A Student's Guide to Secured Transactions, Bulk Transfers and Bankruptcy

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A STUDENT’S GUIDE TO SECURED TRANSACTIONS, BULK TRANSFERS AND BANKRUPTCY

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For reasons known to each of them
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We would like to express our appreciation to a number of people who helped to put this book together. Rhonda Laster typed all the drafts; Carol Kennedy prepared the final manuscript for publication. The diagrams and format are hers. Suggestions from Jenniffer Horan, Roselise Olson and the editors at Matthew Bender made our writing, we hope, more understandable and our punctuation less, ah, creative. Many classes of patient commercial law students labored through early, cumbersome drafts and made suggestions that the final version reflects. Deans David G. Epstein and J.W. Looney of Arkansas and Robert J. Desiderio of New Mexico encouraged the project as only deans can. And, finally, each of us would like to acknowledge the energy, optimism, patience and good humor of the other in a project that covered several years, thousands of miles and hours on the phone.

Robert Laurence
Fayetteville

Frederick M. Hart
Albuquerque

April 1985
Why another book or guide to commercial transactions? There are excellent texts on the market and a plethora of outlines. This is not a text. Indeed, we urge you to read and study those that are available. It is an outline, but, we believe, a very different kind of outline; less complete than others that have been published, but, we hope, more useful to those learning the subject for the first time.

Why do we believe this guide will be more helpful than those written by others? Well, we think we have a different approach. We are not trying to summarize the law, as useful as that may be. This book is not much interested in the details; nor in the complex problems that arise under the law, as much as those problems may interest us as teachers and researchers. What we have tried to do is to give an approach to the several types of problems that arise under Articles Nine and Six of the Uniform Commercial Code and the Bankruptcy Code. Through the use of relatively straightforward problems, we have attempted to show how we (and we believe everyone else) analyzes these problems. Through this approach, we believe you can best learn the basic concepts necessary to master these areas of the law.

We are somewhat suspicious of detail. A lot of detail, we suspect, you will forget until your first client with a commercial problem really gets your attention. We want to teach you now some things that you have a chance of remembering past the exam. To wit: concepts. How Article Nine hangs together; what Article Six is really about; what the basic notions of bankruptcy are. Occasionally, we will specifically leave issues unanswered, referring you to your teacher or the cases. When we do, remember why we do—we want you not to be distracted from the concepts by details you can easily master, when the time comes, on your own.

A few suggestions as you use this guide. First, we emphasize the word use, because it is not written to be read like a treatise or summary. It is more like a workbook, requiring, perhaps, more effort on
your part if you are to understand and become comfortable with our approach to the analysis of problems.

Second, we encourage you to go through each step of your analysis of a problem carefully at the beginning. As your knowledge of the law becomes more extensive, you may be able to eliminate steps or give short shrift to some in the context of some problems, but wait awhile before you try to speed your analysis by skipping.

Read the statute. READ THE STATUTE. You will find many statutory references in this guide. Usually, these citations take up only about a half-inch of space in the text and are easily ignored. Reading the statutory sections cited is time consuming, and understanding what the statute says is often difficult. Believe us, however, when we tell you that it is essential if you are to learn commercial law and that it will become easier the more you do it. Learning how to read the statute is the most important skill taught by the course in commercial law. Any lawyer will tell you how significant statutes are in the practice of law and that it is a skill no less important than that of reading cases. Don't worry too much if you have trouble with the wording of a particular section the first time you read it. Read it again, in connection with the applicable part of this guide and the Official Comments. Read it again! READ IT AGAIN! We are confident that ultimately even the most complex sections of the Uniform Commercial Code and the Bankruptcy Code will become understandable.

We also encourage you to read the many fine treatises, texts and summaries of commercial law that have been published. This is not a substitute for them. They all have more detail than does this guide, and each attempts to explain the law in its own way. We still regularly consult them in our research and in preparing for class. Seeing how others approach a topic is usually enlightening and will aid in your understanding of the subject matter. And don't ignore the Official Comments. They are often helpful in explaining the statutory language.
Finally, use this guide in conjunction with the course you are taking. It is not designed as a quick review to be picked up the night before your final exam. Although we have used this guide, successfully we believe, as the primary book in a survey course, supplemented by a number of handouts, we expect that most of you will be in courses where your instructor is using one of the national casebooks or locally produced materials. The casebook is important, and you should not neglect it. The cases demonstrate what happens when courts are faced with the same problem that you have; i.e., applying the statute to a fact situation. Your course will also flesh out the details omitted from this guide.

Why Articles Nine, Six and the federal Bankruptcy Code? Why in that order? By the end you will know. These are three important bits of legislation that deal with debtors and creditors, borrowing and lending, and the competition between parties when there isn't enough money to go around. We suspect that this text will fit in nicely with a course in your curriculum, perhaps called Creditor's Remedies, Commercial Transactions, or Secured Transactions.

A word about language: readable. That's what we have tried to be. Occasionally we have dropped the precision that is required by a treatise. We paraphrase, we change punctuation in order to get the concept across. Again, whenever we refer you to a particular statutory section, we urge you to look up that section and read it. When dealing with the U.C.C., the Bankruptcy Code or any other statute, there is absolutely no substitute for reading the statute.

One other word about language: sex. The English language has it. Many writers wish it didn't. We have attempted to take advantage of it. Generally speaking throughout this book debtors are male; creditors are female. We find that this sometimes makes problems and sentences easier to understand. We hope you agree. (How did we decide which would be which? We flipped a coin.)
We begin, then, with Article Nine of the Uniform Commercial Code and the security interest, the basic building block of present-day commercial financing. Good luck. We hope you enjoy your work.
# Table of Contents

**Preface** .................................................. ix

**PART A: SECURED TRANSACTIONS UNDER ARTICLE NINE**

1. **THE BASIC OVERVIEW** ................................... 1
   A. Debtor-Creditor Relations in General ............................ 1
   B. Creating a Security Interest ...................................... 4
      1. The Agreement ............................................... 4
      2. Value ...................................................... 4
      3. Collateral .................................................. 4
   C. The Relationship Between the Secured Party and the Debtor (Herein of Default) .................................................. 6
      Problem A-1. .................................................. 8
      Analysis of Problem A-1 ........................................ 10
   D. The Relationship Between the Secured Party and Others Having Rights in the Collateral (Herein of Priorities) ................................. 14
      Problem A-2. .................................................. 24
      Analysis of Problem A-2 ........................................ 29
      Problem A-3. .................................................. 38
      Analysis of Problem A-3 ........................................ 39
      Problem A-4. .................................................. 45

2. **SOME DETAILS** ........................................... 48
   A. Creation of the Security Interest ................................ 48
      1. The Agreement ............................................... 48
      2. Value ...................................................... 50
      3. Collateral .................................................. 51
   B. Rights Between the Parties (Herein of Default) ................... 55
      1. Overview .................................................. 55
      2. Repossession ............................................... 58
         Problem A-5. .................................................. 58
         Analysis of Problem A-5 ...................................... 59
      3. Disposition Following Repossession ................................ 60
         a. Redemption ............................................... 60

xiii
b. Retention of the Collateral in Satisfaction of the Debt .......... 61

c. Disposition ........................................... 61
   Problem A-6 ........................................... 64
   Problem A-7 ........................................... 68
   Problem A-8 ........................................... 68

d. The Effect of Non-compliance with the Requirements of Part 5 ........................................... 69

C. Rights Between Parties Competing for the Collateral (Herein of Perfection, Purchase and Priorities) ........................................... 70

1. Perfection ........................................... 71
   a. Automatically ........................................... 71
   b. Possession of the Collateral by the Creditor ............... 72
   c. Filing ........................................... 72

2. A Summary of the Rights of Purchasers of the Collateral  ................. 76
   Problem A-9 ........................................... 78
   Problem A-10 ........................................... 81

3. A Summary of the Major Priority Rules  ......................... 83
   Some Notes and Exceptions ........................................... 85
   Problem A-11 ........................................... 86
   Problem A-12 ........................................... 86
   Problem A-13 ........................................... 86
   Problem A-14 ........................................... 86
   Problem A-15 ........................................... 86
   Problem A-16 ........................................... 87
   Problem A-17 ........................................... 87
   Problem A-18 ........................................... 87
   Problem A-19 ........................................... 87
   Problem A-20 ........................................... 88
   Problem A-21 ........................................... 88
   Problem A-22 ........................................... 88
   Problem A-23 ........................................... 88
   Problem A-24 ........................................... 89
   Problem A-25 ........................................... 89
   Problem A-26 ........................................... 89
   Problem A-27 ........................................... 89
   Problem A-28 ........................................... 89
<table>
<thead>
<tr>
<th>Problem A-29</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Problem A-30</td>
<td>90</td>
</tr>
</tbody>
</table>

D. Problems with "Floating Liens" ........................................... 90

1. Creating Floating Liens ................................................. 90
   a. After-acquired Collateral ......................................... 90
   b. Future Advances .................................................... 91
   c. Proceeds ........................................................... 91

2. Perfecting Floating Liens ............................................... 92
   a. After-acquired Collateral ......................................... 92
   b. ... Future Advances ............................................... 93
   c. Proceeds ........................................................... 93

3. Priority Problems with Floating Liens ............................... 95
   a. After-acquired Property ........................................... 95
   b. ... Proceeds ....................................................... 97

   Problem A-31 .......................................................... 97
   Problem A-32 .......................................................... 98
   Problem A-33 .......................................................... 99
   Problem A-34 .......................................................... 101
   Problem A-35 .......................................................... 102
   Problem A-36 .......................................................... 103
   c. Future Advances .................................................... 103

   Problem A-37 .......................................................... 103

E. Some Odds and Ends ....................................................... 105

1. The Scope of Article Nine ................................................ 105

   Problem A-38 .......................................................... 107

2. Multistate Transactions .................................................. 109
   a. When a Secured Transaction Is Put Together in Several Different States ............................................ 109
   b. When Collateral Moves Across State Lines ..................... 111

3. The Pre-1972 Version of Article Nine .................................. 112

APPENDIX I TO PART A ......................................................... 113
PART B: BULK TRANSFERS

I. BASIC OVERVIEW ........................................... 117

II. SOME DETAILS ............................................. 130

A. Statute of Limitations ................................. 130
B. Equipment .................................................. 130
C. Subsequent Transfers ................................. 130
D. Which Creditors Get Protection? ................. 131
   1. Creditors with Knowledge of the Sale .......... 131
   2. Creditors the Buyer Knows ...................... 132
   3. Tort and Other Involuntary Creditors ........ 132
   4. Disputed and Contingent Creditors ............ 132
   5. Creditors Who Received Notice ................. 133
   6. "Gap" Creditors ..................................... 133
E. Interaction with Article Nine and the Treatment of Secured Creditors ...... 134
F. Optional Sections ....................................... 134
G. Auctions ................................................... 135

III. CONCLUSION ............................................. 136

PART C: BANKRUPTCY

I. INTRODUCTION ............................................ 137

A. Debtor Relief .............................................. 137
   1. A Breathing Spell .................................... 137
   2. A Fresh Start .......................................... 137
B. Creditor Protection ..................................... 138
   1. Valid Liens Are Recognized ....................... 138
TABLE OF CONTENTS

2. Unsecured Creditors Share
   Pro Rata .................................................. 138

   A Few Preliminary Notes .................................. 139

II. THE MAJOR STEPS IN LIQUIDATION UNDER
    CHAPTER 7 ................................................... 142

   A. Voluntary Commencement of a
      Bankruptcy Case ....................................... 142

      1. Who May Be a Debtor? ............................... 142
      2. The Order for Relief ................................. 143
      3. The Automatic Stay .................................. 143
      4. The Appointment of the Trustee .................... 145

   B. The Debtor's Estate, and How It
      Is Gathered .............................................. 147

      1. The Basic Beginning: All of
         the Debtor's Property ............................... 148

      2. The Essential Limitation: "As
         of the Commencement of the Case" ................. 149

      3. Two Logical Extensions ....................... 150

        a. Improperly Transferred
           Property—Section 549 ............................... 150

           Problem C-1. ..................................... 150

           Two Notes on the Operation
           of Section 549 ..................................... 151

        b. The Debtor's Property in the
           Possession of Another ............................. 151

      4. Another Extension of Enormous
         Importance: Property Transferred
         by the Debtor Before the Petition
         Is Filed ............................................. 153

        a. Meet the Famous Preference .................... 155

           Problem C-2. ..................................... 157

           Problem C-3. ..................................... 159

           Problem C-4. ..................................... 161

           Problem C-5. ..................................... 162

        b. The Federal Fraudulent Convey-
           ances Act .......................................... 165
1. Which Debtors Are NOT Entitled to a Discharge in Chapter 7? 192
2. What Debts Are NOT Dischargeable? 193
### III. DIFFERENCES IN CHAPTER 11

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>A.</td>
<td>No Trustee</td>
<td>194</td>
</tr>
<tr>
<td>B.</td>
<td>The Operation of the Business</td>
<td>195</td>
</tr>
<tr>
<td>C.</td>
<td>The Plan</td>
<td>197</td>
</tr>
<tr>
<td>1.</td>
<td>Who Files the Plan?</td>
<td>197</td>
</tr>
<tr>
<td>2.</td>
<td>What Does the Plan Contain?</td>
<td>198</td>
</tr>
<tr>
<td>3.</td>
<td>Do the Creditors Have a Say in the Plan?</td>
<td>199</td>
</tr>
<tr>
<td>4.</td>
<td>Does the Court Have a Say in the Plan?</td>
<td>200</td>
</tr>
<tr>
<td>5.</td>
<td>What Is the Effect of Confirmation?</td>
<td>201</td>
</tr>
</tbody>
</table>

### IV. DIFFERENCES IN CHAPTER 13

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>A.</td>
<td>Eligibility</td>
<td>202</td>
</tr>
<tr>
<td>B.</td>
<td>The Trustee</td>
<td>202</td>
</tr>
<tr>
<td>C.</td>
<td>The Plan</td>
<td>203</td>
</tr>
<tr>
<td>1.</td>
<td>Who Proposes the Plan?</td>
<td>203</td>
</tr>
<tr>
<td>2.</td>
<td>What Does the Plan Contain?</td>
<td>203</td>
</tr>
<tr>
<td>3.</td>
<td>Do the Creditors Have a Say in the Plan?</td>
<td>203</td>
</tr>
<tr>
<td>4.</td>
<td>Does the Court Have a Say in the Plan?</td>
<td>204</td>
</tr>
<tr>
<td>5.</td>
<td>What Is the Effect of Confirmation?</td>
<td>204</td>
</tr>
<tr>
<td>D.</td>
<td>The Discharge</td>
<td>205</td>
</tr>
<tr>
<td>E.</td>
<td>The Automatic Stay</td>
<td>205</td>
</tr>
</tbody>
</table>

### V. SOME DETAILS

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>A.</td>
<td>Involuntary Petitions</td>
<td>207</td>
</tr>
<tr>
<td>B.</td>
<td>Joint Petitions</td>
<td>208</td>
</tr>
<tr>
<td>C.</td>
<td>Conversions</td>
<td>208</td>
</tr>
<tr>
<td>D.</td>
<td>Proof of Claim and Allowance</td>
<td>209</td>
</tr>
<tr>
<td>E.</td>
<td>Adequate Protection</td>
<td>210</td>
</tr>
<tr>
<td>F.</td>
<td>Executory Contracts</td>
<td>211</td>
</tr>
<tr>
<td></td>
<td>Problem C-14</td>
<td>211</td>
</tr>
<tr>
<td></td>
<td>Problem C-15</td>
<td>212</td>
</tr>
<tr>
<td></td>
<td>Problem C-16</td>
<td>213</td>
</tr>
</tbody>
</table>
C. Restrictions on Transfer ........................................... 215

II. Exotic Preferences ..................................................... 215

1. Section 547(c)(3) and Purchase Money Security Interests ................. 216

2. Section 547(c)(4) and Running Accounts .................................. 217

   Problem C-17 .......................................................... 217
   Problem C-18 .......................................................... 218
   Problem C-19 .......................................................... 218
   Problem C-20 .......................................................... 219
   Problem C-21 .......................................................... 220

3. Section 547(c)(5) and Floating Liens .................................... 220

   Problem C-22 .......................................................... 223
   Problem C-23 .......................................................... 224
   Problem C-24 .......................................................... 225
   Problem C-25 .......................................................... 225
   Some Summary Notes About Section 547(c)(5) ................................. 226

4. Indirect Preferences .................................................... 227

   a. A Preference to a Guarantor .......................................... 227
      Problem C-26 ........................................................ 227

   b. A Preference to an Undersecured Creditor ............................. 229
      Problem C-27 ........................................................ 229

I. Preserving Avoided Liens for the Benefit of the Estate ..................... 230

   Problem C-28 .......................................................... 230

J. Set-off ............................................................................ 232

   Problem C-29 .......................................................... 233

K. Waivers of Discharge and Reaffirmations ...................................... 234

L. Jurisdiction and Procedure Before the Bankruptcy Courts .................. 235

V. CONCLUSION ................................................................ 236

Index ................................................................................. 237