

Professor Moll
Secured Financing
Fall 2021

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 713-743-2172, and my e-mail address is dmoll@central.uh.edu. My assistant can be reached at 713-743-2226.

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 (9th ed. 2020).
- (2) Elizabeth Warren, Bankruptcy and Article 9, Wolters Kluwer (2020 or latest 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

At the Law Center, we are committed to ensuring inclusive online and classroom learning spaces, where you'll be treated with respect and dignity, and where everyone is provided the equitable opportunity to participate, contribute, and succeed. I encourage you to speak up and to share your views, but also understand that you are doing so in a learning environment in which we're all expected to engage respectfully and with regard to the dignity of all others.

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

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.

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 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.

I will gladly honor your request to address you by an alternate name or gender pronoun. Please advise me of this preference early in the semester so that I may make appropriate changes to my records.

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 ensure 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. Syllabus Changes

Due to the changing nature of the COVID-19 pandemic, please note that I may need to make modifications to the course syllabus and may do so at any time. Such modifications may include changes to the mode(s) of assessment for the course. Notice of such changes will be announced as quickly as possible.

XI. Recording of Class

Students may not record all or part of class, livestream all or part of class, or make/distribute screen captures, without my advanced written consent. If you have or think you may have a disability such that you need to record class-related activities, please contact the [Center for Students with DisABILITIES](#). If you have an accommodation to record class-related activities, those recordings may not be shared with any other student, whether in this course or not, or with any other person or on any other platform.

Classes may be recorded by the instructor. Students may use instructor's recordings for their own studying and notetaking. Instructor's recordings are not authorized to be shared with *anyone* without the prior written approval of the instructor. Failure to comply with requirements regarding recordings will result in a disciplinary referral to the Dean of Students Office and may result in disciplinary action.

XII. UH Resources

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. <https://uh.edu/caps/outreach/lets-talk/index.php#hours>

The Texas Lawyers' Assistance Program ("TLAP") also supports law students who are dealing with stress, anxiety, depression, substance abuse, and other mental health problems. You can reach TLAP at any time at 1-800-343-8527. TLAP's website includes a page with links to sources about mental health that are of interest to law students: <https://www.tlaphelps.org/law-students>

The University and the Law Center are committed to maintaining and strengthening an educational, working, and living environment where students, faculty, staff, and visitors are free from discrimination and sexual misconduct. If you have experienced an incident of discrimination or sexual misconduct, there is a confidential reporting process available to you. For more information, please refer to the University System's Anti-Discrimination Policy SAM 01.D.07 and Sexual Misconduct Policy SAM 01.D.08, available here:

<http://www.uhsystem.edu/compliance-ethics/uhs-policies/sams/01-general-information/index.php>

<http://www.uhsystem.edu/compliance-ethics/docs/sam/01/1d7.pdf> (antidiscrimination)

<http://www.uhsystem.edu/compliance-ethics/docs/sam/01/1d8.pdf> (sexual misconduct)

Please be aware that under the sexual misconduct policy, SAM 01.D.08, faculty and other University employees are required to report to the University any information received regarding sexual misconduct as defined in the policy. Due to this reporting requirement, faculty members and other employees are not a confidential resource. The reporting obligations under the sexual misconduct policy extends to alleged conduct by University employees and students.

XIII. Special Disclosures for the Fall 2021 Semester

1. As a result of the COVID-19 pandemic, I will be teaching this class in both an in-person and virtual manner. In other words, you have your choice of attending in-person or virtually on any given class day. If you decide to attend virtually, we will meet on Zoom, and I expect you to adhere to the following guidelines:

a. The attendance policy and the panel requirements will be enforced as described above. As a consequence, you must attend 80% of the classes, which means that you must appear in the Zoom classroom at our regularly scheduled time for at least 80% of the classes. We will use a Google document rather than a hard copy for the attendance each day as well as for the panel sheet.

b. Each class will be recorded. The Law Center will record class sessions with audio and video for the sole and limited educational purpose of allowing students to stream the recorded sessions for review or to enable students who missed a class to hear the class presentation. Any recordings created will be deleted and destroyed shortly after the final exam for the class. There is a chance that your contributions to class discussion, whether voluntary or while on call, may be included in the recording. Your continued registration in this class indicates your acquiescence to any such incidental recording for the purposes described above.

c. The virtual classroom only works if your video is turned on during the class. Thus, your computer must have a working video camera and quality audio capability. I expect your video to remain on for the entire class period with the exception of short breaks for using the bathroom, screaming at misbehaving family members, picking your nose, or similar events that no one would want you to broadcast. In all seriousness, with the exception of issues such as the above, I expect your video to remain on during the class.

d. Please identify yourself with your class roll name in the Zoom software. Changing your name to something humorous was funny last semester when we hadn't seen it 100 times; at this point, it is just annoying and confusing to your professor. Please use your class roll name.

e. Please manage your “mute” button so that the class remains a professional space. It is very distracting when there are background noises.

2. ***It is possible that I will have to convert the course to an entirely virtual (Zoom) class, taught from my home, with no in-person option.*** This may occur on very short notice for several reasons, including (1) public health conditions worsen; (2) the technology, in my discretion, is inadequate for running both in-person and virtual options; or (3) very few people are attending the in-person classes. I hope to avoid this, but, as you know, circumstances can change quickly.

3. **VERY IMPORTANT DISCLOSURES ABOUT THE EXAM**

a. ***I plan to give a proctored, hard copy exam at the Law Center on the scheduled date and time. You will NOT have the option to take the examination online or in a separate location. If this poses problems for you, you will need to drop the class.***

b. If the Law Center prevents in-person exams due to public health conditions, then you will need to take the examination online. In that event, I will be using Respondus LockDown Browser and Respondus Monitor through Blackboard for your exam. If this occurs, you will be required to practice with the software, possibly on a somewhat expedited basis, so that you will avoid problems on the actual exam.

The below instructions are only necessary to follow if we have to switch to an online exam, which I very much hope will not happen. I am leaving the instructions here just in case:

i. You are responsible for reviewing the Student Guide for both programs (LockDown Browser and Monitor), which can be found at the following link (the link goes automatically to the Student Guide for Monitor; scroll down at that page to see a link to the Student Guide for Browser):

<http://www.instruction.uh.edu/knowledgebase/taking-a-test-with-respondus-monitor-student-guide/>

Please also review:

<https://web.respondus.com/wp-content/uploads/2019/08/RLDB-Quick-Start-Guide-Bb-Student.pdf>

ii. In brief, LockDown Browser is a secure browser for taking exams that will prevent you from printing, copying, going to another URL, or accessing applications during an exam. Monitor is a program that uses your webcam to essentially record you taking the exam to ensure that you are complying with the Law Center’s Honor Code. ***Both of these programs are mandatory for each student and any efforts to evade or circumvent either program are violations of the Honor Code and will be punished accordingly. In addition, you may be***

reported to the Texas bar.

iii. You must have a computer with a working webcam to take the exam in this course. You must also download the LockDown Browser; a link can be found in the Browser Student Guide.

iv. You are required to participate in “practice runs” that I will schedule to make sure that the programs are working for everyone and that we won’t run into any problems during the actual exam. I will let you know when these practice runs will occur.

v. I am still researching the programs to see how they can best be used. *At this point, I know that you will be reading the exam off of your computer screen and will not have a hard copy. You will not be able to underline, highlight, or otherwise notate the exam problems on your screen, as the programs do not allow for such editing. I will allow you to use scratch paper, however, so you will be able to jot things down (but the scratch paper must be disposed of at the end of the exam). If these circumstances will be a problem for you, you will likely need to drop the class.*

c. There will be further announcements about the exam procedure as the semester proceeds. We will, of course, also discuss the exam substance towards the end of the semester.

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