

Secured Transactions

LAW 322(001)
MW 150-315 pm
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Secured Transactions will provide an intensive examination of the legal framework governing personal property secured transactions, including securitization and emerging technologies that employ digital assets.

The principal focus of the course will be on Article 9 of the Uniform Commercial Code (UCC, which establishes the core rules for using personal property as collateral. Unlike a creditor who asserts only a common law contract claim, the secured creditor can assert a property right against third parties by seizing items of debtor's property that serve as collateral for the secured creditor's loan. Adopted uniformly across all fifty states, Art. 9 has also been adopted in Canada, Australia, New Zealand and England.

We'll also look at other statutes, insofar as they affect the rights of secured parties, including the Bankruptcy Code, the tax act with respect to federal tax liens, federal copyright, patent and trademark legislation, Art. 2A (leasehold interests), Art. 5 (Letters of Credit), Art. 7 (documents of title), Art. 8 (investment securities) and Art. 12 (controllable digital assets). After a Contracts class that covers Art. 2, a student who takes this course will have seen nearly all of the UCC, except for payment systems and banking (Articles 3, 4 and 4A).

We're in the midst of a financing revolution in which anything with a stable cash flow, such as car loans and royalty payments, can now serve as collateral. Non-cash-flow assets such as artwork, which formerly were wholly illiquid, can be turned into transferable asset backed securities, and investors can secure blockchain based tokens for cryptocurrencies such as bitcoin.

Required Texts:

Warren & Walt, Secured Transactions in Personal Property (11th edition, 2023)

Commercial Law, Selected Statutes; Warren & Walt (2024)

The Warren & Walt material don't include UCC Art. 12 on controllable electronic records, but my references to it in the reading list below can easily be found on the web.

The Goals of Secured Transactions Law

Secured transactions law deals with two different kinds of problems.

The first concerns the relationship between two parties who have created a security agreement in which a secured party is granted property rights (a security interest) in the assets (collateral) of the debtor to whom the secured party has extended credit. For the most part the two parties are free to craft any kind of bargain they want, with the exception of certain barriers to protect the debtor.

Second, the greater part of secured transactions law concerns the relationship between the secured party and third parties: other secured parties, transferees of the collateral, and the bankruptcy trustee (representing all creditors, secured and unsecured). The problem is how to resolve the ostensible ownership problem that arises when the secured party is not in possession of the collateral and creditors of the debtor might fail to realize that his assets are encumbered by a prior interest.

The principal goals of Art. 9 are:

1. As secured finance is value-increasing, it should be facilitated through rules with which secured parties can readily comply.
2. Because of the ostensible ownership problem, non-possessory secured parties should be required to file a public document (a financing statement) which third parties can readily search.
3. Information economics explains why secured parties who have filed a financing statement should nevertheless be subordinated to certain subsequent secured parties and transferees of collateral

The rules are technical, and it can get complicated when there are questions about where to file or what happens when the debtor or the collateral move around.

My Approach to the Course

Solving the casebook's problems is a useful way of learning the materials, and that's how I'll approach the materials.

You are responsible for all of the codal materials referenced in the readings. In the reading list, I'll also highlight key UCC sections.

The assigned readings below are my best estimate of how the course will shape up, and I reserve the right to amend them.

Office Hours/Availability

Students may email me to arrange a time to discuss any issues they might have.

Basis of Evaluation & Assessments

The only written work is a final exam, on May 9 at noon. I reserve the right to adjust the grade one point upward (e.g. a B+ to an A-) based on classroom performance.

Regular and punctual attendance are required to earn academic credit. Students are expected to participate actively participate in discussions and are required to bring the casebook and statutory materials to every class.

Class Recordings Prohibited

No portion of a class session or an examination may be preserved by means of a recording device such as an audio recording device or camera.

Readings

The readings and class assignments are given below.

	<p><i>After-Acquired Property</i></p> <p>What's the argument for after-acquired property financing.</p>	<p>UCC 9-204, 9-102(a) (accession. payment intangible, account debtor, consumer goods and commercial tort claim), 9-204(b), 9-203, UCC 2-401, 2-403, 1-201(b)(9) UCC 9-102(13), 1-204</p>
4	<p><i>Proceeds</i></p> <p><i>Filing Requirements</i></p> <p>Is there such a thing as being too meticulous? In interpreting the filing requirements, should the goal be to minimize the sum of the secured party's filing costs and the search costs of subsequent parties?</p>	<p>CB 49-52 UCC 9-102(a) (proceeds), 9-203(f) UCC 9-315, 9-322, 9-102(a)78 UCC 1-103(a)</p> <p>CB 53-102 (Skip problem on p. 75 and the cashier's check on p. 77)</p> <p>9-102 (goods, document, instrument, chattel paper), tangible chattel paper, record, general intangible), 9-310, 9-313(a), 9-311(a) 9-314, 9-303, 1-204(1) 9-308(a), 9-210, 9-502(a) 9-516, 9-520, 9-338 9-502(a), 9-506, 9-504 9-507, 9-315, 9-503, 1-103(a)</p> <p>See Virginia Administrative Code, 5VAC5-30-70 as an example of a standardized search logic under 9-506(c)</p>
5	<p><i>Perfection II: The Filing System</i></p>	<p>CB 102-135 (skip Problem 122 and accompanying text on 123)</p> <p>UCC 9-515, 1-201(b)(29), 9-512 9-513, 9-310, 9-511, 9-509 9-516, 9-517, 9-506, 9-519(f)(1) 9-507, 9-316, 9-203, 1-201(9) 9-203, 9-313, 9-103(a)1, 9-320</p> <p>Virginia § 18.2-213.2</p>

6	<p><i>Choice of Law, Priorities</i></p>	<p>CB 135-82 (skip the basic rules of perfection on p. 145 and question 4 on p. 150) (Skip problems 3 and 4 at p. 165, and note after question 4 on pp 165-67)</p> <p><i>Choice of Law</i> 1-301, 9-301, 9-307 9-303, 9-317</p> <p><i>Priority Rules</i> 9-102(a)(registered organization, proceeds, deposit account), 9-320(a), 9-315, 9-316(d)(e) 9-104, 9-327, 9-322 9-201, 9-204, 9-317, 9-323 9-324, 9-210, 9-103, 9-309, 9-103</p>
7	<p><i>Transferees, Rights to Payment</i></p> <p>Why and when does the ordinary course purchaser get superpriority?</p>	<p>CB 182-218 Skip Problem 2 on p.218</p> <p><i>Ordinary Course Buyers</i> 9-317, 9-315 9-102(a)(lien creditor) 9-308(a), 9-317, 9-203(b)(3) 9-323(b)(1), 9-201(a) 2-403, 1-201(b)(9), 9-320 9-204(b), 9-309(1), 9-325</p> <p>Bankruptcy Code 544, 550(a)(1)</p> <p><i>Rights to Payment</i> 9-109, 9-102(42)(61) 9-309, 9-318</p>
8	<p><i>Accounts, Deposit Accounts</i></p>	<p>CB 218-52 (skip the material on 245-52)</p>

		<p><i>Accounts and Proceeds</i> 1-201(b)(35), 9-102(a)(73) 9-322, 9-315, 9-203(f) 9-109(a)(9)(29), 9-309(2), 9-310</p> <p><i>Controllable Electronic Records</i> 12-102(a), 12-105(a) 9-326A, 12-104 Ignore Problem 3 on p.227</p> <p><i>Chattel Paper and Instruments</i> 9-312(a), 9-313(a), 9-314(a), 9-330 9-331, 9-105</p> <p><i>Deposit Accounts</i> 9-102(a)29, 9-327, 9-104, 9-340, 9-341, 9-332, 9-342</p>
9	<i>Tracing, Federal Tax Liens</i>	<p>CB 252-280 (skip question 5 at 263, and page 280)</p> <p><i>Tracing</i> 9-332, 9-315, 9-336, 9-330, 9-331</p> <p><i>Federal Tax Liens</i> Read IRC 6323 carefully IRC 3713(1)(a)</p> <p>9-506(a), 9-502(a), 9-520(c) 9-317(a)2(B), 9-317(e) 9-203, 9-516(b)</p>
10	<p><i>Leases</i></p> <p>Is there a principled way to distinguish between a true lease and a security agreement?</p>	<p>CB 281-320 (Ignore questions 3 and 4 at p.320)</p> <p>UCC 2A-103(1)j, 301, 304, 305 504(1)</p> <p>UCC 1-203, 1-201(b)35, 9-505(a)</p> <p>Bankruptcy Code 365</p> <p>Va. Code 46.2-640, 46.2-640.1</p>

11	<p><i>Consignments</i></p> <p>What's the difference between a bailment, a security consignment, and a non-Art. 9 consignment</p>	<p>CB 320-341</p> <p>UCC 2-326, 9-109(a)(4) 9-102(a)(12)(20), 1-201(b)(35) 9-103(d), 9-319, 9-601(g)</p>
12	<p><i>Intellectual Property: Copyrights</i></p> <p>When does federal intellectual property law preempt Art. 9?</p>	<p>CB 343-69</p> <p>Constitution Art. VI, cl. 2. 17 USC §§ 102(a)(b), 106, 205, 101 301(a), 201(d), 408(a) UCC 9-102(a)(42), 9-109(c)(1) 9-311(a)(1)</p>
13	<p><i>Intellectual Property: Trademarks and Patents</i></p>	<p>CB 369-88</p> <p>15 USC 1051, 1057(b), 1116, 1060 35 USC 101, 261</p> <p>UCC 9-109(c)(1), 9-311(a)(1) 9-317, 9-202 9-401(2), 9-406(d), 9-408</p>
14	<p><i>Investment Securities I</i></p>	<p>CB 389-410</p> <p>9-102(a)(49), 9-313(a)</p> <p>8-102, 8-103, 8-201(a) 8-102(a) (security, certificated security, uncertificated security, security entitlement, security intermediary, clearing corporation, entitlement holder, financial asset, registered form) 8-501, 8-503, 8-511(b) 8-301, 8-106, 8-303, 8-105</p>

		9-313(a), 9-312(a), 9-314(a) 9-106, 9-328 9-102(a)(49)(52)(64) 9-207(a), 9-608(a)(4), 1-201(29)
15	<i>Investment Securities II</i>	CB 410-30 Skip question 4 on p. 412 and question 2 on p.424 9-102(a)(29)(49), 9-314(a) 9-328, 9-317, 9-503, 1-201(29) 8-106, 8-501, 8-511(b), 8-507 8-102(a)(7)(18), 8-303, 8-105 8-107, 8-103(b), 8-504
16	<i>Fixtures</i>	CB 431-54 Skip “Circular Priorities, pp. 438-45 9-102(a)(40)(41)(53)(54) 9-334, 9-501(a), 9-502(b) 9-311(a), 9-604
17	<i>Enforcement I</i>	CB 455-93 1-103, 1-303, 1-201(b)(36) 9-601, 9-607, 9-609, 9-610 9-611, 9-612, 9-613, 9-620 9-623, 9-608, 9-602, 9-624

18	<i>Enforcement II</i>	CB 493-524 Skip Case # 1 on p.509 Skip Problem 2 on p.518 9-627, 9-626 9-615, 9-616, 9-603(a) 9-617, 9-611, 9-620 9-625, 9-622, 9-621 9-607, 9-623 Bankruptcy Code 722
19	<i>Bankruptcy I</i>	CB 525-36 BC 303, BC 362, 101(41) BC 1228(a), BC 727, BC 1322 BC 1228, 524, BC 523(a) BC 507, BC 704, BC 707(b) BC 506, BC 725, BC 363 BC 554(a), BC 524, BC 722
20	<i>Bankruptcy II</i>	CB 536-70 BC 303, 362(a), 363 BC 554(a), 722, 524 BC 521, 1325(a), BC 1101 BC 1107(a), 1121, 1104, 1123 BC 1129, 1124, 552, BC 1322, 1328, 1327 BC 1303, 1304, 506
21	<i>Bankruptcy III</i>	CB 571-603 Skip question 2(b) on p. 571 and 1(c) on p. 575 Skip “Effect of Avoidance: at 577-78 Skip “Indirect Benefit at pp. 598-601 Virginia §§ 55.1-400, 55.1-401 BC 548, BC 550, BC 547 BC 546, 541, 542, 550 BC 544, 101(31), 552 UCC 9-317, 9-201

22	<i>Letters of Credit I</i>	<p>CB 605-630 Skip note 6 at 630 and note at 631-32</p> <p>UCC 2-702, 2-705</p> <p>UCC 7-102, 7-403(a), 7-301 7-309</p> <p>UCC 3-104(a)</p> <p>Standby Letter of Credit p.674</p> <p>UCC 5-105, 5-102, 5-103(d) 5-104, 5-108, 5-111</p>
23	<i>Letters of Credit II</i>	<p>CB 632-53 Skip Problem 3 on p. 637</p> <p>5-108, 5-103, 5-117, 5-110, 5-109</p> <p>Bankruptcy Code 509</p>
24	<i>Letters of Credit III</i>	<p>CB 653-73 Skip Problem 1(c) on p. 652 Skip Transfer, Assignment and Security Interests, at pp. 664-71</p> <p>5-111, 5-103, 5-109 5-102, 5-107(a)</p> <p>Bankruptcy Code 542(e), 547(c)</p>
25	<i>Review of Priorities</i>	
26	<i>Review for Exam</i>	