
PREFACE

Welcome to the study of Secured Transactions. *We hope* that you will find it to be an interesting and engaging subject. *We know* how foundational it is to transactional practice—whether you are or represent a lender (including a seller on credit) or a borrower (including a buyer on credit) and whether you or your client are an individual or a business—and, consequently, to understanding the underlying legal issues when litigation in which at least one party seeks to enforce or avoid a security interest in personal property arises from a failed transaction or from a bankruptcy filing.

If you allow yourself to do so, you may even enjoy the process of learning the law of personal property secured transactions. Yes, you will have to wrestle with a complex and occasionally frustrating statute—Article 9 of the Uniform Commercial Code (UCC). Yes, at times the subject matter will seem fairly “technical” and require a good deal of close reading and careful application on your part. But beneath it all, remember, are those human interactions that make this subject worth studying and its details worth mastering. People enter into secured transactions because they have something to accomplish. For example, a consumer wanting to purchase an automobile, but unable to pay the purchase price in cash or its equivalent, borrows some or all of the purchase price from the seller or a third-party lender to whom the buyer grants a security interest in the automobile; or a small business owner wanting to expand her operations, but lacking the cash on hand to do so, borrows funds from a lender to whom she grants a security interest in some of the business’ assets. If all goes well, the borrower and their lender both stand to gain. If all does not go well, whether the borrower, the lender, or both end up worse off than anticipated can hinge on having gotten the “technicalities” right.

You will meet many different types of actors along the way. We focus most of our attention on the particular secured party and the particular debtor involved in a particular transaction being contemplated, carried out, or litigated over; but we will also encounter unsecured creditors, lien creditors, bankruptcy trustees, other secured parties, sellers, and buyers—just to name the most-frequently discussed—who may claim some right in the personal property that the debtor is offering or has offered to the secured party as collateral. By the final part of the book, we even get to meet the professional repossession agent: the “repo man.” As you work your way through this material, consider the goals and the concerns of each of these actors as they appear. In particular, as you work your way through any problem—at first on your own and then with your instructor—imagine yourself in the role of each of the parties. “What,” you may reasonably ask yourself, “is my motivation? What am I feeling at this point?”

The organization of the book is fairly straightforward. Although some instructors who teach from this book (and, indeed, the co-authors) disagree about the best order in which to study the chapters, we have structured each chapter in the same way. First comes an Introduction. In some instances this will be very brief, in others we provide a bit more background. We do not intend each chapter’s Introduction to summarize all that you will learn in the chapter. Rather, we intend it to get you oriented and headed into the material.

Next in each chapter comes a Preparation section. Carefully read each of the UCC sections and the Official Comments (found after each UCC section in any commercially available statutory supplement) to which we direct you. Other UCC sections and other official comments to the assigned sections or to other sections may be relevant. At least skim any sections and comments cross-referenced by the assigned sections and comments. You need not fully comprehend or appreciate every nuance of the UCC material before you can move on. Try, however, to understand what is in the assigned sections and comments so that you will be able to refer back to this material in your statutory supplement as you read and work through the Problems and Cases in each chapter and the Review Questions at the end of each part of the book (see below). Think of the Preparation as equipping you with a set of tools that you will need to address the issues that follow in the remainder of the chapter.

After you have completed the Preparation, you are ready for the Problems and Cases. You should first work through this material on your own or with your study partner or study group. Your notes about the readings will provide a script from which you will be prepared to carry on a conversation with your instructor during class.

We have provided a few multiple-choice review questions at the end of each part of the book. You may find these helpful for self-assessment. For each question it is important, of course, that you get the right answer, but it is no less important that you can explain why the right answer is indeed right and why each of the wrong answers is, well, wrong.

We sincerely hope that you will find the subject of this book interesting and engaging. In any event, we know its centrality to the practice of transactional law and the frequency with which bar examiners in many jurisdictions include it in essay questions or performance tests.

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