

SECURED TRANSACTIONS

Spring 2012

Room 205

Tues./Thurs. 10:25-11:45 a.m.

(5 min. added to account for 2 missed days when I must be out of town)

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SYLLABUS AND POLICIES

Why study Secured Transactions?

DEBT is a familiar concept for most of us. We finance our education with student loans, have numerous credit cards, and buy cars, televisions, computers, and just about anything – “on credit.” In the process of acquiring debt, we may agree that our creditors may take our property (“collateral”) if we do not pay the debts. When the collateral is personal property, we often become party to secured transactions governed by Article 9 of the Uniform Commercial Code (“UCC”) as adopted by the states.

Understandably, creditors seek assurance of repayment. Sometimes a debtor’s “credit worthiness” will justify lending funds based on only the debtor’s promise to pay, resulting in unsecured debt. Many creditors, however, demand that a debtor either obtain a surety (“co-signor” or “guarantor”, or under UCC Article 3 an “accommodation party”) or secure repayment by nominating some of the debtor’s property to serve as collateral for the loan. If the debtor fails to pay the amount of money owed, the creditor may seize and sell the collateral and apply the proceeds of the sale to pay the debt.

There are many devices for securing credit, including mortgages, liens (statutory and non-statutory), leases, etc. This course in Secured Transactions will focus on consensual liens on personal property or fixtures, called “security interests” and governed by UCC Article 9. The course also will touch on other liens, such as judicial and statutory liens. Bankruptcy issues will also be considered where they intersect with secured transactions problems involving insolvent debtors. Indeed, UCC Article 9 issues often arise when one is unable to pay bills, or insolvent. On the other hand, one who pays all of his or her bills on time may be a party to many secured transactions, but never have reason to consider the provisions of UCC Article 9.

UCC Article 9 issues generally focus on a creditor's chief concern: "How do I get paid?" When a debtor defaults on a loan, all of the debtor's creditors seek repayment from the debtor's limited assets. Conflicts arise when more than one creditor has an interest or right to collect from the same property. Some creditors may have an Article 9 Security Interest while others have non-Article 9 liens or other interests in the property. The law of Secured Transactions seeks to sort out the priority of these interests.

Colorado has adopted revised Article 9 (the 1998 version). Moreover, per the National Conference of Commissioners on Uniform State Laws's (NCCUSL) mandate, all 50 states and the District of Columbia adopted revised Article 9 by or slightly after the July 1, 2001 effective date – making the revision one of the most (if not *the most*) successful uniform law revisions of all time. Revised Article 9 therefore became effective in all states by January 1, 2002.

Accordingly, this course will focus on the **uniform version of the revised UCC Article 9, which is now the standard secured transactions law most refer to generally as "Article 9"**. Thus, assume that references to "UCC Article 9" are to the 1998 revision reprinted in the Supplement unless noted otherwise. In addition, note that there have been **revisions to the revision (see below)**, and each state may pass the law with **state-specific idiosyncrasies!** Therefore, Colorado's version of Article 9 may differ in limited respects from the uniform version in the supplement. However, state differences are limited and a national law practice (and the bar exam) calls for attorneys to know the **uniform** version of Article 9. The uniform version is also what is reprinted in the Selected Commercial Statutes for Secured Transactions Courses 2011 ed. assigned for this course. **We will also point out difference under the 2010 Amendments (noted below).**

NOTE ON THE 2010 AMENDMENTS

NCCUSL has proposed adoption of 2010 Amendments to UCC Article 9 that are designed to go into effect on July 1, 2013. Colorado has not yet adopted the Amendments, but may enact them as early as this year. The 2010 Amendments to UCC 9 modify the existing statute to respond to filing issues and address other matters that have arisen in practice following a decade of experience with the 1998 version of UCC 9.

Of most importance, the 2010 Amendments provide greater guidance as to the name of an individual debtor to be provided on a financing statement. The amendments offer two alternatives to each state:

Alternative A provides that, if the debtor holds a driver's license issued by the state where the financing statement is filed, the debtor's name as it appears on the financing statement is the name required to be used on the financing statement. If the debtor does not have such a driver's license, either the debtor's actual name or

the debtor's surname and first personal name may be used on the financing statement.

Alternative B provides that the debtor's driver's license name, the debtor's actual name or the debtor's surname and first personal name may be used on the financing statement.

The amendments further improve the filing system for the filing of financing statements. More detailed guidance is provided for the debtor's name on a financing statement when the debtor is a corporation, limited liability company or limited partnership or when the collateral is held in a statutory or common law trust or in a decedent's estate. Some extraneous information currently provided on financing statements will no longer be required.

In addition, the amendments provide greater protection for an existing secured party having a security interest in after-acquired property when its debtor relocates to another state or merges with another entity.

The amendments to UCC Article 9 were drafted and approved by both the Uniform Law Commission and the American Law Institute in 2010. It has also been introduced this year in Connecticut, the District of Columbia, Kentucky, Massachusetts, Oklahoma, and Rhode Island. Further information on UCC Article 9 can be found at the ULC's website at www.uniformlaws.org.

Required Materials:

- (1) Whaley & McJohn, Problems and Materials on Secured Transactions (8th ed. 2010);
- (2) Selected Commercial Statutes for Secured Transactions 2011 (West Group).

I also may provide other handouts and materials in class or through TWEN from time-to-time.

TWEN and Additional Resources:

I have created a Secured Transactions course page on TWEN. All students in this course must register on TWEN in order to access the page. The TWEN course page may post announcements and assignments, and provide additional materials and resources.

I have created a special course reserve for this course in the library. This reserve includes treatises and study aids on UCC Article 9 and secured transactions. I hope that these materials will be helpful! Please note that there also are other helpful commercial law resources in the library. Nonetheless, many resources pre-date the significant

revisions of UCC Article 9 – and therefore may confuse your learning. Most of these revisions were in 1999, but others are as recent as 2011.

Office Hours:

Office hours for this class will be held on Tuesdays from 3:30 to 5:00 p.m., or by appointment. Of course, please feel free to talk to me after class or stop by my office anytime. I am in my office most days. In addition, I am happy to schedule coffee/meetings/lunch with study groups.

Class Attendance, Preparation and Participation:

General Attendance and Preparation: Class attendance, preparation and participation are essential. Your contribution to this class will enhance everyone's course experience. *This means you really should be present and prepared for every class meeting.* This includes reading the material, thinking about it, and being prepared to discuss the cases, Problems in the book, and related hypotheticals I create. Nonetheless, in order to relieve some burden and stress, I do assign the book Problems in advance. This means that you should prepare answers to all the Problems, but you will be responsible **for more carefully preparing** answers to your assigned Problems and will present these answers in class. I also may add follow-up questions and related hypotheticals to the Problems. *If you are unable to attend class the day on which you are scheduled to present an assigned Problem, then you must "swap" Problems with another student to be sure the Problem is covered. In that event, kindly let me know of the "swap."*

I realize that you will have days that you cannot attend due to illness, etc., and extenuating circumstances may prevent you from being prepared at times. For this reason, you each have three "passes." A pass allows you to come to class without fear of being called on for that day. You must alert me that you are using a pass, however, *before class begins. Please also note that the ABA accreditation standards require us to enforce "regular and prompt class attendance," and a student's failure to comply will result in failing or being denied credit for the class.* I hate to have any rules, and sincerely hope that you all come to class and that you prepare for and participate in class discussions! I truly enjoy this material and discussing it with you.

Participation Points: Because participation is very important to your learning, I wish to acknowledge students' efforts and contributions to the class through additional points. Therefore, I will add from 1 to 5 points to each student's final grade based on the student's overall participation and contribution to the class. These are full points that can really help bring up your grade. *It is therefore very beneficial to participate!*

Exam:

Your grade for this course will be based primarily on a three-hour final essay exam. You may bring with you to the exam the casebook and supplement, any additional materials I distribute or provide on TWEN, and outlines which *you have prepared/substantially prepared* (i.e., *not borrowed or copied from a friend, former student, outline file, etc.*). *You may not bring other books, treatises, nutshells, commercially prepared outlines, or the like.*

Assignments:

Schedule: I have added 5 minutes to each class to account for 2 missed days when I must be out of town for conferences/presentations. One of the missed days will be Thursday, February 23, and the other is TBA. Therefore, there are 26 assignments listed.

Proviso: Each assignment is expected to cover roughly one class period. Some assignments, however, may take more or less time depending on complexity of the material. In addition, other adjustments may be made along the way. **Accordingly, the reading assignments are subject to change and you should not read too far ahead of class.**

Problems: As noted above, you will be responsible **for more carefully preparing** answers to your assigned Problems and will present these answers in class. However, that does not mean you may skip the other Problems. Instead, you should consider and prepare answers to all of the Problems, even if you are not responsible for presenting the Problem in class. We may often work the cases into discussion of the Problems and follow-up hypotheticals. ****Also note that you are all on-call for Problems 1-15! I hope to have the class roster finalized and post assignments on TWEN after that time.**

Statutory Cites: **Please be sure to read and study the provisions and comments in the UCC and other statutes referred to in the casebook assignments.** These provisions and comments are reprinted in the statutory supplement, which you must always bring to class. Indeed, when you see a citation to the UCC, put down the casebook and read the UCC provision and comments cited! Note that although the comments to Article 9 are not “law,” they are persuasive and particularly helpful in explaining the statutory provisions.

ASSIGNMENT 1:

INTRODUCTION TO SECURED TRANSACTIONS – pp. 1 – 13 ****Also, please bring in examples of security agreements you have seen in your own contracts (ie: check car leases and sales on credit!).**

ASSIGNMENT 2:
SCOPE OF ARTICLE 9 – pp. 15 – 31 (through part IV)

ASSIGNMENT 3:
EXCLUSIONS FROM ARTICLE 9 – pp. 31 – 40

ASSIGNMENT 4:
CLASSIFYING COLLATERAL I & BINGO – pp. 41 – 48 (not including Prob. 15) **It is *especially essential to read and study §9-102!*

ASSIGNMENT 5:
CLASSIFYING COLLATERAL II & TECHNICAL VALIDITY OF THE FORMS I– pp. 49– 55 (start w/Prob. 18 through the top of page/before Part C)

ASSIGNMENT 6:
TECHNICAL VALIDITY OF THE FORMS II – pp. 55– 71 (starting with Part C & Prob. 25)

ASSIGNMENT 7:
FORMS – FILING EXERCISE! Use the handouts and the Safe Harbor forms per UCC 9-521 (find in your Supplement). Be sure to read the UCC provisions and comments regarding the forms in your Supplement per UCC 9-521, as well as the instructions on the forms. Also read 9-501 through 9-503, 9-509 through 9-523, 9-308, and 9-310 through 9-316.

ASSIGNMENT 8:
ATTACHMENT OF THE SECURITY INTEREST – pp. 71 – 82

ASSIGNMENT 9:
PLEDGE & AUTOMATIC PERFECTION I – pp. 83 – 104

ASSIGNMENT 10:
AUTOMATIC PERFECTION II, PERFECTION BY FILING & PERFECTION BY CONTROL – pp. 105 – 113

ASSIGNMENT 11:
MULTI-STATE TRANSACTIONS – pp. 115 – 126

ASSIGNMENT 12:
PRIORITY BASICS – pp. 127 – 136 (through Prob. 66)

ASSIGNMENT 13:
PURCHASE MONEY SECURITY INTERESTS – pp. 136 – 155 (through Prob. 73)

ASSIGNMENT 14:
CONTROL AND PRIORITY & BUYERS I – pp. 155 – 173 (through Prob. 79)

ASSIGNMENT 15:
BUYERS II – pp. 173 – 188 (starting with Prob. 80)

ASSIGNMENT 16:
LEASES, UCC ART. 2 CLAIMANTS & STATUTORY LIEN HOLDERS – pp. 189 – 201

ASSIGNMENT 17:
FIXTURES & ACCESSIONS AND COMMINGLING – pp. 201 – 216 (through Prob. 104)

ASSIGNMENT 18:
FEDERAL PRIORITIES FOR DEBTS AND TAXES – pp. 216 – 236

ASSIGNMENT 19:
BANKRUPTCY I (TRUSTEES & PREFERENCES) – pp. 237 – 244

ASSIGNMENT 20:
BANKRUPTCY II (MORE ISSUES) – pp. 244 – 259

ASSIGNMENT 21:
MEANING OF PROCEEDS – pp. 261 – 268 (to the top of the page)

ASSIGNMENT 22:
PRIORITIES IN PROCEEDS – pp. 268– 279 (starting with Prob. 117)

ASSIGNMENT 23:
PRE-DEFAULT DUTIES OF THE SECURED PARTY & DEFAULT I – pp. 281 – 288 (through Prob. 125)

ASSIGNMENT 24:
DEFAULT II & REPOSESSION AND RESALE I – pp. 288 – 300 (through Prob. 127)

ASSIGNMENT 25:
REPOSESSION AND RESALE – pp. 300 – 307, 324 – 325
**** SKIP PP. 297-312 R&J OF TENN. INC. & SKIP PP. 315-326 COXALL**

ASSIGNMENT 26:
REVIEW OR CATCH-UP