UNDERSTANDING SECURED TRANSACTIONS
UNDERSTANDING SECURED TRANSACTIONS

FIFTH EDITION

William H. Lawrence
Professor of Law
University of San Diego School of Law

William H. Henning
Distinguished Professor of Law
University of Alabama School of Law

R. Wilson Freyermuth
Curators’ Teaching Professor & John D. Lawson Professor of Law
University of Missouri-Columbia School of Law
DEDICATION

For my son, Marcus, with love
W.H.L.

For Emma, Ayden, and Liam
W.H.H.

For my wife, Shari, with love and gratitude
R.W.F.
ACKNOWLEDGMENTS

Professor Lawrence gratefully acknowledges the support provided by a summer research grant from the University of San Diego.

Professor Henning gratefully acknowledges the generosity of the University of Alabama Law School Foundation, which supports his scholarship.

Professor Freyermuth gratefully acknowledges the generosity of John K. Hulston, W. Dudley and Elizabeth McCarter, Charles H. Rehm, Edgar Maufield, John W. Cowden, and the law firm of Thompson Coburn LLP, whose financial support facilitated his contributions to this book.

William H. Lawrence
William H. Henning
R. Wilson Freyermuth

July 2012
PREFACE

Like the other books in the Understanding series, this book is designed as a student text. Our approach is to aid students’ understanding of secured transactions by informing them about both the law and the nature of the transactions to which the law applies.

The primary sources of law are Article 9 of the Uniform Commercial Code and selected provisions of the Bankruptcy Reform Act. Beyond a focus on the text of the statutes, an analysis of their underlying rationales is critical to an in-depth understanding of the codified provisions. The Official Comments to the U.C.C. and the Historical and Revision Notes to the Bankruptcy Reform Act are helpful but often lack sufficient insights or clarity to provide adequate guidance. Learning the essence of each statutory section in isolation is difficult and insufficient; students must learn to interrelate multiple sections in a sophisticated manner in order to solve problems in this complex area of the law.

When the first edition of this book was published, the 1972 text of Article 9, as amended from time to time, was in effect. In 1998, the U.C.C.’s sponsoring bodies, the Uniform Law Commission and the American Law Institute, adopted a revised version of Article 9.

The revision represented a comprehensive modernization and reformulation of the law governing secured transactions. It was not in effect in any state as of the publication date of the second edition of this book, which was designed as a transitional work. The primary emphasis of the second edition was the 1972 Official Text, but it also provided a discussion of the revision and explained how its provisions would change existing law.

Revised Article 9 was a remarkable success! It was promulgated with a delayed effective date of July 1, 2001, and by that date it was in effect in virtually every state, with the other states coming along within a few months thereafter. This universal adoption compelled the third edition, which focused on revised Article 9 and discussed former law only to the extent necessary to shed light on particular provisions of the revision.

The fourth edition incorporated significant revisions to bankruptcy law resulting from the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 and this Fifth Edition was necessitated by a significant set of amendments to revised Article 9 promulgated by the sponsors in 2012. As this edition goes to print, the amendments have been enacted in over half the states, with a deferred effective date of July 1, 2013.

The law of secured transactions reflects business practices with which many students are unfamiliar. An understanding of the essential aspects of the transactions themselves is crucial for any student who seeks to comprehend the law that governs them. This book explains different types of secured transactions. For example, it describes the structure and use of financing arrangements that are made possible through such techniques as asset-based securitization, mortgage warehouse lending, terminal and field warehousing,

---

1 The sponsors approved minor amendments to revised Article 9 in 1999, 2000, and 2001.

2 This was done to avoid the “horrendous complications” that would have arisen had part of the country remained subject to former law while another part adopted revised Article 9. U.C.C. § 9-701, Comment 1.
financing of accounts, factoring of accounts, and floor planning, as well as other methods of transacting business. The discussion of each financing arrangement is integrated into the place in the text in which the relevant substantive concepts are covered.

Much of the practice in the area of secured transactions involves preventative law, in which the practitioner advises the client on alternative methods of structuring transactions and the risks associated with each option. The book integrates and develops significant aspects of these considerations, going beyond the text of the U.C.C. by explaining the practical constraints that ultimately shape decision-making in this field.

The organization of the subject matter of the text is largely based upon the traditional five-part approach to the law of secured transactions: (1) scope of the article, (2) attachment (creation) of security interests, (3) perfection of security interests, (4) priorities among competing claimants to collateral (i.e., the effects of perfection or nonperfection), and (5) enforcement of security interests. This organizational scheme is emphasized by designating each of these five concepts as a separate Part of the book.

Entries in the Table of Contents include a descriptive word or phrase, along with relevant section numbers of the U.C.C. and the Bankruptcy Reform Act. The Table of Contents does not cite all the provisions that might be relevant, but only the most fundamental provisions relating to the particular topic. This approach should aid students using the book as a supplemental text by enabling them to find the relevant discussion based on either the subject or the basic statutory section numbers. The Table of Statutes and Index enable a more detailed search.
# TABLE OF CONTENTS

## Part I  
**SCOPE** ................................................. 1

## Chapter 1  
**TRANSACTIONS WITHIN ARTICLE 9** ......................... 7

§ 1.01  
THE PRE-CODE DISARRAY OF SECURED TRANSACTIONS LAW  ... 8

§ 1.02  
THE UNITARY APPROACH OF ARTICLE 9; TERMINOLOGY  
DESCRIBING PARTIES ........................................... 9

§ 1.03  
GENERAL APPLICABILITY OF ARTICLE 9 ........................ 11
[B] Leases and Consignments ...................................... 12
  [1] Disguised Leases ........................................... 12
  [2] Disguised Consignments ..................................... 15
  [3] True Consignments .......................................... 16

§ 1.04  
CLASSIFICATIONS OF COLLATERAL ................................ 17
      (53), (54) ................................................... 21
  [3] Inventory — § 9-102(a)(48) ............................... 25
[B] Indispensable Records ........................................ 26
[C] Intangibles .................................................... 31
[E] Investment Property — § 9-102(a)(49) ..................... 38

§ 1.05  
PURCHASE-MONEY SECURITY INTERESTS — § 9-103 .......... 41
[A] General ........................................................ 41
[B] Adoption of “Dual-Status” Rule ............................ 43

§ 1.06  
SALES OF ACCOUNTS, CHATTEL PAPER, PAYMENT  
INTANGIBLES, AND PROMISSORY NOTES — § 9-109(a)(3) .... 46

§ 1.07  
EXCLUSIONS FROM ARTICLE 9 — § 9-109(c), (d) ............ 50
[A] Federal Statutes .............................................. 50
[B] Landlord and Statutory Liens ............................... 51
[C] Real Estate Interests ........................................ 52
[D] Wage Claim Assignments .................................... 54
# Table of Contents

- **[E]** Government Transfers ........................................... 54
- **[F]** Transfers Irrelevant to Commercial Finance .................. 55
  - [1] Specified Transfers of Rights to Payment ....................... 55
  - [3] Rights of Set-off .................................................. 57
- **[G]** Insurance Assignments ........................................... 57
- **[H]** Deposit Accounts .................................................. 58

§ 1.08 RELATIONSHIP BETWEEN ARTICLE 9 AND OTHER ARTICLES . . 59

## Part II  
**ATTACHMENT OF SECURITY INTERESTS .............. 63**

### Chapter 2  
**CREATION AND ENFORCEABILITY OF SECURITY INTERESTS ............................. 65**

- § 2.01 OVERVIEW: THE CONCEPT OF ATTACHMENT ....................... 65
- § 2.02 CREATION OF AN ENFORCEABLE SECURITY INTEREST —
  - § 9-203 ........................................................................... 66
  - [A] Security Agreement — § 9-203(b)(3) ............................... 67
  - [1] Authenticated by the Debtor ....................................... 69
  - [3] Multiple-Source Approach .......................................... 74
  - [B] Value — §§ 9-203(b)(1), 1-204 ..................................... 76
  - [C] Rights or the Power to Transfer Rights in the Collateral —
    § 9-203(b)(2) ................................................................. 77
- § 2.03 PROCEEDS .................................................................. 83
  - [A] Defined — § 9-102(a)(64) ............................................ 83
  - [B] Attachment — §§ 9-203(f), 9-315(a)(2), (b) .................... 87
- § 2.04 ATTACHMENT TO UNDERLYING OBLIGATIONS — § 9-203(f), (g) .. 89

### Chapter 3  
**ONGOING FINANCING RELATIONSHIPS  ................. 91**

- § 3.01 FACILITATING CLAUSES GENERALLY ............................. 91
- § 3.02 AFTER-AQUIRED PROPERTY — § 9-204(a), (b) .................. 93
  - [A] General Applicability ................................................. 93
  - [B] Exceptions ............................................................... 95
- § 3.03 FUTURE ADVANCES — § 9-204(c) ................................. 97
- § 3.04 FINANCING INVENTORY AND ACCOUNTS ..................... 99
  - [A] Factoring of Accounts .............................................. 100
  - [B] Financing Against Inventory and Accounts .................... 101
  - [C] Floor Planning Inventory .......................................... 103
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Part III</th>
<th>PERFECTION OF SECURITY INTERESTS</th>
<th>105</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chapter 4</td>
<td>PERFECTION IN GENERAL</td>
<td>107</td>
</tr>
<tr>
<td>§ 4.01</td>
<td>PURPOSE</td>
<td>107</td>
</tr>
<tr>
<td>§ 4.02</td>
<td>THE ALTERNATIVE METHODS OF PERFECTION — § 9-310</td>
<td>108</td>
</tr>
<tr>
<td>[A]</td>
<td>Filing a Financing Statement</td>
<td>109</td>
</tr>
<tr>
<td>[B]</td>
<td>Possession</td>
<td>109</td>
</tr>
<tr>
<td>[C]</td>
<td>Automatic Perfection</td>
<td>109</td>
</tr>
<tr>
<td>[D]</td>
<td>Temporary Perfection</td>
<td>109</td>
</tr>
<tr>
<td>[E]</td>
<td>Perfection Under Federal Law</td>
<td>110</td>
</tr>
<tr>
<td>[F]</td>
<td>State Certificate-of-Title Statute</td>
<td>110</td>
</tr>
<tr>
<td>[G]</td>
<td>Control</td>
<td>111</td>
</tr>
<tr>
<td>[H]</td>
<td>Delivery</td>
<td>111</td>
</tr>
<tr>
<td>§ 4.03</td>
<td>WHEN PERFECTION OCCURS — § 9-308(a)</td>
<td>111</td>
</tr>
<tr>
<td>§ 4.04</td>
<td>CONTINUITY OF PERFECTION — § 9-308(c)</td>
<td>112</td>
</tr>
<tr>
<td>Chapter 5</td>
<td>PERFECTION BY FILING</td>
<td>115</td>
</tr>
<tr>
<td>§ 5.01</td>
<td>GENERAL METHOD — § 9-310(a)</td>
<td>116</td>
</tr>
<tr>
<td>§ 5.02</td>
<td>WHAT CONSTITUTES FILING — § 9-516</td>
<td>116</td>
</tr>
<tr>
<td>§ 5.03</td>
<td>WHAT TO FILE</td>
<td>119</td>
</tr>
<tr>
<td>[A]</td>
<td>Requirements — §§ 9-502, 9-516(b)</td>
<td>119</td>
</tr>
<tr>
<td>[1]</td>
<td>Debtor Names — § 9-503(a)–(c)</td>
<td>121</td>
</tr>
<tr>
<td>[4]</td>
<td>Indication of Collateral</td>
<td>129</td>
</tr>
<tr>
<td>[B]</td>
<td>Notice Filing</td>
<td>133</td>
</tr>
<tr>
<td>[1]</td>
<td>The Function of Notice</td>
<td>133</td>
</tr>
<tr>
<td>[2]</td>
<td>Requests for Information — §§ 9-210, 9-625(f), (g)</td>
<td>133</td>
</tr>
<tr>
<td>[C]</td>
<td>Effect of Errors and Changes</td>
<td>134</td>
</tr>
<tr>
<td>[1]</td>
<td>Errors — §§ 9-506(a), 9-518</td>
<td>134</td>
</tr>
<tr>
<td>[a]</td>
<td>Information Required for Sufficiency</td>
<td>134</td>
</tr>
<tr>
<td>[b]</td>
<td>Other Required Information</td>
<td>136</td>
</tr>
<tr>
<td>[c]</td>
<td>Information Statements</td>
<td>136</td>
</tr>
<tr>
<td>[a]</td>
<td>Changes Related to the Debtor’s Name</td>
<td>137</td>
</tr>
<tr>
<td>[b]</td>
<td>Transferees and New Debtors</td>
<td>139</td>
</tr>
<tr>
<td>§ 5.04</td>
<td>WHEN TO FILE — § 9-502(d)</td>
<td>144</td>
</tr>
<tr>
<td>§ 5.05</td>
<td>WHERE TO FILE — § 9-501</td>
<td>145</td>
</tr>
<tr>
<td>§ 5.06</td>
<td>LAPSE AND TERMINATION OF FILING</td>
<td>146</td>
</tr>
</tbody>
</table>
TABLE OF CONTENTS

[A] Lapse of Initial Financing Statement — § 9-515(a) ......................... 146
[B] Continuation Statements — § 9-515(c)–(e) ............................. 147
[C] Termination Statements and Releases of Collateral — §§ 9-513, 9-509 .................................................. 149

Chapter 6 PERFECTION BY POSSESSION AND CONTROL .... 153

§ 6.01 POSSESSION GENERALLY ................................................. 153
[A] History ................................................................. 153
[B] Possession Under Article 9 — § 9-313 ................................. 155
§ 6.02 POSSESSORY SECURITY ARRANGEMENTS IN SPECIFIC TYPES 
OF PERSONAL PROPERTY ............................................. 156
[A] Pledges of Valuables and Indispensable Paper ......................... 157
[B] Goods in Storage or Manufacture ..................................... 158
[1] Terminal Warehousing — § 9-312(c) ................................. 159
[2] Field Warehousing — § 9-312(d) ..................................... 161
[C] Goods in Transit .......................................................... 164
§ 6.03 THE CONCEPT OF POSSESSION — § 9-313 ..................... 166
[A] Possession by the Secured Party ........................................ 166
[B] Possession by Agents and Bailees ..................................... 167
[C] Symbolic or Constructive Delivery ..................................... 170
§ 6.04 PERFECTION BY CONTROL .......................................... 170
[A] Investment Property — §§ 9-314(a), 9-106 ............................. 170
[B] Deposit Accounts, Electronic Chattel Paper, Electronic Documents, 
and Letter-of-Credit Rights — §§ 9-314(a), 9-104, 9-105, 9-107 ........ 174

Chapter 7 AUTOMATIC PERFECTION ................................. 177

§ 7.01 PURCHASE-MONEY SECURITY INTERESTS IN CONSUMER 
GOODS — § 9-309(1) .................................................. 178
[A] Application of the Provision ............................................. 178
[B] Policy ................................................................. 179
[C] Exceptions ............................................................. 180
§ 7.02 CERTAIN TYPES OF ASSIGNMENTS ............................ 181
[A] Isolated Assignment of Account or Payment Intangible — § 9-309(2) . 182
[B] Sales of Payment Intangibles and Promissory Notes — § 9-309(3), (4) . 184
[C] Assignment of Health-Care-Insurance Receivables to a Provider — 
§ 9-309(5) ............................................................... 184
[D] Investment Property — § 9-309(9), (10), (11) .......................... 185
[E] Assignment for the Benefit of All Creditors — § 9-309(12) ........... 185
[F] Assignment of a Beneficial Interest in a Decedent’s Estate — 
§ 9-309(13) ............................................................... 186
[G] Sales of Lottery Winnings — § 9-309(14) ............................. 186
TABLE OF CONTENTS

Chapter 8  TEMPORARY PERFECTION AND PERFECTION OF PROCEEDS ........................................... 187

§ 8.01  INSTRUMENTS, CERTIFICATED SECURITIES, DOCUMENTS AND BAILED GOODS — § 9-312(e)–(h) ........................................... 187
[A]  Initial Perfection .................................................. 187
[B]  Continuing Perfection for Collateral Made Available to Debtor ........................................... 189

§ 8.02  PROCEEDS — § 9-315(c)–(e) ........................................... 191
[A]  The Grace Period of Temporary Perfection .................................................. 191
[B]  Continuing Perfection .................................................. 192
   [1]  Identifiable Cash Proceeds ........................................... 192
   [2]  Same Filing Office: The Basic Rule ........................................... 194

Chapter 9  MULTISTATE TRANSACTIONS ........................................... 199

§ 9.01  THE CODE’S BASIC CHOICE-OF-LAW PROVISION ........................................... 199
[A]  The Reasonable-Relation Test ........................................... 200
[B]  The Appropriate-Relation Test ........................................... 202

§ 9.02  THE ARTICLE 9 CHOICE-OF-LAW RULES ........................................... 203
[A]  General Rule: Location of the Debtor — § 9-301(1) ........................................... 204
[B]  Possessory Security Interest Exception — § 9-301(2) ........................................... 207
[C]  Tangible Property Partial Exception — § 9-301(3)(C) ........................................... 207
[D]  Additional Exceptions .................................................. 209
   [1]  Land-Related Collateral — § 9-301(3), (4) ........................................... 209
   [4]  Investment Property — § 9-305 ........................................... 211

§ 9.03  INITIAL PERFECTION UNDER A CERTIFICATE-OF-TITLE LAW — §§ 9-303, 9-311 ........................................... 211

§ 9.04  PERFECTION FOLLOWING CHANGE IN GOVERNING LAW — § 9-316 ........................................... 215
[A]  Change of Location .................................................. 215
[B]  Transferees and New Debtors ........................................... 218
   [1]  Transferees .................................................. 218
   [2]  New Debtors .................................................. 219
[C]  Goods Subject to a Certificate-of-Title Act ........................................... 220
# TABLE OF CONTENTS

**Part IV**

PRIORITIES ............................................. 225

**Chapter 10**

AMONG SECURED PARTIES .............................. 229

§ 10.01  FIRST-TO-FILE-OR-PERFECT — § 9-322(a) ............... 229
§ 10.02  FUTURE ADVANCES — §§ 9-323, 9-322 .................. 233
§ 10.03  EXCEPTIONS FOR NON-FILING COLLATERAL .............. 237
       [A] Deposit Accounts — § 9-327 ......................... 237
       [B] Investment Property — § 9-328 ....................... 238
       [C] Letter-of-Credit Rights — § 9-329 ................... 239
       [D] Chattel Paper, Instruments, Negotiable Documents, and Securities —
            §§ 9-330, 9-331 ......................................... 239
§ 10.04  PURCHASE-MONEY SECURITY INTERESTS ................. 240
       [A] Collateral Other Than Inventory — § 9-324(a) .......... 240
       [B] Inventory — § 9-324(b), (c) ............................. 242
§ 10.05  PROCEEDS ........................................... 244
       [A] Nonpurchase-Money Security Interests .................. 245
       [2] Special Rules ............................................. 246
           [a] Special Rule on Non-Temporal Priority — § 9-322(c)(2) ... 246
           [b] Special Rule on Temporal Priority — § 9-322(d), (e) ...... 247
       [B] Purchase-Money Security Interests — § 9-324(a), (b) ...... 248

**Chapter 11**

PURCHASERS (OTHER THAN SECURED PARTIES) VERSED PERFECTED SECURED PARTIES ................. 251

§ 11.01  GENERAL RULE ON DISPOSITION — § 9-315(a) .......... 251
§ 11.02  AUTHORIZED DISPOSITION — § 9-315(a)(1) ............ 254
       [A] Express Authorization ..................................... 254
       [B] Implied Authorization ..................................... 256
§ 11.03  PRIORITIES ........................................... 258
       [A] Goods ..................................................... 259
           [1] Buyers and Lessees of Goods in Ordinary Course of Business —
               §§ 9-320(a), 9-321(c) .................................. 259
               [a] Defining the Buyer or Lessee — §§ 1-201(b)(9), 2A-103(o) ... 259
               [b] Created by Its Seller or Lessor ........................ 262
           [3] Future Advances — § 9-323(d)–(g) ........................ 266
       [B] Licensees of General Intangibles in Ordinary Course of Business —
           § 9-321(a), (b) ............................................ 268
TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Chapter 12</th>
<th>THE FARM PRODUCTS RULE ............................................. 275</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 12.01</td>
<td>THE ARTICLE 9 RULE .................................................. 275</td>
</tr>
<tr>
<td>§ 12.02</td>
<td>THE FEDERAL FOOD SECURITY ACT ...................................... 276</td>
</tr>
<tr>
<td>[A]</td>
<td>Advance-Notice Approach ............................................. 277</td>
</tr>
<tr>
<td>[B]</td>
<td>State Central-Registry Approach .................................... 278</td>
</tr>
<tr>
<td>§ 12.03</td>
<td>A CRITIQUE ............................................................. 280</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter 13</th>
<th>CREDITORS WITH LIENS ARISING BY OPERATION OF LAW ......... 283</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 13.01</td>
<td>POSSESSORY LIENS THAT ARISE BY OPERATION OF LAW — .......... 283</td>
</tr>
<tr>
<td>§ 13.02</td>
<td>AGRICULTURAL LIENS — §§ 9-317, 9-322(a)(1) ................... 286</td>
</tr>
<tr>
<td>§ 13.03</td>
<td>FEDERAL TAX LIENS .................................................... 287</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter 14</th>
<th>PURCHASERS (OTHER THAN SECURED PARTIES) AND LIEN CREDITORS VERSUS UNPERFECTED SECURED PARTIES ........... 293</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 14.01</td>
<td>ARTICLE 9’s RESIDUAL PRIORITY RULE — § 9-201(a) ................ 293</td>
</tr>
<tr>
<td>§ 14.02</td>
<td>LIEN CREDITORS ................................................................ 294</td>
</tr>
<tr>
<td>[A]</td>
<td>General Rule — § 9-317(a)(2) ....................................... 294</td>
</tr>
<tr>
<td>[C]</td>
<td>Future Advances — § 9-323(b) ...................................... 297</td>
</tr>
<tr>
<td>§ 14.03</td>
<td>OTHER PURCHASERS ................................................................ 298</td>
</tr>
<tr>
<td>[A]</td>
<td>General Rules — § 9-317(b)–(d) .................................... 298</td>
</tr>
<tr>
<td>[B]</td>
<td>Purchase-Money Security Interests — § 9-317(e) ................ 300</td>
</tr>
<tr>
<td>[C]</td>
<td>Future Advances — § 9-323(d)–(g) ................................. 300</td>
</tr>
<tr>
<td>§ 14.04</td>
<td>CLAIMANTS NOT EXPRESSLY GOVERNED BY ARTICLE 9 ............... 300</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter 15</th>
<th>FIXTURES, ACCESSIONS, AND COMMINGLED GOODS .............. 303</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 15.01</td>
<td>FIXTURES DEFINED — § 9-102(a)(41) ...................................... 303</td>
</tr>
<tr>
<td>§ 15.02</td>
<td>FIXTURE FILINGS — § 9-102(a)(40) ...................................... 305</td>
</tr>
<tr>
<td>§ 15.03</td>
<td>PRIORITIES IN FIXTURES ................................................................ 307</td>
</tr>
<tr>
<td>[A]</td>
<td>The Code’s Residual Rule — § 9-334(c) .................................... 307</td>
</tr>
<tr>
<td>[B]</td>
<td>The Purchase-Money Priority Exception — § 9-334(d) .................. 307</td>
</tr>
</tbody>
</table>
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Topic</th>
</tr>
</thead>
<tbody>
<tr>
<td>[D]</td>
<td>Power to Avoid Statutory Liens</td>
</tr>
<tr>
<td>[1]</td>
<td>Background</td>
</tr>
<tr>
<td>[2]</td>
<td>Proving the Elements of a Preference</td>
</tr>
<tr>
<td>[3]</td>
<td>Determining When the Transfer Occurred</td>
</tr>
<tr>
<td>[a]</td>
<td>Substantially contemporaneous exchanges for new value</td>
</tr>
<tr>
<td>[b]</td>
<td>“Ordinary-course” payments</td>
</tr>
<tr>
<td>[c]</td>
<td>Security interests granted in conjunction with enabling loans</td>
</tr>
<tr>
<td>[d]</td>
<td>Transfers ameliorating an earlier preference</td>
</tr>
<tr>
<td>[e]</td>
<td>Floating liens in inventory and receivables</td>
</tr>
<tr>
<td>[f]</td>
<td>Statutory liens</td>
</tr>
<tr>
<td>[g]</td>
<td>Consumer transfers</td>
</tr>
<tr>
<td>[h]</td>
<td>Nonconsumer transfers</td>
</tr>
<tr>
<td>[F]</td>
<td>Power to Avoid Fraudulent Transfers</td>
</tr>
<tr>
<td>[3]</td>
<td>Pre-bankruptcy Foreclosure Sales as Fraudulent Transfers</td>
</tr>
<tr>
<td>§ 16.05</td>
<td>THE TRUSTEE’S RIGHT TO ASSERT THE DEBTOR’S DEFENSES — 11 U.S.C. § 558</td>
</tr>
<tr>
<td>§ 16.06</td>
<td>SECURITY INTERESTS IN AFTER-ACQUIRED PROPERTY — 11 U.S.C. § 552</td>
</tr>
<tr>
<td>§ 16.07</td>
<td>THE DEBTOR’S RIGHT TO CLAIM EXEMPT PROPERTY</td>
</tr>
<tr>
<td>[A]</td>
<td>Generally</td>
</tr>
<tr>
<td>[B]</td>
<td>The Debtor’s Power to Avoid Liens Against Exempt Property</td>
</tr>
<tr>
<td>§ 16.09</td>
<td>REAFFIRMATION BY THE DEBTOR — 11 U.S.C. § 524(c)</td>
</tr>
<tr>
<td>[A]</td>
<td>Reaffirmation Agreements</td>
</tr>
<tr>
<td>[B]</td>
<td>Retention of Collateral Without Either Redemption or Reaffirmation</td>
</tr>
<tr>
<td>[1]</td>
<td>The Law Prior to BAPCPA</td>
</tr>
<tr>
<td>§ 16.10</td>
<td>“CRAMDOWN” IN CHAPTER 13 AND THE “NEGATIVE EQUITY” DILEMMA</td>
</tr>
</tbody>
</table>
### TABLE OF CONTENTS

[A] Introduction ................................................................. 393
[B] Section 1325(a)(5) and the “Hanging Paragraph” ......................... 394
[C] The Hanging Paragraph and the “Negative Equity” Conundrum .......... 395

#### Part V DEFAULT ................................................. 399

#### Chapter 17 DEFAULT AND ITS CONSEQUENCES ....................... 401

§ 17.01 IMPORTANCE OF THE CONCEPT OF DEFAULT ........................ 401
[A] Waiver of Default ......................................................... 403
[B] Acceleration Clauses and Insecurity Clauses .......................... 406

§ 17.02 REMEDIES AVAILABLE UPON DEFAULT .......................... 408
[A] Types of Remedies .......................................................... 408
[B] Cumulation of Remedies .................................................... 411

#### Chapter 18 THE FORECLOSURE PROCESS ................................. 413

§ 18.01 REPOSSESSION — § 9-609 ........................................... 413
[A] Self-Help ................................................................. 414
[1] “Breach of the Peace” .................................................... 415
[2] Disabling the Collateral ................................................... 419
[B] Judicial Action ............................................................... 419

§ 18.02 DISPOSITION OF COLLATERAL — §§ 9-610 – 9-615 ............... 421
[A] The Standard of Commercial Reasonableness .......................... 422
[1] Duty to Publicize .......................................................... 423
[2] Disposition Within a Reasonable Time .................................. 424
[4] Is There a Duty to “Fix Up” the Collateral? ............................ 429
[5] Price as an Indicator of Commercial Unreasonableness ............... 429
[B] Notification of Disposition ................................................. 431
[1] Persons Entitled to Notification ......................................... 431
[3] Form and Content of Notification ......................................... 437
[C] Whether Secured Party Can Purchase at Disposition ................. 441
[D] Application of Proceeds of Disposition ................................ 442
[E] Property Rights of Transferee at Disposition ........................... 445

§ 18.03 FORECLOSURE ON INTANGIBLE ASSETS — § 9-607 ............. 447
§ 18.04 STRICT FORECLOSURE — §§ 9-620 – 9-622 ........................ 449
§ 18.05 REDEMPTION — § 9-623 ........................................... 452
TABLE OF CONTENTS

Chapter 19 THE CONSEQUENCES OF CREDITOR MISBEHAVIOR .......... 455

§ 19.01 OVERVIEW ................................................. 455
[A] Pre-Disposition Remedies .............................................. 456
[B] Monetary Damages ...................................................... 457
[3] Failure to Use Reasonable Care Regarding Collateral in Secured Party’s Possession ................................. 462
[4] Failure to File or Send Termination Statement ................... 462
[6] Failure to Provide Statement of Account or List of Collateral .. 463

§ 19.02 SECURED PARTY’S RIGHT TO DEFICIENCY JUDGMENT ....... 464

§ 19.03 THE CONSUMER PENALTY — § 9-625(c) ....................... 467

Table of Cases ...................................................... TC-1
Table of Statutes ...................................................... TS-1
Index ................................................................. I-1

xix