**Introduction**

A **Concept of “security device”**

1 **A theoretical explication**

*Definition:* A security device is some accessory right, either real or credit, accorded to a certain obligee, either by will or by law, over and above the ordinary rights that obligees enjoy as a matter of course, the purpose of which is to increase the chance that this obligee will ultimately obtain satisfaction of the obligation owed to him.

What’s meant by “accessory”? See CC art. 1913. (Explain concepts of “accessory” and “principal”.) Why’s it important to know that a security device is an accessory right? *Accessorium no ducit, sed sequitur suum principale* (“The accessory does not lead, but follows its principal.”) What’s meant by “real or credit”? What’s meant by “by will or by law”? What’s meant by all this business at the end: “over and above the ordinary rights that obligees enjoy as a matter of course, the purpose of which is to increase the chance that this obligee will ultimately obtain satisfaction of the obligation owed to him”?

2 **A practical explication**

a **The plight of the “unsecured” creditor**

To understand why we care about security devices, we have to understand the limited remedies available to unsecured creditors (who do NOT have a “security device” of some kind to take certain property of the debtor).

* The rights of the unsecured creditor

† Explication & enumeration thereof

Read CC art. 3182; then read CC art. 3183, first part.

How are these basic rights of creditors enforced? I.e., what does the creditor have to do to “get” the debtor’s property?

† Assessment thereof (a/k/a why these rights leave a lot to be desired)

I **Problems vis-a-vis the debtor**

II **Problems vis-a-vis certain third persons, namely, the debtor’s other creditors**

b **The solution(s) to this plight**

This course focuses on various ways that creditors enhance their position with respect to other competing creditors and increasing a creditor’s chances for getting paid (from the debtor’s assets). A security device allows a contract creditor to reserve an interest in some of debtor’s property (a real accessory right) or against another person (personal accessory right) before trouble arises to have certain sources of recovery if trouble occurs down the line—and an easier and more certain path to realizing value.

Specific benefits of security:

I **Of personal security**

II **Of real security**

A **In re the relationship between the creditor and the debtor**

B **In re the relationship between the creditor and other creditors: privilege / priority**

B **Classification of security devices**

1 **Summa divisio:** classification according to the nature of that which supplies the security – persons v. things

a **Personal security: security in a person**

1) **Concept**
2) Instance: suretyship

b Real security: security in a thing
1) Concept
2) Subclassifications
   a) Classification according to the nature of the thing in which the security lies
      1] Movable security
         a] Concept
            * Caveat
         b] Illustrations: “Article 9 ‘security interests’”, certain statutory liens & privileges
      2] Immovable security
         a] Concept
            * Caveat
         b] Illustrations: mortgages, certain statutory liens & privileges
   b) Classification according to who “controls” the thing
      1] “Possessory” security
         a] Concept
         b] Illustrations: “pawn” (now a kind of Article 9 security interest), “antichresis”
      2] “Non-possessory” security
         a] Concept
         b] Illustrations: an Article 9 security interest based on a “security agreement”, mortgages

2 Classification according to the source of the security: the will of the parties v. the law
a Volitional security
   1) Concept
   2) Illustrations: “Article 9 ‘security interests’”, “‘conventional’ mortgages”

b Legal security
   1) Concept
   2) Illustrations: various so-called “statutory” liens or privileges, “‘legal’ mortgages

II Corpus
A Personal security (suretyship)
   a Concept
   b Scope (what obligations can be secured by suretyship)
   c Formation requirements
      1 General contractual formation requirements
      2 Special formal requirements
   d Interpretation
   e Classification
      1 Ordinary
      2 Commercial
      3 Legal
   f Effects
1 Relations between the surety and the obligee
   a Nature and extent of surety’s liability
   b Defenses
2 Relations between the surety and the principal obligor
   a “Collection” rights
      1) Enumeration & explication
         a) Surety’s right of reimbursement
            1) Concept of reimbursement
            2) Prerequisites to reimbursement
         b) Surety’s right to subrogation
            1) Concept of subrogation
            2) Extent of subrogation
      2) Limitation
   c Right to demand security
3 Relations among the sureties
   a Division of responsibility
   b Right of contribution
      1) In general
      2) Where one surety pays part but obtains a release for all
   g The “end” (extinction & termination)
      1) Extinction
         a) Accessorium non ducit sed sequitur suum principale
            1) General principle
            2) Particular applications
               a) Prescription of the principal obligation
               b) Remission
                  1) Of principal obligor
                  2) Of one of multiple sureties
               c) Novation of the principal obligation
         b) Modification of the principal obligation
         c) Impairment of real security for the principal obligation
      2) Termination