



SCHOOL OF LAW

MEMORANDUM

To: Drafting Committee for Amendments to the Model Tribal Secured Transactions Act
From: Stephen L. Sepinuck
Date: August 25, 2015
Re: Power to Transfer Previously Sold Receivables

The Official Text of UCC section 9-318 contains two principal rules. First, subsection (a) contains the rather unremarkable statement that a seller of accounts, chattel paper, payment intangibles or promissory notes retains no interest in the property sold. Second, subsection (b) provides that such a seller retains the power to transfer rights in that property to a purchaser for value of the initial buyer did not perfect. Because attachment requires that the debtor have either rights in the collateral or the power to convey rights in the collateral, *see* § 9-203(b)(2), the rule of subsection (b) effectively allows the seller of accounts, chattel paper, payment intangibles or promissory notes to resell or pledge them as collateral for a secured obligation if the initial buyer did not perfect.

The MTSTA omits section 9-318, even though the MTSTA, like UCC Article 9, applies to most sales of accounts, chattel paper, payment intangibles, or promissory notes. *See* MTSTA §§ 9-110(a)(2), 9-111(e)–(h). The reason for this omission is not clear and the Drafting Committee might wish to consider adding to the MTSTA the rules of UCC § 9-318. Because these rules relate principally to attachment, they could be inserted as section 9-207 (which is currently reserved):

§ 9-207. NO INTEREST RETAINED IN RIGHT TO PAYMENT THAT IS SOLD; RIGHTS AND TITLE OF SELLER OF ACCOUNT OR CHATTEL PAPER WITH RESPECT TO CREDITORS AND PURCHASERS.

(a) [Seller retains no interest.] A debtor that has sold an account, chattel paper, payment intangible, or promissory note does not retain a legal or equitable interest in the collateral sold.

(b) [Deemed rights of debtor if buyer's security interest unperfected.] For purposes of determining the rights of creditors of, and purchasers for value of an account or chattel paper from, a debtor that has sold an account or chattel paper, while the buyer's security interest is unperfected, the debtor is deemed to have rights and title to the account or chattel paper identical to those the debtor sold.