

SECURED TRANSACTIONS

SPRING 2019

PROF. BROOK E. GOTBERG

HULSTON HALL ROOM 4

TWTH 10:30-11:20

PROFESSOR'S CONTACT INFORMATION

Office: 326 Hulston Hall
Office tel.: 573.882.3914
e-mail: gotbergb@missouri.edu

COURSE OVERVIEW

Transactions based on credit are the reality of today's economy, both in the consumer sector and in business. There are real benefits to secured credit for both the lender and the borrower, but also many traps for the unwary and potential negative impacts on the larger economic system. A working knowledge of secured credit – why it is useful, how it is accomplished, and when it is enforced – is fundamentally necessary to all who aspire to advise individuals who borrow, individuals who lend, and companies who transact on credit.

In this course, you will:

- read and apply statutory text from Article 9 of the UCC and the Bankruptcy Code;
- learn the requirements for a legally enforceable security interest;
- understand the import and impact of perfection for maintaining security interests in the face of competing claims;
- gain knowledge useful for passing the secured transactions portion of the bar exam; and
- learn to identify ethical issues arising in the context of the making and enforcing of secured transactions.

In many ways, the law of secured transactions functions as a practical, code-driven application of the law of contracts. You will be able to draw on what you learned in your 1L curriculum and build upon your base of knowledge to establish a more sophisticated understanding of how the conduct of business responds to legal constraints.

COURSE MATERIALS

The following materials are *required* for the course:

- *Casebook*: WILLIAM D. WARREN & STEVEN D. WALT, SECURED TRANSACTIONS IN PERSONAL PROPERTY (9th ed.), Foundation Press.
- *Statutory Supplement*: ELIZABETH WARREN, BANKRUPTCY AND ARTICLE 9 (2019 ed.), Wolters Kluwer.

You should not feel obligated to search out additional study materials, but if you find them helpful, you may also wish to consult the library's online study tools, available at <http://libraryguides.missouri.edu/StudyAids>. The library also has some hard copy treatises available. Titles I would recommend include:

- P. BARRON & M. WESSMAN, SECURED TRANSACTIONS PROBLEMS AND MATERIALS, West Academic Publishing;
- J. BROOK, SECURED TRANSACTIONS EXAMPLES & EXPLANATIONS, Wolters Kluwer Law & Business;
- R. HAGEDORN, SECURED TRANSACTION IN A NUTSHELL, Thomson West;
- B. MARKELL & T. ZINNECKER, QUESTIONS & ANSWERS: SECURED TRANSACTIONS, LexisNexis;
- S. SEPINUCK, SECURED TRANSACTIONS EXAM PRO, Thomson West;
- J. WHITE & R. SUMMERS, PRINCIPLES OF SECURED TRANSACTIONS CONCISE HORNBOOKS, Thomson West.

ATTENDANCE AND CLASSROOM PARTICIPATION

Attendance:

I will take attendance at the beginning of every regularly scheduled class. (But not at makeup classes.) Unexpected absences are sometimes necessary; accordingly, every student will have four automatically excused absences during the semester. Although advance notice is not required, it is a good idea to get into the habit of contacting me if you know you will need to miss a class, just as you would contact a partner or a client in advance if you had to miss a meeting. More than four absences – for whatever reason – will result in the reduction of your grade, as explained below in the grading section. Perfect attendance may merit a slight upward adjustment of your grade.

Class participation:

In my experience, students get the most out of the classroom experience when everyone is engaged in a structured dialogue. Each student should anticipate that I will call on each student at least once every class to give thoughts, explain a case, or interpret a statutory provision. You should come to class prepared, attentive, alert, and ready to answer questions pertaining to the discussion. This form of participation may be more demanding than simply

sitting and listening to a lecture, but it will also provide a bigger educational payout for you and your fellow students. At the beginning of every class, I will provide a synopsis of the primary takeaways from the previous class. I will also provide an opportunity for students to ask questions regarding concepts covered in the previous class.

I expect that you will do the reading assignment and be prepared to discuss it in class. If you are not prepared to participate in class discussion, (i.e., because you have not done the reading, have developed laryngitis, or intend to spend the class pretending to listen while you answer emails) you may take a “pass” for the day. You may request a pass *twice* without it affecting your grade, as explained below in the grading section. Please note that in some classes we may not make it through all the assigned reading for that day. We will cover this information at the beginning of the next class period. Accordingly, if our class discussion does not cover all the material for a particular day, you should review the uncovered material for the following class period (in addition to that day’s assigned reading) so that you are prepared to discuss it.

If you do not request a pass and are not prepared in class, your grade may be affected. Similarly, if your preparation is consistently half-hearted, I may determine that an adjustment of the final grade is appropriate. On the flip side, students that consistently demonstrate thoughtful contributions to the class discussion may warrant an upward adjustment of their grades. I reserve the right to make these determinations.

Note that I do not punish students for wrong answers – ever. We all occasionally make mistakes when asked to think on our feet, and wrong answers are often a valuable teaching tool for both the student and the class at large. Part of the goal of active learning is to encourage facility in giving answers in front of a group, even when you are unsure that the answer is correct. Learning to take correction, even if it may be embarrassing, is also a valuable tool for an attorney, one you will inevitably use in the courtroom, with co-workers, with clients, and in many other contexts.

FINAL EXAM

The final exam will take place from 8:30am – 11:30am on December 5, 2019. You may bring your book, the supplement, and whatever notes you would like to reference on the exam. You should anticipate multiple essay questions (usually three or four) that will cover the breadth of the class content. The questions will largely follow the structure of essay questions you would expect to see on the bar exam. I will assign points based on your recognition of problems, your understanding of the law, and your ability to apply the law to the problem at issue.

GRADING

Your score on the final exam will determine your grade in this class. However, I will adjust grades to account for the attendance policy stated above, with the reduction of one grade point per absence for four or more absences, and for class participation, with the reduction of one grade point per “pass” after two freebies. I also reserve the right to adjust grades to reflect extremely good or extremely poor classroom participation, as referenced above.

I intend to cover the topic of secured transactions *loosely* in order of the outline below:

- I. Introduction to Secured Credit
 - a. Why do we need it?
 - b. What does it do?
 - c. Is it fair?
- II. Attachment (or How Credit Becomes Secured) - § 9-203(b)
 - a. The Security Agreement
 - i. Composite document rule
 - ii. Description of collateral
 - 1. After-acquired collateral
 - 2. Proceeds
 - b. Value
 - c. Rights in Collateral
- III. Perfection
 - a. By Filing
 - i. The filing system
 - ii. Where to file
 - iii. The financing statement
 - 1. Indication of collateral
 - 2. Name of debtor
 - iv. Post-filing changes
 - b. By Possession
 - i. Special rules for consumer goods
 - c. By Control
 - d. By Certificate of Title
- IV. Priority
 - a. First to File Rule
 - i. Future advances
 - b. Purchase Money Priority
 - i. Special rule for inventory
 - ii. Special rule for consumer goods
 - c. Lien Creditors
 - d. Special Rules by Collateral
 - i. Buyers of goods
 - 1. Ordinary course
 - 2. Double debtors
 - ii. Rights to payment
 - iii. Accounts and general intangibles
 - iv. Chattel paper and instruments
 - v. Deposit accounts
 - vi. Cash proceeds
 - e. Federal Tax Liens
- V. Default and Enforcement
 - a. What is Default?
 - b. Repossession
 - i. Self-help
 - ii. Breach of the peace
 - iii. Judicial action
 - c. Disposition of Collateral
 - i. Notification
 - ii. Commercially reasonable disposition
 - iii. Deficiency
 - d. Effect on Third Parties
- VI. Lease vs. Security Interest
 - a. Bright Line Test
 - b. Meaningful Residual Interest
- VII. Fixtures
 - a. Fixture Filings
 - b. Priority
- VIII. Bankruptcy
 - a. Overview
 - b. Secured Claims by Chapter
 - c. Trustee Avoidance Powers
 - i. Preferences
 - ii. Fraudulent Conveyance

A tentative, but ambitious reading schedule is attached to this syllabus for your review, as a general sense of where we will be heading in the course. I reserve the right to alter this schedule at my discretion. I will be absent at least two days this semester (as noted on the schedule) but we should be able to cover the course material within the remaining class periods, accordingly I have not scheduled any makeup classes at this point.

Following Thanksgiving Break, I will schedule a final review session in preparation for the final exam. At that session we will review a practice exam and go over any final questions students may have.

OFFICE HOURS

Because I have small children, my time in the office can be unpredictable. Accordingly, rather than assign set office hours, I will maintain an open door policy, meaning I will be generally available to visit with students while in the office. (Even if my door is shut.) On occasion, I may be tied up and unable to entertain student questions, in which case I will try to schedule an alternative time. It is always a good idea to contact me in advance if you would like to drop by with questions or thoughts. My office phone number is (573) 882-3914. My email address is gotbergb@missouri.edu.

ACADEMIC HONESTY

Academic integrity is fundamental to the activities and principles of a university. All members of the academic community must be confident that each person's work has been responsibly and honorably acquired, developed, and presented. Any effort to gain an advantage not given to all students is dishonest whether or not the effort is successful. The academic community regards breaches of the academic integrity rules as extremely serious matters. Sanctions for such a breach may include academic sanctions from the instructor, including failing the course for any violation, to disciplinary sanctions ranging from probation to expulsion. When in doubt about plagiarism, paraphrasing, quoting, collaboration, or any other form of cheating, consult the course instructor.

RECORDING CLASS

University of Missouri System Executive Order No. 38 lays out principles regarding the sanctity of classroom discussions at the university. The policy is described fully in Section 200.015 of the Collected Rules and Regulations. In this class, students may make audio or video recordings of course activity. However, the redistribution of audio or video recordings of statements or comments from the course to individuals who are not students in the course is prohibited without the express permission of the faculty member and of any students who are recorded. Students found to have violated this policy are subject to discipline in accordance with provisions of [section 200.020](#) of the Collected Rules and Regulations of the University of Missouri pertaining to student conduct matters.

INFORMATION REGARDING DISABILITIES:

If you anticipate barriers related to the format or requirements of this course, if you have emergency medical information to share, or if you need to make arrangements in case the building must be evacuated, please contact Associate Dean David Mitchell as soon as possible.

If disability related accommodations are necessary (for example, a note taker, captioning), please register with the Disability Center (<http://disabilitycenter.missouri.edu>), S5 Memorial Union, 573.882.4696, and then notify Dean Mitchell or Law School Registrar Denise Boessen of your eligibility for reasonable accommodations. **(Please do not discuss examination accommodations with me. Notice of special accommodations may impair the “blind grading” policy we use at the law school.)** For other MU resources for persons with disabilities, click on “Disability Resources” on the MU homepage.

UNIVERSITY STATEMENT ON INTELLECTUAL DIVERSITY

The University community welcomes intellectual diversity and respects student rights. Students who have questions or concerns regarding the atmosphere in this class (including respect for diverse opinions) may contact the departmental chair or divisional director, the director of the [Office of Academic Integrity](#), the [MU Equity Office](#), or equity@missouri.edu. All students will have the opportunity to submit an anonymous evaluation of the instructor at the end of the course.

TENTATIVE READING SCHEDULE

| Date | Reading Assignment |
|--------------------|--|
| Tues. August 20 | <i>Why Secured Credit?</i> William D. Warren & Steven D. Walt, <u>Secured Transactions in Personal Property</u> , pgs. 1-8, 12-13 |
| Wed. August 21 | <i>Attachment</i> 13-23 |
| Thurs. August 22 | <i>Description of Collateral</i> 23-29 and Handout |
| Tues. August 27 | <i>After-Acquired and Proceeds</i> 29-38 |
| Wed. August 28 | <i>Value and Rights in Collateral</i> 38-47 |
| Thurs. August 29 | <i>Perfection by Filing</i> 49-63 |
| Tues. September 3 | <i>Indication of Collateral</i> 64-73 |
| Wed. September 4 | <i>Name of Debtor</i> 73-88 |
| Thurs. September 5 | <i>Post-Filing Changes</i> 88-94 |
| Tues. Sept. 10 | <i>The Filing System</i> 94-103 |
| Wed. Sept. 11 | <i>Perfection by Possession and Control</i> 103-111 |
| Thurs. Sept. 12 | <i>Security Interests in Consumer Goods</i> 111-114 |
| Tues. Sept. 17 | <i>Choice of Law</i> 114-119 |
| Wed. Sept. 18 | <i>Certificate of Title</i> 119-125 |
| Thurs. Sept. 19 | <i>Priority</i> 129-141 |
| Tues. Sept. 24 | <i>Purchase-Money Priority (Part I)</i> 141-151 |
| Wed. Sept. 25 | <i>Purchase-Money Priority (Part II)</i> 151-159 |
| Thurs. Sept. 26 | <i>Lien Creditors</i> 159-161 |
| Tues. Oct. 1 | <i>Buyers and Lessees</i> 161-178 |
| Wed. Oct. 2 | <i>Rights to Payment</i> 179-183; 197-199 |

| | |
|----------------|---|
| Thurs. Oct. 3 | <i>Accounts and General Intangibles</i> 200-205 |
| Tues. Oct. 8 | <i>Chattel Paper and Instruments</i> 205-214 |
| Wed. Oct. 9 | <i>Review Problems/Catch Up</i> 215 |
| Thurs. Oct. 10 | <i>Deposit Accounts</i> 216-225 |
| Tues. Oct. 15 | <i>Cash Proceeds</i> 225-239 |
| Wed. Oct. 16 | <i>Federal Tax Liens</i> 239-253 |
| Thurs. Oct. 17 | <i>Default</i> 254-264 |
| Tues. Oct. 22 | Class Cancelled |
| Wed. Oct. 23 | Class Cancelled |
| Thurs. Oct. 24 | <i>Enforcement</i> 265-279 |
| Tues. Oct. 29 | <i>Judicial Action</i> 279-292 |
| Wed. Oct. 30 | <i>Commercially Reasonable Disposition</i> 293-307 |
| Thurs. Oct. 31 | <i>Acceptance of Collateral in Satisfaction</i> 307-314 |
| Tues. Nov. 5 | <i>Disposition and Third Parties</i> 314-328 |
| Wed. Nov. 6 | <i>Leases</i> 329-346 |
| Thurs. Nov. 7 | <i>Fixtures</i> 473-490 |
| Tues. Nov. 12 | <i>Bankruptcy Overview</i> 491-502 |
| Wed. Nov. 13 | <i>Treatment by Chapter</i> 503-523 |
| Thurs. Nov. 14 | <i>Valuing Collateral in Bankruptcy</i> 523-532 |
| Tues. Nov. 19 | <i>Bankruptcy Trustee Avoidance Powers (Part I)</i> 532-544 |
| Wed. Nov. 20 | <i>Bankruptcy Trustee Avoidance Powers (Part II)</i> 552-557 |
| Thurs. Nov. 21 | <i>Fraudulent Transfers</i> 557-565 |