

SECURITY INTERESTS IN PERSONAL PROPERTY

CASES, PROBLEMS AND MATERIALS

THIRD EDITION

JOHN O. HONNOLD

STEVEN L. HARRIS

CHARLES W. MOONEY, JR.

UNIVERSITY CASEBOOK SERIES

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by

JOHN HONNOLD

William A. Schnader Professor Emeritus
University of Pennsylvania Law School

STEVEN L. HARRIS

Norman & Edna Freehling Scholar and Professor of Law
Chicago-Kent College of Law

CHARLES W. MOONEY, JR.

Professor of Law
University of Pennsylvania Law School

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PREFACE

The focus of this book is the law governing secured transactions. This law is a direct and conscious response to the desire of debtors and creditors to structure their relationships in particular ways. Because this law cannot be understood without an understanding of the transactions it governs, we have designed the book to give students an understanding not only of the governing law but also of the transactions themselves. To this end, the book consists in large part of Problems that are tailored to focus attention on both the language of the relevant statutes and its application to common patterns of secured financing. The two Prototypes—one on wholesale and retail automobile financing and the other on financing of accounts and other receivables—introduce the student to many of these patterns. The Problems range from those that ask the student to predict the outcome of a dispute to those that ask the student to give advice to clients, to structure transactions, and to draft certain provisions of documents. In this way, the book helps students develop counseling, planning, drafting, and litigation skills. While many of the Problems have been adapted from the Second Edition, others are entirely new.

Most of this book is concerned with the application of Revised Article 9 of the Uniform Commercial Code (“UCC”). Although the revised Article has yet to take effect in any jurisdiction, it will become the law in most of the United States on July 1, 2001. Even after Revised Article 9’s effective date, its predecessor (which we refer to as “Former Article 9”) will remain relevant. However, in recognition of the limitations inherent in teaching a one-semester course on secured transactions, we have kept discussion of Former Article 9 to a minimum.

One reason for revising Article 9 was to resolve ambiguities in, and unanswered questions under, Former Article 9. Many of these ambiguities arose from reported cases, whose relevance is reduced, if not altogether eliminated, by the revision. Accordingly, the Third Edition contains fewer cases that did the Second Edition. For obvious reasons, none of the cases was decided under Revised Article 9.

As did the Second Edition, the Third Edition contains numerous explanatory Notes, designed to draw the student’s attention to the applicable legal principles, the policies that underlie them, and the process by which the policies became reflected in the statute. Many of the Notes reflect insights we gained during a decade of service as Reporters, first to the Study Committee on Article 9 and then to the Drafting Committee to revise Article 9.

Although the organization of the Third Edition has changed somewhat from the Second Edition, it remains essentially the same. Before turning to secured financing in earnest, Chapter 1 outlines the rights of unsecured creditors and the state-law collection process. It considers the *in rem* rights of a seller of goods to withhold delivery, stop goods in transit, and reclaim delivered goods as against the buyer and as against third parties. Chapter 1 covers basic conveyancing principles for goods, including voidable title and good faith purchase, reclamation, and entrustment. It also introduces good faith purchase of negotiable instruments, other rights to payment, and documents of title.

Chapter 2 provides an introduction to secured financing that describes the differing treatment afforded unsecured and secured debt, canvasses prevailing consumer and business financing patterns, and explains the diverse roles of lawyers in secured financings. In addition, Chapter 2 contains an overview of Revised Article 9, to which the student and the instructor can refer throughout the course.

The remaining Chapters address the details of secured financing. They focus on the scope and fundamental concepts of Article 9, the rights of the parties to a secured transaction between themselves, the rights of Article 9 secured parties against the holders of competing claims, and the treatment of Article 9 security interests in bankruptcy.

We wish to thank our colleagues and the many law librarians, secretaries, and students whose encouragement and support have made the Third Edition possible. In particular, Ms. Eliana Carelli (University of Virginia School of Law class of 2001) and Ms. Leanne Striegel (Chicago-Kent College of Law class of 2001) provided helpful research assistance. Thanks also are owed to Professor Allan Farnsworth for the use of cases and notes developed in connection with materials on which he and Professor John Honnold collaborated.

We owe a great debt to John Honnold. Although he was not directly involved in the preparation of the Third Edition, these materials still bear the stamp of his creativity and thoughtfulness. We hope we have succeeded in maintaining the high standard he set.

The study of law can be interesting and challenging. We hope this book to be both.

STEVEN L. HARRIS
Chicago
August, 2000

CHARLES W. MOONEY, JR..
Philadelphia
August, 2000

NOTE ON SOURCES AND CITATION CONVENTIONS

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In editing the foregoing works and the principal cases, we have taken the liberty of making minor adjustments to style and deleting footnotes and authorities without indication. We have retained the original footnote num-

bers for footnotes that remain. Editorial interpolations, including additional footnotes, have been bracketed.

The citations in principal cases generally are to the 1990 Official Text of the Uniform Commercial Code (“UCC”). In principal cases that involve a pre-1972 version of the UCC, we have added footnotes to indicate that fact. Citations to Revised UCC Article 9 and accompanying amendments to other Articles are to the 2000 Official Text of the UCC. They are preceded by the letter “R” (e.g., R9-320(a), R2-502). Earlier Official Texts of Article 9 are referred to as “Former Article 9”; citations to Former Article 9 are preceded by the letter “F” (e.g., F9-307(1)). Citations to the United States Code are current through August 1, 2000. Citations to the Bankruptcy Code (“BC”) are to Title 11, U.S.C.

The Notes and Problems contain many business, financial, and legal terms that lawyers often use. When these terms first appear, they are printed in bold-face type and are explained briefly. A useful source for those who wish more detailed explanations is J. Dolan, *Commercial Law: Essential Terms and Transactions* (2d ed. 1997).

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