing under the accession rule.' " Glenn v. Trust Co. of Columbus, 152 Ga. App. 314, 262 S.E.2d 590, 593 (1979) (quoting Passieu v. B.F. Goodrich Co., 58 Ga. App. 691, 692, 199 S.E. 775, 776 (1938)).

23. Goodrich Silvertown Stores of B.F. Goodrich Co. v. Pratt Motor Co., 198 Minn. 259, 269 N.W. 464, 465 (1936). This or a similarly worded test is recited or
This readily identifiable, easily detachable test focuses on the injury to the principal goods. Some courts state the test more broadly to include consideration of the injury that detachment will cause to the lesser, added goods. Consider-

ing this additional fact makes sense in cases in which separation will seriously impair the independant usefulness or value of the accessorial goods. If apart from the principal thing the accessorial goods have little or no value, the debtor is actually benefitted by a decision that the goods are accessions which are subject to the secured party's interest and must remain attached to the collateral. So attached, the goods will presumably enhance the value of the principal thing and thereby increase the price that will be paid should the collateral as a whole be resold on the debtor's default.

The generally accepted test of detachment without injury to the principal goods usually involves two inversely related variables: ordinarily, the possibility of injury decreases as the ease of detachment increases. This is true when the effect of separating the goods is measured only in terms of the physical damage that will result. A few courts, however, measure injury to the goods in broader terms and consider the overall impact that detachment will have on the worth and value of the property; they consider the functional, as well as the physical, integration of the goods. To these courts it is an inconclusive fact that the accessorial goods can be readily identified and easily removed without physical damage to the principal collateral. They consider also the effect that separation will have on the utility of the goods. It has been suggested, for instance, that an engine installed in an automobile is not an accession because "these days . . . the various parts of automobiles are easily removed and replaced or interchanged, often without materially affecting the structure of a car . . . . [In the ordinary case] it is clear that the engine could . . . be taken out of the . . . car without damage to the body or chassis."25 Everyone knows that a skilled mechanic using only a few tools can remove an automobile engine quickly and without causing any damage to either the motor or the shell of the vehicle. Nevertheless,

25. Atlas Ins. Co. v. Gibbs, 121 Conn. 188, 183 A. 690, 691 (1936). "The automobile to-day is often assembled with parts brought from different dealers, which are separable and replaceable. This practice and course of business must be considered on the question of accession as applied to automobiles." Franklin Service Stations v. Sterling Motor Truck Co., 50 R.I. 336, 147 A. 754, 756 (1929).
The motor is in fact a vital, integral part, the very life and substance of an automobile. An automobile chassis and body without a motor is not an automobile. The one is ordinarily as indispensable as the others. An automobile is used for transportation, and without a motor it can serve no useful purpose. 26

Most courts faced with the issue have concluded that the doctrine of accession applies in the case of an engine installed in a vehicle. 27

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A similar test is among those used by the courts to determine whether and when a chattel becomes a fixture and thus part of the real estate to which it is attached.

Under the "institutional doctrine," the test is whether the chattel is permanently essential to the completeness of the structure or its use. A chattel is a fixture if its severance from the structure would cause material damage to the structure or "prevent the structure from being used for the purposes for which it was erected or for which it has been adapted."


The reasoning which considers the effect of detachment on the goods' utility helps to justify the holding of some courts that automobile tires are accessions. The skill of a trained repairman is not required to change a tire which in the ordinary case is easily removed without physical damage to anything. Yet an automobile cannot be used for its intended purpose without a complete set of tires. A decision that tires are accessions is defensible for other reasons, too. When a secured party repossesses and sells a vehicle in which he has a security interest, the debtor will be accountable to the secured party for the value of tires, in one way or another. If the tires are accessions, the security interest attaches to them for they are a part of the principal collateral and must go with it. If the tires are not accessions (and the secured party's interest does not otherwise attach to them) and the debtor removes them prior to repossession of the vehicle, the secured party must either resell the collateral without tires or purchase a replacement set. If sold without tires, the price paid for the car will be adjusted downward, and the debtor will suffer a smaller surplus or (as is more likely) a larger deficiency. If the secured party purchases a replacement set of tires in anticipation of resale, this cost may be

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29. The proceeds resulting from a secured party's disposition of collateral are applied to the debt and certain other liabilities owed by the debtor. See U.C.C. § 9-504(1). Thereafter, "the secured party must account to the debtor for any surplus, and, unless otherwise agreed, the debtor is liable for any deficiency." U.C.C. § 9-504(2).
chargeable to the debtor as an expense of preparing the collateral for disposition or of selling it.\textsuperscript{30} If the tires are not accessions yet the debtor leaves them on the car and sues for their value, the secured party will undoubtedly counter by seeking a setoff for the value of the tires that were on the vehicle when his security interest attached.\textsuperscript{31} The courts thus have ample justification for recognizing that automobile tires are accessions because (1) tires are integral parts of a vehicle in the sense that the principal collateral has little or no utility without them and (2) a contrary decision will license defaulting debtors to remove tires before their vehicles are repossessed thus forcing real and undue hardships on secured parties when, in the ultimate analysis, such a debtor must account for the value of tires anyway.

Yet many pre-Code cases suggest that tires are not accessions.\textsuperscript{32} In all of these cases, however, the tires or their

\textsuperscript{30} See U.C.C. § 9-504(1)(a).

\textsuperscript{31} The original tires are part of the vehicle when a security interest is first taken, and it would seem that these tires remain subject to the interest even though they are removed from the car. Thus the secured party can replevy these tires from the debtor if the debtor has possession of them. Pre-Code law seems to support this conclusion. See, e.g., Star Finance Corp. v. Chain Inv. Co., 146 S.W.2d 291 (Tex. Civ. App. 1940). But compare Purnell v. Fooks, 32 Del. 336, 122 A. 901 (Super. Ct. 1923), criticized in Notes, 24 Colum. L. Rev. 312 (1924); 22 Mich. L. Rev. 559 (1920). If the debtor has disposed of the original tires, the secured party's interest in them may continue so that the transferee is liable for them. See generally U.C.C. § 9-306(2).


value were claimed by a secured party with an interest only in the tires and who asserted priority as to them over a creditor with an interest in the vehicle on which the tires were installed. The courts in these cases did not disagree with decisions holding that as between the debtor and a secured party as to a vehicle, tires are accessions that form a part of the collateral. They simply distinguished those decisions on the basis that no third party with an interest in the tires was claiming them.\textsuperscript{33} Inconsistencies among sets of cases involv-

\textsuperscript{33} See generally, e.g., Motor Credit Co. v. Smith, 181 Ark. 127, 24 S.W.2d 974 (1930); General Motors Truck Co. v. Kenwood Tire Co., 94 Ind. App. 25, 179 N.E. 394 (1932); Auto Owners Fin. Co. v. Evirs, 94 N.H. 180, 49 A.2d 507 (1946); K.C. Tire Co. v. Way Motor Co., 143 Okla. 87, 287 P. 993 (1930); Goodrich Silvertown, Inc. v. Rogers, 189 S.C. 101, 200 S.E. 91 (1938); Blackwood Tire & Vulcanizing Co. v. Auto Storage Co., 133 Tenn. 515, 182 S.W. 576 (1916); Free Service Tire Co. v. Manufacturers Acceptance Corp., 38 Tenn. App. 647, 277 S.W.2d 897 (1955); Turner v. Superior Tire Service, 9 Tenn. App. 597 (1929); Firestone Service Stores v. Darden, 96 S.W.2d 316 (Tex. Civ. App. 1936). Cf. Clark v. Wells, 45 Vt. 4, 12 Am. Rep. 187 (1872) (wagon wheels and axles). Many of these cases are discussed in \textit{Lee, Accessories to Automobiles Sold Under Title Retaining Instruments}, 19 Temp. L.Q. 89 (1945); Comment, 70 U.S.L. Rev. 363 (1936); Notes, 12 B.U. L. Rev. 673 (1932); 10 B.U. L. Rev. 206 (1930); 7 Ind. L.J. 507 (1932); 15 Iowa L.J. 488 (1930); 16 Md. L. Rev. 170 (1956); 14 Minn. L. Rev. 404 (1930); 13 Mo. L. Rev. 314 (1948); 8 N.Y.U.L.Q. Rev. 122 (1930); 16 Notre Dame Law. 61 (1940); 5 Ohio St. L.J. 373 (1939); 18 Ohio Ops. 496 (1940); 15 St. Louis L. Rev. 289 (1930); 15 Tex. L. Rev. 140 (1936); 4 Tul. L. Rev. 477 (1930); 22 Wash. L. Rev. 269 (1937); 11 W. Res. L.N. 1 (1941); 5 Wis. L. Rev. 490 (1930).
ing other accessoril goods are also explainable on this ba-
sis. This reasoning implies that the test for deciding if
goods are accessions must consider not only whether they
can be easily detached without causing injury (physical or
other kinds); it must also consider the existence of a conflict-
ing interest in the accessoril goods. The temptation is to
alogize to principles of real property law governing
fixtures. Courts regularly determine whether goods become
fixtures largely on the basis of whether the party making the
annexation intends to attach the goods permanently to the
realty. According to the cases involving fixtures, subjecting
the goods to a security interest prior to their annexation is
"usually equivalent to an express agreement . . . that the
[goods] . . . shall be personality," and not become part of

the accessoril goods were distinguished largely on the basis of the existence of the
contlicting third party claim to the tires. See generally, e.g., Davy v. State, 130 Okla.
91, 265 P. 626 (1928); Texas Hydraulic & Equip. Co. v. Associates Discount Corp.,

34. Compare cases cited note 27 supra holding that motor vehicle engines are
accessions with Lincoln Road Equip. Co. v. Bolton, 127 Neb. 224, 254 N.W. 884
(1934); Havas Used Cars v. Lundy, 70 Nev. 539, 276 P.2d 727 (1955). But see Twin
repair or substituted parts for machinery, compare Davy v. State, 130 Okla. 91, 265 P.
59, 43 A. 418 (1899). But see Campbell Implement Co. v. Nelson, 159 Minn. 163, 198
N.W. 401 (1924). Regarding automobile batteries, compare generally Bozeman Mor-
tuary Ass'n v. Fairchild, 253 Ky. 74, 68 S.W.2d 756 (1934) with Goodrich Silvertown
Stores of B.F. Goodrich Co. v. Pratt Motor Co., 198 Minn. 259, 269 N.W. 464 (1936);
bodies or the like added to motor vehicle chassis, compare Auto Owners Fin. Co. v.
Ewir, 94 N.H. 180, 49 A.2d 507 (1946); Texas Hydraulic & Equip. Co. v. Associates
Foundry & Machine Co., 17 Ala. App. 152, 82 So. 642 (1919); A. Meister & Sons Co.
App. 785, 30 P.2d 630 (1934).

35. See Teaff v. Hewitt, 1 Ohio St. 511 (1853), the leading American case on the
law of fixtures, in which the court decided that to be considered on the question
whether goods become fixtures is:

The intention of the party making the annexation, to make the article a
permanent accession to the freehold—this intention being inferred from the
nature of the article affixed, the relation and situation of the party making
the annexation, the structure and mode of annexation, and the purpose or use
for which the annexation has been made.

Id. at 530 (emphasis in original). See also 5 AMERICAN LAW OF PROPERTY § 19.3 (A.
Casner ed. 1952).
the real property.\textsuperscript{36} But the courts deciding accession cases have infrequently relied on such an analogy.\textsuperscript{37} The presence of a third party's interest in accessorial goods has absolutely no bearing on the issue whether the goods have been so physically or functionally attached to other personal property that they become an integral part of it. Thus one court conceded the illogic of saying "that tires and tubes become an integral part of the truck, as between the owner and the holder of the contract retaining title to the truck, and that they do not become an integral part of it as to the seller of the replacement tires and tubes."\textsuperscript{38}

Still, however, it is possible to reconcile the pre-Code decisions holding, in one line of cases, that tires and certain other accessorial goods are accessions as between the debtor


Where the chattel subject to a separate security interest is attached to land which is subject to a mortgage at the time, two sharply opposing views exist. It will be recalled that articles owned by the mortgagor and attached by him become subject to the existing mortgage if they satisfy the objective intention test. Where the chattel attached belongs to the conditional vendor, the great majority of the jurisdictions refuse to hold the chattel subject to the mortgage, short of accession, even though the conditional vendor allowed it to be attached to the land.

\textit{Id.} at 49. But compare \textit{id.} at 50 n.11.

\textsuperscript{37} But see generally, on the issue of the importance of intentions when deciding if goods are accessions, Valley Chevrolet Co. v. O.S. Stapley Co., 50 Ariz. 417, 72 P.2d 945 (1937); Ralston General Tire Co. v. Colorado Kentworth Corp., 135 Colo. 110, 309 P.2d 616 (1957); Tire Shop v. Peat, 115 Conn. 187, 161 A. 96 (1932); Omaha Standard, Inc. v. Nissen, 187 N.W.2d 721 (Iowa 1971); Ralston Purina Co. v. Toycen Motors, 21 Wis. 2d 206, 124 N.W.2d 24 (1963). Compare cases otherwise analogizing to fixtures law, e.g., Passieu v. B.F. Goodrich Co., 58 Ga. App. 691, 199 S.E. 775 (1938); Free Service Tire Co. v. Manufacturers Acceptance Corp., 38 Tenn. App. 647, 277 S.W.2d 897 (1955). A number of commentators have suggested that the analogy between accessions and fixtures is strong. See generally Hoar, Accession-Conditional Sales, 6 WIS. L. REV. 33 (1930); Hoar, Quasi-Fixtures—Accession—Conditional Sales, 148 Wis. L. REV. 298; Hoar, Quasi-Fixtures, 15 BUS. L.J. 167 (1930); Notes, 12 B.U.L. REV. 673 (1932); 15 IOWA L.J. 488 (1930); 14 MINN. L. REV. 404 (1930); 17 N.C.L. REV. 442, 446 (1939); N.Y.U.L.Q. REV. 122 (1939). Compare generally 2 G. Gilmore, SECURITY INTERESTS IN PERSONAL PROPERTY § 31.1 (1965), in which the author notes the comparability of accessions and fixtures problems and the similarity of underlying policies that govern the resolution of them.

\textsuperscript{38} Passieu v. B.F. Goodrich Co., 58 Ga. App. 691, 199 S.E. 775, 777 (1938). To say this, the court admitted, "may not be entirely logical." \textit{Id.}
and secured party claiming an interest in the whole, but concluding, in another line of cases, that the same type goods are not part of this secured party's collateral if they are claimed by a third party encumbrancer. The true reason for the result in the latter line of cases was not necessarily that the goods were not accessions; the true but seldom expressed reason may have been that the doctrine of accession did not apply (or that an exception to it was applicable) to cases in which accessorial goods were subject to another creditor's chattel mortgage or conditional sales contract. An early and generally applicable priority rule in pre-Code secured transactions cases was that when the interest of a prior encumbrancer attaches to the debtor's after-acquired property, it "attaches subject to all the conditions with which it is incumbered when it comes into the hands of the [debtor]. The [prior encumbrancer] takes just such an interest in the property as the [debtor] acquired; no more, no less."39 Thus under this common law rule, the interest acquired by a prior encumbrancer in after-acquired property was generally subject to the same limitations and restrictions under which the debtor got the property.40 If, for example, property was

40. Professor Gilmore traced the history of the rule in America and found its source to be the decision in United States v. New Orleans R.R., 79 U.S. (12 Wall.) 362 (1870). See 2 G. GILMORE, supra note 37, § 28.1. In this case the Court wrote:

A mortgage intended to cover after-acquired property can only attach itself to such property in the condition in which it comes into the mortgagor's hands. If that property is already subject to mortgages or other liens, the general mortgage does not displace them, though they may be junior to it in point of time. It attaches only to such interest as the mortgagor acquires; and if he purchase property and give a mortgage for the purchase-money, the deed which he receives and the mortgage which he gives are regarded as one transaction, and no general lien impending over him, whether in the shape of a general mortgage, or judgment, or recognizance, can displace such mortgage for purchase-money. And in such cases a failure to register the mortgage for purchase-money makes no difference. It does not come within the reason of registry laws. These laws are intended for the protection of subsequent, not prior, purchasers and creditors.

79 U.S. at 365. Also, see generally Myer v. Car Co., 102 U.S. 1 (1880); Huidekoper v. Locomotive Works, 99 U.S. 258 (1878); Fosdick v. Car Co., 99 U.S. 256 (1878); Fosdick v. Schall, 99 U.S. 235 (1878). This principle was applied repeatedly by the courts in cases involving the priority of a chattel mortgagee or other security party claiming goods under an after-acquired property clause. See, e.g., cases collected in Annot., 86 A.L.R.2d 1152 (1962). See also cases cited note 42 infra. But compare, e.g., Perkins v.
purchased pursuant to a conditional sales contract, the debtor's right to the property was conditioned on payment of the price. If the price was not paid, the conditional seller was entitled to the goods not only as against the debtor, but also as against another secured creditor who claimed them under an after-acquired property clause in a prior security instrument.41

This priority rule explains why a secured creditor as to the whole could not under pre-Code law prevail as to accessory goods over a chattel mortgagee or conditional seller of them on the basis of an express after-acquired accessory goods clause in a security agreement.42 The rule or the rea-

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Yet when the dispute was between the immediate parties only, i.e., the secured
soning behind it can also explain the typical pre-Code holding that even though goods might be accessions if the conflict were only between the debtor and the secured party as to the whole, this creditor could not claim accessorial goods on the basis of the doctrine of accession if the goods were also claimed by another creditor who sold them to the debtor and held or encumbered their title. In some cases creditor as to the whole and the debtor, an after-acquired property clause in the parties' security instrument was effective as to accessorial goods. See, e.g., Commercial Credit Corp. v. W.E. Caldwell Co., 279 S.W.2d 803 (Ky. 1955); Home Fin. Co. v. Fraizer, 380 S.W.2d 91 (Ky. 1954); Black Motor Co. v. Fourre, 266 Ky. 431, 99 S.W.2d 177 (1937); Burtrum v. Beaver, 171 S.W.2d 73 (Mo. App. 1943); Spritzer v. Rutgers Chevrolet Co., 12 N.J. Misc. 782, 174 A. 881 (1934); Lynch v. Stable-Oberteuffer-Peterson, 122 Or. 597, 260 P. 222 (1927).


The pervasive pre-Code priority rule that a prior encumbrancer could claim after-acquired property only in the condition in which it came into the debtor's hands, see text accompanying notes 34-41 supra, was also applied in cases involving a conflict between a real estate mortgagee and a fixtures secured party. See, e.g., Holt v. Henley, 232 U.S. 637 (1913). See also 2 G. Gilmore, supra note 37, § 28.3; 1 L. Jones, supra note 7, § 133a. But in these cases, the general priority rule was possibly subject to an important exception. The fixtures secured party might lose the priority contest in cases "in which the property claimed has become so intimately connected with or embodied in that which is subject to the mortgage that to reclaim it would more or less physically disintegrate the property held by the mortgagee. . . . When the obvious destination of an article is to be incorporated into a structure in such a way that to remove it would destroy the other work, like bricks or beams in a building, there is " ground for not giving to title [i.e., the interest of the fixtures secured party] an absolute right of way." Detroit Steel Cooperative Co. v. Sistersville Brewing Co., 233 U.S. 712, 717 (1914). See also 1 L. Jones, supra note 7, § 132. Compare
the courts seem to have attributed this result at least partly to the notion that a secured creditor's interest in after-acquired property (including after-acquired accessorial goods) is coextensive with the debtor's rights to the property and thus does not have priority over the interest retained by a creditor who sold them to the debtor or financed their purchase.\textsuperscript{44} In

U.C.C. § 9-313(2) regarding termination of security interest in fixtures that are ordinary building materials. There is some indication that this exception to the general rule of priority was also applicable in accession cases.

It may be said that the doctrine of accession is a graft upon or exception to one of the first known rules of property conveyancing, which is, that one cannot convey a greater title to a thing than that which he possesses. This is a sound rule as applied to the conveyance of chattel property. And even though a mortgagor conveys a thing mortgaged to another who has then an interest in that thing mortgaged, the conveyance will not convey to the buyer an interest in the mortgaged thing. If the mortgagor does not still own the thing mortgaged, the mortgagor may bind himself, but not the property of another subsequently attached to the thing [such as a conditional vendor retaining title], unless its removal would materially damage the principal thing. In such instances the mortgagor's interests [those of the secured creditor as to the whole] are impaired and his security lost and to deny application of the doctrine of accession would be to countenance injustice.

Goodrich Silvertown Stores of B.F. Goodrich Co. v. F.M. Rugg Motor Sales Co., 64 Ohio App. 141, 28 N.E.2d 364, 366 (1940), aff'd, 137 Ohio St. 66, 27 N.E.2d 936 (1940). See also Hoar, \textit{Quasi-Fixtures}, 1943 Wis. L. Rev. 298, 299; Hoar, \textit{Accession-Conditional Sales}, 6 Wis. L. Rev. 33, 34 (1930); Guest, \textit{Accession and Confusion in the Law of Hire-Purchase}, 27 Mod. L. Rev. 505, 512 (1964). This exception was rarely, if ever, actually applied in pre-Code accession cases, however, except possibly in the case of Sasia & Wallace, Inc. v. Scarborough Implement Co., 154 Cal. App. 2d 308, 316 P.2d 39 (1957). The reason is that in the vast majority of the cases, such as those involving automobile tires and engines, the goods—though perhaps functionally integrated—were not physically fused to the principal collateral and could be easily removed without any property damage. U.C.C. § 9-314 governing priority of interests in accessions does not contain an exception comparable to that suggested in the \textit{F.M. Rugg Motor Sales} case or that expressed in U.C.C. § 9-313(2) which terminates security interests in fixtures that are ordinary building materials and thus inseparably part of the realty. Perhaps such an exception can and should be read into U.C.C. § 9-314 by resort to common law principles and by analogy to fixtures law.

\textsuperscript{44} See generally, e.g., Motor Credit Co. v. Smith, 181 Ark. 127, 24 S.W.2d 974 (1930); Rabtaoy General Tire Co. v. Colorado Kentworth Corp., 135 Colo. 110, 309 P.2d 616 (1957); Tire Shop v. Peat, 115 Conn. 187, 161 A. 96 (1932); Mossler Acceptance Co. v. Norton Tire Co., 70 So. 2d 360 (Fla. 1954); Ivey's Inc. v. Southern Auto Stores, 59 Ga. App. 336, 1 S.E.2d 35 (1939); Passieu v. B.F. Goodrich Co., 58 Ga. App. 691, 199 S.E. 775 (1938); Bozeman Mortuary Ass'n v. Fairchild, 253 Ky. 74, 68 S.W.2d 756 (1934); Bousquet v. Mack Motor Truck Co., 269 Mass. 200, 168 N.E. 800 (1929); John W. Snyder, Inc. v. Aker, 134 Misc. 721, 236 N.Y.S. 28 (1929); Goodrich Silvertown Stores of B.F. Goodrich Co. v. F.M. Rugg Motor Sales Co., 64 Ohio App. 141, 28 N.E.2d 364 (1940), aff'd, 137 Ohio St. 66, 27 N.E.2d 936 (1940); Olive's Store v. Thomas, 294 P.2d 562 (Okla. 1956); Goodrich Silvertown, Inc. v. Rogers, 189 S.C.
Goodrich Silvertown Stores of B.F. Goodrich Co. v. A & A

101, 200 S.E. 91 (1938); Blackwood Tire & Vulcanizing Co. v. Auto Storage Co., 133 Tenn. 515, 182 S.W. 576 (1916); Free Service Tire Co. v. Manufacturers Acceptance Corp., 38 Tenn. App. 647, 277 S.W.2d 897 (1955); Glen Falls Ins. Co. v. State Nat'l Bank of El Paso, 475 S.W.2d 386 (Tex. Civ. App. 1972); Fish v. Connecticut Fire Ins. Co., 241 Wis. 166, 5 N.W.2d 779 (1942). A leading decision relied on in a great many pre-Code accession cases is Clark v. Wells, 45 Vt. 4, 12 Am. Rep. 187 (1872). In this case the issue was whether wheels added to a wagon became part of it when the title to the wheels had been retained by their seller, the plaintiff. The court held that the doctrine of accession did not apply to pass title to the wheels to a buyer from the chattel mortgagee of the wagon. The court concluded that the wheels "could be followed, identified, severed without detriment to the wagon, and appropriated to other use without loss." 45 Vt. at 5. In addition, the court observed that the "plaintiff was the owner [of the wheels], and never parted with the property [i.e., the title to the wheels]." He had the right to resume possession when . . . [the debtor] failed to pay the note owed the plaintiff. The property remained in him as perfectly as if, in the exigency of a broken wheel . . . he had loaned them for temporary use." Id. This suggests that the court in Clark treated the controversy as a priority dispute and applied the traditional, pre-Code general rule of priority that has been discussed in the text of this article. One court interpreted the Clark case this way: "While it was said in the opinion that, unlike bolts and thills [the shaft of a vehicle], the repairs furnished did not become accessions to the principal chattel, yet the court further placed its decision on the ground that the reparer has retained title to the said wheels and axles." Blackwood Tire & Vulcanizing Co. v. Auto Storage Co., 133 Tenn. 515, 182 S.W. 576, 577 (1916).

A number of commentaries also suggest that a conflict between a creditor with a security interest in accessorial goods and a secured creditor as to the principal property claiming the goods as accessions was, in essence, a priority dispute, and that the latter creditor lost because he could acquire no better title to or interest in the accessions than the debtor had. Thus, again under the general priority rule, the creditor with a prior interest in (usually title to) the accessorial goods could assert it against the secured party claiming the goods as part of the whole. The inference drawn from these commentaries is that this rule creates an exception to the accession doctrine. See generally, e.g., 6 C. BERRY, supra note 33, §§ 6.387, 6.408; Evans, Some Applications of Title by Accession, 16 U. Cin. L. Rev. 267, 269 (1942); Hoar, Accession-Conditional Sales, 6 WIS. L. REV. 33 (1930); Hoar, Quasi-Fixtures, 15 BUS. L.J. 167 (1930); Sawyer, Accession in English Law, 9 Austl. L.J. 50 (1935); Notes, 7 Ind. L.J. 507 (1932); 1 Melb. U.L. REV. 458 (1958); 17 N.C.L. REV. 442 (1939); 18 Ohio Opns. 496 (1940); 13 Rocky Mt. L. Rev. 159 (1941); 15 Tex. L. Rev. 140 (1936); 22 Wash. L. Rev. 269 (1937); 1 W. Res. L.N. 1 (1941). Yet a few writers argued that the debtor's lack of title to the accessorial goods should make no difference. They urged that the focus in terms of applying the accession doctrine should be on the ease with which the goods can be removed from the principal collateral, which is the traditional test for deciding if goods are accessions. See text accompanying notes 21-23 supra. See generally Lee, Accessories to Automobiles Sold Under Title Retaining Instruments, 19 Temp. L.Q. 89, 99 (1945); Notes, 10 B.U.L. REV. 206; 8 N.Y.U.L.Q. REV. 122 (1930). In one sense this argument had merit because under pre-Code law the results in accessions priority cases would vary among the states depending on whether the jurisdiction followed the "title" or "lien" theory regarding the interest of the secured party who claimed only the accessorial goods. See generally Notes, 12 B.U.L. REV. 673 (1932); 13 Mo. L.
Credit System, for example, the court explained the rule in Minnesota that articles attached to an automobile or other personal property, when easily detachable without injury to either, do not pass by accession to the one having a prior mortgage or lien on the principal article, as against the conditional vendor of the accessories, even if the lien instrument on the principal article has an after-acquired property clause. This is on the theory that a mortgage or other lien . . . can only attach to such property in the condition as to title in which it comes into the hands of the mortgagor. Since [the debtor in this case] got only a qualified title [to accessorial goods sold to him under a conditional sales contract], which could not become more without payment of the full purchase price, [the chattel mortgagee of the vehicle] could take no greater right than [the debtor].

The court in this case appears to justify both the inapplicability of the doctrine of accession and the ineffectiveness of an after-acquired property clause by reference to the pre-Code priority rule that a lien on a debtor's goods attaches to after-acquired property subject to any interest and rights of one who financed their purchase or for other reasons encumbered them first. Since this principle of priority was for a time generally pervasive under pre-Code secured transactions law, courts might naturally have adhered to it in accession cases on the implicit assumption that it overrode the doctrine of accession. Adherence might and often did take the form of a finding that the accessorial goods were not accessions; thus the secured party lost the priority dispute as dictated by the general rule of priority under the common law but for the reason that since the goods were not accessions, he had no interest in them to assert against their seller who retained title or against some other prior encumbrancer.

Rev. 314 (1948); 8 N.Y.U. L.Q. Rev. 122 (1930); 15 Tex. L. Rev. 140 (1936). Even under pre-Code law, however, the argument was without substantial merit because it ignored another test for deciding if goods are accessions, the test that considers the functional—as well as the physical—integration of the accessorial goods and the principal chattel. See text following note 24 and accompanying notes 25-27 supra.

45. 200 Minn. 265, 274 N.W. 172 (1937).
46. 274 N.W. at 173.
Article 9 has its own priority rules governing conflicting claims to after-acquired property and accessions, and these rules in some respects differ from those pre-dating the Code. Therefore, the decision under Article 9 whether tires or other accessorial goods are accessions and for this reason become subject to a security interest in the principal collateral should not be influenced by pre-Code cases involving a third party with an interest in the goods and thus holding inapplicable the doctrine of accession. In *Mixon v. Georgia Bank*, the court specifically held that such pre-Code decisions should not be followed in accession cases arising under Article 9.

We reject the proposition that a determination of whether one chattel is an accession to another is, for purposes of Article 9 of the Uniform Commercial Code, dependent upon the relationship between the parties to an action. Whether a chattel is an “accession” depends upon the relationship that such chattel bears to another. The rules of priority are set forth in Article 9 of the Code. To the extent that [a pre-Code case] stands for a contrary proposition, it will not be followed. The court in *Mixon* also rejected an argument founded on the “accessions” definition in U.C.C. section 9-314 that a security interest automatically reaches goods solely because they are “installed in or affixed” to collateral. “[T]he Code does not indicate the degree to which one chattel must be affixed to another in order to constitute an accession.”

47. *See generally* U.C.C. §§ 9-201, 9-301 to 9-318. Priority rules governing accessions are codified in U.C.C. § 9-314. These rules are discussed at text accompanying notes 83-94 infra.


49. 267 S.E.2d at 484. Also, *see generally* Ford Motor Credit Co. v. Howell Bros. Truck & Auto Repair, Inc., 57 Ala. App. 46, 325 So. 2d 562 (1975). *But see generally In re Williams*, 12 UCC Rep. 990 (Bankr. E.D. Wis. 1973) (but here the secured party claiming the whole and the debtor executed a separate security agreement covering the accessorial goods).

50. Goods that “are installed in or affixed to other goods . . . [are] (called in this section ‘accessions’),” U.C.C. § 9-314(1) (emphasis added).

court correctly held that this determination must be based on traditional common law principles under which to constitute an accession, "the lesser chattel must 'form such an integral part' of the greater chattel and must be 'so attached to it' as to constitute 'one and the same thing.'"\(^{52}\) This case confirms that when the question is whether goods are accessions and as such are subject to a security interest in the principal collateral, the only issue under Article 9—despite the existence of third party claims to and interests in the goods—is whether the goods have physically or functionally become an integral part of the whole. The better answer with respect to tires, engines and similar accessorial goods is that they do, and thus the secured party as to the whole acquires an interest in them as accessions by operation of law. This analysis does not mean, however, that under Article 9 this secured party necessarily has priority over third parties with claims to and interests in the accessions;\(^{53}\) it means only that the existence of competing interests should not affect the initial decision whether the goods are accessions, thus subjecting them for this reason to a security interest in the principal collateral.

\(^{52}\) Id. (quoting Passieu v. B.F. Goodrich Co., 58 Ga. App. 691, 692, 199 S.E. 775 (1938)). See also text accompanying notes 21 & 22 supra, and cases cited in those notes.

\(^{53}\) Even if goods are accessions and thus subject to the interest of the secured party claiming the whole, U.C.C. § 9-314 or some other law may give priority to one claiming only the accessorial goods. See, e.g., International Atlas Services, Inc. v. Twentieth Century Aircraft Co., 251 Cal. App. 2d 434, 59 Cal. Rptr. 495 (1967); IDS Leasing Corp. v. Leasing Associates, Inc., 590 S.W.2d 607 (Tex. Civ. App. 1979). See also text accompanying notes 83-94 infra, regarding the resolution of priority disputes on the basis of U.C.C. § 9-314. But compare Ford Motor Credit Co. v. Howell Bros. Truck & Auto Repair, Inc., 57 Ala. App. 46, 325 So. 2d 562 (1975) (the third party claimant had no interest to assert in the accessorial goods); Municipal Equip. Co. v. Butch & Son Deep Rock, 185 N.W.2d 756 (Iowa 1971) (the supplier of the accessorial goods claimed the principal chattel, and not the accessions themselves).
2. WHEN DOES A SECURITY INTEREST IN PRINCIPAL COLLATERAL EXTEND TO "ACCESSORIES," GOODS THAT ARE NOT INTEGRALLY PART OF THE WHOLE?

For this article's purposes, "accessories" are goods that are installed in or attached to collateral but not to such an extent that they become integrally part of it; thus the goods are not accessions under the common law doctrine, and a security interest in the principal collateral does not reach them by operation of law. A security interest reaches accessories only if Article 9's prerequisites for the attachment of a security interest are satisfied with respect to the accessorital goods themselves. The debtor must have rights in them, value must have been given, and the parties' security agreement must adequately provide for and cover the accessorial property. Typically, the debtor owns the accessories that are added to the principal collateral, and value has usually been given. Typically, also, the security agreement the debtor signed contains a clause extending the secured party's interest to "all replacements of the collateral described herein and all accessories, additions, parts and equipment now or hereafter affixed thereto or used in connection therewith." Virtually all accessorial goods imaginable are within the scope of and thereby covered by this clause because its language is so broad. But is it so general

54. Goods are not accessions unless they become an integral part of the principal thing to which they are attached. See text accompanying notes 21-32 supra.

55. See U.C.C. § 9-203(1)(c).

56. See U.C.C. § 9-203(1)(b).

57. See U.C.C. § 9-203(1)(a).

58. The Code does not explain what "rights in collateral" are sufficient under U.C.C. § 9-203(1)(c) to support a security interest in the property; all it provides is that "rights includes remedies." U.C.C. § 1-201(36). Clearly, however, a debtor who owns or has title to property has sufficient "rights in collateral" to satisfy this U.C.C. § 9-203 prerequisite to the existence of a security interest.

59. When, as is often the case, the issue is whether an interest attaches to after-acquired accessories, the U.C.C. § 9-203 value requirement is usually satisfied because "a person gives 'value' for rights if he acquires them . . . as security for . . . a pre-existing claim." U.C.C. § 1-201(44)(b). Thus a secured party need not give new value in order to acquire a security interest in after-acquired property.

60. The courts may also interpret such clauses liberally in the secured party's
that the clause inadequately describes accessorial property of whatever nature and thus is insufficient to support a security interest in any accessory that is affixed to the principal collateral? In order for a security interest to attach to goods (other than accessions), the parties' security agreement must describe the property, but not just any description will suffice. It must reasonably identify what is described by making possible the identification of the thing described. Does the description "all accessories, additions, parts and equipment now or hereafter affixed to the collateral" satisfy this test? A court will probably answer this question by analogizing to cases involving the validity of descriptions of principal collateral in which the debtor already has or will acquire rights as part of or contemporaneously with the secured transaction. In these cases broad, general descriptions such as "all goods," "all equipment," and other generic descriptions are often discouraged and sometimes found to be inadequate.

favor. One court recently announced that Article 9's drafters intended descriptions of accessories to be liberally construed. See Brown v. Green, 618 P.2d 140 (Wyo. 1980).

61. See U.C.C. § 9-203(1)(a).
62. See U.C.C. § 9-110, and the Comment accompanying it.
63. More often, however, the courts find that such descriptions are sufficient. For an exhaustive collection of cases, see Annot., 100 A.L.R.3d 940 (1980). Compare Brown v. Green, 618 P.2d 140 (Wyo. 1980), although the issue in this case might have been whether the goods were within the definitional scope of the terms "accessions and additions," not whether these terms were themselves legally adequate descriptions of collateral. Yet in many cases in which descriptions such as "all equipment," "all inventory" and similar ones are approved, the courts can and do justify their decisions on the grounds that Article 9 specifically defines these terms (see U.C.C. § 9-109) and that these kinds of property are specific types of goods that differ principally on the basis of the use to which they are put. Accessories is not statutorily defined, however. The term "accessories" or similarly ambiguous terms mean what the parties intended for them to mean; but without greater definitional specificity in the security agreement, identification with reasonable accuracy of those things the parties intended to describe is difficult, if not impossible. Of course, the dictionary defines the term "accessory," but this definition makes matters worse: "a thing of secondary or subordinate importance, an object or device not essential in itself but adding to the beauty, convenience, or effectiveness of something else." Webster's Seventh New Collegiate Dictionary 5 (1965). This definition complicates the identification of the things described because it requires purely subjective determinations about the importance, beauty, or utility of a thing. When the security agreement purports to cover "accessories" and the like, the parties could easily specify in general the kinds of accessorial goods they want covered or, at least, list some examples so that a rea-
Most often, disputes arise not over accessories attached to collateral at the time a secured transaction is consummated, but over those subsequently added. Accessorial goods later added to collateral are a form of after-acquired property; thus, when the issue is the sufficiency of the description of collateral, another possible analogy is to those cases questioning the legal adequacy of language intended to cover property the debtor might acquire in the future. These cases suggest that for purposes of "describing" this property to be acquired in the future, very broad and general indications merely signifying coverage of after-acquired property are sufficient. 64 In this type case, however, the kinds of property that will serve as collateral are fully or, at least, reasonably described elsewhere in the security agreement. The purpose of an after-acquired property clause is only to indicate the parties' intentions that the same kinds of property described in the agreement will be subject to a security interest if and when the debtor later acquires rights in additional such goods. Any further description of the goods as part of the after-acquired property clause would be redundant. This is not true in a case involving a generally worded accessories clause when the security agreement contains no description whatsoever of the particular types or various kinds of accessorial goods that the parties' want subjected to the security interest. Such an accessories clause covers both present and after-acquired such goods without identifying this property beyond what is suggested by the generic words themselves such as "accessories," "additions," "parts," and "equipment." This description may not be sufficient no matter when the accessorial goods are affixed to the principal collateral, even if accessories were affixed when the security

64. See generally cases collected in Annot., 100 A.L.R.3d 940, 1022 (1980). And even though U.C.C. § 9-204(1)'s authorization of after-acquired property clauses uses the specific term "after-acquired" to cover such collateral, a security agreement need not "specifically contain the talisman of 'after-acquired property,' or its equivalent." Frankel v. Associates Fin. Serv. Co., 281 Md. 172, 377 A.2d 1166, 1168 (1977).
agreement was executed; if not, the secured party will have no interest in either present or after-acquired accessories despite a clause in the security agreement purporting to cover accessories later added to the collateral. After-acquired property language in a security agreement cannot subject goods to a security interest if the description of the kinds of property to be covered is inadequate to create an interest under Article 9.

An adequate description of accessorio goods coupled with after-acquired property language does not insure that the secured party’s interest will attach to all after-acquired accessories. Section 9-204(2) limits the operation of after-acquired property clauses against consumers:

No security interest attaches under an after-acquired property clause to consumer goods other than accessions (Section 9-314) when given as additional security unless the debtor acquires rights in them within ten days after the secured party gives value.

On the basis of an after-acquired property clause, a secured party cannot claim as additional collateral any consumer goods the debtor acquires more than ten days after the giving of value. “Accessions” are excepted from this rule, but how to define this term for section 9-204(2) purposes is a

65. See text accompanying notes 61-63 supra, and see discussion in note 63 supra.

66. If, on the other hand, the description of accessorio goods is adequate under U.C.C. §§ 9-203(1)(a) & 9-110, it may be unnecessary to indicate further and specifically that after-acquired such goods are also covered. A word such as “accessories” may by itself be sufficient to indicate coverage of both present and after-acquired such property, at least in cases where it is modified by the word “all.” See generally Brown v. Green, 618 P.2d 140 (Wyo. 1980), in which the phrase “any and all accessions and additions thereto” was held to cover a rotary table later attached to the principal collateral, a drilling rig. Compare the pre-Code cases Johnson v. Interstate Sec. Co., 152 Kan. 346, 103 P.2d 795 (1940); White Co. v. Bowen, 84 Pa. Super. Ct. 484 (1925).


68. See U.C.C. § 9-204(2). Presumably, “proceeds” of collateral (see U.C.C. § 9-306(1)) are also excepted because a security interest in them arises by operation of law, not on the basis of an after-acquired property clause in a security agreement. See U.C.C. § 9-306(2).
problem. If it is defined by reference to the common law doctrine of accession, the only consumer goods excepted from the section's rule are those that are installed in or attached to collateral to such an extent that they become an integral part of it.\textsuperscript{69} If, however, the definition of accessions in section 9-314 is controlling,\textsuperscript{70} all consumer goods installed in or attached to collateral would be excepted whether or not they become an integral part of the whole. The biggest problem with using the section 9-314 definition is that according to the literal language of the section itself, the term "accessions" is defined there for "this section,"\textsuperscript{71} not for purposes of Article 9 generally or any other provision. Yet when the term accessions is used in section 9-204 and in the Comments to it, section 9-314 is cited each time, perhaps, though not necessarily, as a definitional cross-reference.\textsuperscript{72}

How broadly to define the term "accessions" for section 9-204(2) purposes has been an issue in cases arising under the federal Truth in Lending Act.\textsuperscript{73} This Act's regulations require that in certain consumer credit transactions, the creditor must provide

[a] description or identification of the type of any security interest held or to be retained or acquired by the creditor in connection with the extension of any credit, and a clear identification of the property to which the security interest relates . . . . If after-acquired property will be subject to the security interest, . . . this fact must be clearly set forth in connection with the description or identification of the type of security interest held, retained or acquired.\textsuperscript{74}

\begin{footnotes}
\item[69] See generally text accompanying notes 16-32 supra.
\item[70] See U.C.C. § 9-314(1), which defines accessions as goods that are installed in or affixed to other goods.
\item[71] "[G]oods installed in or affixed [to other goods are] (called in this section 'accessions') . . . ." U.C.C. § 9-314(1) (emphasis added).
\item[72] See U.C.C. §§ 9-204(2) & 9-204, Comment 4.
\item[74] 12 C.F.R. (Reg. Z) 226.8(b)(5) (1980). See also 15 U.S.C.A. § 1639(a)(8) (1974). Regulation Z has recently been revised to reflect changes in TILA effected by the Truth in Lending Simplification and Reform Act, Pub. L. 96-221 §§ 601-625 (1980). With respect to security interests, the new regulations require the creditor to disclose "[t]he fact that the creditor has or will acquire a security interest in the prop-
\end{footnotes}
As part of this disclosure, the creditor must also disclose the ten day limit of section 9-204(2) by explaining that any security interest in after-acquired consumer goods will attach only to those obtained by the debtor within ten days of the credit transaction. Some creditors charged with failing to make this disclosure have argued that certain after-acquired property covered by the security agreement—such as “additions” to the collateral and other property related to it—are accessions within the meaning of the section 9-204(2) exception. Therefore, they have contended that since the section 9-204(2) limitation does not apply to such property, the ten day limit need not be disclosed. For this reason, the courts have been forced to determine the breadth of the term “accessions” as used in section 9-204(2). They have decided that “replacements” of collateral and property simply used “in connection with” it are not necessarily accessions; presumably, the reason is that such goods may not be physically joined to any extent with the principal collateral. A few


courts seem to have decided also that "additions"—a term that may include goods affixed to collateral but not integrally so—are not necessarily accessions within the section 9-204(2) exception.\(^77\) This decision is consistent with the doctrine of accession under the common law and implies that it and not section 9-314 is the proper source of law to consult when defining "accessions" for section 9-204(2) purposes. The courts may reach this decision because they are interpreting section 9-204 in conjunction with consumer protection legislation, and thus they construe the statutes and the parties' agreements most strictly against the creditors. Yet this construction is also appropriate apart from such legislation.

Section 9-204(2) is in itself a true consumer protection provision, one of only two such provisions in Article 9.\(^78\) Its apparent purpose is to limit the additional collateral that a secured party can acquire after the ten day period to that property which the parties specifically agreed would serve as collateral and which they fully described in their agreement. To accomplish this objective of narrowing the sweep of after-acquired property clauses in consumer transactions, the term "accessions" as used in section 9-204(2) should be defined according to common law principles. By doing this, the only accessorial goods acquired after the ten day period that a secured party can claim under an after-acquired property clause are those that are so integrally connected with the principal goods that removing them would cause physical or

\(^77\) See generally Jacklitch v. Redstone Fed. Credit Union, 463 F. Supp. 1134 (N.D. Ala. 1979), aff'd, 615 F.2d 679 (5th Cir. 1980); Glenn v. Trust Co. of Columbus, 152 Ga. App. 314, 262 S.E.2d 590 (1979). See also Smith v. No.2 Galesburg Crown Fin. Corp., 615 F.2d 407 (7th Cir. 1980), in which the court recognized that "it can be argued that 'additions' are broader than 'accessions' so that the ten-day limitation [of U.C.C. § 9-204(2)] should properly be disclosed in connection with additions." Id. at 420. But compare Anderson v. Southern Discount Co., 582 F.2d 883 (4th Cir. 1978). Also, but compare Magee v. Garrard Chevrolet Co., 5 CCH Consumer Cr. Guide ¶ 97,207 (E.D. La. 1981), wherein the parties agreed that the word "accessions" was synonymous with the word "accessories."

\(^78\) The other true consumer protection provision in Article 9 is U.C.C. § 9-507(1) which establishes a minimum statutory penalty a debtor can recover when a secured party fails to comply with the provisions of Part 5 governing the foreclosure of security interests.
functional injury to the collateral. The test should be whether removing the goods would diminish the value of the principal collateral to an amount that is less than the value it would likely have in its present condition but in its original form, i.e., its form without the accessorial goods. If removing the accessories would not have this effect, the secured party is no worse off than he would have been if the goods had never been added to the collateral. Therefore, his collateral should be that which he and the debtor specifically agreed to and fully described in their security agreement; his collateral should not include accessories added after the ten day period that are covered only by after-acquired language in the security agreement and that can be removed without having the effect just mentioned. Accessories that can be removed without injuring the principal property are not accessions under the common law doctrine, nor should they be considered accessions for section 9-204(2) purposes.

3. WHAT IS THE PRIORITY OF A SECURITY INTEREST THAT EXTENDS TO ACCESSORIAL GOODS?

When a security interest in principal collateral extends to accessorial goods because of the doctrine of accession or the parties' agreement, the interest in the whole—including the lesser goods—is effective against the debtor and third parties. 79 This general rule is, however, subject to exceptions created by Article 9's priority provisions. The typical priority dispute involving accessorial goods is between a financer with a security interest in the principal collateral (usually a motor vehicle) and the seller of the lesser goods (usually an automobile repairman) who also installs or attaches them to the vehicle. 80 The repairman may collateralize the price of

79. See U.C.C. § 9-201.

80. Other priority disputes are possible, of course. A financer's interest in a vehicle and accessorial goods added to it may conflict with a security interest retained by the seller of the accessorial goods. U.C.C. § 9-314 resolves this priority dispute. See discussion of this section at text accompanying notes 83-94 infra, and see generally, e.g., IDS Leasing Corp. v. Leasing Associates, Inc., 590 S.W.2d 607 (Tex. Civ. App. 1979). Or, the third party claimant resisting the financer's interest may be a creditor of the debtor who caused a lien of execution to attach to the whole. Generally, a
the goods and services he sells by taking an Article 9 security interest in the vehicle itself.\footnote{81} In such a case in which the priority contest involves two conflicting security interests in

priority contest between a secured party and a lien creditor is won by the former if his security interest is perfected before the lien creditor becomes such. \textit{See} U.C.C. \S\ 9-301(1)(b). But if the financer is first perfected as to the vehicle, does he necessarily prevail as to the accessorio goods if he has not also first perfected his interest in them separately? One judge has suggested that the answer depends on whether the accessorio goods are accessions (and thus an integral part of the vehicle itself) or only accessories. \textit{See generally In re} Williams, 12 UCC Rep. 990 (Bankr. E.D. Wis. 1973). Whenever perfection as to accessorio goods attached to a vehicle is required of anyone, an issue is whether the governing law on how to perfect is Article 9 or a certificate of title law. \textit{See} note 90 \textit{infra}.

\footnote{81} To acquire such an interest, the repairman must comply with U.C.C. \S\ 9-203(1) which governs the attachment of security interests. If the parties have in fact agreed that the repairman will have an interest in the vehicle to secure the value of services and materials, no need exists for a written security agreement as long as the repairman retains possession of the collateral. \textit{See} U.C.C. \S\ 9-203(1)(a). Very often, however, such a writing is executed in the form of a service order signed by the debtor. It describes the vehicle, and usually has some language that creates or provides for a security interest. For example, three businesses in Northwest Arkansas that regularly repair vehicles—Montgomery Ward Service Center, Lewis Ford Sales, Inc., and Northwest Arkansas Truck & Equipment, Inc.—all use a service order form that contains language similar to this: “The below bill for labor and material is approved, and \textit{an express mechanic's lien is granted on said vehicle to secure the payment thereof}.” This language does not simply confirm any existing right the repairman may have to an artisan’s lien; the debtor’s confirmation is unnecessary to give a repairman the benefits of that lien which arises by operation of law. By this language, the parties are intending to create a consensual “security interest,” \textit{i.e.}, “an interest [in this case, an ‘express mechanic’s lien’] in personal property [such as a vehicle]... which secures payment... of an obligation [here, the price of services and materials].” U.C.C. \S\ 1-201(37). Article 9 clearly applies to such a case in which the parties attempt to create an interest that the parties characterize as an “express mechanic’s lien.” \textit{See}, \textit{e.g.}, River Oaks Chrysler-Plymouth, Inc. v. Barfield, 10 UCC Rep. 1236 (Tex. Civ. App. 1972). Article 9's applicability does not depend on the form used by the parties or their characterization of the interest created in the creditor's favor.

When it is found that a security interest as defined in Section 1-201(37) was intended, this Article applies regardless of the form of the transaction or the name by which the parties may have christened it. The list of traditional security devices in subsection 2 [U.C.C. \S\ 9-102(2)] is illustrative only; other old devices, as well as any new ones which the ingenuity of lawyers may invent, are included, so long as the requisite intent is found.

U.C.C. \S\ 9-102, Comment 1. \textit{Compare generally, e.g., In re} King Furniture City, Inc., 240 F. Supp. 453 (E.D. Ark. 1965); \textit{Bank of North America v. Kruger}, 551 S.W.2d 63 (Tex. Civ. App. 1977) (Article 9 applies to a transaction in which the parties purported to create an express landlord’s lien). Thus Article 9 applies, and a repairman using the form described above will have a security interest in a vehicle even after he releases possession of the collateral if (1) the written description of the vehicle is adequate, \textit{see} U.C.C. \S\ 9-110, and (2) the debtor has signed the writing.
and claims to the whole, the repairman will lose if the financer has previously perfected an enforceable interest.\(^82\) The result may be different if the repairman asserts a valid security interest just in the accessorial goods themselves and claims priority only as to them. In this case, the priority of his interest will be determined under section 9-314.\(^83\)

Section 9-314 governs a variety of priority conflicts over what the drafters called “accessions.” The section’s definition of this term includes goods that are installed in or attached to other goods;\(^84\) it does not require that the goods become an integral part of the principal property to which they are affixed.\(^85\) Thus section 9-314’s priority rules apply

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\(^82\) As the first to file or perfect, the financer will have priority under U.C.C. § 9-312(5)(a). When a motor vehicle is the collateral, the usual means of perfection is compliance with a certificate of title law which ordinarily provides for noting the security interest on the automobile’s paper title. When state law makes this the exclusive method for perfecting an encumbrance on a motor vehicle, “[t]he filing of a financing statement otherwise required by this Article is not necessary or effective to perfect a security interest.” in the collateral. U.C.C. § 9-302(3). Nevertheless, compliance with such a statute “is equivalent to the filing of such a financing statement under this Article.” U.C.C. § 9-302(4).

\(^83\) See U.C.C. § 9-314. This section and its priority rules are discussed in Note, 32 Baylor L. Rev. 447 (1980).

\(^84\) See U.C.C. § 9-314(1).

\(^85\) But in Jacklitch v. Redstone Fed. Credit Union, 463 F. Supp. 1134 (N.D. Ala. 1979), aff’d per curiam, 615 F.2d 679 (5th Cir. 1980), the court construed U.C.C. § 9-314 to define accessions “as goods ‘installed in or affixed to other goods’ which ‘become part of a whole,’” 463 F. Supp. at 1137 (emphasis added), and declared this definition consistent with pre-Code case law. This declaration implies a belief that goods are not accessions for U.C.C. § 9-314 purposes simply because they are attached to other goods; they must be attached in such a way or to such an extent that the attached goods become integrally part of the whole. This is the common law rule, see text accompanying notes 21-32 supra, with which the court declares U.C.C. § 9-314 is consistent. If this implication is correct, U.C.C. § 9-314 applies only when the goods are “accessions” as defined by the common law. Thus the section will not determine the priority of a security interest in accessories, i.e., goods that are installed in or affixed to other goods but not integrally so; other Article 9 priority provisions will govern depending on whether the third party claiming the accessories is another secured party, a buyer, a lien creditor, or some other claimant. The court in Jacklitch was probably wrong, however, to suggest that U.C.C. § 9-314 applies only to priority disputes over common law accessions and not accessories as well.

The definition of accessions for U.C.C. § 9-314 purposes is part of U.C.C. § 9-314(1); yet this provision does not even mention the phrase “become a part of the whole,” much less make this a condition to the section’s applicability. Even if the court in Jacklitch was right to borrow the phrase from subsection (2) of U.C.C. § 9-314 and tack it to the definition of accessions in subsection (1), the phrase itself is not
to accessions as defined under the common law and accessories as defined for purposes of this article. The section establishes two general rules governing the priority of an interest asserted only in accessions as against claims to them by persons with interests in the whole. One of these rules concerns the priority of a security interest in accessions vis-à-vis claims to the whole existing before the accessions were added to it. The accessions secured party wins if his interest in them attached before the goods were added to the principal property; if his security interest attached to the accessions after this time, he loses to prior claimants of the whole. Section 9-314's other general priority rule is that if the interest of the accessions secured party is first perfected,

defined; contrary to the court's apparent belief, the words in themselves do not necessarily suggest that becoming part of the whole requires anything more than simply being installed in or affixed to principal goods regardless of the degree or extent of attachment. For purposes of U.C.C. § 9-314, the phrase "become part of the whole" can be and probably is exactly synonymous with the notion of "accessions" as defined in subsection (1). The section is intended "[t]o state when a secured party claiming an interest in goods installed in or affixed to goods is entitled to priority over a party with a security interest in the whole," U.C.C. § 9-314, Comment 1 (emphasis added), not to determine this priority only when the attached goods have become integrally part of the whole. Since accessorial goods are attached to and are expected to remain with the principal property in the ordinary course of things whether or not they are integrally part of it, the logical approach is to treat alike security interests in all such goods. Thus the better interpretation of U.C.C. § 9-314 is that it applies whether or not the added goods are accessions under the common law doctrine; the only requirement is that the goods be installed in or affixed to other goods, and the degree of their affixation is irrelevant.

86. See text accompanying notes 21-28 supra.

87. "Accessories" for this article's purposes are goods that are installed in or affixed to other goods but that are not accessions under the common law doctrine because they do not become integrally part of the whole.

88. See U.C.C. § 9-314(1), and the negative implication of U.C.C. § 9-314(2). But see U.C.C. § 9-314(3)(c). According to the drafters, U.C.C. § 9-314 and, presumably, this rule in particular "change prior law in that the secured party claiming an interest in a part (e.g., a new motor in an old car) is entitled to priority and has a right to remove even though under other rules of law [the doctrine of accession, perhaps] the part now belongs to the whole." U.C.C. § 9-314, Comment 2. But under pre-Code law, a secured creditor who had reserved title to a part or acquired a chattel mortgage on it prior to its attachment to other goods was virtually always given priority. See text accompanying notes 32-47 supra. U.C.C. § 9-314 seems expressly to perpetuate this pre-Code rule, not change it.

89. See U.C.C. § 9-314(2). This is not true when the prior claimant consents in writing to the security interest or disclaims an interest in the goods as part of the whole. Id.
it prevails over all claims to the whole that arise after the accessorial goods were installed. 90 If the accessions secured party has priority over all those asserting prior and subsequent claims to the whole (and the accessions as part of it), he may on default remove his collateral from the principal property. 91

Therefore, the right result is obvious in the typical pri-

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90. See U.C.C. § 9-314(2) & (3). Even an unperfected interest in accessions will prevail over everyone subsequently claiming the whole except
(a) a subsequent purchaser for value of any interest in the whole; or
(b) a creditor with a lien on the whole subsequently obtained by judicial proceedings; or
(c) a creditor with a prior perfected security interest in the whole to the extent that he makes subsequent advances.

U.C.C. § 9-314(3). For applications of this provision, see Mills-Morris Automotive v. Baskin, 224 Tenn. 697, 462 S.W. 486 (1970); IDS Leasing Corp. v. Leasing Associates, Inc., 590 S.W.2d 607 (Tex. Civ. App. 1979). These claimants, too, will lose priority if, despite the accessions secured party's failure to file, they acted with knowledge of his interest. See U.C.C. § 9-314(3).

How does an accessions secured party perfect a security interest in such goods if they are added to a motor vehicle? By the usual means prescribed by Article 9? Or by complying with a state certificate of title law that governs the perfection of an interest in the vehicle itself? A certificate of title statute is the governing law on perfecting a security interest only when the collateral is "subject to" such a statute.

See U.C.C. § 9-302(1)(b). Usually, certificate of title laws apply only to "vehicles," and very often "vehicle" as defined in such laws means the machine or device that is driven, transported, or drawn on a highway. See, e.g., Ark. Stat. Ann. §§ 75-102 & 75-160 (Repl. 1979). Thus, accessorial goods added to a vehicle are arguably not within the scope of these laws, and the perfection of an encumbrance on such goods is probably not governed by them. See, e.g., Rabtoay General Tire Co. v. Colorado Kenworth Corp., 135 Colo. 110, 390 P.2d 616 (1957). Compare Mills-Morris Automotive v. Baskin, 224 Tenn. 697, 462 S.W.2d 846 (1970); Free Serv. Tire Co. v. Manufacturers Accept. Corp., 38 Tenn. App. 647, 277 S.W.2d 897 (1955). But compare Wooden v. Michigan State Bank, 117 Ga. App. 852, 162 S.E.2d 222 (1968). Even when the accessorial goods are accessions that become an integral part of the vehicle itself, such goods are not the vehicle itself; arguably, therefore, though less certainly, a security interest in them alone is perfected according to the usual Article 9 rules, not according to a certificate of title law. But cf. U.C.C. §§ 9-313(1)(b) & 9-401(1) (regarding fixture filing and providing that security interests in fixtures must be perfected by giving notice in such a way that claimants of the real estate might learn of the fixtures interest). No such argument is tenable, of course, if an applicable title statute specifically covers not only vehicles but, also, parts and accessories added to them. Cf. International Atlas Services, Inc. v. Twentieth Century Aircraft Co., 251 Cal. App. 2d 434, 59 Cal. Rptr. 495 (1967) (applying Federal Aviation Act to a transaction involving accessories added to aircraft).

91. See U.C.C. § 9-314(4). Perhaps removal of the goods should not be permitted despite the complete priority of an accessions secured party if removal would more or less physically disintegrate the whole. There is common law authority for
ority contest between a financer of an automobile who has a security interest in it and a repairman who later sells and installs accessorrial goods and retains an enforceable security interest in them. If the repairman’s security interest attached to the accessorrial goods before they were installed on the vehicle, his interest in these goods (whether or not perfected) will prevail over the financer’s claim to them as part of the whole.\(^\text{92}\) If the repairman’s interest attached to the accessorrial goods after they were affixed to the vehicle, he loses the priority contest.\(^\text{93}\) In such a case, the repairman’s only argument is that the financer never acquired an interest in the accessorrial goods. This argument will succeed unless the financer’s security agreement with the debtor adequately provides for and covers the accessorrial goods, or the doctrine of accession applies so as to give the financer an interest in them by operation of law.\(^\text{94}\)

Very often, a repairman will not take a security interest either in the vehicle as a whole or in the accessorrial goods that he sells and installs; instead, to secure the value of his services and materials, he will rely on the common law artisan’s lien or a statutory version of it.

By the common law, a workman who by his skill and labor has enhanced the value of a chattel has a lien on it for his reasonable charges, provided the employ-ment be with the consent, either express or implied, of the owner. And it is immaterial whether there be an agreement to pay a stipulated price for such skill and la-

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\(^{92}\) See U.C.C. § 9-314(1). But see U.C.C. § 9-314(3)(c).

\(^{93}\) See U.C.C. § 9-314(2).

\(^{94}\) U.C.C. § 9-314 is a priority provision only, not a creation section; it does not extend by operation of law a secured party’s interest in principal collateral to accessorrial goods. See text accompanying notes 16-20 supra. The section governs priority conflicts between a secured party with an interest only in “accessions” and another claimant with an interest in or claim “to the whole,” i.e., the principal property and the lesser goods added to it; but U.C.C. § 9-314 does not determine how and when someone acquires an interest in either component or both of them together. To determine whether a secured party’s interest in principal property extends to accessorrial goods and thus to the whole, the law of accession (see text accompanying notes 3-13, 21-53 supra) or the parties’ security agreement (see text accompanying notes 54-66 supra) must be consulted.
bor, or there be only an implied agreement to pay a reasonable price.

 Except as declared by modern statutes, this lien rests upon immemorial recognition, or, in other words, upon the common law. It exists in favor of every bailee for hire who takes property in the way of his trade and occupation, and by his labor and skill imparts additional value to it. A tailor who has made a coat out of cloth delivered to him by the owner, is not bound to deliver the coat until he is paid for his labor. Neither is a shoemaker bound to restore a shoe which he has mended; nor a jeweller a gem which he has set; nor a wheelwright a wagon which he has repaired; . . . .

The common law lien has been modified and expanded by statute to increase the classes of persons who can claim a lien, broaden the range of services and goods for which a lien can be asserted, and enhance the remedies for the lien's enforcement. Statutes are common that specifically grant a lien on a vehicle in favor of one who repairs or improves it; that provide for continuing the lien when the repairman

95. 1 L. JONES, A TREATISE ON THE LAW OF LIENS § 731 at 509-10 (1888).


releases possession of the vehicle;\textsuperscript{98} and that give him the right to enforce the lien by selling the vehicle himself or by forcing a judicial sale of it.\textsuperscript{99} Even under these statutes, however, the seller of accessorial goods attached to a motor

\footnotesize{ally); MO. REV. STAT. § 430.020 (1952); NEB. REV. STAT. § 52-201 (1978); NEV. REV. STAT. § 108.270 (1979); N.H. REV. STAT. ANN. § 450.2 (Repl. 1968); N.J. REV. STAT. § 2A:44-21 (Supp. 1980); N.M. STAT. ANN. §§ 48-3-1, 48-3-2 (1978); N.Y. Lien Law § 180 (1979) (personal property generally); N.C. GEN. STAT. § 44A-2(d) (Repl. 1976); N.D. CENT. CODE § 35-13-01 (Repl. 1980); OKLA. STAT. ANN. tit. 42 § 131 (1979); OR. REV. STAT. § 87-152 (1979) (personal property generally); R.I. GEN. LAWS § 9-3-9 (1970); S.D. CODIFIED LAWS § 44-11-1 (1967) (personal property generally); TENN. CODE ANN. §§ 64-1901, 64-1903 (Repl. 1976); TEX. REV. CIV. STAT. art. 5503(a) (Supp. 1980); UTAH CODE ANN. § 38-2-3 (Supp. 1979) (personal property generally); VA. CODE § 43-33 (Supp. 1980); VT. STAT. ANN. tit. 9 § 151 (1971) (personal property generally); WASH. REV. CODE § 60.08.010 (1961) (personal property generally); W. VA. CODE § 38-11-3 (1966) (personal property generally); WIS. STAT. § 779.41 (1980) (personal property generally); WYO. STAT. § 29-7-101 (1977).


vehicle may not always be entitled to an artisan’s lien. In *Rouse v. Paramount Transit Co.*,\(^{100}\) for example, a merchant in the business of servicing automobiles and selling tires was denied a lien on a truck for the price of tires the merchant had mounted on it. The court construed a Kansas repairman’s lien statute to give a lien on a vehicle for the price of goods added to it only when they were materials supplied as a subordinate and collateral part of a primarily service transaction, not when the sale of the goods themselves was the essence of the transaction.\(^{101}\)

If a repairman fails to retain an enforceable security interest for the price of accessorail goods and related services and does not or is unable for any reason to assert an artisan’s lien, he ordinarily will have no interest whatsoever to assert in the debtor’s property; thus he will not as against anyone be entitled to the vehicle or accessorail goods that he added to it.\(^{102}\) If, on the other hand, the repairman can assert an

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100. 137 Kan. 858, 22 P.2d 429 (1933).

The Kansas statute construed in the *Rouse* case has since been amended several times. *See Kan. Stat. Ann. § 58-201* (1976). None of the amendments appears, however, to change the result in *Rouse*. The statute as construed in *Rouse* gave the lien to a repairman for his services and materials when he worked on the goods or repaired or improved them. *See Kan. Rev. Stat. § 58-201* (1923) (since amended) (*quoted in* *Rouse v. Paramount Transit Co.*, 137 Kan. 858, 22 P.2d 429, 439 (1933)). Today, too, the Kansas repairman’s lien is given for the value of “materials used in the performance of such services.” *Kan. Stat. Ann. § 58-201* (1976). The lien attaches to goods that have come into the repairman’s “possession for the purpose of having the work, repairs or improvement made thereon,” *id.*, just as was true under the version of the statute interpreted in *Rouse*. *Compare* *Ark. Stat. Ann. § 51-404* (Repl. 1971) that gives a lien for materials or parts furnished in the repair of a vehicle, and expressly includes “the furnishing of tires and all other accessories and bodies for . . . motor propelled vehicles.”

artisan’s lien on the automobile, his claim may be superior to that of the automobile-financer who asserts a security interest in the vehicle. The usually applicable priority provision is section 9-310; it gives priority over an Article 9 security interest, even though perfected, to “a person [who] in the ordinary course of his business furnishes services or materials with respect to goods subject to a security interest [and who has] a lien upon goods in [his] . . . possession . . . given by statute or rule of law for such materials or services . . . unless the lien is statutory and the statute expressly provides otherwise.”

Sometimes a statutory lien may provide


In the absence of a statute providing otherwise, an artisan’s lien was ordinarily subordinate under pre-Code law to a prior chattel mortgage or conditional sales contract unless the mortgagee’s or vendor’s consent to repairs was expressly given or, as was often the case, could be inferred or implied. See cases collected in Annot.’s, 36 A.L.R.2d 229 (1954); 36 A.L.R.2d 198 (1954); 104 A.L.R. 267 (1936); 32 A.L.R. 1005 (1924); 20 A.L.R. 249 (1922). This rule may not be entirely displaced by Article 9 or other modern statutes. See generally, e.g., Associates Fin. Serv. Co. v. O’Dell, 417 A.2d 604 (Pa. 1980). For discussions of the artisan’s lien and its priority under pre-Code law, see Lee, Power of Possessor of Personal Property to Create Lien for Repairs and Storage Charges Superior to Existing Interests of Others, 90 U. PA. L. REV. 910 (1942); Whiteside, Priorities Between Chattel Mortgagee or Conditional Seller and Sub
otherwise\textsuperscript{104} or for some other reason the repairman with an artisan’s lien on an automobile may lose priority as to the vehicle.\textsuperscript{105} In such a situation, the repairman ordinarily has no superior alternative claim to the accessorial goods themselves because, unless he retained a security interest in them, the repairman probably has no interest of any kind in these goods. His artisan’s lien is on the vehicle that he improved or repaired, not on the goods he used to make the improvements or repairs.\textsuperscript{106} (Moreover, such a lien on the accessorial


Even if a statutory repairman’s lien provides that a security interest is superior, the repairman may rely in the alternative on the common law artisan lien and assert priority on the basis of it. \textit{See generally} authorities cited in note 96 \textit{supra}.

\textsuperscript{105} U.C.C. § 9-310 by its literal terms applies to give an artisan’s lien priority only when the repairman is in possession of the goods. \textit{See generally} Leger Mill Co. v. Kleen-Leen, Inc., 563 P.2d 132 (Okla. 1977). When the repairman loses possession of the property, his artisan’s lien may continue on the basis of statutory authority, \textit{see note 98 supra} and text accompanying it, but the negative implication of U.C.C. § 9-310 may be that the non-possessorary lien is subordinate to a prior, perfected security interest. \textit{See generally}, e.g., Blazer Mach. Co. v. Klinesline Sand & Gravel Co., 271 Or. 596, 333 P.2d 321 (1975); Forest Gate Ford, Inc. v. Fryar, 62 Tenn. App. 572, 465 S.W.2d 882 (1970). \textit{But compare generally} Thorp Commercial Corp. v. Mississippi Road Supply Co., 348 So. 2d 1016 (Miss. 1977) (repairman surrendered but regained possession of the goods and thus was entitled to priority).

\textsuperscript{106} This is true at least in those cases in which the accessorial goods have become accessions to the vehicle and thus an integral part of it. \textit{See generally} General Motors Acceptance Corp. v. Madden, 331 So. 2d 882 (La. 1976); Roberts v. Williams, 99 So. 2d 392 (La. App. 1957). Typically, however, statements of the common law concerning artisan’s liens and statutory enactments of such liens are to the effect that the encumbrance attaches to the vehicle or other chattels repaired or improved, not to the goods used in making the repairs or improvements. Thus it probably makes no difference whether or not the goods installed by the repairman became an integral
goods alone would likely have the same priority as the lien on the whole.) Neither can the repairman claim title to the accessorrial goods. Title to them may have passed under Article 2 as early as the time when the accessorrial goods were installed even though the vehicle itself may still be in the repairman's possession; 107 Article 2 notwithstanding, title part of the vehicle. He probably has no lien on the accessorrial goods themselves in either case. Inevitably, however, statutes may be ambiguous. For example, Arkansas law gives to certain artisans "who perform or have performed work or labor for any person . . . or who have furnished any materials or parts for the repair of any vehicle. . . ." a lien "upon the product or object of their labor, repair or storage and upon all . . . articles repaired." Ark. Stat. Ann. § 51-404 (Repl. 1971) (emphasis added). Does this mean that an artisan repairing an automobile acquires a lien not only on the vehicle, but also on the goods he incorporates into the vehicle as "objects" of his labor? Probably not. The part of the statute giving artisans a lien on the "object of their labor" is surely designed to make clear that someone who supplies only labor and no materials is nevertheless entitled to a lien on the chattel that he has repaired. The first phrase describing who can acquire a lien and for what reasons (performing labor or supplying materials) simply parallels the latter phrase explaining that for his labor on an object an artisan acquires a lien on it or that for the parts he supplies when repairing a vehicle the repairman has a lien on it. Even when a repairman adds parts to an automobile, the object of his labor—that toward which his labor is directed and that which provides the reason for his labor—is the vehicle, not the parts.

107. If the sale aspects of a contract with an automobile repairman are governed by Article 2, the relevant provision on title is probably U.C.C. § 2-401(2). It states a general principle that in the absence of an explicit agreement of the parties, "title passes to the buyer at the time and place at which the seller completes his performance with respect to the physical delivery of the goods." With respect to the accessorrial goods that are sold to the debtor-buyer, the repairman's performance with respect to them and their physical delivery is arguably completed when the goods are installed in the vehicle that the repairman possesses more or less as a bailee. According to the Code drafter's test for passage of title under U.C.C. § 2-401(2) is based "upon the time when the seller has finally committed himself in regard to specific goods." U.C.C. § 2-401, Comment 4. The affixation of accessorrial goods to an automobile evidences a certain and definite commitment by the repairman.

Article 2 generally and U.C.C. § 2-201(2) in particular may not, however, apply to the sale of accessorrial goods by a repairman who is also to install them. The "essence" or principal "thrust" of such a transaction may be a service, not a sale of goods. The general rule is that Article 2 does not govern a contract that has as its predominant factor the rendition of services, with goods only incidentally involved. See, e.g., Bonebrake v. Cox, 499 F.2d 951 (8th Cir. 1974); Robertson v. Ceola, 255 Ark. 703, 501 S.W.2d 764 (1973); Allied Indus. Serv. Corp. v. Kasle Iron & Metals, Inc., 62 Ohio App. 2d 144, 405 N.E.2d 307 (1977); Van Sistine v. Tolland, 95 Wis. 2d 678, 291 N.W.2d 636 (1980). Under the common law, when title passes depends generally on the parties' intentions. See 2 S. Williston, THE LAW GOVERNING SALES OF GOODS § 261 (Rev. ed. 1948). Surely one important fact to consider when ascertaining these intentions in a case involving the sale of accessorrial goods is a clear and certain commitment by the seller to transfer the property, a commitment evidenced
passed under the common law doctrine of accession when the goods were affixed to the whole if they became an integral part of it. Thus a repairman with a subordinate artisan’s lien on a vehicle ordinarily is entitled to take nothing whatsoever from a secured party with an interest in both the vehicle and accessorial goods added to it: The repairman cannot legally reclaim accessorial goods and remove them from the automobile unless he retained a security interest in them and only then if Article 9 gives his interest priority.

by his attachment of them to other, more substantial property (such as a vehicle) that the debtor owns and in which the repairman-seller probably has no interest whatsoever.

Whether or not the transaction is within the scope of Article 2, if the accessorial goods become an integral part of the vehicle and thus are accessions to it, title to the goods will probably pass from the seller as soon as the goods are installed. The passing of title in such a case is dictated by the doctrine of accession. See text accompanying notes 3-46 supra. Presumably, this common law doctrine is not displaced by U.C.C. § 2-401 which does not purport to deal with conflicting claims to title when various goods are joined to form an inseparable whole. Thus the doctrine of accession will supplement the title provisions of Article 2. See U.C.C. § 1-103.

Suppose, however, a case in which an automobile repairman installs accessories (accessorial goods that are not accessions under the common law) and retains possession of the vehicle; suppose, also, that the transaction is within Article 2’s scope and that title to the goods has not passed from the seller under the rules of U.C.C. § 2-401. This could all be possible, for example, in a case involving the debtor-owner of a pickup truck who buys a camper that the seller attached to the vehicle. Though he does not have title, the buyer may have a “special property” and “insurable interest” in the accessories, see U.C.C. § 2-501, because the goods were identified to the contract not later than the time of installation. This U.C.C. § 2-501 property or interest is probably sufficient to support an Article 9 security interest. See 1 G. Gilmore, supra note 37, § 11.5 at 353. Therefore, the secured party with a valid interest in the vehicle and accessorial goods added to it will have an interest in the accessories; and this interest conflicts with the seller’s title which has never passed from him. The priority contest as to the accessorial goods themselves, therefore, is between a seller who retains full title to the goods (not just a security interest) and a secured party whose interest in the goods rests only on the debtor’s U.C.C. § 2-501 special property in them. An educated guess about how to resolve such a priority conflict is ventured at Nickles, A Localized Treatise on Security Transactions—Part II: Creating Security Interests, 34 Ark. L. Rev. 559, 620-25 (1981).

108. See generally text accompanying notes 3-28 supra.

109. Regarding the priority of a security interest in accessorial goods when the goods are claimed by someone with an interest in the whole, see U.C.C. § 9-314, discussed at text accompanying notes 84-94 supra. See also Note, 32 BAYLOR L. REV. 447 (1980).

In an appropriate case, however, a repairman might possibly attempt to assert a common law or Article 2 right of reclamation. U.C.C. § 2-702 allows an unpaid credit seller to reclaim goods from an insolvent buyer; but even if a seller of accesso-
CONCLUSION

The Code is not always the exclusive source of law when resolving cases within its scope. This article demonstrates that Article 9's provisions do not completely displace the common law doctrine of accession. On the basis of this doctrine, a secured party's interest may automatically reach accessorial goods affixed to his collateral but only if these goods become an integral part of the whole. In all other cases, the acquisition of an interest in the added goods depends on compliance with Article 9. And, today, Article 9 is always the predominant source of law when the issue is not the existence but the priority of a security interest in accessorial property. Regardless of the source of governing law, however, what was true of pre-Code decisions about the existence and priority of secured claims to accessorial goods is equally true of modern such decisions: "The amount is small, but the principle is important."