In 1999, the National Conference of Commissioners on Uniform State Law (NCCUSL) and the American Law Institute (ALI) promulgated a comprehensive revision to Uniform Commercial Code Article 9: Secured Transactions, with the stated goal that all 50 states and the District of Columbia enact it to take effect on July 1, 2001. Unlike most recent efforts to revise or amend the UCC, NCCUSL and the ALI got almost exactly what they sought: 45 jurisdictions enacted Revised Article 9 in time to meet the target effective date of July 1, 2001; and, by spring 2002, Revised Article 9 was in effect in all 50 states (yes, even Louisiana) and D.C. Compared to its predecessor, Revised Article 9 covers more types of transactions, provides more streamlined filing procedures and requirements, is substantially more detailed, and contains significantly more explicit exceptions to its general rules. Of course, no model statute (much less one with many different constituencies, each with its own vested interests, involved in drafting) definitively answers every question that it raises—which inevitably leads to inconsistent judicial interpretations and applications. Moreover, each state enacts its own version of the UCC and can add to, subtract from, or revise the uniform product of NCCUSL’s and the ALI’s efforts when enacting or amending its own version of a new or revised Article.

Nearly a decade after the Revised Article 9 drafting committee completed its work, NCCUSL and the ALI formed a joint UCC Article 9 Review Committee, which began its work in 2008 and presented the ALI and NCCUSL in May and July 2010, respectively, a number of proposed amendments—which the ALI and NCCUSL approved—to the text of and the official comments to uniform Revised Article 9. State legislatures began considering the 2010 Amendments earlier this year, and ten states—including Nevada—have enacted some or all of them (although the amendments are not yet in effect anywhere. I was a consultant to the Joint Review Committee and participated in all of its meetings and all of its conference calls that did

1 REPO MAN (Edge City/Universal 1984). Don’t confuse this screwball 1984 cult classic, starring Emilio Estevez, with 2010’s far grittier Repo Men, starring Jude Law, Forest Whitaker, and Liev Schreiber, for which the tag line might be “It’s 4 A.M. Do you know where your pancreas is?”

2 By comparison, the ALI and NCCUSL comprehensively revised UCC Articles 1 and 7 in 2001 and 2003, respectively, and extensively amended Articles 3 and 4 in 2002 and Articles 2 and 2A in 2003. As of August 1, 2011, forty states (including Nevada) had enacted Revised Article 1; thirty-nine states (including Nevada) had enacted the Revised Article 7; ten states (including Nevada) had enacted the 2002 Article 3 and 4 amendments; and only Oklahoma had enacted any of the 2003 amendments to Article 2 and 2A. See http://www.law.unlv.edu/faculty/rowley/ucc_updates.htm.
not conflict with my teaching duties. Although they are not yet in effect in Nevada or elsewhere, we’ll discuss some of the 2010 amendments, as well as some of the factors motivating them, the dynamics involved in drafting them, and the obstacles to state enactment.

**Course Coverage and Approach**

UCC Article 9 governs security interests in, and to some extent non-Article 9 liens against, personal property. In addition to studying Article 9 (and related UCC provisions) extensively, we will also spend some time with non-UCC state law governing debtor-creditor relations, as well as related federal consumer protection and bankruptcy law.

I will teach this course using cases and problems – with emphasis on the latter – designed to explore, illustrate, expand upon, and occasionally confound the text, purpose, or both, of Article 9 and other relevant statutes and regulations.

**Goals and Objectives**

I aspire, at a minimum, to teach you the fundamentals of the law governing creditors’ claims against debtors’ personal property, including

- the scope of Article 9 and selected other federal and non-UCC state law,
- how creditors create and memorialize security interests and other personal property liens,
- what rights a security interest or other lien gives a creditor against a debtor and against others who claim an interest in the debtor’s personal property,
- what actions, if any, a creditor must take to perpetuate its rights against the debtor and against others who claim an interest in the debtor’s personal property, and
- what remedies a creditor has against a defaulting debtor, what steps a creditor must take in order to realize the benefits of those remedies, and some of the limitations federal and state non-UCC law impose on creditors exercising those remedies,

as well as some of the practice and theory underlying that body of law and shaping its continuing development. I also hope to inspire you to critically evaluate the applicable law, relevant authorities, and the conclusions one should draw from them.

**Class Meetings**

We will meet in **Room 110** every **Monday** from **3:35 p.m. to 5:00 p.m.** and **Wednesday** from **3:05 p.m. to 4:30 p.m.** beginning August 22nd and ending November 21st – except for Monday, September 5th (Labor Day) and Wednesday, September 7th, when I will be speaking at the annual meeting of the Society of Legal Scholars in Cambridge, England. We will make-up the September 7th class (most likely at our regular time on Thursday, November 17th – but I’ll confirm that date later). If I miss any other scheduled class meeting, I reserve the right to schedule a make-up class.
Office Hours and Availability

My office is RAJ 428. My office hours are Mondays from 5:15 to 6:00 p.m. and Wednesdays from 4:45 to 6:00 p.m. I will also be available in Room 110 immediately after our class meeting most Monday and Wednesday afternoons and Mondays (and Wednesdays except for nights on which SELA bowling is scheduled) from 9:15 to 10:00 p.m. If I am not yet in my office by 5:15 p.m. on Mondays or 4:45 p.m. on Wednesdays, it will almost certainly be because I am still or have been answering student questions in Room 110.

I am in my office (except for occasional forays to the library, committee meetings, faculty meetings, or to hear guest speakers) most afternoons (and some mornings, too). Feel free to drop in. I will either see you then or arrange a time to meet with you. I will make every effort to accommodate you if you want to schedule an appointment during or outside of my posted office hours. I am also available by e-mail at keith.rowley@unlv.edu, usually beginning around 9:00 a.m. and often as late as 1:00 a.m., whether I am in town or not. I will respond to your e-mails as promptly as I can, and will generally “cc” the whole class if doing so is appropriate.

Required Materials

Our principal text will be James Brook, Problems and Cases on Secured Transactions (2008). You will also need the official UCC text and comments, selected provisions of the U.S. Bankruptcy Code, selected non-UCC state statutes and regulations, and selected non-Bankruptcy federal statutes and regulations. Ronald J. Mann, Elizabeth Warren & Jay L. Westbrook, Comprehensive Commercial Law: 2011 Statutory Supplement3 reproduces the UCC and relevant Bankruptcy Code provisions, as well as some of the relevant other state and federal law. Both titles are available at the UNLV Bookstore, as well as from Aspen and various online booksellers. I will also assign readings that are not included in either of the required texts. I will make these materials available as far in advance of the date we will discuss them as I can.

Optional Materials


3 If you already own the 2009 or 2010 edition of Comprehensive Commercial Law, or a recent edition of West’s Selected Commercial Statutes (Chomsky et al. eds.) or Commercial and Debtor-Creditor Law: Selected Statutes (Baird, Eisenberg & Jackson eds.), you need not purchase the 2011 edition of Comprehensive Commercial Law for this course. That said, be aware that no 2009 or 2010 statutory supplement will contain the 2010 amendments to UCC Article 9 and that there may be minor differences between the current version of certain provisions of the U.S. Bankruptcy Code and the version contained in an older statutory supplement. The Library has the 2010 edition and will have the 2011 edition as soon as it is available; if you’re using an older or different book, you should compare it to Comprehensive Commercial Law and make note of the differences.

Students looking to test their ability to apply the legal concepts about which we will read and discuss in class, the law library and UNLV Bookstore have copies of James Brook, Secured Transactions: Examples & Explanations (5th ed. 2010), Scott J. Burnham, The Glannon Guide to Secured Transactions: Learning Secured Transactions Through Multiple Choice Questions and Analysis (2007), and Bruce A. Markell & Timothy R. Zinnecker, Questions & Answers: Secured Transactions (2003 & 2d ed. 2011). There are also some good Article 9 tutorials available on-line from http://www.cali.org.

For the truly ambitious or genuinely interested, the law library has copies of a number of useful references, including White & Summers’s four-volume Uniform Commercial Code (5th ed.), Barkley & Barbara Clark’s two-volume The Law of Secured Transactions Under the Uniform Commercial Code, the late William D. Hawkland et al.’s multi-volume Uniform Commercial Code Series, Ronald A. Anderson & Lary Lawrence’s multi-volume Anderson on the Uniform Commercial Code, and the late Grant S. Gilmore’s two-volume Security Interests in Personal Property (1965). (Gilmore’s book obviously pre-dates the 1999 Article 9 revision. However, as the principal draftsman of the original Article 9, his book offers valuable insights into what the Revised Article 9 drafters were revising and what they left as they found it.) I can suggest still other titles if you want to learn more.

Obviously, I do not expect any of you to read all of the foregoing this semester, this year, or even this lifetime. My aim is to offer you access to as much helpful information as you desire. I have my own copies of most of the above, as well as some other useful titles. If you find yourself pressed and unable to locate a resource that you want to review, come by my office. If I am in, and if the book you want is available, I will allow you to look at it in my office.

LexisNexis Web Course/Web Content

I will create a restricted-access LexisNexis Web Course, to which I will post electronic copies of all class announcements, reading assignments, assigned readings not appearing in either the Brook text or the Mann, Warren & Westbrook statutory supplement, optional written assignments, topical outlines, PowerPoint slides, sample questions and answers, and useful links, and will include an interactive discussion board and an e-mail list. You must be registered for Secured Transactions and must have a LexisNexis Custom ID or password to access the Web Course. If you do not have a LexisNexis Custom ID or a Lexis password, please get one as soon as possible. If you are registered for Secured Transactions and cannot access the Web Course, despite having a valid LexisNexis Custom ID or a Lexis password, please e-mail me and I will give you access to the Web Course. If the e-mail address associated with your current LexisNexis Custom ID or a Lexis password is not the e-mail address you normally use, please update your e-mail address. You should regularly check the e-mail address associated with your LexisNexis Custom ID and the Web Course for important announcements and content.
Reading Assignments

I will periodically distribute an updated Reading List, the first installment of which is attached. **For the first week of class, read** (or skim, where indicated) all of the items in **Topics I.A and I.B**, as well as the **Introduction to Debtor-Creditor Law** handout posted to the Web Course. We should get into Topic I.B.1 before the end of our first class and into or through Topic I.B.3 by the end of our second class. I reserve the right to modify assignments as circumstances dictate. I will always try to tell you before the end of a particular day’s class what I expect to cover in the next class or two. I will make every effort to post all assigned readings not included in the Brook text or the Mann, Warren & Westbrook statutory supplement to the LexisNexis Web Course at least one week prior to the class meeting in which we discuss them.

Grades

Grades are not a reflection of your value as a human being (or, in some instances, your potential as a lawyer). However, they can be important, everything else being equal, in securing a certain summer job, a judicial clerkship, or other post-law school employment. Moreover, there is a strong historic correlation between Boyd students’ grades and their performance on the Nevada Bar Exam. I will make every effort to fairly evaluate your exam, other written work, and in-class performance and to assign you a course grade that fairly reflects that performance.

Class Attendance and Participation

Teaching you how to “think like a lawyer” about secured transactions and related matters works best if you regularly prepare for, attend, and participate in class. I reserve the right to raise or lower your final grade by up to one-half letter (e.g., from B to B+ or from B to B-) based on your class attendance and participation. Furthermore, ABA Standard 304(e) dictates that “[r]egular and punctual class attendance is necessary [for a student] to satisfy residence credit and credit hour requirements.” Therefore, I also reserve the right to drop any student who misses all or most of seven or more class meetings (with or without excuse) or to reduce her course grade by one-half letter grade for each class missed following her sixth absence.

Written Assignments

I anticipate making periodic written assignments and will factor your performance on those assignments into your course grade, *provided that doing so improves your course grade*. You may choose whether to complete each assignment and submit your work. If you do, your grade on the optional assignment will count toward your course grade – thus reducing the weight of the final exam – unless counting it would lower your course grade; if you do not, it will not count against you, but your final exam grade will weigh more in calculating your course grade.

Periodic Quizzes

I may also offer short quizzes throughout the semester to allow you and me to better assess your grasp of key concepts, some of the nuances surrounding them, and the cumulative nature of the material. We’ll discuss in the first week or two of the semester whether I will require these quizzes or make them optional.


Exam

The largest component of your grade will be your performance on the final exam scheduled for **Tuesday, December 6th, at 9:00 a.m.** The final exam will include questions designed to test the breadth of your knowledge of the material we will have covered, the depth of your knowledge of particular topics, and your analytical skills. As the semester progresses, I will let you know the precise format of the exam and what materials you may use to assist you in taking it. I will also provide you with sample exam questions and answers from prior semesters.

Calculating Your Course Grade

Current BSL policy permits me (1) to consider work graded nonanonymously and your classroom performance (as discussed above), as well as your performance on the anonymously-graded final exam; and (2) to combine anonymous and nonanonymous grade components after obtaining exam number identities from the registrar, provided that I disclose that fact in writing before the end of the first week of the semester.

I plan to calculate your course grade in the following manner:

<table>
<thead>
<tr>
<th>Component</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Final Exam</td>
<td>75-100%</td>
</tr>
<tr>
<td>Written Assignments &amp; Quizzes</td>
<td>0-25%</td>
</tr>
<tr>
<td>Class Participation</td>
<td>-5% to +5%</td>
</tr>
</tbody>
</table>

I hereby disclose to you that, as I have done for the entirety of my legal teaching career, I will grade all optional written assignment(s) nonanonymously, and will calculate final course grades, including class participation and optional written assignment grades, after the registrar reveals whose name goes with each exam I.D. number. Never fear. I take grades too seriously and value my reputation as a fair grader too much to play favorites.

Accommodating Disabilities

UNLV complies with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, offering reasonable accommodations to qualified students with documented disabilities. If you have a documented disability that may require accommodation, you will need to contact the Disability Resource Center (DRC). The DRC coordinates all academic accommodations for students with documented disabilities. The DRC reviews and maintains student disability documentation and provides students with an official Academic Accommodation Plan to present to their professors if the DRC concludes that an accommodation is warranted. UNLV strongly discourages faculty from accommodating students who lack an Academic Accommodation Plan.

The DRC is located in the Student Services Complex (SSC-A), Room 143. Its contact numbers are: Tel: (702) 895-0866; TTY: (702) 895-0652; Fax: (702) 895-0651. For additional information, visit: **http://studentlife.unlv.edu/disability/**.
I. Introduction to Debtor-Creditor Law

A. (Mostly) Non-UCC Debtor-Creditor Law
Brook, pp. xxiii-xxiv, xxvii & 1-13
UCC §§ 1-201(b)(13); 9-102(a)(52)(A)&(C)


Sportsco Enterprises v. Morris, 917 P.2d 934 (Nev. 1996)

B. UCC Article 9’s Scope

1. Generally
Brook, pp. 13-25
UCC §§ 1-201(b)(3), (12), (26)-(27) & (35); 9-102(a)(12), (28)(A), (59), (72)(A) & (73) & 9-109(a)(1)


2. The Security Interest-Lease Distinction
Brook, pp. 343-357
UCC §§ 1-203; 2-103(1)(a) & (d) & 2-106(1)**; 2A-103(1)(j)


UC Leasing v. Laughlin, 606 P.2d 167 (Nev. 1980)


In re Copeland, 238 B.R. 801 (Bankr. E.D. Ark. 1999)

Sharer v. Creative Leasing, 612 So. 2d 1191 (Ala. 1993)

* We will study Revised UCC Article 1, which was in effect as of August 1 in 40 states (including Nevada).

** We will study the pre-2003 versions of UCC Articles 2 and 2A.
3. **Excluded Transactions (and Their Included Cousins)**
   Brook, pp. 373-385***
   UCC §§ 9-102(a)(41), (42) & (55), 9-109(b)-(d) & 9-334(a)
   *Board of Trustees of Vacation Trust Carpenters Local No. 1780 v. Durable Developers*, 724 P.2d 736 (Nev. 1986)

C. **Characterizing Collateral**

1. **Tangible Collateral**
   Brook, pp. 27-39
   UCC §§ 2-105(1); 9-102(a)(23), (33)-(35), (44), (48), (53) & (75)

2. **Intangibles and “Quasi-Intangibles”**
   Brook, pp. 41-47
   UCC §§ 1-201(b)(6), (16), (31), (42) & (43); 3-103(a)(8) & (12), 3-104(a)-(f); 7-104 & 7-201(b); 9-102(a)(2), (11), (13), (29)-(31), (47), (51), (61), (65), (69) & (78)

3. **Investment Property**
   Brook, pp. 49-57 (skip Problem 4.4(b))
   UCC §§ 8-102(a)(2)-(4), (7) & (13)-(18), 8-201(a), 8-301 & 8-501(a) & (b); 9-102(a)(14)-(17) & (49)

*** For the present, limit your analysis of Problem 30.2 to whether a patent is personal property in which the bank could take a security interest within the meaning of UCC § 1-201(b)(35); and, if so, whether federal patent law preempts UCC Article 9 within the meaning of UCC § 9-109(c)(1)? We’ll discuss the perfection issue Problem 30.2 raises later in the semester.