

NOTICE TO STUDENTS WITH DISABILITIES: If you need accommodations because of a disability, if you have emergency medical information, or if you need special arrangements in case the building must be evacuated, please notify me or Dean Trachtenberg as soon as possible. To request academic accommodations (e.g., a note taker), students must also register with the Office of Disability Services, S5 Memorial Union, 882-4696. This is the campus office responsible for reviewing documentation provided by students requesting academic accommodations, and for accommodations planning in cooperation with students and instructors, as needed and consistent with course requirements. For other MU resources for students with disabilities, click on “Disability Resources” on the MU homepage.

SECURED TRANSACTIONS (Law 5885)

Fall Semester 2021

Prof. Freyermuth

MWF 2:30 pm - 3:20 pm, Room 112 (Courtroom)

Office: 215 Law School

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COURSE INFORMATION AND POLICIES

TEXT AND MATERIALS: Required materials for this class include:

- LAWRENCE, HENNING & FREYERMUTH, UNDERSTANDING SECURED TRANSACTIONS (5th ed. 2012)
- SELECTED COMMERCIAL STATUTES FOR SECURED TRANSACTIONS COURSES (2020 or 2021 ed.) (the “Code Book”)

I do not use a traditional casebook for this course. The course material is divided into Modules. For each Module, there is an assigned reading from the UNDERSTANDING book, and assigned sections of Uniform Commercial Code (UCC) text and comments from the Code Book. For each Module, there is also a Problem Set; the problems in the Problem Set will provide the basis for class discussion.

At the end of this Syllabus, you will find a Course Schedule that reflects each Module to be covered in Secured Transactions. The assigned readings and Problem Set for each Module is posted on the Canvas site for the Secured Transactions course (<http://courses.missouri.edu>). I encourage you to complete the Problem Set prior to class discussion for assigned classes for that module.

LEARNING OUTCOMES: In compliance with Standard 301(b) of the American Bar Association’s Standards and Rules of Procedure for Approval of Law Schools, the following statement reflects the learning outcomes for this course. The Secured Transactions course addresses the laws that govern the creation, perfection, enforcement, and priority of security interests in personal property. During the course, students will:

- discuss and learn the nature and types of credit transactions, both in consumer and business settings, in which the borrower’s obligation is secured by personal property;
- discuss, learn, and appreciate the essential interests of the various parties to these credit transactions;
- discuss, learn, and apply the provisions of the Uniform Commercial Code and other statutes that establish the substantive legal rules governing secured transactions;
- discuss and appreciate the problem-solving and strategy decisions parties and their lawyers must make in structuring and litigating secured credit transactions;
- discuss and appreciate how courts apply principles of statutory interpretation in disputes involving a “uniform” law like the Uniform Commercial Code;
- gain foundational knowledge needed for success if you encounter a Secured Transactions question on the bar examination.

At the end of this Syllabus, you will find a Course Schedule that reflects each “module” to be covered in Secured Transactions. The assigned readings and Problem Set for each module is posted on the Canvas site for the Secured Transactions course (<http://courses.missouri.edu>). The Problem Set for each module will provide the basis for class discussion.

DECREASING THE RISK OF COVID-19: If you are experiencing any COVID-related symptoms, or are otherwise feeling unwell, do not attend class and contact your health care provider and/or student health immediately. COVID symptoms include: fever greater than 100.4 or chills; cough, shortness of breath or difficulty breathing; fatigue; unexplained muscle or body aches; headache; new loss of taste or smell; sore throat; congestion or runny nose; nausea or vomiting; diarrhea. If you are unable to attend a scheduled class due to illness or medical reasons, an audio recording of the class will be posted on the course Canvas site for your review, and any Powerpoint materials used during the class will also be posted on the course Canvas site. See the “**Communication, Accommodation, and Pivot Plan**” below for more information.

COMMUNICATION, ACCOMMODATION, AND PIVOT PLAN: While this class is scheduled to meet on a face-to-face basis, note that any class periods are subject to being moved into a synchronous remote format as warranted by data about COVID rates within the University and Columbia communities. Students who cannot attend a face-to-face class due to illness or medical reasons will be accommodated to facilitate their participation in the course.

In this regard, please note particularly the following:

- **Communication.** This Syllabus addresses how you may communicate with me during the course, both at the beginning and if it becomes necessary to transition the course to remote, whether temporarily or permanently. See “Communication with Students” below for further details.

- **Accommodation.** If you are unable to attend a scheduled class in person due to illness or medical reasons, you should plan to participate as follows:
 - If the scheduled class has been pivoted to a synchronous Zoom class (because of COVID-related reasons), you should plan to participate live in synchronous fashion via Zoom.
 - If the scheduled class is a face-to-face class session, I will conduct the class in-person as scheduled. I will make an audio recording of the class session, which I will post following class on the Canvas site, along with any Powerpoint materials covered during the class session.
- **Pivot.** If pandemic-related circumstances require class sessions to be moved fully online, class sessions will simply shift to synchronous Zoom sessions. An announcement that any particular class or set of classes will be conducted in a synchronous Zoom session will be posted via announcement on the course Canvas site. Any such sessions will be recorded and posted on the class Canvas site.

COMMUNICATION WITH STUDENTS: I have traditionally maintained an “open-door” policy, which is something of a challenge during a pandemic. You are welcome to connect with me in any of the following ways:

- If the class is face-to-face, I will remain in or outside Room 112 after each class session for follow-up questions. [If a pivot is necessary, following any synchronous class, I will remain on Zoom after each class session for follow-up questions.]
- I will have in person Office Hours in Room 215 from 9:00 a.m. to Noon on Monday.
- Each week, I will also have a Zoom office hour in the evening. The date and time of the Zoom office hour each week, and the Zoom link for that office hour, will be posted each week on Sunday by an Announcement on the Canvas site.
- If the regular Office Hours or Zoom hour doesn’t work in your schedule and you’d like to set up a specific appointment time, send me an e-mail at freymuthr@missouri.edu to schedule a time.
- You are also welcome to communicate with me by e-mail to raise questions or concerns at any time, if that is convenient for you. My address is freymuthr@missouri.edu.
- If I am in the building and in my office, you are welcome to stop by my office with a question, even outside of office hours — subject to the caveat that if I am tied up with another deadline or preparing for class, I may ask you to schedule more convenient time.

At the time of this Syllabus, while the University has chosen not to require COVID vaccination, the University has adopted the following temporary indoor masking policy:

As of Aug. 2, all students, faculty, staff and visitors, regardless of vaccination status, will be required to wear masks in classrooms, as well as meeting spaces where social distancing is not possible. For the remaining indoor spaces on campus, if you are not fully vaccinated, you are required to wear a mask. Even if you are fully vaccinated, the university recommends wearing a mask in these other indoor spaces, which is aligned with latest CDC recommendations.

Consistent with these instructions, you must wear a mask during class. Likewise, while you are welcome to come to my office with a question, you must wear a mask while doing so. The University's next update with regard to COVID and masking policy is expected by September 15. If the policy changes, an announcement to that effect will be posted by Announcement on the class Canvas site.

EXPECTATIONS: To facilitate the accomplishment of the general learning outcomes noted above, and the specific learning outcomes for each course module, I have several basic expectations of each student in the course:

- **I expect you to be present for each class, to have read the assignment for the class period, and to be prepared to participate in class discussion.** Each of you has a responsibility for your own learning and that of your fellow classmates. If you are not present in class, not paying attention, not engaged in discussion with your classmates, and not contributing to class discussion generally, you are not fulfilling that responsibility.
- **For each assigned Problem, I will assign one or more students to be “on call” for discussion of the Problem.** The students who are “on call” will be listed in the Problem Set, which you can find on the course Canvas site for each assigned Module. During class discussion of that Problem, I will look to those students to participate, although I reserve the right to call on others, and certainly welcome voluntary participation and/or questions from other students who are not “on call” for that Problem.
- **I expect you to participate actively in class discussion, even if you are not sure of the “right” answer.** One of the most important lawyering skills that you must develop—whether as an advocate or a counselor—is the ability to process verbal and written information and to respond to extemporaneous questions or comments in a concise and articulate way. One of the benefits of the law school classroom is that you can develop this ability in an environment where your mistakes do not have third-party consequences—i.e., if you answer something wrong in class, your client does not go to jail or become subject to an enormous monetary judgment. You and your classmates can (and should) learn not only from one another's insights, but also from one another's mistakes.
- In reviewing and synthesizing the course material and class discussions, you will inevitably identify questions or issues about which you are uncertain. **I expect you to make an effort to “fill the gaps” in your understanding of the material, such as by (a) posing questions in class; (b) posing questions to a fellow classmate outside of class, (c) making reference to secondary resources, and/or (d) posing the questions to me outside of class, either by e-mail or on the Canvas discussion board.** I particularly

encourage you to pose questions immediately following a class meeting, while those questions are fresh in your mind.

ATTENDANCE POLICY: According to American Bar Association accreditation guidelines, class attendance is required and expected of all students. I expect students to be present and ready to begin class *promptly* at 2:30 p.m. Any student that misses more than **twelve (12)** regularly scheduled classes during the semester *will be withdrawn from the course*.

From time to time, you may have to miss a class because of illness, family responsibilities, job interviews, or the like. I appreciate it when you can provide me with prior notice of your anticipated absence (an e-mail message is fine) or, in cases of emergency when notice prior to class is impossible, as promptly as possible afterwards. In practice, clients and colleagues will expect such courtesy, so I encourage you to get in the habit of providing notice when you must miss class.

Keep in mind (for this class and others) that many of you will need one or more of your professors to provide valuable references for you in the future — whether for the bar examiners or for future employers. If you are present and prepared for class discussion, and provide your professors with prior notice on the rare occasions when you must be absent, your professors will take note of your diligence and discipline, and will respond to inquiries by observing how diligently and seriously you pursued your studies. Correspondingly, if you are often absent without explanation or excuse, your professors take note of that, too.

COURSE GRADE: Grades in this course will be based upon the following:

- A. **Graded Problem Sets.** There will be three graded Problem Sets as indicated below. Your combined grade on the three graded Problem Sets will constitute **40% of your course grade** (10% for Problem Set #1, and 15% each for Problem Sets 2 and 3). The Problem Sets will be **mostly** noncumulative in nature (i.e., they will address the material covered since the immediately preceding quiz). Distribution and due dates are:

<u>Problem Set</u>	<u>Distribution Date</u>	<u>Due Date</u>
Graded Problem Set 1	September 17	September 24
Graded Problem Set 2	October 15	October 22
Graded Problem Set 3	November 12	November 19

- B. **Final Exam.** The final will be an in-class cumulative examination, on the date indicated on the Law School exam schedule. You will be able to bring your Code Book into the exam, as well as an outline that you created (or contributed to in a study group). The exam will consist of multiple choice questions and short essay questions, and your score on the final will constitute **60% of your course grade**.
- C. **Class Participation.** I encourage and expect participation in class discussion. I reserve the right to add up to two (2) points to a student's final course grade for ***consistent and outstanding*** participation in class discussion. I reserve the right to subtract up to two (2) points from a student's final course grade for consistent unpreparedness. I will also deduct

points from a student's final course grade for failure to complete the required multiple choice questions (explained below).

CANVAS SITE: I have established a Canvas site for this course. You can use the URL <http://courses.missouri.edu> to log into Canvas. A copy of this syllabus is posted on the Canvas site, should you misplace this copy. The Canvas site contains all relevant information about the course, and you should therefore check the Canvas site prior to each class for the following:

- The relevant reading assignment for each scheduled Module will be posted on the Canvas site at least one week prior to that scheduled class. Completed Modules will remain archived on the Canvas site.
- During many classes, I may have Powerpoint slides that accompany class discussion for a particular Module. After each class, I will post any slides related to that class on the Canvas site. You may find that this reduces your need to take notes and helps you to pay closer attention to class discussion.
- I will be making an audio recording of each class meeting, and will post those audio recordings on the Canvas site.
- From time to time, I will post Announcements on the Canvas site. Often, these will clarify a point raised in a previous class or respond to a question raised after class or in my office.
- On some occasions, there may be specific issues or Code sections on which I choose not to spend class discussion time. In those cases, I will usually post an Announcement with any additional explanation that is necessary for your understanding of those issues.
- All student-drafted multiple choice questions (see below) will be posted on the Canvas site.
- Announcements about class cancellations/makeups will also be posted on the Canvas site.

MULTIPLE CHOICE QUESTIONS: As stated above, the final exam will include multiple choice questions. During the semester, as part of class participation, each student must draft, and prepare answers and explanations for, **two (2) original** multiple choice questions designed to test knowledge of the course material. When satisfactorily completed, these questions will be posted on the Canvas site, as part of a Practice Quiz that will be available to all members of the class, to provide members of the class with questions to assist in their exam review. At the end of this syllabus, I have included a memo that explains how you should prepare and send your questions/explanations to me, and provides a sample question/explanation to give you an idea what is expected. That memo also includes the assigned due dates for your questions.

Note: At least two (2) of the multiple choice questions on the final exam will be questions drafted by members of this class. [I reserve the right to change the names of the parties and/or make grammatical/spelling corrections as necessary].

If you submit a question that is factually ambiguous or for which your explanations are incorrect or insufficient, I will send you an e-mail reply pointing out the error and asking you to correct and resubmit the question and your explanations. [The most important part of this exercise is that it gives me a good sense of how well students are understanding the material, and it allows me to correct misunderstandings about the material earlier rather than later.]

If you fail to submit any question (or fail to correct and resubmit any question until it is suitable for posting on the class website), your grade will be **reduced by 1 point** for that question. [Thus, not submitting any questions would result in a reduction of 2 points in your final grade.]

ACADEMIC INTEGRITY: Academic integrity is fundamental to the activities and principles of a university. All members of the Law School community must acquire, develop, and present their work responsibly and honorably. Any effort to gain an advantage not given to all students is dishonest, whether or not the effort is successful. The Law School community regards breaches of the academic integrity rules as extremely serious matters. Sanctions for such a breach may include grade sanctions (up to and including failing the course) and disciplinary sanctions ranging from probation to expulsion. I encourage you to make sure that your work in this and other courses complies in all respects with the Law School's Honor Code. If you have any question regarding whether your conduct complies with the Honor Code, you should contact me for clarification. If you become aware that you or another student have violated the Honor Code, you **MUST** report the violation promptly to me or to Associate Dean Trachtenburg.

Note: According to the instructions found later in this Syllabus, your multiple choice questions are to be original questions. Thus, plagiarizing a question from an already published source is a violation of the Honor Code.

RECORDINGS: UM 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 of the University of Missouri. In this class, students may make audio recordings of course activity. However, any distribution or redistribution of such recordings of statements or comments from the course to individuals who are not students in the course (including, but not limited to, any posting of a recording to social media) is prohibited without my express permission and the permission of any other student in the class who was recorded. Students who violate 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. **PLEASE NOTE:** I will make an audio recording of each class session which will be posted to the course Canvas site, so there will be no need for you to make your own recording.

INTELLECTUAL PLURALISM: 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 Dean Lidsky or Associate Dean Trachtenburg, the director of the Office of Students Rights and Responsibilities, 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.

MODULES: The following is a tentative list of the Modules I expect to cover during the course. Some will take one class session, and others will take multiple classes. Further, the list is subject to potential minor change as the semester proceeds, so pay close attention to Announcements on the course Canvas site. Each week, I will post one or more announcements clarifying the anticipated schedule for the ensuing two weeks.

Module	Title
A	Introduction to the Debtor/Creditor Relationship, Security, and Foreclosure
B	Attachment of the Security Interest: The Basic Requirements
C	Attachment: “Proceeds” of Collateral
D	Attachment: Consumer-Related Limitations on Attachment
E	Perfection of the Security Interest: Perfection by Filing
F	The “Composite Documents” Rule
G	Perfection: Automatic Perfection and the Purchase-Money Security Interest
H	Perfection: Perfection by Possession/Control
I	Priority: Secured Party vs. Secured Party
J	Priority: Secured Party vs. Buyer of Goods
K	Priority: Secured Party vs. Lien Creditor
L	Priority: Financing of Intangibles and Indispensable Paper
M	Priority: Secured Party vs. Statutory Lien Creditors
N	Maintaining Perfection and Priority: Lapse and Continuation Statements
O	Maintaining Perfection and Priority: Post-Transaction Changes
P	Maintaining Perfection and Priority: Changes in Governing Law
Q	Bankruptcy: The Trustee’s Strong-Arm Avoiding Power
R	Bankruptcy: The Trustee’s Preference Avoiding Power
S	Security Interests in Land-Related Collateral; Priority in Fixtures and Accessions
T	Default: Acceleration and Repossession
U	Default: Foreclosure and Strict Foreclosure
V	Bailment, Lease, and Consignment Transactions

For the first class on Monday, August 23, you should prepare the Module A Problem Set, which can be found on the course Canvas site and on the Library’s website for first-day assignments.

DRAFTING AND POSTING MULTIPLE CHOICE QUESTIONS

As the Syllabus suggests, part of the final examination in this course will consist of multiple choice questions. As part of this course, students must prepare and submit **two (2) original** multiple choice questions to be posted to the course webpage during the semester. I have three reasons for this requirement:

- First, having a significant number of sample questions will help class members with exam preparation and review.
- Second, preparing a good question will require you to develop a more complete understanding of the particular UCC section(s) or Bankruptcy Code section(s) on which your question focuses.
- Third, to the extent that you post a question and/or explanation that is ambiguous or inaccurate, I can learn about your confusion or error more quickly — and can help you correct it earlier in the semester (so that at the end of the semester, you’re reinforcing what you’ve already learned, rather than trying to figure things out for the first time).

Here is the schedule for submitting your questions. Each question will be due on a rolling basis, with the due date determined by the first letter of your last name. The schedule is also listed (and will be updated as the semester progresses) on the course website.

Due Date	Question	Last Name
Friday, Sept. 10	First	A-D
Friday, Sept. 17	First	E-L
Friday, Sept. 24	First	M
Friday, Oct. 1	First	R-S
Friday, Oct. 8	First	T-Z
Friday, Oct. 15	Second	A-D
Friday, Oct. 22	Second	E-L
Friday, Oct. 29	Second	M
Friday, Nov. 5	Second	R-S
Friday, Nov. 12	Second	T-Z

This memo explains in more detail how you should prepare and send your questions.

Preparing a Question. Questions should take the form of relatively simple hypotheticals designed to test understanding and application of one or more UCC sections. Each question should contain four responses: one correct and three incorrect. A good question should include at least one or two “incorrect” answers that appear plausible.

For example, the following question tests understanding of the rules governing a priority dispute between a person holding a perfected security interest and a subsequent buyer of the collateral:

D purchased a new refrigerator from S on credit and granted S a security interest in the refrigerator. S properly filed a UCC-1 financing statement covering the refrigerator. Subsequently, D sold the refrigerator to her next-door neighbor, N. At the time of this sale, N had no knowledge of S's security interest in the refrigerator. After using the refrigerator for 2 months, N sold the refrigerator to ABC Appliances, a dealer in new and used appliances. The following week, ABC Appliances sold the refrigerator to X, who knew nothing about the refrigerator's history.

D has now defaulted on her payments to S. S successfully locates the refrigerator in X's possession. As between S and X, which statement is correct?

- (1) X can keep the refrigerator. N took free of S's interest in this neighbor-to-neighbor transaction, and X is protected by N's priority under the shelter rule.
- (2) X can keep the refrigerator. X is a buyer in the ordinary course of business and takes free of perfected security interests.
- (3) S may repossess the refrigerator from X even though X is a buyer in the ordinary course of business.
- (4) S may repossess the refrigerator from X because X is not a buyer in the ordinary course of business.

Preparing Your Explanations. After preparing your question, you should also prepare a message explaining (a) which answer is correct and why, and (b) why the other answers are incorrect. Your explanation should make specific reference to the appropriate UCC sections. For example, the explanation for the above question might read as follows:

Answer (1) is INCORRECT. N did not take the refrigerator free of S's security interest under § 9-320(b), because S's filed a financing statement covering the refrigerator (even though S's security interest was technically automatically perfected without filing under § 9-309(1)). Thus, N took the refrigerator subject to S's security interest under the general priority rule of §§ 9-315(a) and 9-317(b). Under the derivative title rule, this perfected security interest continued against the refrigerator into the hands of the subsequent buyers, ABC and X.

Answer (2) is INCORRECT. X is a buyer in the ordinary course of business under § 1-201(b)(9), as X appears to have purchased in good faith, without knowledge of S's security interest, and from a dealer in refrigerators. However, under § 9-320(a), a buyer in the ordinary course of business only takes free of those security interests *created by its own seller*. Here, X's seller (ABC) did not create the security interest — it was created by a previous owner, D. Thus, X did not take the refrigerator free of the security interest created by D.

Answer (3) is CORRECT. D granted S a security interest in the refrigerator. Although this security interest in consumer goods was automatically perfected without more under § 9-309(1), S also filed a financing statement covering the refrigerator. When D sold the refrigerator to N, the security interest continued against the refrigerator. Section 9-320(b)'s "neighbor to neighbor" exception did not apply here because S filed a financing statement covering the refrigerator before the sale took place. Likewise, when N sold the refrigerator to ABC, the security interest continued against the refrigerator, as § 9-315(a) provides. Finally, when ABC sold the refrigerator to X, S's security interest continues in the refrigerator under § 9-315(a). As discussed above, even though X is a buyer in the ordinary course of business, § 9-320(a) does not protect X here because the security interest was not created by X's seller.

Answer (4) is INCORRECT. X appears to have been a buyer in the ordinary course of business under § 1-201(b)(9). He acted in good faith, without knowledge of S's security interest, and he purchased the refrigerator from a dealer in appliances.

Sending Your Question and Explanation. For each question you are required to submit, you should send me the question and your explanation, in the format suggested in the above example, by e-mail. My e-mail address is:

frevermuthr@missouri.edu

After I receive your question and explanation, I will review it. If there is a problem with your question — *i.e.*, if it is factually ambiguous, or if there is a problem with your analysis — I will send you a reply message pointing out the problem and asking you to revise the question and resubmit it. Likewise, if your explanation is not sufficiently detailed, I will ask you to provide an appropriate explanation. Once the question and the explanation are sufficient for posting, I will post the question and the explanation to course Canvas site, as part of a Practice Quiz that will be available for the benefit of all students in the class as part of their studying.

[Note: It is rare that someone's question is "ready to post" when it is first submitted. Most students will have to "revise and resubmit" at least once.]

Tips for Preparing Your Questions

1. Don't make your questions too simplistic. The exam is NOT going to include a question like "Which section of Article 9 contains the requirements for a security interest to attach?" **The purpose of having you prepare the questions is to help you master how the language of Article 9's provisions is applied to specific factual situations.**

Keeping this in mind, suppose that you decided to draft a question regarding the definition of the term "inventory." Don't draft a question that provides four alternative definitions of inventory and asks which definition is correct. That's too simple, especially given that you'll have your Code Book during the exam. Instead, you might draft a question that describes four different items of personal property in the hands of four different debtors and asks which of the items would constitute "inventory" under Article 9.

2. Likewise, don't make your questions too complicated. The exam is not going to include multiple choice questions with long, complicated factual scenarios. The exam typically includes around 30 multiple choice questions, which you would be expected to complete in 90 minutes. So resist the urge to draft questions with long, complicated fact scenarios. Also, remember that I use at least two of the student questions on the exam. **This means that drafting a question with an unnecessarily long or complicated fact scenario pretty much guarantees that your question would not be one of the questions included on the exam.** Keep the facts of your question to 1-2 brief paragraphs.