

SECURED TRANSACTIONS
UNDER THE UNIFORM
COMMERCIAL CODE AND
INTERNATIONAL
COMMERCE

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SECURED TRANSACTIONS UNDER THE UNIFORM COMMERCIAL CODE AND INTERNATIONAL COMMERCE

Second Edition

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MATTHEW  BENDER

SECOND EDITION PREFACE

A significant body of case law from around the country, unavailable when we published our first edition in 2002, is now available.¹ We draw extensively on this new body of case law and eliminate pre-revision cases in this new edition.

Our new edition is more user friendly than our earlier edition. Inclusion at the outset of the H. Fleisig *Secured Transactions: The Power of Collateral* article puts secured transactions in a context which sensitizes students as to why a modern secured transactions law is important to creditors and debtors. Notes on “The Role of Codes, Statutes and Case Law” and “Simplifying Complicated Statutory Language” introduce students to statutory interpretation and develop skills which will help them to better understand the sometimes complicated text of Article 9, as well as other statutes. Students have found Appendix A, *Actual Text and Simplified Version of Actual Text of Selected Provisions of the UCC Pertaining to Secured Transactions*, interesting and useful in developing these skills.

Use on a continuing basis throughout the course of *Samuel Clemens Hypothetical Problems* to navigate through secured transactions from creation (Chapter 2), to enforcement (Chapter 3), to perfection and priority of the security interest (Chapter 4), continues to be unique to this secured transactions text. With this model, students work with more interesting and more easily understood problems rather than a series of unrelated hypotheticals.

Exposure of students early in the course to *In Re QDS* forces them to work with difficult and complicated statutory language to distinguish the so-called “true lease” from the “dirty lease.” This early exposure not only sensitizes them to the broad scope and applicability of Article 9, but also assists them throughout the course in working with complicated UCC statutory language, and enhances their ability to work with complicated statutory language in other areas of the law.

New materials illustrating breach of the peace, notification, and commercially reasonable foreclosure requirements are included in the book. Difficult problems created by errors in financing statements in particular with reference to names of individual debtors are also addressed with new cases interpreting Revised Article 9.

Louis F. Del Duca
Marie T. Reilly
Edwin E. Smith
Peter Winship

January 2011

¹ Revised Article 9 was adopted and effective in all 50 states as of July 1, 2001 except for Connecticut, Alabama, Florida, and Mississippi. It was adopted in these four states to become effective January 1, 2002.

FIRST EDITION PREFACE

Student understanding and mastery of complex transactional settings, highly specialized terminology, and intricate legal secured transactions issues through the vehicle of simplified, user-friendly problems, cases, and commentary continue to be facilitated by our new edition of *Secured Transactions Under the Uniform Commercial Code and in International Commerce*. This course book develops students' skills in: (a) analyzing, applying, and interpreting relevant statutory text and related case law; (b) preparing and interpreting security agreements, financing statements, and other documents; and (c) identifying and evaluating policy alternatives involved in creating an equitable and efficient secured transaction system designed to enhance the availability of credit and working capital for developing and enriching the economy.

These materials also sensitize students to the historical evolution of basic legal principles and development of sophisticated secured financing statutes, such as the UCC and related state and federal statutes. For example, the venerable case of *Clow v. Woods*, 5 Serg. & Rawle 275 (Pa. 1819), with its classic treatment of "ostensible ownership," is included for this purpose. Illustrative documents are also generously interspersed throughout the text.

This book can be adapted to two or three credit courses. The authors have actually used the book in both types of courses. Chapter 5, "The Effects of Bankruptcy" and Chapter 6, "Introduction to International Secured Transactions," can be comfortably included in a three credit course. In order to sensitize students to these important areas within the parameters of a two credit course, these subjects are also addressed with less specificity in other chapters of the book.

Opportunities for enrichment of Secured Transactions course materials result from Revised Article 9's expanded coverage, inclusion of new techniques for creating and perfecting security interests, new priority and conflict of laws provisions, and its enactment by all 50 states. Additionally, the increase in international secured lending has generated efforts to create secured transactions regimes effective on a worldwide basis. Evaluation of these regimes provides excellent international and comparative source material.

The new edition uses a system of parallel section number citations which correlates Revised Article 9 and former Article 9 sections. Citations to Revised Article 9 sections are in bold, followed by the analogous section from former Article 9 in brackets. The same approach is utilized for the newly revised Article 1. This parallel citation system enables students to efficiently and meaningfully analyze case law under the former Article 9 and Article 1 numbering systems.

To introduce students to the subject of International Secured Transactions, Chapter 6, "Introduction to International Secured Transactions," utilizes the recently completed *Convention on International Interests in Mobile Equipment*, developed under the auspices of the International Institute for Unification of Private Law (UNIDROIT) in cooperation with the Council of the International Civil Aviation Organization. An overview of other major efforts to create international secured transactions regimes is included in Chapter 6 by introducing students to the work of the United Nations Commission on International Trade Law (UNCITRAL), with its outstanding work on the

FIRST EDITION PREFACE

Convention on Assignment of Receivables in International Trade, and the work of the European Bank for Reconstruction and Development with its *Model Law on Secured Transactions*.

Louis F. Del Duca
Egon Guttman
William H. Henning
Frederick H. Miller
Peter Winship

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