**Explanation Through Dialogue: Secured Transactions**

“What is a ‘security interest’?” asked Stephen.

“Remember,” responded Alan, “when we were at the bank and Fred Luvick told you that the bank would need security of some sort before it would fund the loan?”

Stephen nodded.

“Well,” continued Alan, “the legal vehicle by which it will get the security in the property listed in paragraphs 1, 2, 3 and 4 is called a ***‘security interest’***. It is defined in the Uniform Commercial Code in part as: “…*an interest in personal property…which secures payment…of an obligation.’* [*3*](http://ucc-madeeasy.com/excerpts.htm#STfootThree)

“What is the obligation being referred to?” Stephen interrupted.

“Your obligation to repay the bank per the payment schedule you ultimately agree upon,” responded Alan.

“What interest in the property will the bank have?” Stephen asked.

“Its interest will be comprised of certain legal rights it will have in the listed property,” responded Alan, “which it can exercise in the event you fail to perform your obligations to it under the terms of the Security Agreement or Loan Agreement.”

“If for example, you failed to meet your obligations to the bank under the Loan Agreement by not meeting your payment schedule, the bank could, under certain circumstances, take possession of your inventory and sell it to recover the money you owe it.”

“By the way,” Alan said, “this property is called ***’collateral’*** under the Code.” [4](http://ucc-madeeasy.com/excerpts.htm#STfootFour)

Alan could see that Stephen was having some trouble grasping the concept, “Stephen,” he said, “Let me give you an example which can help clear this up for you. Let’s assume that instead of borrowing money from the bank for the boat business, you are borrowing $750 from a pawnbroker. As you know, he won’t give you the money unless you give him some property. And of course the property must be worth at least as much as the loan or he probably won’t lend. Anyway, let’s assume that he takes your watch worth $1200 and you agree that if you don’t pay him back within, say, 60 days, he can keep the watch. In Article 9 language, he would have a ***‘security interest’*** in the watch.

“That is, the pawnbroker would have ‘*an interest in personal property’* i.e. the rights you and he agree that he shall have in the watch, which secures payment of an obligation: your obligation to repay the money you borrow from him.

“Your situation with the bank,” Alan continued, “is basically the same, except, of course, that bank won’t have physical possession of the boats. First, the bank, like the pawnbroker, won’t lend money without security. In the pawnbroker situation, the security is the watch, in the bank situation, it will primarily be the boats. Failure to make your payments to the bank will give the bank similar rights with the boats and other property listed that the pawnbroker would have with the watch. For example, subject to certain rules, it can sell the boats to recover money you owe if you don’t meet your obligations to it. Thus, the interest which the bank has in the collateral, i.e., the security interest, like the pawnbrokers interest in the watch, secures payment of your obligations to it to repay the money borrowed.

As you can see, the loan agreement is specifically referred toin the Security Agreement in the last paragraph before the default provisions. As you notice, the bank is under an obligation to lend you additional money in the amount of $400,000 upon your securing either the Crown or Marina account. This obligation on the part of the bank is sort of like the after acquired property clause we discussed this morning. This particular clause is called a ***“future advance clause”.*** It, like the after acquired property clause, was looked upon with disfavor in earlier case law. It has now been validated by §9-204 of the Uniform Commercial Code.

“The Uniform Commercial Code gives special names to the parties in such a transaction. Since the bank would be a lender in whose favor you would be creating the security interest, the bank would be called the ***‘secured party’***. [5](http://ucc-madeeasy.com/excerpts.htm#STfootFive) Since you have an interest in the collateral, you will be called the ***‘debtor’***. [6](http://ucc-madeeasy.com/excerpts.htm#STfootSix) As you can see, this agreement is titled ***“Security Agreement”***. The reason is because it is an agreement which creates a security interest.” [7](http://ucc-madeeasy.com/excerpts.htm#STfootSeven)  
  
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

3 Section 1-201(b)(35)

4 *“Collateral” means the property subject to a security interest* . . . Section 9-102(a)(12)

*5 “Secured party” means a person in whose favor a security interest is created or provided for under a security agreement*. . . Section 9-102(a)(72)(A)

*6 Debtor” means  a person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;*  Section 9-102(a)(28)(A)

*7 “Security agreement” means an agreement which creates or provides for a security interest.* Section 9-102(a)(73)  
  
The general validity of a security agreement is set forth in §9-201:

*Except as otherwise provided in [the Uniform*

*Commercial Code] a security agreement is*

*effective according to its terms between the*

*parties, against purchasers of the collateral,*

*and against creditors.* Section 9-201(a)  
  
There are exceptions to the basic rule noted above which are contained in subsections (b), (c) and (d).  Most notable among these exceptions is subsection (b) which deals with *“any applicable rule of law which establishes a different rule for consumers. . . .”*  
  
The distinction between merchants [professionals in business] and non merchants permeates the Uniform Commercial Code.

[**Back**](http://ucc-madeeasy.com/excerpts.htm#top)

**Explanation Via Legal Memorandum In A Law Firm:**

**V. DELIVERY OF GOODS**

(A) Bill of Lading Person Entitled to Take

(B) Possession of Goods;Person Entitled

Under the Document.

***(A) Bill of lading*** [**66**](http://ucc-madeeasy.com/excerpts.htm#LMLFfootSixtysix)

When the carrier receives the boats, it will issue a bill a document known as a ***‘bill of lading’***.  This document will acknowledge the carrier’s possession of the boats, and in addition will contain a contract for delivery of the boats. In such a situation, the carrier is called at ***‘bailee’***.[67](http://ucc-madeeasy.com/excerpts.htm#LMLFfootSixtyseven) The person from whom the carrier receives the goods is called the ***‘consignor’***,[68](http://ucc-madeeasy.com/excerpts.htm" \l "LMLFfootSixtyeight) here, Royal.  Since the contract calls for delivery to the order of Royal, Royal would also be the ***‘consignee’***.[69](http://ucc-madeeasy.com/excerpts.htm#LMLFfootSixtynine)  
  
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*66“Bill of Lading” means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods*. . . . Section 1-201(b)(6). A bill of lading is a document of title under Section 1-201(b)(16). That section states as follows:

*“Document of title” includes dock warrant*

*dock receipt, warehouse receipt or order for*

*the delivery of goods, and also any other*

*document which in the regular course of*

*business or financing is treated as ade-*

*quately evidencing that the person or*

*possession of it is entitled to receive, hold*

*and dispose of the document and the goods*

*it covers.  To be a document of title a*

*document must purport to be issued by or*

*addressed to a bailee and purport to cover*

*goods in the bailee’s possession which are*

*either identified or are fungible portions of*

*an identified mass.*

The use of documents in commercial transactions is extremely important and will be discussed in some detail in this book. For now it should simply be borne in mind that in many situations the document is treated as the equivalent of the goods it covers and that transfer of the document or rights thereunder will generally be equivalent to a transfer for the goods so covered.  
  
*67 “Bailee” means the person who by . . . bill of lading or other document of title acknowledges possession of goods and contracts to deliver them.* Section 7-102(a)(1).  
  
*68 ”Consignor” means the person named in a bill as the person from whom the goods have been received for shipment.* Section 7-102(a)(4).  
  
*69 “Consignee” means the person named in a bill to whom or to whose order the bill promises delivery*. Section 7-102(a)(3).

A document of title can take one of two forms.  It can be ***‘negotiable’*** or ***‘non negotiable’***.  §7-104 specifies when a document is negotiable or non-negotiable:

*(a) Except as otherwise provided in subsection (c) a document of title  is negotiable if by its terms the goods are to be delivered to bearer or to the order of a named person;*

*(b) A document of title other than one described in subsection (a) is non-negotiable.*

*(c) A document of title is nonnegotiable if, at the time it is issued, the document has a conspicuous legend, however expressed, that it is nonnegotiable.*

In the instant situation, the goods are to be delivered to the order of a named person, Royal. Thus, the form of the bill of lading falls squarely within §7-104(a).  As is obvious from the quoted definition, whether or not a bill of lading [or any document of title] is negotiable or non-negotiable is simply a matter of form.  To the extent that the bill of lading does not have the proper form, it is non-negotiable.[70](http://ucc-madeeasy.com/excerpts.htm#LMLFfootSeventy) The distinction between negotiable and non-negotiable documents pervades all of Article 7.  In fact, the last sentence to the first paragraph of the comments to §7-104 states as follows:

*The distinction between negotiable and non-*

*negotiable documents in this section makes*

*the most important sub-classification employed*

*in this article. . .*

[**Back**](http://ucc-madeeasy.com/excerpts.htm#topTwo)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

70 Section 7-104(c) previously quoted, states as follows:

*(c) A document of title is nonnegotiable if, at the time it is issued, the document has a conspicuous legend, however expressed, that it is nonnegotiable.*

This provision is contained in the newest amendments to Article 7 and is absent under section 7-104 as it exists in the many states which have not enacted the revised version.  The amendment is logical insofar as it indicates a clear intent of the issuer, and presumably the consignor, that the document be treated as nonnegotiable.  The importance of negotiability will be seen shortly in Doug’s memorandum.

**Explanation Via Legal Memorandum In A Law Firm:**

**BANK DEPOSITS AND COLLECTIONS**

***A. Article 4 and Bank Collections: Characterization of the Banks Involved***

At the outset it is important to distinguish the  
manner in which a particular bank is characterized  
for Article 4 purposes, for oftentimes different  
duties and liabilities will attend this classification.  
  In fact, Article 4 is roughly broken down into various subparts based upon such classifications. In the instant case, East Dade Bank was a depository, collecting, and presenting bank; ***‘depository’*** since it was the first bank to which the check was taken for collection; [102](http://ucc-madeeasy.com/excerpts.htm#LMLFfootOnehundredtwo) ***‘collecting’*** since it was a bank handling the item for collection (and was not the payor bank),[103](http://ucc-madeeasy.com/excerpts.htm#LMLFfootOnehundredthree) and finally as a ***‘presenting bank’*** since it presented the item for payment and was not the payor bank.[104](http://ucc-madeeasy.com/excerpts.htm#LMLFfootOnehundredfour)  South Dade Bank, as the drawee, was the ***‘payor bank’***.[105](http://ucc-madeeasy.com/excerpts.htm#LMLFfootOnehundredfive)

***B. Activities of the Depository-Collecting Bank***

*1. Provisional credits*

*2. Cash Withdrawals*

*3. Timely Action*

Generally, when a depository-collecting bank receives an item for collection, it will not advance cash for the item.  It will usually wait until final payment by the payor bank before allowing any cash to be withdrawn on the strength of the item.  In order to reflect the transaction on its books, it will make a provisional entry into its customer’s account [discussed more below.

Some banks will however, allow customers to draw cash in this type of situation, but that is usually because there is enough money in the account to offset the check if it doesn’t clear, or the customer and the bank have an established relationship in which such advances are normal. Regardless of whether or not cash is taken back, the bank will reflect the transaction by making the noted entry in its customer’s account.  The presumption is that this entry is “provisional” in nature:

*Unless a contrary intent clearly*

*appears. . .a collecting bank . . . is an agent*

*or sub-agent of the owner of the item and*

*any settlement given for it is provisional*

§4-201(a).

The fact that cash was given for the item prior to receiving payment from the payor bank as in the instant case does not change the provisional nature of the credit given.[106](http://ucc-madeeasy.com/excerpts.htm#LMLFfootOnehundredsix) After the depository-collecting bank provisionally credits its customer’s account, it will initiate collection of the item.  In performing this duty:

*A collecting bank shall send items by reasonably prompt method taking into consideration relevant instructions, the nature of the item, the number of those items on hand, and the cost of collection involved and the method generally used by it or others to present such items.* §4-204(a).

The check could have been sent to a clearing house, into the Federal Reserve System (under proper circumstances), or as here, directly to the payor bank.[107](http://ucc-madeeasy.com/excerpts.htm#LMLFfootOnehundredseven)

Whichever it chooses, the bank has exercised ordinary care if it takes proper action prior to its midnight deadline.[108](http://ucc-madeeasy.com/excerpts.htm#LMLFfootOnehundredeight)  
  
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

102“*Depository bank” means the first bank to which an item is transferred for collection even though it is also the payor bank.* Section 4-105(a).

*103“Collecting bank” means any bank handling the item for collection except the payor bank.* Section 4-105(d).

*104“Presenting bank” means any bank presenting an item except the payor bank.* Section 4-105(e).

*105“Payor bank” manes a bank by which an item is payable s drawn or accepted.* Section 4-105(b).

106 The second sentence to Section 4-201(a) states in part as follows:  
  
*This provision* [regarding the provisional nature of a credit noted above] *applies regardless of the form of endorsement or lack of endorsement and even though credit given for the item is subject to immediate withdrawal as of right* ***or is in fact******withdrawn.*** (emphasis added)

107Section 4-204(b)(1) says:

*(1) A collecting bank may send*  
*(a) any item direct to the payor bank;*

*108A collecting bank must exercise ordinary care in:*

*(1) presenting an item or sending it for presentment;* Section 4-202(a)(1)  
  
*A collecting bank exercises ordinary care under subsection (a) by taking proper action before its midnight deadline following receipt of an item, notice or settlement. Taking proper action within a reasonably longer time may constitute the exercise of ordinary care, but the bank has the burden of establishing timeliness.*  Section 4-202(b).

[**Back**](http://ucc-madeeasy.com/excerpts.htm#bankDeposits)

**Explanation by Dialogue: Commercial Paper**

Alan and Stephen went to the coffee shop across the street from the bank.  “Why did you want to take a break from the meeting?”  Stephen asked.  “You know that I am leaving this whole matter up to you, don’t you?

“Yes,” said Alan, “when I was referring to the terms of the note, however, it occurred to me that in its present form, the note is probably negotiable.  This could hurt us later on, so I would like to make it non-negotiable.”

“What’s negotiability?” asked Stephen.

Fortunately for Alan, Doug had explained all of this to him over the course of the last few weeks.

“A piece of commercial paper, such as this note,” responded Alan, “is termed ***‘negotiable’*** if it is drafted in a particular form.[115](http://ucc-madeeasy.com/excerpts.htm#LMLFfootOnehundredfifthteen)

“Why is that so important?” Stephen asked.

“For a couple of reasons,” replied Alan.  “For example, if the note is negotiable and George transfers it to a third party, it is possible that the third party will obtain greater rights on the note against us than George had.”

“Before explaining *that* one to me, why would George transfer the note?” asked Stephen.

“Well,” said Alan, “George might decide that he prefers to have one lump sum of cash for the note as opposed to waiting for payments over a 20-year period.  Accordingly, he might try to sell the note to someone.”

“What does that have to do with negotiability?” interrupted Stephen.  
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
  
  
115The form is contained in Section 3-104(a)(1)(2)(3) which is reproduced in the Statutory Supplement.  The requirements of these sections are discussed in the following dialogue between Alan and Stephen.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

“Well,” said Alan.  He paused for a moment and said, “Perhaps the best way to explain this is with an example. Assume for a moment that George decides in a year or two that he wants a lump sum cash payment for the note.  He might take the note to his bank and ask the bank if it would be interested in purchasing the note.  The bank’s interest in purchasing the note lies in the interest built into the note, as well as the amount of ‘discount’ it can get on the note.  That is, if the principal amount owing on  the note in two years is $720,000, anything the bank pays for the note less than $720,000 will represent the amount of discount of the note to the bank.  Of course, in deciding how much to pay for the note, the bank will take into account such factors as inflation, the state of the business at the time, the projected business to be done and the like.

One thing the bank should definitely check is the form of the note, i.e., whether it is negotiable or not negotiable.  If it is negotiable and the bank purchases the note under certain conditions (set forth in §3-302 and discussed later in this discussion), the bank is given a legal status which may give it superior rights with respect to the note, in relation to us, than George had. For example, certain claims we might have against George in a lawsuit on the note would not be assertable against the bank.”

“I’m sorry, Alan, but I don’t understand this.  What superior rights are you talking about, and how would this happen?”

“Okay, Stephen, assume for a moment that when we start operating the outlet we see that George made a mistake in calculating the amount of inventory on hand for which we would be entitled to reduce the note in a corresponding amount.  If George refused to do this and the amount of the mistake was substantial enough to take a stand on, I would refuse to make any further payments to George.  Of course, he would sue us.  Against him we could assert the mistaken value placed on the inventory.  If he sold it to the bank, however, under circumstances in which the bank becomes a ***“holder in due course”***, the inventory error would not be assertable against the bank.[116](http://ucc-madeeasy.com/excerpts.htm#LMLFfootOnehundredsixteen)

“Why does that law produce such a result?” asked Stephen.  
“In order to facilitate the movement of commercial paper,” responded Alan, “someone purchasing such paper must know that when it is taken under certain commercial circumstances, the person or persons obligated on the paper can’t refuse to make payment based on certain designated personal defenses.  Otherwise, banks and interested third party lenders would not purchase this type of paper except at a correspondingly lower cost which would be almost impossible to compute in most situations.”

“Okay, but what does negotiability have to do with it?”

“Here, let me show you,” said Alan, as he took out his copy of the Uniform Commercial Code.  He showed Stephen that under Section 3-302(a) a holder in due course is first a ***”holder”*** [117](http://ucc-madeeasy.com/excerpts.htm#LMLFfootOnehundredseventeen) of an instrument.” Thus, in order for one to be a holder in due course, one must take an ***“instrument”***. “An instrument,” Alan went on to say, “is defined in Section 3-104(b) as a ‘negotiable instrument.’ The negative implication, of course,” continued Alan, “is that if it’s not negotiable, it’s not an instrument and there can be no holder in due course under Section 3-302.” [118](http://ucc-madeeasy.com/excerpts.htm#LMLFfootOnehundredeighteen)  
     “And you said that this whole question is simply a matter of form, right?” asked Stephen.  
     “Yes,” said Alan. “Here, let me show you.  You start out with Section 3-104(a).  As you can see, in order to be a negotiable instrument, all of the conditions in subsection (a), (1), (2) and (3) must be met. The first condition under section 3-104(a), that the writing must contain an ***”unconditional promise”*** *or order to pay a fixed amount of money.* The ‘unconditional promise’ is not made conditional by the fact that the note mentions the underlying sales agreement, for as noted under Section 3-106, a promise or order is not made conditional by the fact that it refers to another writing. [119](http://ucc-madeeasy.com/excerpts.htm#LMLFfootOnehundrednineteen) Nor is the writing made non-negotiable by the fact that the note refers to the Security Agreement and various rights contained therein with respect to the collateral. Section 3-106 [120](http://ucc-madeeasy.com/excerpts.htm#LMLFfootOnehundredtwenty)  Notice, though, if the agreement stated that it was ***subject to*** the *terms* of the *sales agreement*, it would not be negotiable under 3-106(a)(ii).” [121](http://ucc-madeeasy.com/excerpts.htm#LMLFfootOnehundredtwentyone)  
  
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

116The rights of the holder in due course are contained in §3-302, which is reproduced in footnote 116 in the Appendix.  Some of the policy reasons for this result are discussed later in this discussion between Alan and Stephen.

117A holder is defined in Section 1-201(a)(20) in part as: *. . . a person who is in possession of. . . an instrument. . . issued or endorsed to him or his order*. . .

118In this connection the third paragraph to comment 2 of §3-104 states as follows:

            An order or promise that is excluded from Article 3 because of the requirements of 3-104(a) may nevertheless be similar to a negotiable instrument in many respects. Although such a writing cannot be made a negotiable instrument within Article 3 by contract or conduct of the parties, nothing in Section 3-104 or Section 3-102 is intended to mean that in a particular case involving such a writing a court could not arrive at a result similar to the result that would follow if the writing were a negotiable instrument.

119 *. . . A reference to another writing does not of itself make the promise or order conditional.*  Section 3-106(a)

120 *A promise or order is not made conditional (i) by a reference to another writing for a statement of rights with respect to collateral, prepayment, or acceleration.*  Section 3-106(b)

121 *Except as provided in this section, for the purposes of Section 3-104(a) a promise or order is unconditional unless it states:. . . (ii) that the promise or order is subject to or governed by another writing. .* . Section 3-106(a)(ii)  
Anyone purchasing paper which states that it is “subject to” another writing is on notice that the piece of commercial paper involved is in effect, subrogated to the terms of the other writing.  The promise on the commercial paper, in that situation, is clearly conditional on the terms and conditions in the other writing.

[**Back**](http://ucc-madeeasy.com/excerpts.htm#nineteen)

**Explanation Through Dialogue: Leases**

As much as he didn’t want to do so, he called Doug for help in understanding what a finance lease was all about.

Doug told him he would come to Alan’s office in a few minutes.  On the one hand, he was pleased that Alan came to him for legal advice on the UCC.  On the other hand, Alan seems to have forgotten that Doug had other partners to work for besides Alan.  Doug was confident that when the bonuses came out at the end of the year, he would be well remembered.  So, he put on his smiling face and walked into Alan’s office.

….

“Before we look at the definition of a finance lease, I want to call your attention to the fact that the transactional aspects require three parties, the ‘supplier’ of the goods; the ‘finance lessor’ of the goods; and the ‘lessee’ of the goods involved.  The essence of the transaction is that the supplier provides the leased goods to the lessee, with the finance lessor becoming the ultimate owner and lessor of the goods leased.  As implied in the term ‘finance lease’, the finance lessor is involved in the transaction as a financing agency, and has little involvement in the underlying transaction between the lessee and the supplier.

“Let’s start our analysis by taking a look at the statutory definition of a *Finance Lease* under Section 2A-103(1)(g). There are three requirements for  a valid finance lease.  The first two requirements unique to the finance lease, are stated under Section 2A-201(1)(g)(1)(2):

*“Finance lease” means a lease with respect to*

*which:*

*(1) The lessor does not select, manufacture,*

*or supply the goods;*

*(2) the lessor acquires the goods or right to*

*possession of and use of goods in connection*

*with the lease.*

Alan interrupted Doug.  “That’s part of what confuses me.  How can a finance lessor lease goods it doesn’t ‘select, make, manufacture or supply’ and furthermore, goods that it has no interest except in connection with the lease?”

“Remember what I told you.  The finance lessor is in the deal solely as a financier.  As you will see, there are a number of special rules which apply uniquely in the finance lease situation which reflect the role of the finance lessor.  For example, the finance lessor’s role regarding warranties, and general obligations is very limited.  The finance lessor is not concerned with the business of leasing goods, but with the business of collecting rents.  Hence, the finance lessor ‘*does not select, manufacture, or supply goods’* and has no rights in the goods except ‘*in connection with the lease’*.”

“Doug, how would this apply in our situation?

**Explanation Via Instant Messaging: Secured Transactions**

As soon as he got off the phone with Kitty, he sent Doug an Instant Message. He wanted any information he could get, as soon as possible,  which would help him understand the transactions. Doug was hooked into his computer, and always answered quickly. He would pay Doug as an independent attorney, rather than try to include this in his arrangement with Alan.  
He sent the following Instant Message:

Doug:

I hope this finds you doing well.  Things here

are really active.  Just got off the phone with

Duke. Looks like they discovered oil on his Texas

Ranch. Also, wants to jump start his orange

business. Needs to borrow $200,000 for the

orange business. Duke has asked me to help him

with this.  I would like you to represent me and

help me figure out how best to proceed.

Time is of the essence.  What do you think?

Go Canes!

Stephen

---------------------------------------------

Hi Stephen:

Of course I can help.  And, thanks for

thinking of me!  Maybe one of these days I’ll get

paid what I am worth by this law firm!

What can I do for you?

---------------------------------------------

Doug:

Obviously, the bank is going to want

collateral for the loan.  They are already

financing the orange inventory.  I am not clear

on how that works. Can you explain?

---------------------------------------------

Stephen:

I haven’t seen the documents, but my guess

is that they have a security interest in the

oranges as ‘farm products’.  The term is defined

under Article 9 of the Uniform Commercial Code:

*“Farm products” means goods, other than*

*standing timber, with respect to which the*

*debtor is engaged in a farming operation and*

*which are:*

*(A) crops grown, growing, or to be grown,*

*including:*

*(I) crops produced on trees, vines and bushes;*

*and*

*(II) ....*

*(B) livestock, born or unborn….*

*(C) ….*

*(D) ….*

            Section 9-102(a)(34)(A)(B)

One thing the bank might consider, is using part of the loan proceeds to purchase a commodity contract in which the bank could take a security interest.  Or it could take a security interest in a commodity account. This would decrease the exposure to the bank.

---------------------------------------------

Doug:

     Remember, it wasn’t too long ago that

I was on the beach sipping pina coladas!

     What is a commodity contract and a

commodity account & how would this work.

---------------------------------------------

How much time do you have Stephen?

---------------------------------------------

Whatever it takes!  In case you haven’t

heard, there is an involuntary petition filed

against our clothing store.  Onus Primo

robbed us and my financial outlook is not

good right now.

I need to be able to help Duke big time so

he can maybe help me back!  I will send you a

retainer in the morning, and if Alan gives you a

hard time about this, let me know and I will

deal with him.

---------------------------------------------

OK.  Here goes. I am going to start with the definition and work you through the whole process.  I am going to do this in legalese, so bear with me.  Also, I am doing this quickly, so before you rely on this, I want some timeto review it.  Don’t want any malpractice possibilities amigo.  If you have any questions, just stop me and ask them.

*“Commodity Account” means an account*

*maintained by a commodity intermediary*

*in which a commodity contract is carried for*

*a commodity customer.*    Section 9-102(14)

In order to understand the meaning what a commodity account is, one must define three terms contained in the foregoing definition:

a. Commodity intermediary;

b. Commodity contract;

c. Commodity customer

The security interest itself could be in the ‘commodity account’, or the ‘commodity contract’. Where multiple contracts are being secured, it would probably be in the overall account, rather than each individual contract.  In either event, it would be designated as “investment property” under Article 9:

*“Investment property” means a security,*

*whether certificated or uncertificated,*

*security entitlement, securities account,*

***commodity contract, or commodity***

***account.*** Section 9-102(49)