SECURED TRANSACTIONS
Spring 2015 - Wednesday 8:10 - 10:00 am
Hofstra Law School • Koppelman Hall 0038N
Adjunct Professor Marc L. Hamroff

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Selected Commercial Statutes For Secured Transactions 2015

Agreement Binder (To be supplied at first class)

Syllabus as of December 2014
Updates will be posted on the Website

Goal of the Problem-Solving Method

The course will address a wide variety of commercial transactions essential to a student contemplating a career in commercial law including creditors rights, bankruptcy, securities, commercial and real estate lending, finance and business litigation. A primary focus of the course will be UCC Article 9 but will also include the interplay between Article 9 and the bankruptcy laws, other state and federal created liens (both statutory and judicial) and other types of financing structures. The nature of these topics will expose students to real life commercial transactions including problem solving and strategy decision practitioners must make in litigating and structuring these business arrangements.

This course is designed for you to learn a statutory scheme that regulates security interests in personal property (Article 9 of the Uniform Commercial Code (UCC)). The legal rules are not a mystery, they are printed right in the statute book. The critical learning is to understand how the statutory provisions apply to particular factual scenarios, the alternative arguments that can be made about how they apply, and the consequences of the various arguments. We do this through evaluation of the problems in the course book and related hypothetical scenarios that will be developed as a result of class discussion.

In addition, because the UCC is part of a comprehensive scheme of rules regarding particular transactions, it is important to understand how the provisions of the UCC work together. In that respect, the course is a building block course. What we learn each day will be relevant to what we learn in every other day.

This problem-solving method replicates in significant part the work of practicing lawyers. Lawyers are confronted with factual scenarios and must identify and investigate the legal rules relevant to those scenarios. Lawyers then consider how the relevant legal rules may be applied to that factual
scenario. In doing so, lawyers must be able to deal with a great deal of uncertainty and creativity, that is, a lawyer must have the ability to imagine new arguments regarding how to apply legal principles to typical scenarios and innovative applications of settled law to new types of scenarios.

The following requirements for class preparation and attendance are designed to help achieve the goals related to this style of learning.

Class Preparation

I expect students to be prepared for class. Adequate preparation requires reading and analyzing all relevant statutory sections and comments as well as the material in the textbook. We will focus on the problems during class discussion.

To use the textbook most effectively: (i) read the textual material; (ii) read the cited statutory sections and the official comments, and (iii) analyze the problems. You will find that as you analyze the problems, you will have to go back through the textual material, cases, statutes, and official comments repeatedly in order to identify the relevant issues and construct your analysis.

Final Examination

The final examination for this course will be given during the exam period at the end of the semester and will be open book. You will be allowed to bring into the examination the casebook, the statute book, and your own notes/outlines. You will be allowed to use the approved software for typing your examination answers if available at Hofstra. Other than as allowed by the approved software for typing your examination answers, you will not be allowed access to any other electronic device.

Grading

Subject to rules imposed for blind grading and/or curves, the final examination will be worth 80% of the final grade for the course. Class participation will be worth 20%.

Assignments

The following is the tentative schedule of assignments for the class; page numbers refer to the textbook. We may move faster or slower than these specific assignments.
Read any referenced statutes and commentary from the Selected Commercial Statutes book as necessary to provide a thorough analysis of the assigned problems.

<table>
<thead>
<tr>
<th>Date</th>
<th>Class No.</th>
<th>Topics/Issues</th>
<th>Required Reading Material</th>
<th>Statutes</th>
</tr>
</thead>
<tbody>
<tr>
<td>W, 1/14</td>
<td>1</td>
<td>Overview: (1) the context in which debtor-creditor relationships arise, (2) the difference between secured and unsecured creditors, (3) the reality that some creditors are not timely paid what they are owed, (4) the basic creditor collection remedy which is known as &quot;execution&quot; and the rights of &quot;statutory liens&quot;, (5) the difficulties facing creditors when debtors do not voluntarily pay their debts, (6) fraudulent transfers, and (7) pre-judgment remedies.</td>
<td>Pgs. 1-43; Problem 1-3</td>
<td>NY Lien Law §§80, 151, 160, 180, 184; CPLR §§5201, 5202, 5203, Articles 62-65, 270 et. seq. and Bky Cod 548.</td>
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<tr>
<td>W 1/21</td>
<td>2</td>
<td>Nature of Security Interest: What is a Security Interest? Focus on the conflicting rights of secured and unsecured creditors, equitable remedies and protection of credit; introduction to basic working definitions.</td>
<td>Pgs. 45-64; Problem 2-1; Chart Appendix annexed.</td>
<td>1-201(b)(35); 9-102(a)</td>
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<tr>
<td>W, 1/21</td>
<td>2</td>
<td>Attachment: Authenticated Security Agreement. We will look at creating a security agreement, discuss authentication and granting of collateral interests.</td>
<td>Pgs. 65-67; Problems 2-4; 2-6</td>
<td>9-203(a)(b); 9-203(b)(3)</td>
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<tr>
<td>W, 1/28</td>
<td>3</td>
<td>Attachment: Description Requirement. How collateral interests are adequately described and introduce the concept of After Acquired property (a key provision in major financing deals) and Proceeds; we also touch Value and Rights in the Collateral although most information can be obtained from the written materials.</td>
<td>Pgs. 75-80; 89-102; Problems 2-11; 2-13; 2-19</td>
<td>9-203(b)(1); 9-203(b)(3)(A); 9-504(2) 9-102(a)(28); 9-108(b)</td>
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<tr>
<td>W, 1/28</td>
<td>3</td>
<td>Equipment Leases and Other Forms of Personal Property Financing. We focus on the differences between leasing personal property assets and taking a security interest in those assets. Understanding the inter-play of the Continued - bankruptcy trustee as hypothetical lien creditor.</td>
<td>Pgs. 107-122; Problems 2-22; 2-25</td>
<td>In re Lee H. Purdy, US App Lexis 15586 (6th Cir. 8/14/2014) 9-109(a)(1); 1-201(37); 2A-103(j); 1-203(b); 2A-214</td>
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<tr>
<td>W</td>
<td>2/4</td>
<td>4</td>
<td>Equipment Leasing and Consignments; three party finance leases, purchase options and the impact on the distinction between leases and secured loans.</td>
<td>9-505; 2A-2-103(1)(g); 1-201(b)(35); 9310(a)</td>
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<tr>
<td>W</td>
<td>2/4</td>
<td>4</td>
<td>Perfection: The bedrock of Article 9. We will look at the financing statement; authorization; collateral description; secured creditor's names; impact of perfection on bankruptcy trustees and judgment creditors; perfection by filing.</td>
<td>Pgs. 223-236; 241-247 Problems 4-3; 4-7</td>
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<td>W</td>
<td>cont'd 2/4</td>
<td>4</td>
<td>Alternative Methods of Perfection; Perfection by possession or control; title certificates.</td>
<td>Pgs. 248-260 Problems 4-10; 4-11; 4-14</td>
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<tr>
<td>W</td>
<td>2/11</td>
<td>5</td>
<td>Perfection: What happens to properly filed security interests when there are post-filing changes through business mergers, name changes, location changes and the like?</td>
<td>Pgs. 276-283; 290-298; 302-305 Problems 4-21; 4-32; 4-35</td>
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<tr>
<td>W</td>
<td>2/18</td>
<td>6</td>
<td>Priority: Background in the core First to File Rules discussing the problems and examples raised in the selected reading.</td>
<td>311-320; 331-338 Problems 5-12, 13,14,15 and 17</td>
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<tr>
<td>W</td>
<td>2/25</td>
<td>7</td>
<td>Priority: Special rules for purchase money security interests, how they relate to sellers of goods, the close relationship with personal property leasing and the different rules for equipment and inventory.</td>
<td>344-360, Problems 5-23, 5-28 and 5-30</td>
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<td>W</td>
<td>cont'd 2/25</td>
<td>7</td>
<td>Priority: Cash Proceeds - What happens when the Debtor converts collateral to cash proceeds and uses proceeds to pay other creditors; a discussion of how secured creditors protect their liens in cash proceeds through lock-box and other controlled accounts.</td>
<td>9-332; 9-330</td>
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<tr>
<td>W</td>
<td>3/4</td>
<td>8</td>
<td>Priority: The relative rights of Secured, Unsecured Creditors and Judicial Lien Creditors and understanding competing rights of buyers of goods and lessees of goods subject to security interests.</td>
<td>361-373, 382, 388 Problems 5-41, 47, 48</td>
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<tr>
<td>Date</td>
<td>Page</td>
<td>Priority:</td>
<td>Default and Remedies:</td>
<td>Bankruptcy:</td>
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<tr>
<td>W 3/4</td>
<td>cont'd 8</td>
<td>The complexity of commercial transactions has given rise to security interests in payment intangibles, chattel paper and receivables. The scheme associated with security interests in &quot;rights of payment&quot;. The impact of chattel paper, instruments, deposit accounts.</td>
<td>Enforcement of a security interest; litigation and workout aspects of Article 9. Because a security interest is only as good as a secured party's ability to enforce it, we look at how the secured party realizes on its collateral.</td>
<td>We have seen that many of these cases and disputes over perfection, priority and creation of security interests arise in the context of a bankruptcy proceeding. For the students who have not yet taken a course in creditors rights, the reading at these pages is crucial. We will spend some time on this background and then explore how secured creditors' claims are treated in bankruptcy.</td>
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<tr>
<td>W 3/11</td>
<td>9</td>
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<tr>
<td>W 3/11</td>
<td>cont'd 9</td>
<td></td>
<td>Events of Default and Remedies Section of Credit Agreement in Appendix</td>
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<tr>
<td>W 3/18</td>
<td>10</td>
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<td></td>
<td>Foreclosure by the secured creditor has resulted in more litigation than practically any other issue in Article 9. We will also tie in the treatment of personal property leases discussed earlier and compare how the creditor is addressed depending upon whether the personal property is being financed by a secured loan or a lease.</td>
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<td>W 3/18</td>
<td>cont'd 10</td>
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<td>We will discuss disposition of collateral, notice of disposition and sales of collateral.</td>
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<tr>
<td>W 3/25</td>
<td>11</td>
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<td>Forbearance Agmt in Appendix pp 160-169 pb 3-3, 3-9</td>
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<tr>
<td>W 3/25</td>
<td>cont'd 11</td>
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<tr>
<td>Date</td>
<td>Week</td>
<td>Topic</td>
<td>Pages/Pages</td>
<td>References</td>
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<tr>
<td>4/1</td>
<td>12</td>
<td>Default and Remedies: Wrap-up and new issues raised by Article 9 including rights of guarantors, junior lienholders and transferees.</td>
<td>pp 193-199</td>
<td>9-102(a)(71); 9-611(c); 9-620</td>
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<td>pb 3-21, 3-23</td>
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<td>4/8</td>
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<td>NO CLASS</td>
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<tr>
<td>4/15</td>
<td>13</td>
<td>Impact of Federal Tax Lien on Security Interests. We will look at the differences between the Federal Tax Lien Act and the UCC and how the FTLA impacts the priority scheme associated with Article 9.</td>
<td>pp 458-465</td>
<td>FTLA 6321, 6322 and 6323; 9-317</td>
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<td>pb 6-13</td>
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<tr>
<td>4/22</td>
<td>14</td>
<td>LAST CLASS SPECIAL TOPICS (Patents and Trademarks) - TIME PERMITTING</td>
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<td>4/22</td>
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<td>LAST CLASS REVIEW</td>
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<td>14</td>
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FINAL
# Article 9 Secured Transactions: Analytical Steps

## 1. Identify the Collateral
All analysis is collateral-specific: a secured interest may attach to some items of property but not to others. Similarly, a security interest may be perfected in some items but unperfected in others. Isolate each item of concern.

## 2. Determine Whether Article 9 Applies to the Collateral
See § 9-109
If Article 9 does not apply, the creditor may still be able to acquire a consensual lien on the property, but Article 9 will not indicate how to get it, how to perfect it (if the term perfection has any meaning outside of Article 9), or how to enforce it. The creditor will have to consult other statutes or the common law, which may provide little guidance.

## 3. Classify the Collateral
See § 9-102
With respect to goods, first determine how the debtor is using them (or, if the debtor is about to purchase them, how the debtor plans to use them). With respect to rights to receive money, consider the definitions of accounts, instruments, chattel paper, and general intangibles. Remember also that what appears to be one obligation may in fact be several (e.g., the purchase price, sales taxes, and freight charges).

## 4. Determine If and When Attachment Occurred
See §§ 9-109(a), 9-203, 9-204
Attachment requires: (i) that the debtor have rights or the power to convey rights in the property; (ii) value (typically an extension of credit constituting the secured obligation); and (iii) a security agreement. The security agreement typically must be authenticated by the debtor but form does not matter; conditional sales contracts as well as some leases and other transactions create security interests. Identify and resolve ambiguities in the security agreement’s description of the collateral. Remember, a security interest cannot attach to after-acquired property before the debtor acquires it.

## 5. Determine Which State’s Law Governs
See §§ 9-301 through 9-307; § 9-316
Section 1-105 generally permits parties to select their own governing law, but not with respect to perfection issues. With regard to perfection, the Code’s rules control; they tell filers in which state to file and, therefore, searchers in which state to search.

## 6. Determine How to Perfect
See §§ 9-309 through 9-314
Depending on several factors, principally the type of collateral involved, perfection may be by: filing, see § 9-310; possession, see § 9-313; compliance with a certificate of title statute or national registration system, see § 9-311; control, see § 9-314; or automatic, see §§ 9-309 & 9-312(e)-(h). Note, even if a creditor has alternative ways to perfect, one method may produce a better priority than the others.

## 7. If Perfecting by Filing, Determine Where to File
See § 9-501
Go to § 9-501, as enacted in the state whose law governs perfection. It will identify the office in which to file. For the most part, that will be the secretary of state’s office. For fixtures, a central filing is adequate but filing in the office in which local real estate records are filed is necessary for a high priority. See § 9-334.
**8**

**EVALUATE CONTENTS OF ANY FILING**

See §§ 9-502 through 9-510, & 9-516

A filing must contain the names of the debtor and the secured party as well as a description of the collateral. § 9-502(a). Other information, if missing, will prompt the filing office to reject the filing. § 9-516(b). The debtor’s name is the most important, see § 9-503, but minor errors that are not seriously misleading will not invalidate a filing, see § 9-506.

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**9**

**EVALUATE THE CONTINUITY OF PERFECTION**

See §§ 9-315, 9-316, 9-507 & 9-515

Filings are effective for only five years. A continuation statement must be filed in the six months prior to expiration of the five-year period to maintain perfection. See § 9-515. Other post-filing events may render a security interest unperfected. See, e.g., § 9-507. The most important are when the collateral is transferred to a new owner, causing the governing law to change, see § 9-316(a), and when the security interest attaches to proceeds. When proceeds are involved, revisit the first five steps of this chart (in other words, because new property is involved, start the analysis over). Then, with respect to the efficacy of any existing filing, apply the rules in § 9-315(c), (d).

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**10**

**CLASSIFY THE COMPETING CLAIMANT**

See §§ 1-201(b)(9), (29), (30), 9-102(a)(52)

The competing claimant may be a lien creditor, a buyer, a purchaser, a holder in due course, or a secured party. A buyer may or may not qualify as a buyer in ordinary course. Both buyers and secured parties also qualify as purchasers. The classification of the competing claimant is the most important factor in isolating the correct priority rule. The rights of a lien creditor are governed mostly by § 9-317. The rights of a holder in due course are protected by § 9-330. The rights of buyers are governed mostly by §§ 9-317, 9-320 & 9-331. The rights of a secured party are governed by § 9-322(a) subject to numerous exceptions.

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**11**

**DETERMINE THE EXTENT TO WHICH ANY INTEREST IS A PMSI**

See §§ 9-103, 9-317(3) & 9-324

For each secured party, determine the extent, if any, that its interest qualifies as a PMSI. In this respect, note that it may be that only some – but not all – of the collateral constitutes purchase-money collateral. Similarly, it may be that only some – but not all – of the secured obligation qualifies as a purchase-money obligation. In other words, a creditor with a PMSI is unlikely to have PMSI status with respect to either after-acquired collateral or future advances.

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**12**

**DETERMINE THE EXTENT TO WHICH THE SECURED OBLIGATION INCLUDES FUTURE ADVANCES**

When dealing with two (or more) secured parties, it rarely matters the extent to which either secured obligation includes future advances. See § 9-323 comment 3. When dealing with a buyer or lien creditor, however, it is very common for the secured party to have priority with respect to some portion of the secured obligation but to lose that priority with respect to some or all advances made after the competing claimant acquired its interest. See § 9-323(b), (d).

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**13**

**CHECK FOR “SPECIAL” PRIORITY RULES**

See §§ 9-325 through 9-339

Some types of collateral are subject to special priority rules. These include: deposit accounts, see § 9-327; investment property, see § 9-328; instruments and chattel paper, see §§ 9-330 & 9-331; certain proceeds, see § 9-322(c)-(e); fixtures and crops, see § 9-334; accessions; see § 9-335; and commingled goods, see § 9-336. Other important special rules cover claimants whose interests were created at different levels in the chain of title, see § 9-325, and the rights to money coming out of a collateralized deposit account, see § 9-332.