

SECURED

TRANSACTIONS

Problems and Materials

Paul Barron
Mark B. Wessman

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SECURED TRANSACTIONS

PROBLEMS AND MATERIALS

By

Paul Barron

*The Class of 1937 Professor of Law
Tulane Law School*

Mark B. Wessman

*Professor of Law
Tulane Law School*

AMERICAN CASEBOOK SERIES®

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For Arlene who supplied all the vowels

P.B.

For Julie, Julia, and Kirk

M.W.

*

Preface

It has been our experience that students approach the course in secured transactions with more apprehension than they do other courses—indeed, far more than the subject matter warrants and far more than is usually generated by the course in sales. We believe that at least two factors are responsible for our students' heightened level of anxiety. First, learning Article 9 of the Uniform Commercial Code requires a student to master a technical vocabulary that is neither familiar nor intuitive. Second, the business context of secured lending and personal property financing is alien territory to most students. All students have bought or sold goods, and studying Article 2 therefore produces only the discomfort caused by a first encounter with statutory materials. Article 9 is quite different. While many students may have experienced the indescribable joy of a secured car loan, only a handful in any given class have any experience with inventory or accounts receivable financing. Fixture financiers seem to be absent altogether. As a result, the difficulty of learning new law is compounded by an unfamiliar transactional context. Students reading traditional casebooks often have as much trouble understanding why the business actors featured in reported cases behave in certain ways as they have understanding the solution Article 9 imposes on the problems the cases present.

We are not certain that any law professor can solve the problems posed by students' lack of familiarity with the business context in which Article 9 operates. It may be that only years of experience as practicing lawyers can do that. However, we would like to find techniques that can begin the process in law school in a way superior to traditional casebooks. To that end, we borrow from those contemporary legal scholars who see value in the use of narrative and simulation as devices for communication and learning. We propose to explore the law of secured transactions from the perspective of a staff attorney at a mythical bank holding company with several financing arms. In the pages that follow, we will introduce Megabank, Inc. and its flagship urban bank, the Bank of New Babylon. Along the way, we will also present a consumer finance subsidiary (Friendly Finance Co.), a commercial finance subsidiary specializing in inventory and accounts receivable financing (NB Commercial Finance Co.), a real estate mortgage loan originator (NB Mortgage Co., Inc.), a subsidiary devoted to credit card operations (NBCard, Inc.), and a (somewhat shaky) small town bank (the Bovine State Bank) acquired by Megabank, Inc. as part of the trend toward consolidation in the banking industry. Naturally, it will also be necessary to introduce some of their competitors. It is our hope, in this process, to provide illustrations of the range of personal property financing transactions, as well as to provide some glimpse into the tasks, pressures, and incentives facing the people involved in them. Expository material that would normally be in notes is

provided through the medium of mythical loan officer training and operations manuals.

The reader will note that reports of judicial opinions in appellate cases are entirely absent from this book, although we do occasionally provide case citations in connection with particular problems. The omission of traditional case reports is, in part, a reflection of our hope that narrative may be substituted for them as a means of setting secured transactions in their business context, as well as our intention to shift the focus, at times, from the dispute resolution function of commercial law to its role in planning transactions.

The omission of traditional case reports is also, in part, motivated by the rather awkward state of current personal property lending law. Article 9 of the Uniform Commercial Code supplies the law of secured transactions in all 50 states. Until recently, the 1972 version of Article 9, with a few modest subsequent official modifications and sporadic non-uniform state-specific amendments, was entirely dominant. The case law interpreting the statute for the bulk of the last three decades has thus incorporated the section numbering, the vocabulary, the definitions, and the rules of the 1972 version of Article 9, as modified from time to time. In 1998, the sponsoring organizations for the Uniform Commercial Code officially approved and recommended for adoption an overhauled Article 9, which has been enacted by all of the states. The 1998 version of Article 9 substantially changes the section numbering and definitional sections of the earlier version, and it makes a number of substantive rule changes as well. Because of those changes, our current body of Article 9 case law, though by no means superseded substantively, has become a clumsy teaching vehicle for a course focused on the 1998 version of Article 9.

Most fundamentally, however, our omission of traditional case reports reflects our belief that statutes are mastered best by incremental increases in the ability to work with them, and that such incremental increases are most effectively produced by solving problems before and during class rather than by reading enormous numbers of cases. The citations occasionally accompanying problems are included to satisfy those with more traditional tastes.¹

The 1998 version of Article 9 became effective on July 1, 2001 in most states and in the rest by January 1, 2002. In addition, the 1998 version of Article 9 provided a one-year transition period during which the earlier version of Article 9 would continue to apply to transactions entered into prior to the effective date of the 1998 version of Article 9. After the one-year transition period, these transactions are subject to the rules in the 1998 version of Article 9. As a result, these materials deal only with the 1998 version of Article 9.²

1. In the hope that we will not break the narrative flow of the book, we introduce the case citations, as well as relevant Code section numbers, in bracketed footnotes.

2. For a clear explanation of the transition rules see, Caroline N. Brown, *U.C.C. Revised Article 9: The Transition Rules*, 79 N.C. L. Rev. 993 (2001).

With the foregoing preliminary comments concluded, it is time to meet some of the players in our unfolding story and to provide some introductory background material. To that end, we ask each of our students to assume that he or she is Sidney Carlson, a recent law school graduate. Sidney has just passed the bar examination and is about to commence permanent employment with MEGABANK, Inc.

*

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PB
MBW

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