I. MATERIALS:


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.

IDAHO, WASHINGTON, MONTANA, OREGON, UTAH AND WYOMING 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).

In the 2017 and 2018 editions 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.

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 UCC1 and UCC9 (including 2010 amendments).
II. PROFESSIONALISM:

A. Attendance Policy: 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 extreme 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.

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.

B. Preparation and Participation: This course will be conducted using a 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 problems in each Assignment (except for any problems you are specifically told to skip) 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. I MAY COLLECT YOUR WRITTEN PROBLEMS AT THE END OF THE CLASS IN WHICH WE DISCUSSED THE PROBLEMS COLLECTED. Repeated failure to have your problems for handing in will negatively affect your grade.
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 CRITICALLY, 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 HELP 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 not 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.

This class and the sales class are complementary, but will be focused on different aspects of commercial transactions. In Sales class the focus will be on reading and applying the statutory language - the how to read a statute aspect - to the problems with the focus being on how to read and apply the statutory language. In this class the focus will be on applying the statutes to resolve client problems. THE DIFFERENCE - IN THIS CLASS we will not spend time focusing on the statutory language - I assume you will have read and applied the statute yourself and that IN THIS CLASS WE CAN FOCUS ON THE ACTUAL CLIENT PROBLEMS.
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 electronic or recording 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 (AND POSSIBLE COLLECTION) in class.**

III. **ACADEMIC MATTERS**

A. **Subject Matter and Objectives of this Course:**

*In this course we will focus on reading and applying a comprehensive statute to solve client problems.* 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 UCC9 and general real estate mortgage law, and related statutes and materials, 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.) ; (3) further hone your skills of critical reading, interpretation, and application of statutory material; and (4) be able to bring your legal training to bear on real life situations that may confront a client. THIS COURSE, AS THE AUTHORS NOTE ALSO, IS ABOUT APPLICATION OF LEGAL RULES AND PRINCIPLES TO SOLVE REAL WORLD PROBLEMS. YOU SHOULD APPROACH ALL THE PROBLEMS, AND OUR DISCUSSIONS IN CLASS AS THOUGH YOU WERE COUNSELING A REAL CLIENT!

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) collected, handed in, problem sets from the assignments (See II. B. Above) and possibly 1 or 2 collaborative assignments, 2) two or three quizzes during the semester (maximum 75 points), 3) a final examination during the finals period (usually 100-120 points), and 4) class participation (to the extent applicable
1) **THE QUIZZES** - 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) worth two points each, for a total of twenty (20) to thirty (30) points. 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 lieu of a third quiz, I may include an objective portion covering the last block of material as part of the Final Examination - see Syllabus below. The total points for the quizzes and/or objective questions on the final exam will be between 60 and 75 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 be given during the scheduled final examination time and you will be given 4 hours to complete the exam. The total points on the final examination, other than any objective questions, will be 100-120 points. Depending on time during the semester, in lieu of a third quiz, I may include an objective portion covering the last block of material as part of the Final Examination - see Syllabus below.

In any case, the Quizzes and the Final Examination will be closed book except that you may bring into, and use during, the quizzes and exam, the Supplement (you may write as much in your Supplement anywhere on the pages that are included as part of the original bound Supplement). You may NOT bring into, or use during, the Quizzes or the Final 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. Book for more information on the disability accommodation process.

C. Center for Disability Access and Resources (CDAR) Reasonable Accommodations Statement:

Reasonable accommodations are available for students who have documented temporary or permanent disabilities. Ideally, students in Moscow and Boise should meet with CDAR by the end of the first week of class to assess if any accommodations are needed for courses and/or examinations. All accommodation requests are then submitted by CDAR to Dean Dodge for final approval. CDAR 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 CDAR first submitting a recommendation. You may contact CDAR by:

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

It is ultimately the student’s responsibility to seek a disability accommodation, and until an accommodation is approved by CDAR and Dean Dodge, no student will be entitled to receive any accommodations. To learn more about CDAR, visit its website at http://www.uidaho.edu/current-students/cdar. Moscow students may also visit CDAR in suite 127 of the Pitman Center. Please review the College of Law Catalog and Student Handbook for more information on the disability accommodation process.

D. Civility

In any environment in which people gather to learn, it is essential that all members feel as free and safe as possible in their participation. To this end, it is expected that everyone in this course will be treated with mutual respect and civility, with an understanding that all of us (students, instructors, professors, guests, and
teaching assistants) will be respectful and civil to one another in discussion, in action, in teaching, and in learning.

Should you feel our classroom interactions do not reflect an environment of civility and respect, you are encouraged to meet with your instructor during office hours to discuss your concern. Additional resources for expression of concern or requesting support include the Dean of Students office and staff (885-6757), the UI Counseling & Testing Center’s confidential services (885-6716), or the UI Office of Human Rights, Access, & Inclusion (885-4285).

E. Credit Hours for Coursework

In accordance with ABA Standard 310, the College of Law awards one credit hour for experiences that are reasonably designed to involve 50 minutes of classroom or direct faculty instruction and two hours of out-of-class student work per week, or at least the equivalent amount of work for academic activities including simulation, field placement, clinical, and other academic work leading to the award of credit hours.

The Course requirements outlined in this Syllabus and List of Assignments with respect to materials and assignments, in my professional judgement, are complex enough in nature that it is expected that the amount of out-of-class time it will take students to complete the assignments will meet the rule (See Section II.B. above).

F. Recording Class Sessions:

Students may not electronically record classes unless they have the express consent of the instructor, except where the Dean of Students has allowed recording as a disability accommodation pursuant to a recommendation by CDAR. Recording classes without the instructor’s express consent violates the Honor Code. Students recording classes as a disability accommodation must follow procedures set down by CDAR. Students who are unable to attend class for reasons of illness or other exigencies must receive permission from the instructor before classes are recorded on their behalf. Contact the Law Library for recording equipment and information on recording procedures.

IV. ASSIGNMENTS:

The following lists the Assignments for the Semester in the order in which we will go through the material. These assignments cover a lot of material - particularly note the last week of the semester. 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.

I RESERVE THE ABSOLUTE AND UNFETTERED RIGHT, ON DUE NOTICE,
TO ADJUST THE SCOPE, COVERAGE, AND PACE OF THESE ASSIGNMENTS.
Rather than give you periodic assignment lists through the semester, I am giving you
a comprehensive list of the assignments and material I intend to cover this semester
so you have a sense of the larger picture and where we are going. So be sure to keep
an eye on your emails for any updates to this assignment list.

WEEK 1 - JANUARY 8 & 10

READ Syllabus Carefully and come with any questions; Casebook Introduction
- P. xxxi-xxxvii;
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?

CRITICAL CONCEPTS: Be sure you understand the following concepts: Money
Judgment; Execution, Levy, and Attachment (Pre-Judgment); Exemptions from
Execution; Conversion; Self-Help (Repossession); Set-off - 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 (SKIP Problems 2.3, 2.7, and
2.8)
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?

CRITICAL CONCEPTS: Be sure you understand the following concepts: Security Interest; Mortgage/Deed of Trust; Equity of Redemption (Right to Redeem); Clogging the Equity of Redemption; 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.

WEEK 2 - JANUARY 15 AND 17

Assignment 3 - Repossession of Collateral. P. 40-58

STUDY QUESTIONS: 1) What is the importance of who has possession of the collateral between default and foreclosure? 2) How difficult is it for a secured party to obtain possession of the collateral? Is it as difficult as levying on property as an unsecured judgment creditor? 3) The UCC authorizes self-help repossession of collateral. What factors and considerations must you assess in counseling a client about whether a repossession will be ok? Use the cases summarized on P. 47-50 in answering the problems. 4) When consulting with a client about collecting accounts receivable of the debtor after default, what must be considered before you seek to realize on this sort of collateral? 5) A Receiver performs many of the same functions as a bankruptcy trustee - but less broadly. Why might a creditor prefer the appointment of a state receiver rather than simply petitioning to put the debtor into bankruptcy?

CRITICAL CONCEPTS: Be sure you understand the following concepts: Replevin; Writ of Temporary Possession; Breach of the Peace; “privilege” to trespass; Receiver; Account. Be sure to appreciate the limits placed on the attorney counseling the client regarding possession.
Assignment 4 - Judicial Sale and Deficiency - P. 59-77

STUDY QUESTIONS: 1) This assignment requires you to consider the strategies and incentives of the parties in the foreclosure/judicial sale setting - keep that in mind as you work through the material. 2) Outline ALL the steps in the “typical” judicial sale. 3) What factors or considerations determine whether a court might upset a judicial sale because the price was too low? 4) Why are low prices at judicial sales not surprising? 5) What steps can a bidder at a judicial sale take to protect its interest - what risks cannot be avoided given the process in place? 6) How do anti-deficiency statutes and credit bidding affect the prices that may be obtained at a judicial foreclosure sale? 7) What do you think about the idea that the judicial sale process and result is intended to, and does, result in an (accurate?) valuation of the collateral? Is it appropriate to use the amount received at a judicial sale to set the deficiency? 8) Are there compensating benefits to the judicial sale process?

CRITICAL CONCEPTS: Be sure you understand the following concepts (and how they relate to, or parallel, the concepts in Assignment 5) - 1) Equity/Surplus; 2) Deficiency/deficiency judgment; 4) Anti-Deficiency Statutes; 4) Strict Foreclosure; 5) Processes for Judicial Sale; 6) Credit Bidding; 7) Confirmation of Sale; 8) Rights of Redemption

WEEK 3 - JANUARY 22 AND 24

FINISH Assignment 4

Assignment 5 - Article 9 Sale and Deficiency - P. 78-94 (SKIP Problem 5.6)

STUDY QUESTIONS: 1) Consider the streamlined nature of the Article 9 process compared to the predominantly real estate based judicial process for sale of collateral. 2) Are Article 9 sale processes better designed to obtain the real value of the collateral than the judicial sale processes noted in Assignment 4? 3) Are the protections for the good faith purchaser at an Article 9 sale appropriate? Do they benefit the debtor? 4) Are Article 9’s protections against/limitations on deficiency judgments appropriate? Are they sufficient? Who do these limitations benefit? 5) Consider your role as attorney for the foreclosing creditor who seeks your opinion on the commercial reasonableness of a particular method for proceeding. Can you ever give such an opinion regarding the legal propriety of a sale? 6) Do you agree with the authors’ analysis of the incentive structures for sale by the secured party? Some of the analysis? None of the analysis?
CRITICAL CONCEPTS: Be sure you understand the following concepts (and how they relate or parallel the concepts in Assignment 4) - 1) Acceptance of Collateral in Satisfaction; 2) Notice of Sale; 3) Commercially reasonable sale; 4) Preparing Collateral for Sale; 5) Private Sale v. Public Sale; 6) Extent of Validity of Defective Sale; 7) Priority in Distribution of Sale Proceeds.

JANUARY 29 AND JANUARY 31

FINISH Assignment 5

ASSIGNMENTS 6 AND 7 - Bankruptcy Automatic Stay; Creditors and Secured Creditors in Bankruptcy (Overview) - P. 95-130 - Problems 6.1-6.6; Do ONLY Problems 7.1, 7.2, 7.3(a), 7.4(a), 7.5(a), and 7.7

STUDY QUESTIONS: 1) What is the point of the automatic stay? Can a creditor do anything to advance collection efforts once a debtor has filed a Bankruptcy Petition? 2) How many numbered exceptions to the automatic stay are reflected in Section 362? Can you make any generalization about the nature of the sorts of actions that are covered by, and excepted from, the stay? 3) Under what circumstances can a secured party have the stay lifted? See 362(d) 4) What components of a claim will be allowed to the creditor in bankruptcy? 5) Are secured and unsecured claims treated differently in bankruptcy? 6) what does it mean to bifurcate a creditor’s claim?


WEEK 5 - FEBRUARY 5 AND 7

FINISH Assignments 6&7 on Tuesday the 6th.

QUIZ NO. 1 on all material covered through Assignment 7 - 8AM Thursday Feb. 8; Class will begin at 8:35 and Quiz will be Reviewed in Class.

WEEK 6 - FEBRUARY 12 AND 14

ASSIGNMENT 8 - Formalities for Attachment - P. 131-149
STUDY QUESTIONS: 1) What three things are required for a security interest to attach? 2) Are there magic words that a secured party would be wise to invoke in order to create a security interest in collateral? Are those magic words essential? 3) Must the giving of a security interest be embodied within a single document? Have you seen the composite documents approach in other contexts? 4) If A owes B 100,000 and goes into default, if A signs a security agreement granting a security interest to B in a 2005 Ford, will B have given value to make the security interest enforceable? 5) Do you think the formalities of real estate practice are beneficial and might avoid more mistakes than the requirements of Article 9?

CRITICAL CONCEPTS: 1) Attachment; 2) Security Agreement; 3) Composite Document Rule; 4) Financing Statement; 5) Value (see Article); 6) Rights in the Collateral; 7) Authentication (compare Signed); 8) Record (compare Writing); 9) Collateral Description; 10) Pawn. As you work through Problems 8.4 and 8.5 realize these are honest mistakes that ANYONE might make. The lesson is to recognize that “there but for the grace of God, go I.” We ALL make mistakes and the issue is how you handle the mistake, and try to rectify the problem, if possible.

ASSIGNMENT 9 - Collateral and Obligations Covered - P. 150-161 - SKIP Problems 9.3 and 9.5

STUDY QUESTIONS: 1) How might a Court be expected to construe a Security Agreement, drafted by the Secured Party, in a dispute between the Debtor and the Creditor? 2) How might a Court be expected to construe the same Security Agreement in a dispute between the secured party and another creditor of the debtor? 3) Be aware of the need to draft collateral descriptions with clarity. 4) What is after-acquired property, and why is it critical to the Secured Party? 5) Why are future advance clauses so critical? 6) Consider the similarities and differences regarding collateral descriptions and obligation coverage in the real estate context.

CRITICAL CONCEPTS: 1) The Categories of Collateral and how they are defined under Article 9 - including Inventory and Equipment; 2) After-Acquired Property (the “floating lien”); 3) Future Advances; 4) Dragnet Clauses; 5) Description of Collateral.

WEEK 7 - FEBRUARY 19 AND 21

FINISH Assignment 9 - Which Collateral and Obligations are Covered - P. 150-161 SKIP Problems 9.3 and 9.5
ASSIGNMENT 10 - Proceeds, Products, and Other Value-Tracing Concepts - P. 162-180 SKIP Problem 10.7

STUDY QUESTIONS: 1) What is the extent of “proceeds” as defined under 9-102(a)(64)? 2) Are Proceeds a bootstrap to getting after-acquired property? Always? Sometimes? Never? 3) How might the debtor be authorized to dispose of collateral free of the security interest? 4) How does multiplication of collateral following unauthorized disposition by the debtor work? Map the Code sections that validate this phenomenon. 5) What is the difference between value-tracing and non-value tracing concepts of obtaining additional collateral following the original execution of the Security Agreement?


WEEK 8 - FEBRUARY 26 AND FEBRUARY 28

FINISH Assignment 10

SKIP ASSIGNMENTS 11 AND 12

ASSIGNMENT 13 - Default, Acceleration, and Cure Under State Law - P. 217-238

STUDY QUESTIONS: 1) Your client comes to you and wants to call Debtor in default under its loan agreement. What is this first thing you will need to do? 2) Do you agree that the revised definition in UCC Article 1 is an “apparent rejection” of Kham & Nate Shoes? 3) Is it riskier to make a demand on a demand term loan, or to refuse to make further advances under a line of credit that has not been maxed out? 4) If debtor comes to you and tells you it has missed several installment payments what is your first question? What is your first phone call on behalf of your client? 5) What is the difference between waiver and waiver by estoppel?

CRITICAL CONCEPTS: 1) Default; 2) Acceleration; 3) Cure (Reinstatement); 4) Installment Loans; 5) Demand Loans; 6) Line of Credit; 7) Insecurity Clause; 8) Waiver; 9) Waiver by Estoppel; 10) Good Faith; 11) Tender; 12) Lender Liability

WEEK 9 - MARCH 5 AND 7

SKIP ASSIGNMENT 14
ASSIGNMENT 15 - The prototypical Secured Transaction P. 253-272

STUDY QUESTIONS: You MUST read the Security Agreement and ALL accompanying documents carefully with a view toward 1) Events of Default; 2) Financing Terms e.g., Deutsche obligation to advance, interest charges, repayment terms; 3) The Floorplan Agreement - how does this agreement relate to the Security Agreement.

CRITICAL CONCEPTS: 1) Inventory Financing (Floor Planning); 2) Loan Approval; 3) Loan Documentation; 4) Financing Statement; 5) Personal Guaranties; 6) Floorplan Agreement (Inventory Financing with Mfr).

SPRING BREAK - MARCH 11-15

WEEK 10 - MARCH 19 AND 21

QUIZ NO. 2 on all material covered since Assignment 7 through Assignment 15 - 8AM Tuesday March 20; Class will begin at 8:35 and Quiz will be Reviewed in Class.

ASSIGNMENT 16 - The Personal Property Filing Systems - P. 275-293

STUDY QUESTIONS: 1) What is priority? 2) Is priority solely a relationship between a creditor and particular property of the debtor? 3) What is the fundamental principle underlying Article 9's system of lien priority? How does a creditor normally establish its priority status? 4) Note and List all the myriad filing offices that may be involved in obtaining perfection by filing. 5) What is preemption, and how does it relate to perfection of security interests? 6) If you were to perfect a security interest in a trademark - list all the offices in which you would file. 7) Keep in mind the relative cost for searching and filing the requisite notices.

CRITICAL CONCEPTS: 1) Creditor Competition for collateral; 2) Priority of Claim; 3) Priority of Lien; 4) Subordination; 5) Perfection by a) Filing, b) Possession, and ( c) Control; 6) Automatic Perfection; 7 Filing Systems (Various); 7) Searching the Filing System

WEEK 11 - MARCH 26 AND 28

FINISH Assignment 16
ASSIGNMENT 17 - Article 9 Financing Statements; The Debtor’s Name - P. 294-310 - PROBLEMS 17.1-17.4 - SKIP 17.5-17.8

STUDY QUESTIONS: 1) How big a problem is the lack of certainty related to the proper name to use for the debtor? WHY? 2) What is the time frame within which the filing office must record and index a Financing Statement once files? 3) How quickly must a Filing Office respond to a request for information? 4) What penalties attach if the Filing Office fails to perform in accordance with the performance standards. 5) What is the significance, in the context of the Debtor’s Name, of the concept of “seriously misleading?” 6) How important is understanding the “search logic” employed by a particular filing office. How might you find that information?

CRITICAL CONCEPTS: 1) Financing Statements; 2) Index; 3) Tract Index; 4) Grantor/Grantee Index; 5) Search Systems; 6) Correct Legal Name; 7) Registered Organization; 8) Trade Names; 9) Search Logic; 10)

WEEK 12 - APRIL 2 AND 4

ASSIGNMENT 18 - Article 9 Financing Statements: Other Information - P. 311-323 - PROBLEMS 18.1-18.5 - SKIP 18.6 AND 18.7

STUDY QUESTIONS: 1) Is the notion of “seriously misleading” more important with regard to information on a Financing Statement other than the Debtor’s Name? 2) What is the distinction between information that must be on a Financing Statement for the FS to be EFFECTIVE - and the information required for the FS to be properly acceptable for filing? 3) What is the consequence if a filing is accepted without some or all of that information? 4) What is the consequence if the filing is refused? Does it matter whether the failure was a rightful or wrongful rejection by the filing officer? 5) Consider 9-338 regarding the various “levels” of perfection - that is, against whom an erroneous filing might be effective. 6) How do you address the problem of bogus filings - either UCC or real estate - that cloud title?


STUDY QUESTIONS: 1) Do you agree that possession as a means of perfection is misleading and unreliable for communicating the interest of the possessor? Think not only of the hypotheticals posed by the authors, but also of your own experiences. 2) How does one exercise “control” so as to demonstrate the equivalent of “possession?” 3) Is control even a thinner reed on which to hang perfection and notice than possession? Sometimes? Always? Never?


WEEK 13 - APRIL 9 AND 11

ASSIGNMENT 20 - The Land and Fixtures Recording Systems - P. 343-358 - PROBLEMS 20.1 and 20.2 - SKIP 20.3 and 20.4 -

STUDY QUESTIONS: 1) What IS a fixture? 2) How might one perfect a security interest in fixture - note all the ways. 3) Recall the real estate recording systems and how they work. 4) Be sure you can classify the assets subject to the security interest - real estate? Personal property? Fixture?

CRITICAL CONCEPTS: 1) Fixtures; 2) Trade Fixtures; 3) Goods; 4) Real Estate Recording Systems; 5) Mortgages as Fixture Filings; 6) Financing Statement as Fixture Filing; 7) Severance

SKIP ASSIGNMENT 21

ASSIGNMENT 22 - Maintaining Perfection Through Lapse and Bankruptcy p. 375-391 - PROBLEMS 22.1-22.7 - SKIP 22.8 AND 22.9 -

STUDY QUESTIONS: 1) What are the differences between typical real estate recording systems and the UCC system in the manner and organization of filing? 2) What happens - what is the liability for - a secured party who refuses or fails to file the appropriate document once the debt has been paid? In the real estate system? In the UCC system? 3) How long is a financing statement effective? When must you file a continuation statement? What happens if you do not properly file the continuation statement? You file another financing statement - you file late?? 4) Can you - are you permitted to - file a continuation statement after the commencement of the debtor’s bankruptcy?
CRITICAL CONCEPTS: 1) Satisfaction of Mortgage; 2) Continuation of Filings/Continuation Statements; 3) Continuation Window; 4) Termination of Filings/Termination Statements; 5) Release; 6) Lapse; 7) Exception rom Automatic Stay for Continuation; 8) Tacking; 9) 20-day Automatic Perfection

WEEK 14 - APRIL 16 AND 18

ASSIGNMENT 23 AND 24 - Maintaining Perfection Through Changes of Name, Identity, Use; and Maintaining Perfection Through Relocation of Debtor or Collateral - P. 393-421 - SKIP PROBLEMS 23.5 AND 23.6, AND 24.5, 24.6 AND 24.7

STUDY QUESTIONS:
1) How do you monitor the debtor’s name? 2) What are the ramifications for failing to catch a name change? Is the standard the same as for an initial filing? 3) What collateral is affected if a) the debtor’s name becomes seriously misleading due to a name change? or b) the debtor conveys collateral to a “new debtor?” 4) What happens if the description of the collateral subsequently changes? 5) How does an exchange or disposition of collateral affect perfection? Does it matter if the collateral is exchanged for other property, or is sold for cash? 6) What happens if the debtor moves its location - what are all the considerations involved? 7) If a Debtor has locations in several states - where do you file the financing statement?

CRITICAL CONCEPTS: 1) Name Changes; 2) Four Month Rule; 3) Type 0, Type 1, Type 2 changes regarding descriptions; 4) Same Office Rule; 5) Loss Payee (on Insurance Policy); 6) New Debtors; 7) Location of Debtor or Collateral; 8) Principal Residence; 9) Organization/Registered Organization; 10) State of Incorporation; 11) Chief Executive Office; 12) Four Month Grace for Change in Location.

SKIP ASSIGNMENT 25

ASSIGNMENT 26 - The Concept of Priority: State Law - READ p. 439-451 - SKIP ALL PROBLEMS (This is critical background reading and is somewhat review of our discussions in Assignments 2-4.)

STUDY QUESTIONS: 1) May junior liens foreclose even if the senior lienholder objects? What possible downsides exist for the Junior - for the Senior - if the Junior does foreclose over the objection? 2) How will proceeds be distributed depending on which creditor does the foreclosing? 3) Is the senior lienholder entitled to possession against the junior? If so, when and under what circumstances?

WEEK 15 - APRIL 23 AND 25

SKIP ASSIGNMENT 27


STUDY QUESTIONS: 1) How does a judgment creditor “perfect” the judgment lien? Does it matter what kind of property is involved? 2) How do you determine the priority of a lien creditor’s lien? 3) How do you establish the priority between a lien creditor and a secured creditor under Article 9 - what law controls? 4) What is “purchase-money priority? - why is it an exception to first in time - and is it justified?

CRITICAL CONCEPTS: 1) Lien Creditor; 2) Secured Party; 3) Security Interest; 4) Levy; 5) Judgment Filing; 6) Delivery of Writ (to Sheriff); 7) Becoming a Lien Creditor; 8) Perfection; 9) PMSI; 10) 20 day grace period (PMSI v. Lien Creditor); 11) Advance; 12) Future Advance; 13) Non-advance; 14) 45 day grace period; 15) Without Knowledge

SKIP ASSIGNMENTS 29, 30, and 31

ASSIGNMENT 32 - Secured Creditors against Secured Creditors: The Basics - P. 522-535 SKIP PROBLEMS 32.7, 32.8, AND 32.9

STUDY QUESTIONS: 1) How do you generally establish priority between secured parties under Article 9? 2) How does Article 9 deal with priority battles and future advances, and after-acquired property? 3) What are the rules for perfection and priority with regard to PMSIs, conflicting PMSIs in the same collateral, PMSIs in Inventory, and proceeds of PMSI collateral? 4) How do you sort out priority regarding commingle or mixed collateral?

CRITICAL CONCEPTS: 1) Earlier of Filing or Perfection; 2) 20-day grace period (§9-324(a)); 3) Double Debtor Problem; 4) Circularty of Liens; 5) Subordination