

Professor Moll
Secured Financing
Spring 2018

I. Course Description

When a debtor runs into financial trouble, the likelihood of a particular creditor getting repaid in whole or in part will often depend on whether the creditor loaned on a secured or unsecured basis. Compared to an unsecured creditor, a secured creditor possesses vastly superior legal rights in the collection and enforcement of debts. This course will address the “elevated” legal rights of the secured creditor by focusing upon Article 9 of the Uniform Commercial Code (the “UCC”)—the law of secured financing. We will discuss the rights and remedies of the secured creditor and the unsecured creditor under state law, and we will also address the effect of bankruptcy upon these rights and remedies (no prior knowledge of bankruptcy is required). The course is taught from a problem-solving approach; thus, the classes will focus upon discussing and analyzing real-world legal problems.

II. Learning Outcomes and Assessment Method

As a result of this course, students will be able to: (1) evaluate the strengths and weaknesses of unsecured and secured creditor remedies; (2) assess whether a security interest has been properly created (“attachment”); (3) assess whether a security interest has been properly perfected; (4) evaluate the relative priorities of various secured claimants; and (5) demonstrate understanding of how article 9 of the Uniform Commercial Code is organized and structured.

Your grade in this class is based entirely upon an open-book exam given at the end of the semester, less any adjustment for unacceptable panel performance (see below).

III. Office Hours

My office hours are by appointment. Please feel free to call me or e-mail me to make an appointment. My office is located at TUII 220, my telephone number is 743-2172, and my e-mail address is dmoll@central.uh.edu. My assistant can be reached at 743-2226.

IV. Course Materials

The following materials are required for this class:

- (1) Lynn M. LoPucki, Elizabeth Warren, and Robert Lawless, Secured Transactions: A Systems Approach, Wolters Kluwer (8th ed. 2016).
- (2) Elizabeth Warren, Bankruptcy and Article 9, Wolters Kluwer (2017 edition).

V. Class Preparation

As mentioned, this course focuses upon problem solving in a statutory environment. As a consequence, every class session involves the discussion and analysis of problems in the textbook, as well as the application of Article 9, the Bankruptcy Code, or related statutes. By working the problems and paying attention to the class discussions, you will understand how Article 9 and parts of the Bankruptcy Code operate. More importantly, you will be able to apply these statutes to various legal issues and problems arising in your clients' business transactions and in your own.

Because Secured Financing is a problem-solving course, it is imperative that you make a good-faith attempt to answer the problems *before class* such that you can contribute to a productive (and efficient) class discussion. I will not be upset by an incorrect resolution of a problem so long as it is clear that you have prepared and made a good-faith attempt to address the issues in the problem.¹

I will distribute or announce specific reading and problem-solving assignments in class. Such assignments will generally cover the next several weeks of the course. Please be advised that these assignments may be altered based upon the amount of material that we get through in class. If any alterations do occur, I will announce them as soon as possible.

VI. Class Participation

To facilitate our discussion and analysis of the assigned problems, I will question students in panels of 3-4 students per class. Depending upon our class size, each student will serve on one or two panels during the semester. I will pass around a sign-up sheet periodically throughout the course and each student will be required to sign up for a designated number of panels.

If for some reason you are unable to be present or prepared on your panel day, it is your responsibility to switch days with someone else and to inform me of the switch *before the class begins*. If a class is cancelled for some reason, the panel for that day will be rescheduled. All other panels will keep their previously-assigned days.

In general, panel members will be questioned on the problems that were assigned for that particular day. As mentioned, however, reading and problem-solving assignments may be altered based upon the amount of material that we get through in class. If there are any changes to the assigned readings and problems that I expect a panel to be responsible for, I will announce the changes at the conclusion of the prior class session. To this extent, you are on notice that your

¹ For many problems, there may not be a definitively "correct" answer. Thus, it is good-faith preparation and attempts at problem solving that I am after.

panel may be responsible for material that was not initially designated for discussion on your particular panel date.

Participation by non-panel members is welcomed and encouraged. Pursuant to Law Center guidelines, I reserve the right to lower your final grade by one notch (e.g., from a B to a B-) if you are absent or unprepared on any of your assigned panel days. Any student who is absent or unprepared on two panel days will be dropped from the course.

VII. Class Attendance

The Law Center requires students to attend at least 80% of the scheduled classes. Any student who attends fewer than the minimum percentage of classes is to be automatically dropped from the class. I will take attendance by passing around a roll sheet at the beginning of each class. Each student should initial by his or her name. Not surprisingly, initialing for another student is unacceptable. It is your responsibility to insure that you have initialed the roll sheet before I leave the classroom each day. This is particularly important if you arrive after class has begun. PLEASE NOTE: You can only sign the attendance sheet for a particular day if you were present for at least half of that day's class.

VIII. Examination and Grading

The examination in this course will be entirely "open book." You may use any material that you wish, whether prepared by you or someone else. Your grade in this course will be derived from your examination score less any adjustment for unacceptable panel performance (see above). The examination itself will be discussed as the semester progresses.

IX. Instructor Evaluations

I welcome any comments or suggestions that you may have regarding my teaching style, class presentation, or any other subject. Please feel free to provide me with such comments during the course of the semester as they will help me to improve my teaching. I will carefully consider all of the comments and suggestions that I receive.

X. Counseling Services

Counseling and Psychological Services (CAPS) can help students who are having difficulties managing stress, adjusting to the demands of a professional program, or feeling sad and hopeless. You can reach CAPS (www.uh.edu/caps) by calling 713-743-5454 during and after business hours for routine appointments or if you or someone you know is in crisis. No

appointment is necessary for the “Let's Talk” program, a drop-in consultation service at convenient locations and hours around campus. http://www.uh.edu/caps/outreach/lets_talk.html

COURSE OUTLINE

NOTE: *Portions of this Course Outline may be altered or deleted depending upon the amount of material that we are able to cover during the semester.*

I. THE CREDITOR-DEBTOR RELATIONSHIP

A. Creditors' Remedies Under State Law

1. Remedies of Unsecured Creditors Under State Law
2. Security and Foreclosure
3. Repossession of Collateral
4. Judicial Sale and Deficiency
5. Article 9 Sale and Deficiency

B. Creditors' Remedies in Bankruptcy

1. Bankruptcy and the Automatic Stay
2. The Treatment of Secured Creditors in Bankruptcy

C. Creation of Security Interests

1. Formalities for Attachment
2. What Collateral and Obligations are Covered?
3. Proceeds, Products, and Other Value-Tracing Concepts
4. Tracing Collateral Value During Bankruptcy

D. Default: The Gateway to Remedies

1. Default, Acceleration, and Cure: State Law

E. The Prototypical Secured Transaction

1. The Prototypical Secured Transaction

II. THE CREDITOR-THIRD PARTY RELATIONSHIP

A. Perfection

1. The Personal Property Filing Systems
2. Article 9 Financing Statements: The Debtor's Name

3. Article 9 Financing Statements: Other Information
 4. Exceptions to the Article 9 Filing Requirement
 5. Characterizing Collateral for the Purpose of Perfection
- B. Maintaining Perfection
1. Maintaining Perfection Through Lapse and Bankruptcy
 2. Maintaining Perfection Through Changes of Name, Identity, and Use
 3. Maintaining Perfection Through Relocation of Collateral or Debtor
- C. Priority
1. The Concept of Priority: State Law
- D. Competitions for Collateral
1. Lien Creditors Against Secured Creditors: The Basics
 2. Lien Creditors Against Secured Creditors: Future Advances
 3. Trustees in Bankruptcy Against Secured Creditors: Preferences
 4. Secured Creditors Against Secured Creditors: The Basics
 5. Sellers Against Secured Creditors
 6. Buyers Against Secured Creditors