

Syllabus For

SECURED TRANSACTIONS

(Course No. 6280-20; 2 credits)

Professorial Lecturer Gregory E. Maggs

Content of the Course:

This course primarily covers secured transactions under Uniform Commercial Code (UCC) Article 9. Secured transactions are arrangements that provide a creditor recourse to collateral or something else of value if a debtor does not repay a debt. For example, a car dealer may retain a security interest in a car that the dealer sells on credit so that the dealer can repossess and sell the car if the buyer does not pay. The course also briefly addresses letters of credit under UCC Article 5.

Secured Transactions is tested on the Uniform Bar Examination (UBE) and on the bar examinations in most states that do not use the UBE, including states such as California and Virginia. But the subject is not important because it is tested on bar examinations; rather, the subject is tested on bar examinations because it is important. Secured transactions are very common, and most lawyers should know something about them.

The course has no prerequisites and does not presume knowledge of any special business practices. Students may take this course and any other commercial law courses, including Commercial Paper (No. 6282); International Business Transactions (No. 6522); and Creditors' Rights and Debtors' Protection (No. 6284).

Learning Outcomes (ABA Accreditation Standards 301 & 302)

For the expected "learning outcomes" for this course, please see the "learning outcomes statement" at the end of this syllabus.

Office Hours, Telephone, and Email:

Because I am a part-time instructor, I do not have an office at the Law School. My office is at the U.S. Court of Appeals for the Armed Forces, 450 E Street, N.W., Washington, D.C. Until COVID-19 restrictions on visitors are lifted, I will hold on-line

office hours at times to be announced. You may reach me directly by email at gmaggs@law.gwu.edu or through my assistant, Ms. Veronica Sevier, at veronica.sevier@armfor.uscourts.gov.

GW Law Web Portal

This course has a page on the GW Law Web Portal (accessible through <https://my.law.gwu.edu>). On this page, you can find course announcements, the syllabus, and past secured transactions examinations and their grading guides.

Required Books:

In this course, we will use a casebook and a statute book. The casebook is:

Steven D. Walt & William D. Warren, *Secured Transactions in Personal Property* (10th ed. 2019), ISBN: 9781683289364

For the statute book, any commercial law supplement, new or used, will suffice so long as it (1) was published after 2011, and (2) contains U.C.C. Articles 1, 5, and 9 (with official comments). If you choose to buy a new statute book, I recommend:

Steven D. Walt & William D. Warren, *Commercial Law, Selected Statutes, 2021-2022*, ISBN: 9781647088781

A few additional federal statutory and regulatory provisions are included in the appendix to this syllabus.

Final Examination:

This course will have a two-hour, open-book examination. The examination is currently scheduled for Wednesday, May 4, at 6:30 p.m. The Law School, however, has not yet announced final plans for administering spring examinations.

Class Participation and Slides Shown in Class:

Please complete the reading assignments before each class session. During the class session, please have your books open because we will look at them very carefully. Shortly before each class, I will post on the portal the slides that will be shown in the class.

Recording of Classes and Absences:

All classes will be recorded. If you are not feeling well, please stay home and watch the recording. Recorded classes will be accessible through the Law School's web portal.

Reading Assignments and Problems:

At the end of each class, I will tell you how far to read for the next class.

You should look up in the statute book and study very carefully every section of the Uniform Commercial Code cited in the reading. Read other statutes and regulations as indicated in the assignments below.

For each of the assigned problems, please complete the problem worksheet that will be distributed separately.

You need not read the notes and problems following the text and cases in the casebook unless they are specifically assigned.

I. INTRODUCTION

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Problem, p. 5

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II. DEFAULT AND ENFORCEMENT IN SECURED TRANSACTIONS

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B. REPOSSESSION AND JUDICIAL ACTION

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Okefenokee Air. v. PrimeSouth Bank, pp. 273-275

Notes (1) & (2), pp. 275-276

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Williams v. Ford Motor Credit, pp. 279-283

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Cla-Mil East v. Medallion Funding, pp. 285-287

Note (1), pp. 287

C. DISPOSITION OF COLLATERAL

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Problem, pp. 290

Moore v. Wells Fargo, pp. 290-295

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WM Capital Partners v. Thornton, pp. 300-305

Note, p. 305-306

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D. LIABILITY FOR DEFICIENCY

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Problems (1)-(3), pp. 311-312

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E. RIGHTS TO PAYMENT AND REDEMPTION

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III. CREATING SECURITY INTERESTS

A. ATTACHMENT

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Note (1), pp. 20-21

The Federal Bankruptcy Code's Strong Arm Clause,
11 U.S.C. § 544(a) [Syllabus Appendix Item #1]

Problem (2), p. 22

B. DESCRIPTION OF THE COLLATERAL

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In re Hintze, pp. 24-29

Problem (2), pp. 29-30

C. AFTER-ACQUIRED COLLATERAL AND PROCEEDS

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In re Filtercorp, pp. 31-35

Text, pp. 35-36

Bayer CropScience v. Stearns Banks, pp. 37-42

Note, p. 43

Text, pp. 43-45

The FTC Unfair Credit Practice Regulation, 16
C.F.R. § 444.2(a)(4) [Syllabus Appendix Item #2]

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D. MORE DETAILS ABOUT REQUIREMENTS FOR ATTACHMENT

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Text, pp. 46-47

In Re WL Homes, pp. 47-52

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IV. PERFECTING SECURITY INTERESTS

A. PERFECTION BY FILING

1. Basic Requirements

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2. Indication of the Collateral

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ProGrowth Bank v. Wells Fargo Bank, pp. 68-73

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3. Proceeds

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Problem, pp. 75-76

4. Name of the Debtor

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In re Nay, pp. 79-83

Text, pp. 83-84

In re EDM Corp., pp. 84-90

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5. Authorization to File a Financing Statement

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6. Supplemental Filings

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C. SECURITY INTERESTS IN CONSUMER GOODS

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D. GOODS COVERED BY CERTIFICATE OF TITLE

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Sample Presentations in Standby Letters of Credit
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Appendix Item #1. The Federal Bankruptcy Code's Strong Arm Clause, 11 U.S.C. § 544(a)

§ 544 Trustee as lien creditor and as successor to certain creditors and purchasers

(a) The trustee shall have, as of the commencement of the case, and without regard to any knowledge of the trustee or of any creditor, the rights and powers of, or may avoid any transfer of property of the debtor or any obligation incurred by the debtor that is voidable by--

(1) a creditor that extends credit to the debtor at the time of the commencement of the case, and that obtains, at such time and with respect to such credit, a judicial lien on all property on which a creditor on a simple contract could have obtained such a judicial lien, whether or not such a creditor exists;

(2) a creditor that extends credit to the debtor at the time of the commencement of the case, and obtains, at such time and with respect to such credit, an execution against the debtor that is returned unsatisfied at such time, whether or not such a creditor exists; or

(3) a bona fide purchaser of real property, other than fixtures, from the debtor, against whom applicable law permits such transfer to be perfected, that obtains the status of a bona fide purchaser and has perfected such transfer at the time of the commencement of the case, whether or not such a purchaser exists.

Appendix Item #2. The Federal Trade Commission's Unfair Credit Practices Regulation, 16 C.F.R. § 444.2(a)(4)

§ 444.2 Unfair credit practices.

(a) In connection with the extension of credit to consumers in or affecting commerce, as commerce is defined in the Federal Trade

Commission Act, it is an unfair act or practice within the meaning of Section 5 of that Act for a lender or retail installment seller directly or indirectly to take or receive from a consumer an obligation that:

* * *

(4) Constitutes or contains a nonpossessory security interest in household goods other than a purchase money security interest.

**Appendix Item #3. The Federal Tax Lien Statute, 26 U.S.C.
§§ 6321; 6323(a), (f)(1)(A)(ii), (h)(1)**

§ 6321 Lien for taxes

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

§ 6323 Validity and priority against certain persons

(a) Purchasers, holders of security interests, mechanic's lienors, and judgment lien creditors

The lien imposed by section 6321 shall not be valid as against any purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor until notice thereof which meets the requirements of subsection (f) has been filed by the Secretary.

* * *

(f) Place for filing notice; form

(1) Place for filing

The notice referred to in subsection (a) shall be filed--

(A) Under State laws

* * *

(ii) Personal property

In the case of personal property, whether tangible or intangible, in one office within the State (or the county, or other governmental subdivision), as designated by the laws of such

State, in which the property subject to the lien is situated, except that State law merely conforming to or reenacting Federal law establishing a national filing system does not constitute a second office for filing as designated by the laws of such State;
. . .

* * *

(h) Definitions

For purposes of this section and section 6324--

(1) Security interest

The term "security interest" means any interest in property acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability. A security interest exists at any time (A) if, at such time, the property is in existence and the interest has become protected under local law against a subsequent judgment lien arising out of an unsecured obligation, and (B) to the extent that, at such time, the holder has parted with money or money's worth.

Appendix Item #4. Sample Presentations in Standby Letters of Credit

Here are examples of the kinds of documents that actual standby letters of credit have required the beneficiary to present to obtain payment:

1. "A statement purportedly signed by Richard G. Fanslow or his authorized representative stating that: . . . SNL Corporation has defaulted in one or more of its obligations under the terms of the promissory note in the amount of \$6,400,000.00 payable to the order of Richard G. Fanslow and dated October 5, 1988 (the 'note'), therefore immediate payment of \$ (insert amount of draft) is now due and owing under the note." Fanslow v. Northern Trust Co., 700 N.E.2d 692, 694 (Ill. App. 1998).
2. "[A] draft accompanied by a notarized statement that the draft represents an unpaid note installment or that the outstanding balance is due as a consequence of default." Mennen v. J.P. Morgan & Co., Inc., 689 N.E.2d 869, 872 (N.Y. 1997)
3. "[An] original, written request from beneficiary for payment from the proceeds of this letter of credit accompanied by original, written instruction from applicant (containing the written signature of Jochen Rohr) permitting beneficiary to payment under this letter of credit" John Wendt &

Sons v. Edward C. Levy Co., 685 N.E.2d 183, 186-87 (Ind. App. 1997).

4. "A letter purportedly signed by an authorized officer of Branch Banking & Trust Company, Winston-Salem, North Carolina, stating that payment is due under promissory note dated August 2, 1990 in the amount of four hundred twenty-five thousand and no/100 (\$425,000.00) U.S. Dollars by and between Carolina First Holding Corporation and Branch Banking and Trust Company." Carlson v. Branch Banking and Trust Co., 473 S.E.2d 631, 634 (NC. App. 1996).
5. "A statement as follows: '1. This drawing by Eastern General Contractors, Inc. is due to the default or failure to perform by Tolley Tree and Landscaping on project No. 5001, outside repair to housing, Naval Education Training Center, in accordance with contract dated March 13, 1985.'" Rhode Island Hosp. Trust Nat. Bank v. Eastern General Contractors, 674 A.2d 1227, 1229 (R.I. 1996).

LEARNING OUTCOMES STATEMENT

This statement identifies the "learning outcomes" for this course in accordance with ABA Accreditation Standards 301 and 302 and the "Guidance" to these Standards.

(a) Knowledge and understanding of substantive and procedural law

Upon completing Secured Transactions, students should know and understand the law pertaining to:

Default and enforcement in secured transactions;
Creating security interests;
Perfecting security interests;
Priority of security interests; and
Letters of credit

(b) Legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context

When assigned to read a secured transactions case, students should be able to:

1. identify and discuss the facts, the plaintiff's claim, the defendant's defense, the remedies sought, the pertinent legal rules, the issue for decision under these rules, the arguments of the parties, and the holding and reasoning of the court;
2. apply the holding to hypothetical variations of the facts;
3. discuss the logical strengths and weaknesses of the parties' arguments and the court's reasoning; and
4. identify and analyze competing policy considerations about what the law should be.

When given a hypothetical problem, students should be able to identify and discuss any claims and defenses that the parties might assert and any remedies that they might seek.

Students should be able to identify ambiguities in contractual terms and propose alternative ways to draft the terms.

Students should be able to parse and explain statutory provisions, identify ambiguities in statutory provisions, and suggest improved ways of drafting statutory provisions.

Students should be familiar with the history of the law governing secured transactions.

(c) Exercise of proper professional and ethical responsibilities to clients and the legal system

Students should be able to evaluate the legal advice that was given in actual cases, suggest what would have been better legal advice, and formulate advice that should be given in the future in similar caeses.

Students should be able to identify and discuss ethical issues that arise in willfully breaking promises, in raising technical defenses to avoid liability, and in giving legal advice that might encourage perjury.

(d) Other professional skills needed for competent and ethical participation as a member of the legal profession (including, but not limited to, interviewing, counseling, negotiation, fact development and analysis, trial practice, document drafting, conflict resolution, organization and management of legal work, collaboration, cultural competency, and self-evaluation)

Students should be able to present arguments as if they were representing clients in contract disputes.

Students should be able to discuss controversial legal and policy issues in a professional and respectful manner.

Students should understand the role of lawyers in advising clients as they enter into contractual arrangements and resolve or litigate disputes.

Students should understand the basic structure of common contractual transactions familiar to all competent lawyers