

Commercial Law: Secured Transactions
Professor Stephen Ware
Fall 2017

Learning Outcomes. This course has two main purposes. One is to study the law and practice of secured transactions and related debtor-creditor law. Successfully completing this course will advance students' knowledge of: enforcement of money judgments; the creation, perfection, and enforcement of liens; and basic bankruptcy law. In addition, successfully completing this course will advance students' skills. An important purpose of the course is to improve—in the context of complex, technical statutes—students' skills in legal analysis and reasoning, legal research, problem-solving, and written and oral communication, as well as heighten students' awareness of professional and ethical responsibilities to clients and the legal system.

Basics. The required casebook is LYNN M. LOPUCKI, ET AL., SECURED TRANSACTIONS: A SYSTEMS APPROACH (8th ed., 2016).

The recommended statutebook is ELIZABETH WARREN, BANKRUPTCY AND ARTICLE 9 (2017). You may use a different statutebook if it has current versions of these statutes: (1) Articles 1 and 9 of the Uniform Commercial Code, (2) the Uniform Motor Vehicle Certificate of Title and Anti-Theft Act, and (3) the Bankruptcy Code. The 2011-2016 versions of the recommended statutebook have the current versions of these statutes, as do several other books.

Also required is a photocopied supplement which I will distribute on the first day of class.

You are responsible for doing the reading listed on this syllabus and for coming to class prepared to discuss the reading. The sections of the Uniform Commercial Code and other statutes referred to in the casebook are an integral part of each reading assignment.

Your grade for the course will be determined by the two-hour final exam (55%), graded assignments (30%), and classroom performance (15%). The graded assignments (10% each) are noted on this syllabus and you must submit them on time to receive any credit for them. Only your initial submission will be graded; any follow-up will only be for learning, not grading. I may show what you submit to the entire class so please consider that lack of privacy in deciding what to send me.

Exam. You may use any written material (such as outlines, books, notes) during the exam. It is completely "open book." You may also use a calculator. You may take the exam on your laptop computer if you do so with the exam software supported by the law school. The exam software must be in the closed mode so that you cannot access any other program on your computer during the exam.

All assigned reading and classroom discussion is fair game for testing on the exam. If you have questions about the assigned reading after our class discussion of it, please do not hesitate to contact me. I try to make the exam correspond to the course so topics that receive a lot of attention in the reading and in class play a bigger role on the exam than topics that receive less attention in the reading and in class. But I am not able to make this correspondence perfect.

I prefer that the entire class take the exam at its scheduled time. I will provide alternate exam times only to the extent the school's rules require me to do so for individual students.

Classroom performance. Should law professors use class time to lecture or to question students? I believe some time devoted to lecture may be appropriate because lecturing can be an efficient way to convey information from someone who has it to someone who needs it. But you should not need to acquire much information during class. You can acquire nearly all the relevant information before class by doing the assigned reading, thinking about it, and discussing it with your classmates. In short, you should come to each class knowing the law that will be discussed in that class. You should know what the statutes say and what the courts have held. You should know the basic arguments in favor of those statutes and holdings and the basic arguments against those statutes and holdings.

If students know all this before class starts, then what is the purpose of our class time? One purpose is simply to test whether you have learned before class what you should have learned. If the professor asks straightforward, factual questions about the reading and you have trouble answering quickly and confidently then you are receiving feedback suggesting that your class preparation or your ability to speak under pressure is deficient. Either way, you benefit from getting that feedback throughout the semester, rather than learning on the exam or later about the deficiencies. Of course, it is not only questions directed to you personally that give you feedback. After each question directed to one of your classmates, you should think about how you would answer it and compare the answer you would have given to the answer your classmate gave. In many good law school classes, much of the learning occurs through this process.

Another very important purpose of class time is to give you opportunities to "learn by doing." We lawyers are often good at learning by reading and that is good because many lawyers do a lot of reading for their jobs. But reading alone is not sufficient preparation for the practice of law. Nearly all lawyers' careers require them to engage in effective communication about the law. While *written* communication about the law is a large part of many lawyers' jobs, so is *spoken* communication about the law. In this course, written communication will be tested on the exam and other assignments, while spoken communication will be tested in the classroom throughout the semester.

During class, I may call on students who have not raised their hands, as well as students who have. Your classroom performance grade is based on the quantity and quality of both forms of participation.

I want you to raise your hand and voluntarily contribute to class discussion because I believe doing this is good training for the practice of law and because class discussion tends to be better when many viewpoints are represented. So the classroom performance part of the grade rewards students who frequently raise their hands and say things that contribute to the education of the class.

I generally try to ensure that every student makes a significant number of contributions to the class discussion over the course of the semester. Therefore, students who raise their hands less frequently than their classmates are more likely to be called on when their hands are not raised.

If you are unable to prepare for a particular class, better for you to tell me ahead of class than to skip the class or risk being called on. If you ask ahead of class for a pass that day, I will grant it if your classroom performance throughout the semester has been adequate. By contrast, if you have gone a week without contributing to class discussion then you should not be asking me for a pass. If you have gone a week without contributing to class discussion and are unable to prepare for a particular class then you are not handling the course appropriately. If that situation arises, you should take the initiative in contacting me to discuss solutions to the problem.

If you come to class without previously asking me for a pass then you are representing to me and your classmates that you are prepared and ready to contribute. If I call on you in class and you, at that point, ask for a pass or say that you are unprepared then your grade will suffer and your reputation for honesty will be jeopardized.

I recognize that many students find law school classes stressful if classroom performance is graded and the professor may call on any student at any time. If you find this sort of classroom environment stressful then I encourage you to reconsider whether your preparation for class is adequate. If you are well prepared for class then you have anticipated the issues raised by the questions the professor is asking and are ready to use the “book learning” you did before class. That said, even well-prepared students sometimes find speaking in class somewhat stressful. Similarly, many lawyers find aspects of their jobs, including speaking to large audiences, stressful. Compared to most types of law practice, the law school classroom is a relatively safe, low-stakes environment in which to develop important professional skills. Please get the most out of it, rather than shying away from it. I am here to help you with that. If you ever find me demanding or critical, please know that I am trying to help you develop important professional skills.

Attendance and lateness. You may miss a class or two during the semester because you have transportation problems, a job interview, illness, a death in the family, or something similar. This sort of absence is nothing to worry about and there is no need to contact me about it. Just borrow class notes from a classmate and then let me know if you have any questions. Similarly, you may be late once or twice during the semester for reasons like those listed above. Again, this is nothing to worry about and there is no need to contact me about it.

By contrast, if you are going to miss class or be late more than a couple of times during the semester, that is a worry. If that happens, you should take the initiative and contact me to discuss how we can address the problem and keep you on track with the course and your classmates. Missing or being late for more than a couple of classes without contacting me would be a sign of disregard for the course and would make things more difficult for all concerned. Please do not be that student.

Computers and other electronics in class. You may use a computer in class but only for working on this course. Any other use of your computer during class is prohibited. And I reserve

the right to declare some of our class time “computer-off periods.” Please silence computers, phones and any other electronic devices you bring to class. Audio or video recording of class is prohibited without my written permission.

Miscellaneous. If you have a disability for which you intend to request a classroom and/or exam accommodation, you may contact Leah Terranova, Director of Career & Student Counseling Services, leaht@ku.edu.

I like to have lunch with students. We can go across the street to the DeBruce Center and, within limits, the school will buy our lunches. To avoid crowds, I prefer to go at 11:45 or 12:45. I find that these lunches work best with groups of two or three students at a time. If you would like to do this, please send me an email suggesting a day or two that works for all the students in the group and please copy the other student(s) on that email message.

My office is Room 414C, my email is ware@ku.edu and my phone number is 785-864-9209. Please do not hesitate to contact me about this course or anything else.

<u>CLASS</u>	<u>ASSIGNMENT</u>
Chapter 1 - Creditors’ Remedies Under State Law	
1.	xxxi-xxxvii, 3-4
2.	4-13 (think “garnishment” while reading <i>Ellerbe</i>) and pp.1-8 of photocopied supplement
3.	13-19, do 1.1-3,5. (Do 1.5b assuming no mortgage and then assuming the mortgage)
4.	22-24, 33-36, do 2.1
5.	40-50, 52-54 (section F.1.); do 3.1-4
6.	31-32, 50-52, do 3.5-6 (Assume that Firstbank obtains a security interest in Deare’s accounts)
7.	33(section C.) -36 (re-read), 59-75 (skip <i>Marino</i>), and pp.9-10 of photocopied supplement, do 4.1-3, (then redo 4.1 in a state that allows deficiency judgments)
8.	78-91 and p.11-13 of photocopied supplement (Kansas Uniform Consumer Credit Code §§ 5-103, 109-111), do 5.1

<u>CLASS</u>	<u>ASSIGNMENT</u>
9.	<p>Re-read 86-89. Do 5.3.</p> <p>Graded Assignment #1. At least an hour before class, send me an email stating your first and last names and attaching as a pdf the full text of a</p> <ul style="list-style-type: none"> A. post-2007 case, B. not mentioned in our book, C. discussing an Article 9 foreclosure sale (not some other sort of forced sale), D. of personal property other than a vehicle (so no cars, trucks, planes, tractors, etc., unless you specifically identify the non-vehicle personal property also sold in C), E. in which the debtor whose property was sold in C is a business entity (such as a corporation), rather than an individual. <p>In the body of the email include your first and last names and four numbered sentences answering, with cites to pages of the pdf,</p> <ul style="list-style-type: none"> 1. the name of the debtor whose property was sold in C, 2. the name of the creditor holding the sale in C, 3. the property sold at the foreclosure sale in C, and 4. how you know it was an Article 9 foreclosure sale, as distinguished from some other sort of sale. <p>On the pdf, highlight in yellow the portions of the case you cite in support of your four sentences.</p> <p>Your grade on this assignment may be affected by the number of students who turn in the same case you do—the fewer students using your case, the higher your grade.</p>
Chapter 2 - Creditors' Remedies in Bankruptcy	
10.	95-110, do 6.1-4
11.	113-126, do 7.1-2, then do 7.2 assuming Argossy is reorganizing in Chapter 11
12.	re-read 119-126, do 7.3-5
Chapter 3 - Creation of Security Interests	
13.	131-146, do 8.1-4
14.	150-159, 256 paragraph 4, do 9.1,4-5
15.	162-171, 176-178, do 10.1-2
16.	171-176, do 10.4-6

<u>CLASS</u>	<u>ASSIGNMENT</u>
17.	196-206, 209-213, do 12.4-6 (for 12.5, read Rules of Prof'l Conduct on 148-49)
Chapters 4 and 5 - Default, Acceleration and Cure	
18.	217-234 and pp.12-14 of photocopied supplement (Kansas UCCC §§ 5-109-111, 3-405), do 13.1,4, then 13.7 and 13.3
19.	123-126 (re-read), 239-249, do 14.1,3a-b
20.	253-269 (read the contract carefully), do 15.4,6
Chapter 6 - Perfection	
21.	273-283 (focus on <i>Peerless</i>), do 16.3
22.	289-291, do 16.4a&d (skip b&c), 16.5. Read 343-348. Graded Assignment #2. At least an hour before class, send me an email attaching a document with your first and last names and a list and summary of what you found when you searched Arizona financing statements for a debtor named "Ware Manufacturing, Inc." Attach, preferably as pdfs, to the same email everything you found in that search.
23.	324-330, do 19.1a-c,e. 365-366 (sections 3 and 4). For each assigned part of 19.1, in addition to answering the perfection questions in the book, explain how a creditor would realize the value of its collateral if debtor defaults. Graded Assignment #3. At least an hour before class, send me an email attaching a pdf "promissory note" as defined in UCC § 9-102(a)(65). I prefer notes that are <ul style="list-style-type: none"> • real documents used in real transactions (as opposed to samples or blank forms), • with no information redacted, • not involving the student or anyone the student knows, • not arising out of student loans, • recent (e.g., post-2006), • made in the United States, and • short (less than two pages) but complete (no partial documents). These criteria may affect grading. Also, your grade on this assignment may also be affected by the number of students who turn in the note you do—the fewer students using your note, the higher your grade. Also attach to the same email a document with your first and last names and why you think what you are submitting is a "promissory note" as defined in UCC § 9-102(a)(65).

<u>CLASS</u>	<u>ASSIGNMENT</u>
24.	331-339, do 19.4a,6. Familiarize yourself with the phrase “chose in action”?
Chapter 7 - Maintaining Perfection	
25.	375-390, do 22.4-5, then 22.2
26.	393-404, skip <i>Seaway</i> , do 23.1a-b, 23.2
27.	294-303, 407-411, 413-417, do 24.1a-d, 24.2a-d, f, 24.3a-b, 24.4
28.	423-429, 431-436, do 25.2-3
Chapter 8 - Priority	
29.	439-443, do 26.1-2
30.	443-451, skip <i>Bank Leumi</i> , do 26.3-4
Chapter 9 - Competitions for Collateral	
31.	471-479, skip <i>Green</i> , do 28.4, 5-6a, then 28.2
32.	482-493, do 29.3-4, then 29.1-2. In 29.3 assume Mortgagee records.
33.	Review 96-98 (table), 113-126 495-508, skip <i>Midlantic</i> , do 30.1a-b & f
34.	512-519, do 31.1a-c,f; do problem b before a
35.	181-183, do 31.3
36.	522-533, do 32.3, 6
37.	review 16.3. Read 595-612, skip <i>Daniel</i> and <i>RFC Capital</i> , do 36.5,6 a-b then 36.1-2a-d
38.	343-348, 478 (section D), review 28.4; 502 (section 3), 538-544
39.	Pp.15-19 of photocopied supplement.