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For my wonderful wife, Sandra, with all my love and gratitude.

W.H.H.

For my wife, Shari, with love and gratitude.

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For Mom and Dad—my best teachers.

B.E.G.

Contents

Acknowledgment	xxi
Preface	xxiii
PART I · SCOPE	
Synopsis	3
[A] The Security Concept	3
[B] An Organizational Overview of Article 9	5
[C] The Revised and Amended Uniform Commercial Code	6
Chapter 1 · Transactions within Article 9	9
Synopsis	9
§ 1.01 The Pre-Code Disarray of Secured Transactions Law	10
§ 1.02 The Unitary Approach of Article 9; Terminology Describing Parties	11
§ 1.03 General Applicability of Article 9	13
[A] Consensual Security Interests—§ 9-109(a)(1)	13
[B] Leases and Consignments	14
[1] Disguised Leases	14
[2] Disguised Consignments	17
[3] True Consignments	18
§ 1.04 Types of Collateral	20
[A] Goods—§ 9-102(a)(44)	21
[1] Consumer Goods and Manufactured Homes— § 9-102(a)(23), (24), (53), (54)	22
[2] Farm Products—§ 9-102(a)(34)	25
[3] Inventory—§ 9-102(a)(48)	26
[4] Equipment—§ 9-102(a)(33)	27
[B] Collateral Other than Goods	28
[1] Accounts—§ 9-102(a)(2), (46)	28
[2] Instruments—§ 9-102(a)(47), (65)	31
[3] Chattel Paper—§ 9-102(a)(11), (31), (79)	33
[4] Controllable Electronic Records—§ 12-102(a)(1)	37
[5] Documents—§ 9-102(a)(30)	41
[6] Investment Property—§ 9-102(a)(49)	42
[7] General Intangibles (Other than Controllable Electronic Records)—§ 9-102(a)(42), (61)	45
[C] A Comparison of Accounts, Instruments, and Chattel Paper	48

§ 1.05 Sales of Accounts, Chattel Paper, Payment Intangibles, and Promissory Notes—§ 9-109(a)(3)	51
§ 1.06 Exclusions from Article 9—§ 9-109(c), (d)	55
[A] Federal Statutes	55
[B] Landlord and Statutory Liens	56
[C] Real Estate Interests	58
[D] Wage Claim Assignments	60
[E] Government Transfers	60
[F] Transfers Irrelevant to Commercial Finance	61
[1] Specified Transfers of Rights to Payment	61
[2] Judgment Rights and Tort Claims	62
[3] Rights of Set-Off	63
[G] Insurance Assignments	63
[H] Deposit Accounts	64
§ 1.07 Relationship between Article 9 and Other Articles	65
PART II · ATTACHMENT OF SECURITY INTERESTS	
Chapter 2 · Creation and Enforceability of Security Interests	71
Synopsis	71
§ 2.01 Overview: The Concept of Attachment	71
§ 2.02 Creation of an Enforceable Security Interest—§ 9-203	73
[A] Security Agreement—§ 9-203(b)(3)	73
[1] The Signature Requirement and Exceptions	75
[2] Description of the Collateral—§ 9-108	76
[3] Multiple-Source Approach	80
[B] Value—§§ 9-203(b)(1), 1-204	82
[C] Rights or the Power to Transfer Rights in the Collateral—§ 9-203(b)(2)	84
§ 2.03 Proceeds	90
[A] Defined—§ 9-102(a)(64)	90
[B] Attachment—§§ 9-203(f); 9-315(a)(2), (b)	93
§ 2.04 Attachment to Underlying Obligations—§ 9-203(f), (g)	96
Chapter 3 · Ongoing Financing Relationships	97
Synopsis	97
§ 3.01 Facilitating Clauses Generally	97
§ 3.02 After-Acquired Property—§ 9-204(a), (b)	99
[A] General Applicability	99
[B] Exceptions	102
§ 3.03 Future Advances—§ 9-204(c)	103
§ 3.04 Financing Inventory and Accounts	106
[A] Factoring of Accounts	106
[B] Financing against Inventory and Accounts	108
[C] Floor-Planning Inventory	110

PART III · PERFECTION OF SECURITY INTERESTS

Synopsis	113
Chapter 4 · Perfection in General	115
Synopsis	115
§ 4.01 The Alternative Methods of Perfection—§ 9-310	115
[A] Filing a Financing Statement	116
[B] Possession	116
[C] Automatic Perfection	116
[D] Temporary Perfection	116
[E] Perfection under Federal Law	117
[F] State Certificate-of-Title Statute	117
[G] Control	118
[H] Delivery	118
§ 4.02 When Perfection Occurs—§ 9-308(a)	119
§ 4.03 Continuity of Perfection—§ 9-308(c)	120
Chapter 5 · Perfection by Filing	123
Synopsis	123
§ 5.01 General Method—§ 9-310(a)	124
§ 5.02 What Constitutes Filing—§ 9-516	124
§ 5.03 What to File	127
[A] Requirements—§§ 9-502, 9-516(b)	127
[1] Debtor Names—§ 9-503(a)–(c)	129
[a] Registered Organizations	130
[b] Decedents' Estates	131
[c] Trusts That Are Not Registered Organizations	132
[d] Organizations That Are Not Registered Organizations	132
[e] Individuals	133
[i] Alternative A: The Only-If Approach	135
[ii] Alternative B: The Safe-Harbor Approach	135
[2] Authorization—§§ 9-509, 9-510	136
[3] Addresses	137
[4] Indication of Collateral	138
[B] Notice Filing	141
[1] The Function of Notice	141
[2] Requests for Information—§§ 9-210; 9-625(f), (g)	142
[C] Effect of Errors and Changes	143
[1] Errors—§§ 9-506(a), 9-518	143
[a] Information Required for Sufficiency	143
[i] “Standard Search Logic”	146
[b] Other Required Information	148
[c] Information Statements	149
[2] Changes—§§ 9-507, 9-508	150

[a] Changes Related to the Debtor’s Name	150
[b] Transferees and New Debtors	152
[D] May a Financing Statement Function as a Security Agreement?	156
§ 5.04 When to File—§ 9-502(d)	157
§ 5.05 Where to File	159
[A] In What State?	159
[B] In What Office?—§ 9-501	159
§ 5.06 Lapse and Termination of Filing	160
[A] Lapse of Initial Financing Statement—§ 9-515(a)	160
[B] Continuation Statements—§ 9-515(c)–(e)	161
[C] Termination Statements and Releases of Collateral—§§ 9-513, 9-509	164
Chapter 6 · Perfection by Possession and Control	169
Synopsis	169
§ 6.01 Possession Generally	170
[A] History	170
[B] Possession under Article 9—§ 9-313	171
§ 6.02 Possessory Security Arrangements in Specific Types of Personal Property	173
[A] Pledges of Valuables, Instruments, and Chattel Paper	174
[B] Goods in Storage or Manufacture	176
[1] Terminal Warehousing—§ 9-312(c)	176
[2] Field Warehousing—§ 9-312(d)	178
[C] Goods in Transit	182
§ 6.03 The Concept of Possession—§ 9-313	184
[A] Possession by the Secured Party	184
[B] Possession by Agents and Bailees	185
[C] Symbolic or Constructive Delivery	188
§ 6.04 Perfection by Control	189
[A] Investment Property—§§ 9-314(a), 9-106	189
[B] Deposit Accounts, Electronic Documents, and Letter-of-Credit Rights—§§ 9-314(a), 9-104, 9-107	193
[C] Controllable Accounts, Controllable Electronic Records, Controllable Payment Intangibles, and Electronic Money	195
§ 6.05 Perfection by Possession and Control (Chattel Paper)	198
[A] Perfection in Chattel Paper Prior to 2022	198
[B] Perfection in Chattel Paper under the 2022 Amendments	200
Chapter 7 · Automatic Perfection	203
Synopsis	203
§ 7.01 Purchase-Money Security Interests in Consumer Goods—§ 9-309(1)	204
[A] Application of the Provision	204
[B] Policy	205

[C] Exceptions	207
[D] The “Dual-Status” Rule and the “Transformation” Rule	208
§ 7.02 Certain Types of Assignments	209
[A] Isolated Assignment of Account or Payment Intangible—§ 9-309(2)	210
[B] Sales of Payment Intangibles and Promissory Notes—§ 9-309(3), (4)	212
[C] Assignment of Health-Care-Insurance Receivables to a Provider—§ 9-309(5)	212
[D] Investment Property—§ 9-309(9), (10), (11)	213
[E] Assignment for the Benefit of All Creditors—§ 9-309(12)	214
[F] Assignment of a Beneficial Interest in a Decedent’s Estate—§ 9-309(13)	214
[G] Sales of Lottery Winnings—§ 9-309(14)	215
Chapter 8 · Temporary Perfection and Perfection of Proceeds	217
Synopsis	217
§ 8.01 Instruments, Certificated Securities, Documents, and Bailed Goods—§ 9-312(e)–(h)	218
[A] Initial Perfection	218
[B] Continuing Perfection for Collateral Made Available to Debtor	220
§ 8.02 Proceeds—§ 9-315(c)–(e)	222
[A] The Grace Period of Temporary Perfection	222
[B] Continuous Perfection	223
[1] Identifiable Cash Proceeds	223
[2] Same Filing Office: The Basic Rule	225
[3] Same Filing Office: The “Cash-Phase” Rule	226
[4] Timely General Perfection	228
Chapter 9 · Multistate Transactions	231
Synopsis	231
§ 9.01 The Code’s Basic Choice-of-Law Provision	232
[A] The Reasonable-Relation Test	233
[B] The Appropriate-Relation Test	235
§ 9.02 The Article 9 Choice-of-Law Rules	237
[A] General Rule: Location of the Debtor—§ 9-301(1)	237
[B] Possessory Security Interest Exception—§ 9-301(2)	240
[C] Tangible Property Partial Exception for Priority—§ 9-301(3)(C)	241
[D] Additional Exceptions	243
[1] Chattel Paper—§ 9-306A	243
[2] Controllable Accounts, Controllable Electronic Records, and Controllable Payment Intangibles—§ 9-306B	244
[3] Land-Related Collateral—§ 9-301(3), (4)	245
[4] Agricultural Liens—§ 9-302	246

[5] Deposit Accounts—§ 9-304	246
[6] Investment Property—§ 9-305	247
[7] Letter-of-Credit Rights—§ 9-306	247
§ 9.03 Initial Perfection under a Certificate-of-Title Law— §§ 9-303, 9-311	248
§ 9.04 Perfection Following Change in Governing Law—§ 9-316	252
[A] Change of Location	252
[1] Nonpossessory Security Interests	252
[2] Possessory Security Interests	255
[B] Transferees and New Debtors	255
[1] Transferees	255
[2] New Debtors	256
[C] Goods Subject to a Certificate-of-Title Act	257
PART IV · PRIORITIES	
Synopsis	261
[A] The Priority Concept	261
[B] Understanding Priorities	262
Chapter 10 · Priority Contests: Between Secured Parties	265
Synopsis	265
§ 10.01 First to File or Perfect—§ 9-322(a)	266
§ 10.02 Future Advances—§§ 9-323, 9-322	270
§ 10.03 Exceptions for Non-Filing Collateral	274
[A] Deposit Accounts—§ 9-327	275
[B] Investment Property—§ 9-328	276
[C] Letter-of-Credit Rights—§ 9-329	277
[D] Controllable Electronic Records, Controllable Accounts, and Controllable Payment Intangibles—§ 9-326A	277
[E] Chattel Paper, Instruments, Negotiable Documents, Securities, Controllable Electronic Records, Controllable Accounts, and Controllable Payment Intangibles—§§ 9-330, 9-331	277
§ 10.04 Purchase-Money Security Interests	278
[A] Purchase-Money Security Interests Generally	278
[1] Adoption of the “Dual-Status” Rule	280
[B] Application to Secured Party versus Secured Party Priorities	283
[1] Collateral Other than Inventory—§ 9-324(a)	284
[2] Inventory—§ 9-324(b), (c)	286
§ 10.05 Proceeds	288
[A] Non-Purchase-Money Security Interests	289
[1] General Rule (First to File or Perfect)—§ 9-322(b)(1)	289
[2] Special Rules	290

[a] Special Rule on Non-Temporal Priority—§ 9-322(c)(2)	290
[b] Special Rule on Temporal Priority—§ 9-322(d), (e)	291
[B] Purchase-Money Security Interests—§ 9-324(a), (b)	292
Chapter 11 · Priority Contests: Purchasers versus Perfected Secured Parties	295
Synopsis	295
§ 11.01 General Rule on Disposition—§ 9-315(a)	296
§ 11.02 Authorized Disposition—§ 9-315(a)(1)	298
[A] Express Authorization	298
[B] Implied Authorization	301
§ 11.03 Priorities	303
[A] Goods	303
[1] Buyers and Lessees of Goods in Ordinary Course of Business—§§ 9-320(a), 9-321(c)	303
[a] Defining the Buyer or Lessee—§§ 1-201(b)(9), 2A-103(o)	304
[b] Created by Its Seller or Lessor	307
[2] Consumer Buyers of Consumer Goods—§ 9-320(b)	310
[3] Future Advances—§ 9-323(d)–(g)	311
[B] Licensees of General Intangibles in Ordinary Course of Business—§ 9-321(a), (b)	313
[C] Chattel Paper and Instruments—§ 9-330	313
[1] Chattel Paper	313
[2] Instruments	315
[D] Negotiable Instruments, Negotiable Documents, Securities, Controllable Electronic Records, Controllable Accounts, and Controllable Payment Intangibles—§ 9-331	317
[E] Funds in Deposit Accounts; Tangible and Electronic Money—§§ 9-332, 9-340	318
Chapter 12 · Priority Contests: Purchasers and Lien Creditors versus Unperfected Secured Parties	321
Synopsis	321
§ 12.01 Article 9's Residual Priority Rule—§ 9-201(a)	321
§ 12.02 Lien Creditors	322
[A] General Rule—§ 9-317(a)(2)	322
[B] Purchase-Money Security Interests—§ 9-317(e)	324
[C] Future Advances—§ 9-323(b)	326
§ 12.03 Purchasers Other than Secured Parties	326
[A] General Rules—§ 9-317(b)–(d), (f)–(i)	326
[B] Purchase-Money Security Interests—§ 9-317(e)	329
[C] Future Advances—§ 9-323(d)–(g)	329
§ 12.04 Claimants Not Expressly Governed by Article 9	330

Chapter 13 · Creditors with Liens Arising by Operation of Law	333
Synopsis	333
§ 13.01 Possessory Liens That Arise by Operation of Law—§ 9-333	333
§ 13.02 Agricultural Liens—§§ 9-317, 9-322(a)(1)	336
§ 13.03 Federal Tax Liens	337
Chapter 14 · The Farm Products Rule	343
Synopsis	343
§ 14.01 The Article 9 Rule	343
§ 14.02 The Federal Food Security Act	344
[A] Advance-Notice Approach	346
[B] State Central-Registry Approach	347
§ 14.03 A Critique	349
Chapter 15 · Fixtures, Accessions, and Commingled Goods	351
Synopsis	351
§ 15.01 Fixtures Defined—§ 9-102(a)(41)	352
§ 15.02 Fixture Filings—§ 9-102(a)(40)	354
§ 15.03 Priorities in Fixtures	355
[A] The Code’s Residual Rule—§ 9-334(c)	355
[B] The Purchase-Money Priority Exception—§ 9-334(d)	356
[C] The “First-to-File-or-Record” Exception—§ 9-334(e)(1)	358
[D] The Nonreliance-Creditor Exception—§ 9-334(e)(3)	359
[E] The Exception for “Readily Removable Collateral”—§ 9-334(e)(2)	361
[F] Special Rules for Construction Mortgages—§ 9-334(h)	362
[G] Exception for Manufactured Homes—§ 9-335(e)(4)	363
[H] Exception Based on Consent or Right of Removal—§ 9-334(f)	364
§ 15.04 Secured Party’s Right to Remove Fixtures after Default—§ 9-604(c), (d)	365
§ 15.05 Accessions—§ 9-335	367
[A] Nature of the Interest	367
[B] Priorities	368
§ 15.06 Commingled Goods—§ 9-336	369
[A] Rights	369
[B] Priorities	370
Chapter 16 · Bankruptcy	373
Synopsis	373
§ 16.01 Background	374
[A] Shifting the Legal Landscape	374
[B] The Bankruptcy Estate and Bankruptcy Jurisdiction	375
[C] Bankruptcy Chapters and Bankruptcy Trustees	377
§ 16.02 Contrasting Secured and Unsecured Claims	380
[A] What Is a Claim?	380
[B] The Allowance of Claims	380

[C] Secured Claims, Unsecured Claims, and Valuation	381
§ 16.03 The Automatic Stay	383
[A] Nature and Scope	383
[B] Relief from Stay	386
[1] Relief for “Cause”—11 U.S.C. § 362(d)(1)	386
[a] Lack of Adequate Protection	386
[i] Value Preservation	387
[ii] Opportunity Costs	389
[b] Other Cause for Relief	390
[2] Relief under 11 U.S.C. § 362(d)(2)	391
[a] Does Debtor Have Equity in the Collateral?	391
[b] Is the Collateral Necessary for Debtor’s Reorganization?	394
[3] Procedural Issues and Burden of Proof	395
§ 16.04 The Trustee’s Avoidance Powers	396
[A] Background	396
[B] Strong-Arm Power—11 U.S.C. § 544(a)	397
[1] The Trustee as Hypothetical Lien Creditor versus the Unperfected Secured Party	397
[2] Relation-Back Priority—11 U.S.C. § 546(b)	400
[C] Subrogation to State-Law Avoidance Powers of an Unsecured Creditor—11 U.S.C. § 544(b)(1)	401
[D] Power to Avoid Statutory Liens	402
[E] Power to Avoid Preferential Transfers—11 U.S.C. § 547	402
[1] Background	402
[2] Proving the Elements of a Preference	403
[3] Determining When the Transfer Occurred	406
[4] Exceptions to the Trustee’s Preference Avoidance Power	409
[a] Substantially Contemporaneous Exchanges for New Value	410
[b] “Ordinary-Course” Payments	411
[c] Security Interests Granted in Conjunction with Enabling Loans	412
[d] Transfers Ameliorating an Earlier Preference	413
[e] Floating Liens in Inventory and Receivables	415
[f] Statutory Liens	417
[g] Statutory Floor for Consumer Transfers	417
[h] Statutory Floor for Non-Consumer Transfers	418
[5] Preference Actions as Nuisance Litigation	418
[F] Power to Avoid Fraudulent Transfers	419
[1] Intentionally Fraudulent Transfers—11 U.S.C. § 548(a)(1)(A)	419
[2] Constructively Fraudulent Transfers—11 U.S.C. § 548(a)(1)(B)	420
[3] Pre-Bankruptcy Foreclosure Sales as Fraudulent Transfers	421
[4] Avoiding Fraudulent Transfers under State Law—11 U.S.C. § 544(b)(1)	425

§ 16.05 The Trustee’s Right to Assert the Debtor’s Defenses—11 U.S.C. § 558	425
§ 16.06 Security Interests in After-Acquired Property—11 U.S.C. § 552	426
[A] The General Rule Cutting Off Liens against After-Acquired Property—11 U.S.C. § 552(a)	426
[B] Proceeds of Pre-Petition Collateral—11 U.S.C. § 552(b)(1)	427
§ 16.07 The Debtor’s Right to Claim Exempt Property	429
[A] State and Federal Exemptions	429
[B] The Debtor’s Power to Avoid Liens against Exempt Property	431
§ 16.08 The Chapter 7 Debtor’s Right of Redemption—11 U.S.C. § 722	434
§ 16.09 Reaffirmation by the Debtor—11 U.S.C. § 524(c)	436
[A] Reaffirmation Agreements	436
[B] Retention of Collateral without Either Redemption or Reaffirmation	439
§ 16.10 “Cramdown” in Chapter 13 and the “Negative Equity” Dilemma	440
[A] Introduction	440
[B] Section 1325(a)(5) and the “Hanging Paragraph”	441
[C] The Hanging Paragraph and the “Negative Equity” Conundrum	442
PART V · DEFAULT	
Chapter 17 · Default and Its Consequences	449
Synopsis	449
§ 17.01 Importance of the Concept of Default	449
[A] Waiver of Default	452
[B] Acceleration Clauses and Insecurity Clauses	455
§ 17.02 Remedies Available upon Default	458
[A] Types of Remedies	458
[B] Cumulation of Remedies	461
Chapter 18 · The Foreclosure Process	463
Synopsis	463
§ 18.01 Repossession—§ 9-609	464
[A] Self-Help	465
[1] “Breach of the Peace”	465
[2] Disabling the Collateral	470
[B] Judicial Action	472
§ 18.02 Disposition of Collateral—§§ 9-610–9-615	474
[A] The Standard of Commercial Reasonableness	475
[1] Duty to Publicize	477
[2] Disposition within a Reasonable Time	478
[3] The Method of Disposition: Public versus Private	481
[4] Is There a Duty to “Fix Up” the Collateral?	485
[5] Price as an Indicator of Commercial Unreasonableness	486

[B] Notification of Disposition	488
[1] Persons Entitled to Notification	489
[2] Time Period for Notification	494
[3] Form and Content of Notification	494
[4] When Notification Is Excused	498
[C] Whether Secured Party Can Purchase at Disposition	500
[D] Application of Proceeds of Disposition	501
[E] Property Rights of Transferee at Disposition	504
§ 18.03 Foreclosure on Rights to Payment and Other Intangible Assets—§ 9-607	507
§ 18.04 Strict Foreclosure—§§ 9-620–9-622	512
§ 18.05 Redemption—§ 9-623	516
Chapter 19 · The Consequences of Creditor Misbehavior	519
Synopsis	519
§ 19.01 Overview	519
[A] Pre-Disposition Remedies	520
[B] Monetary Damages	522
[1] Wrongful Repossession	522
[2] Wrongful Disposition of the Collateral	525
[3] Failure to Use Reasonable Care Regarding Collateral in Secured Party's Possession	526
[4] Failure to File or Send Termination Statement	527
[5] Filing of Unauthorized Financing Statement	527
[6] Failure to Provide Statement of Account or List of Collateral	528
§ 19.02 Secured Party's Right to Deficiency Judgment	529
§ 19.03 The Consumer Penalty—§ 9-625(c)	532
Table of Cases	535
Table of Statutes	553
Index	571

Acknowledgment

This is the first edition of this book without Bill Lawrence (whom we referred to occasionally as “Jayhawk Bill” from his years teaching at the University of Kansas) as a co-author. The series began in 1997, before revised Article 9 became effective in 2001, when Bill Lawrence, Bill Henning, and Wilson Freyermuth teamed up for the first time. The book evolved as the law evolved. The second edition was transitional—the text focused primarily on pre-revision Article 9, and the revision’s provisions were interspersed in bold. A third edition followed soon thereafter and shifted the focus to the revision. The Bankruptcy Code was amended by BAPCPA in 2005, and the fourth edition came out the next year. After that there was a hiatus, but the 2010 amendments to Article 9 spurred the team into action again. Jayhawk Bill’s fifth and last edition came out in 2012.

This edition was needed after the 2022 amendments brought the U.C.C. into the digital age. Sadly, Bill passed away just as the amendments were being approved. He was our senior partner and a dear friend. We miss him.

Brook Gotberg joins us for this edition, and she’s been a wonderful partner. All three authors acknowledge the enormous contributions Bill Lawrence made to this book, many of which still remain apparent in this edition. His name should be on the cover with ours, but he insisted otherwise before his death. That was Bill—brilliant and hard-working but humble. We’re proud of this new edition but wish Bill had been along for the ride.

William H. Henning
R. Wilson Freyermuth
Brook E. Gotberg
June 2024

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 (U.C.C., or Code) and selected provisions of the Bankruptcy Code. 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 Code 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 9.¹ 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.

The 1998 revision 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 the revision 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 the fifth edition was necessitated by a significant set of amendments to Article 9

1. The sponsors approved minor amendments to the 1998 Official Text in 1999, 2000, and 2001.

promulgated by the sponsors in 2012. As with the 1998 revision, a deferred effective date (July 1, 2013) was selected, and again the amendments were universally adopted.

In 2019, the sponsors began a three-year drafting process that resulted in the promulgation of a sweeping set of amendments to the entire U.C.C. The purpose of the amendments is to adapt the Code to emerging technologies, such as artificial intelligence, distributed ledger technology, and virtual currency. They include a new Article 12 governing the holding and transfer of digital assets and a set of conforming amendments to Article 9 that facilitate the leveraging of those assets. At this time only 21 states have enacted the amendments, but as with previous major revisions, universal adoption is anticipated. This sixth edition thoroughly explains the 2022 amendments.

The law of secured transactions reflects business practices with which many students are unfamiliar. An understanding of the essential aspects of the transactions 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, 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 text's subject matter 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 being perfected or unperfected), 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 Code. It does not cite all the provisions that might be relevant, but only the most fundamental provisions relating to a 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.