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BROOK

Problems and Cases on
SECURED TRANSACTIONS



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Law & Business

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In loving memory of my father

Gene Brook
(1921–2001)

to whom I owe so much.

PREFACE

Welcome to the study of Secured Transactions. If you come to the subject with an open mind—and I have no reason to think that you do not—I believe you will find it a particularly *interesting* and *engaging* field of study. That statement might strike you as strange. Yes, you will have to wrestle with a complex and at some points frustrating statute—Article 9 of the Uniform Commercial Code. Yes, at times the matter at hand will seem fairly “technical” and call for a good deal of precise reading and application on your part. But beneath it all, remember, is the heartbeat of the subject, those human interactions which make this a statute worth studying and the details worth mastering. People enter into secured transactions because they have something to accomplish. If things go well they have much to gain. If, on the other hand, discord rears its ugly head, much can be at stake, and who got the “technicalities” right is anything but a dry academic concern.

You will meet many different actors along the way. We start out with the secured party and the debtor, but they are soon joined by all kinds of third parties—the searcher, the lien creditor, the bankruptcy trustee, other secured parties or claimants, sellers, buyers, and factors just to name the most obvious. By the final part of the book we even get to meet the professional repossession agent, the “repo man.” As you work your way through this material, consider the goals and the concerns of each of these characters as they appear. The problems in this book are, I acknowledge, longer than those you may have dealt with in other casebooks. There is, I submit, some method to this seeming madness. As you work your way through any problem—at first on your own and then with your instructor—you might want to consider it something like the outline of a brief, but quite interesting, one-act play. As you read the problem, put yourself in the role of each of the actors. “What,” you may reasonably ask yourself, “is my motivation? What am I feeling at this point?”

The organization of the book is fairly straightforward. Each chapter is structured in the same way. First comes an Introduction. In some instances this can be very brief, in others a bit more background is called for. Each chapter’s Introduction is not, you should be aware, meant as a complete summing up of what you will be learning in the chapter. It is just enough to get you oriented and headed into the material.

Next in each chapter comes a section which I have labeled Preparation. The instructions here are as clear and concise as I could make them. Go to each of the sections of the Code and the Comments to which you are directed and give them a good read. You should not feel at this point

that you must fully comprehend or appreciate every nuance of the Code material before you can move on. Try, however, to get enough of an understanding of what is in the sections and comments cited so that you will be able to refer back to this material in your statutory supplement as and when needed as you face the Problems and Cases. Think of the Preparation section as setting up a kind of tool kit which you will need to address the questions and conundrums that are to follow in the remainder of the chapter.

After you have completed the Preparation, you are ready to head into the Problems and Cases, which make up the final and longest part of the chapter. You will, I assume, first work through this material on your own. It will then be the script off of which you and your instructor will carry on a conversation during the class session. I do not claim any consistency, foolish or otherwise, as to the order in which I placed the problems and the cases. Each chapter seemed, after a great deal of work on my part I assure you, to dictate its own flow through the problems and cases. And, as you will see, I went with the flow.

I truly hope the flow works for you as well. And, yes, I really do believe you will find the subject interesting and engaging.

James Brook

June 2008

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Special thanks go to the special people of Aspen Publishers, and in particular to Eric Holt, Troy Froebe, John Devins, Carol McGeehan, Melody Davies, and Richard Mixter, without whom this book would not have come into being. Their consistent encouragement, gentle nudging when nudging was called for, and good-natured support make them a pleasure to work with and to know.

Finally, my thanks go out to my wife Isabelle, who has I know had to put up with a lot over the past years, at least some portion of which had to do with my working on this book. I owe her more than words can express.

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A SPECIAL MESSAGE ON ARTICLE 1

In the study of Secured Transactions, as with any topic governed by the Uniform Commercial Code, it is often necessary to refer to the General Provisions, including a whole host of useful definitions, of the Code as set forth in Article 1. We are blessed to be living in interesting times, at least as far as Article 1 of the Uniform Commercial Code is concerned. As of the time when this first edition of the book was finalized, something like 32 states had adopted a recently Revised (2001) version of Article 1. The rest of the states were still stuck with the original (1960s) version.

If you have any question about the status of Article 1 in your state, or in any state for that matter, the go-to guy on the subject is Prof. Keith A. Rowley of UNLV's William S. Boyd School of Law and his web site dedicated to the continuing adventures of Revised Article 1: www.law.unlv.edu/faculty/rowley/ucc_updates.htm.

While there are some substantive differences between the two versions of Article 1, the main distinction between the two as far as you need be concerned is that they convey what is essentially the same information in sections which bear different numbers. Fortunately, it did not turn out to be difficult to prepare this book so that the "Preparation" instructions of each chapter give references to both of the versions, but in your studies you need only read and refer to one or the other.

In conjunction with your very first assignment, your instructor should make clear which version, original or revised, of Article 1 she or he expects you to be following. On that basis you should then look at and make reference to *either* the sections of the original version of Article 1 (cited as § 1-XXX) *or* those of the revised version (cited as § 1R-XXX). I assure you there is absolutely nothing to be gained from looking at both.

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