# PROPERTY SECURITY - LAW 925 PROFESSOR BEARD SPRING SEMESTER, 2014

# This Syllabus and Assignment List can be found through the Library E-Reserve System

#### SYLLABUS AND ASSIGNMENT LIST

## I. MATERIALS:

- 1. LoPucki and Warren, *Secured Credit: A Systems Approach* (Walters Kluwer 2012 7th Ed.) (The "Casebook")
- 2. Selected Commercial Statutes, 2013 Edition (Thomson-West) (the "Supplement") -

The

Uniform Commercial Code (UCC) Article 9 (UCC9) governs secured transactions in personal property. UCC9 was substantially revised in 1998 and adopted in **ALL** states. The 2010 Amendments to UCC9 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 UCC9. The 2010 amendments have been enacted in all states except, AL, AZ, NY. OK, and VT.

IDAHO, WASHINGTON, MONTANA, OREGON AND UTAH have adopted UCC Article 1 that was revised in 2001 (UCC1) (in the case of Idaho there are non-uniform amendments to Rev. Art. 1 about which you will be advised during the semester). WYOMING has NOT yet

adopted, the 2001 revision of Article 1.

In the 2013 edition of the Supplement, **READ CAREFULLY** the Student Guide on pages v-vi in the front of the Supplement. UCC1 and UCC9 (including all 2010 amendments) appear in the main body of the UCC. Pre-2001 Article 1 appears in Appendix A. You should also note the Article 1 Concordance provided in the Supplement to correlate the provisions of UCC1 and the Pre-2001 Article 1, that appears at the beginning of UCC1 in the front of the Supplement. Please also note Appendix A setting forth Unrevised Article 1.

**Responsibility**: You are responsible for:

1. All materials in this Syllabus;

2. All definitions in UCC1, all Code sections and comments thereto and other materials referenced in this syllabus, the Casebook, and class. As noted, unless indicated otherwise by me or the Casebook, references are to the UUC1 and UCC9 (including 2010 amendments).

#### II. **PROFESSIONALISM:**

A. <u>Attendance Policy</u>: Regular attendance is necessary in this course. Under Law School and American Bar Association rules, excessive absence from class sessions may result in a reduction of your grade in this course or, in <u>extreme</u> cases, dismissal from this course with a grade of F. If your cumulative absences (for any reason) exceed three (3) class sessions, please see me to discuss the problem. Failure to so advise me will be considered a breach of professional standards and responsibility and treated accordingly.

More importantly, I want you to come to every class. You should be prepared for class as noted below. However, even if you are not prepared I want you to come to class. If you are not prepared for that day, simply advise me before class, and I will not call on you. This ability to take a "pass" is intended to encourage students to come to class even if there are times when you are not prepared. There is no penalty for taking advantage of this ability to "pass," UNLESS THE PRIVILEGE IS ABUSED. In the event a student abuses the privilege, the privilege will be revoked, for that student.

**Preparation and Participation:** This course will be conducted using a В. problem method. The assignments in the Casebook contain assignment problems at the end of each assignment. These problems require you to read and apply the material from the Assignment which includes text explanations, cases, statutory material and MOST IMPORTANTLY statutory references to the UCC. The ASSIGNMENT PROBLEMS require you to apply your reading and understanding of ALL THE MATERIAL AND THE STATUTE to particular facts. Our focus will be on these application problems. You are expected to have worked through ALL of the assigned problems PRIOR to the first class for which they have been assigned AND to have WRITTEN OUT your answer to the assigned problems PRIOR to such class. In answering the ASSIGNMENT PROBLEMS you must note your authority for your positions, specifically the relevant Code sections and comments which support your conclusion. The Cases are provided as guidance regarding the manner in which certain courts have interpreted the law and Code related to the problems

presented. READ THE CASES <u>CRITICALLY</u>, but remember you are responsible to make use of ALL THE MATERIAL included in the Assignment and your PRIMARY SOURCE in working through the problems should be the Code itself.

You should expect to spend a minimum of FOUR (4) hours preparing for each class! In the beginning you may well need to spend more time preparing for class. This preparation will pay off with huge dividends when you then get to the final exam SINCE I ANTICIPATE 2-3 Essay questions that will track the sort of problems you will complete for each Assignment.

**IN CLASS** I expect to spend 15-20 minutes going over the material, answering questions, highlighting the key points, THEN turning to the Problems where you will APPLY the material to the factual settings presented.

I WILL NOT ACCEPT AS AN EXCUSE FOR BEING UNPREPARED A CLAIM THAT YOU PREPARED THE ASSIGNMENT IN ADVANCE AND READ IT TOO LONG AGO. REVIEW PROBLEMS PRIOR TO CLASS AND BE PREPARED TO DISCUSS. IF YOU HAVE WRITTEN OUT YOUR ANSWERS THIS WILL NOT BE A PROBLEM.

Participation in class CAN *ONLY* <u>HELP</u> YOUR GRADE, **although repeated failure to be prepared** may be taken into account, and may result in a possible lowering of your final grade. In the absence of volunteers, I will call on people at random (with emphasis on those who have <u>not</u> volunteered or those who can facilitate the discussion). If, with respect to any given problem, I call on three consecutive people who are unprepared, I WILL ASSUME THAT THE CLASS HAS MASTERED THAT PROBLEM, and I will move on to the next problem.

C. Office Hours: My office is Room 128, which is on the 1st floor of the law school. I do not post office hours because I am in the building and available to meet with you between 6:30 am and 5:00 pm almost everyday (excepting, of course, times when I am in class or in meetings). I encourage you to come by any time you like to discuss class, jobs, family or anything else that is on your mind. I like to talk with students, and try to keep my door "unlatched," though the door is usually not open wide because of hall noise. You may also call me at 885-6747 or email me at beardb@uidaho.edu.

#### D. POLICY REGARDING LAPTOP USE IN CLASS:

I do not permit the use of laptops or any other device in class. I have chosen to implement this "No Laptops Policy" for the following reasons:

- 1. Laptops in class are a significant distraction that detracts from student participation and engagement in class discussion. The very process of class discussion and engagement is critical to learning the skills needed to be a good lawyer.
- 2. Prohibiting laptop use also strengthens the review process following class, as students must consider the material and class discussion in order to incorporate the material into outlines for future study.
- 3. The post-class review will also help students memorize the applicable rules we have discussed. This memorization aspect will be essential come exam time. See III. B. below.

This means that you will have to come to class with your answers to the Assigned problems printed out and available for use in class.

### III. ACADEMIC MATTERS

## A. <u>Subject Matter and Objectives of this Course:</u>

In this course we will focus on reading and applying a comprehensive statute. We will use the statutory material in the Uniform Commercial Code and related materials in each Assignment to see how statutes as a whole are to be read carefully, and interpreted 1) in light of inevitable gaps and ambiguities, 2) considering common law principles that may be applicable, and 3) the interrelationship between statutes, e.g, Article 9 and the Bankruptcy Code. Although there are other materials in the Assignments, when we are working on Assignments involving Article 9, or another statutory source, YOUR PRINCIPAL SOURCE OF LAW WILL BE THE STATUTE!

**Subject Matter**: This course covers the law of Creditors' Rights of enforcement. The principal focus will be on the laws related to the use of collateral (real and personal property) to secure indebtedness under general mortgage law and Secured Transactions, as embodied in UCC9.

**Objectives:** The objectives of this course are for you to (1) learn the principles and rules in Article 9,

and related statutes and material, regarding the system of secured credit; (2) acquire some facility in working with the UCC and other statutory material. (The UCC is organized in a remarkably coherent fashion. While commercial transactions can be very complicated, the UCC has set forth the governing rules in the most logical and coherent fashion possible.):

and (3) further hone your skills of critical reading, interpretation, and application of statutory material. THIS COURSE, AS THE AUTHORS NOTE ALSO, IS ABOUT APPLICATION OF LEGAL RULES AND PRINCIPLES TO SOLVE REAL WORLD PROBLEMS.

We will not cover all of the provisions of Article 9. If you 1) understand the basic principles underlying secured credit, and 2) learn how to read and apply statutory material, you will be able to find the applicable statute and read it and apply it to a given problem.

You will need to be able to find, read, and apply unfamiliar or new statutory material in practice, and you will need to do so as part of this class, including on the exam. You will be expected to be able to read, and apply unfamiliar or new statutory material with regard to provisions we may not have covered in any depth or even at all.

- B. Grades, Course Requirements, and Class Participation: Your grade will be based on 1) a final examination during the finals period, 2) possibly 2 or 3 quizzes during the course of the semester, and 3) class participation (to the extent applicable see paragraph B.3) below).
  - 1) THE QUIZZES I anticipate giving you 2-3 quizzes worth between 10 and 15 points each. The quizzes will be administered during class time, will be 30 minutes in length, and will be comprised of objective questions (multiple choice, true/false, fill in the blank). The objective questions will focus on the big sections and concepts we discuss during the semester. You will receive "quiz numbers" for use in taking the quizzes. Further information on the logistics of quiz administration will be provided before the first quiz. In addition to (or possibly in lieu of) a third quiz, I may include an objective portion on the Final Examination see Syllabus below. The total points for the quizzes and/or objective questions on the final exam will be between 30 and 50 points.

2) THE FINAL EXAMINATION - The final examination will be a "three-hour" exam (an exam designed to be completed in three hours). The exam will either be given during the scheduled final examination time, in which case you will be given 4 hours to complete the exam, or I reserve the option to give the exam during a longer "take-home" format of up to 24 hours. The total points on the final examination, other than any objective questions, will be 90-110 points. In any case, the quizzes and the final examination (if in class) will be closed book except that you may bring into, and use during, the quizzes and exam the Supplement. You may write anything you like on any bound pages within the cover of your Statutory Supplement. You may NOT bring into, or use during, the quizzes or the exam any other materials. 3) CLASS PARTICIPATION - I reserve the right to adjust your final grade upward (but not downward) by one-third of a letter grade for class participation (e.g., from "B" to "B+"). Although I will not lower any grades based on the quality of class participation (but see Section II. B. above where I note that "repeated failure to be prepared may be taken into account, and may result in a possible lowering of your final grade"), I may raise a grade when, in my judgment, a grade based upon the performance on the quizzes and final examination does not accurately reflect the understanding of the material demonstrated by that student through class participation. In short, CLASS PARTICIPATION CANNOT HURT YOU AND MAY HELP YOU. "Class participation" includes not only the number of times you participate but principally the quality of your contributions to class discussion (including your willingness to ask what may seem to you to be "stupid" or "obvious" questions) and, equally important, your willingness to give time and respectful attention to the questions and comments of your classmates (including your willingness to listen carefully to what may seem to you to be "stupid" or "obvious" questions). The importance of your ability to listen carefully, and respond meaningfully and **respectfully** to the questions and comments of your classmates is a critical part of your professional development and cannot be emphasized enough.

### C. Disability Support Services Reasonable Accommodations Statement:

Reasonable accommodations are available for students who have documented temporary or permanent disabilities. Students should meet with Disability Support Services (DSS) by the end of the first week of class to assess if any accommodations are needed for courses, quizzes, and/or examinations. All accommodation requests are then submitted by DSS to Dean Dodge for final approval. DSS serves as the sole evaluator of medical documentation and determines reasonable accommodations on a per semester basis. The College of Law does not have the authority to evaluate or grant disability accommodations without DSS first submitting a recommendation. You may contact DSS by:

- Visiting the Idaho Commons Building, Room 306

- Calling 208-885-6307
- Emailing dss@uidaho.edu

It is ultimately the student's responsibility to seek a disability accommodation, and until an accommodation is approved by DSS and Dean Dodge, no student will be entitled to receive any accommodations. To learn more about DSS, visit its website at <a href="http://www.uidaho.edu/studentaffairs/taap/dss">http://www.uidaho.edu/studentaffairs/taap/dss</a>. Please review the College of Law Catalog and Student Handbook for more information on the disability accommodation process.

## IV. **ASSIGNMENTS:**

**Missed Classes:** I currently do not anticipate that we will miss any classes. However, should class cancellations be necessary, I will give as much notice as I can, and WE WILL MAKE UP ANY MISSED CLASSES.

Syllabus: The following is the Assignment for Week 1. We will cover the material generally in the order presented in the Casebook. Not later that Thursday at 4PM of each week, I will provide to you the Assignment for the Next Week together with Study Questions and Class Objectives. Unless otherwise noted as part of an Assignment, you will be expected to have prepared ALL Problems for discussion in class. We may not cover all problems in class, but I will answer any questions on any of the Problems in each assignment. For EACH ASSIGNMENT "Prepare" means to read all material and to work through each of the designated problems reducing your answer TO WRITING. YOU ARE RESPONSIBLE FOR ALL SECTIONS REFERENCED IN THE CASEBOOK, as well as this syllabus, and in class.

#### WEEK 1

READ Syllabus Carefully and come with any questions; Introduction - P. xxxi-xxxv;

Assignment 1 - Creditors' Remedies Under State Law. P. 3-21. "Turning the White Paper into Green."

STUDY QUESTIONS - 1) Be prepared to define Debtor; Creditor; Secured and Unsecured Status; and the various categories of creditors listed by the Authors. 2) What is the timeline one would follow to collect a debt for a client with a valid claim? 3) What difficulties did Vitale encounter in collecting the judgement against Hotel California? 4) What "rules" can you discern from the Case

regarding levy and execution? 5) What is Amercement? 6) How was Ellerbee's situation different from Vitale's? 7) What is the purpose behind each of the exempt assets outlined in the Wisconsin statutes?

CLASS OBJECTIVES: Be sure you understand the following concepts: Money Judgment; Execution, Levy, and Attachment (Pre-Judgment); Exemptions from Execution; Conversion; Self-Help (Repossession); SetOff - Fraudulent Transfer - These concepts are critical as we proceed to compare the rights of the secured creditor. These are all concepts that are available to collect debts, but you need to be painfully aware of how limited the effectiveness of these processes are.

## Assignment 2 - Security and Foreclosure. P. 22-39

STUDY QUESTIONS: 1) Be sure you understand the Pseudo History regarding the development of secured lending. An alternative structure to the option contract to repurchase is the more common Defeasible Fee - recall how that might work. 2) Is there any way to truly arrange a sale or lease, even though security was all that was intended? 3) Once it is established that the transaction was indeed intended as security - can foreclosure be avoided? 4) NOTE the clever ways existing transactions have been used to create security - Be prepared to explain how the "standard" transaction was used solely for security and how the Court's saw through the ruse. 5) When considering foreclosure, why is this procedure any better than the processes noted in Assignment 1 regarding collection of an unsecured debt? 6) How effective is a Power of Sale or UCC Foreclosure by Sale? Can the Debtor upset these mechanisms?

CLASS OBJECTIVES: Be sure you understand the following concepts: Security Interest; Mortgage/Deed of Trust; Equity of Redemption (Right to Redeem); Foreclosure; Deed in lieu of Foreclosure; "Intended as Security," e.g., Sale-Lease Distinction, Sale of Accounts. You must clearly grasp the "Intended as Security" doctrine as it will be present throughout the course.