

Secured Transactions  
LAW-719

Professor Michael Simkovic  
msimkovic@law.usc.edu  
Office: 468

Assistant, John J. Lee, johnlee@law.usc.edu

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Room 223  
Monday / Wednesday, 10:00 am to 11:15 am

Syllabus

Course Objectives

After completing this course, I would like you to understand:

- The tools available to unsecured creditors to collect on debts and the limits of those tools
- The advantages that secured creditors have in collecting on debts and recovering from creditors and why debtors can benefit from agreeing to grant security
- The process by which a security interest attaches to collateral, including how to draft a simple security agreement
- The process of perfecting a security interest so that it will be valid against third party claimants to the same collateral, including how to draft a simple financing statement
- Coordination among secured creditors and collateral buyers through notice filing and registry systems and de facto penalties for inadequate notice or inadequate searching
- Basic concepts relating to how priority is determined among competing claimants to the same collateral
- Some of the basic interactions between state commercial law governing secured lending and federal bankruptcy law

## Course Description

“Secured Transactions” should be called “Secured Lending” or “Secured Credit.” This is a class about money. Specifically, how can creditors use the legal system to increase the chances that they are repaid in full, on time, with a minimum of hassle and expense? This is also a class about why and when debtors cooperate with creditors, and when and how debtors resist. It is a class about conflict between different groups of creditors or claimants to the same collateral, how creditors try to manage those conflicts, and how debtors can exploit those conflicts. You will learn how to read statutes closely, think strategically, and consider how to help clients solve problems through negotiation and preparation, turning to litigation only as a last resort. You will also learn how to draft some very basic, very simple legal documents, and some of the challenges this entails. This is a course for second- and third-year students who have already mastered reading cases. The threshold intellectual task here is to read statutes; the ultimate intellectual task is to learn how law functions together with other elements as a law-related system.

What you learn in this class will be valuable to you in a career in law, finance, or business. This is not only my judgment, but also the collective judgement of the labor market. According to the U.S. Department of Labor, from 2014 to 2019, the price of business, commercial and bankruptcy legal services has grown 24 percent, compared to only 16 percent for legal services on average and 10 percent for consumer prices.<sup>1</sup> Among legal services, only the price of tax services has grown faster (26 percent) than business, commercial, and bankruptcy services. (The price of investment banking services has grown even faster—32 percent—albeit with more volatility and therefore greater risk than corporate legal services).<sup>2</sup>

## Required Reading

The required textbook is LYNN M. LOPUCKI & ELIZABETH WARREN, SECURED CREDIT: A SYSTEMS APPROACH (Aspen, 7th ed. 2012). Please note that we are not using the recently released 8th edition. At this point, I do not think that the updates between the editions justify the additional cost of the new edition. (The 7th edition can be found used for around \$10; the 8th edition costs around \$170 new). Please note the errata sheet posted to the course website. For example, in problem 3.1, the reference to 9-102(a)(72) and (73) should be (73) and (74).

<sup>1</sup> U.S. Bureau of Labor Statistics, Producer Price Index by Industry: Offices of Lawyers: Bankruptcy and Other Business and Commercial Legal Services [PCU541110541110903], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/graph/?g=pTge>, January 10, 2020.

<sup>2</sup> U.S. Bureau of Labor Statistics, Producer Price Index by Industry: Offices of Lawyers: Bankruptcy and Other Business and Commercial Legal Services [PCU541110541110903], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/graph/?g=pTgA>, January 10, 2020,

Reading statutes is **essential** to your success in this class. I recommend the statutory supplement that goes with this textbook: ELIZABETH WARREN, BANKRUPTCY AND ARTICLE 9: STATUTORY SUPPLEMENT. It has the most recent versions of the statutes we will discuss.

A free online version of the U.C.C. is available, along with links to different states' versions of the U.C.C. <http://www.law.cornell.edu/ucc/ucc.table.html/> However, free online resources may be out of date or contain errors, and may not have the official comments. Electronic versions are also available online through Lexis, and can be downloaded or printed.

[The ABA model rules of professional conduct](#) may be helpful to refer to for problems that call for you to step into the shoes of a lawyer advising clients.

Please be sure to bring a print copy or printout of the statutes to the exam.

### Course Work & Grading

Your grade in the class will be based on an open book final examination and two graded assignments, discussed below. Each assignment will be worth one multiple choice question on the exam. (The exam will consist primarily and possibly exclusively of multiple choice questions). The remainder of your grade will be based on the exam.

It is absolutely essential that you attempt to complete the assigned problems before every class, and review the problems after class. The problems are the primary method through which you will learn the material. This course relies on the problem method. You learn by reading about the system, seeing the material applied in various situations in the text, and then applying the material in new situations as you work the problems. For the problem method to work, you must be an active participant. Reading the solutions to the problems from the notes of former students will prepare you neither for the final exam nor for practice and may interfere with class discussions. You may work on problem sets in groups with other students in the class. You may not look at outlines from former students showing the answers to the problems until after we have discussed those problems in class.

I encourage you to form study groups to work the problems before class. I recommend forming a small study group (2-4 students) and meeting before class to discuss the problems, and at the end of each week to review.

### Problem 9.8

Problem 9.8 requires you to draft the document necessary to create a security interest in an object I will bring to class. The document should be one that, if you advanced \$1,000 to me as a loan and I

signed the document, would create a valid, legally enforceable security interest in the object. You are to omit all provisions not necessary to achieve validity and legal (not practical) enforceability. Also, do not take a security interest in anything other than the object. You will find the readings for Assignments 8 and 9 very useful in preparing the document. This task is not as hard as it might sound and should be within the ability of a first-year associate.

You may use form documents or other documents consistent with what would be the practice in a law office. (Obviously, you may not copy someone else's work from the class.) You are responsible, however, for the document. For example, mistakes in the form or using the wrong form are your error. Also, any forms will need to be adapted to meet the facts of the problem. That is, except for my signature, do not submit an agreement with blanks that need to be completed.

The document is due before the beginning of our class on \_\_\_\_ (TBA). You are to submit an electronic copy of the document by e-mail to my faculty assistant, **johnlee@law.usc.edu**. In the subject line use only these words: "LAW-719 Security Interest." If you do not receive an acknowledgement of receipt, please contact Mr. Lee right away.

If the document creates a valid, legally enforceable security interest, it will receive a pass. If I have doubts about a particular document, I may e-mail you asking for argumentation and case law supporting the enforceability of your security interest. In real life, an agreement that almost but not quite creates a valid, legally enforceable security interest is a failing document, and that will be the case here.

### Problem 18.7

Problem 18.7 requires you to draft a financing statement to perfect the security interest you created in Problem 9.8. (If your document from Problem 9.8 failed to create a valid security interest, we will pretend it did for purposes of Problem 18.7.) Standard search logic is in effect. Do not send filing fees or a cover letter. You should consider use of the Official Form in UCC § 9-521. You will find the readings for Assignments 16, 17, and 18 very useful in preparing this document. This task is not as hard as it might sound and should be within the ability of a first-year associate.

The document is due before the beginning of class on \_\_\_\_ (TBA). You are to submit an electronic copy of the document by e-mail to my faculty assistant, **johnlee@law.usc.edu**. In the subject line use only these words: "LAW-719 Perfection of Interest." If you do not receive an acknowledgement of receipt, please contact Mr. Lee right away.

If the document perfects the security interest, it will receive a pass.<sup>1</sup> If I have doubts, again I may e-mail you asking for argumentation and case law supporting the enforceability of your security interest. In real life, there is no such thing as a security interest that is "almost" perfected. Defective perfection is a failure, and that will be the case here.

### Class Participation & Class Attendance

Class attendance, participation, and preparation are expected. I strongly recommend you attend class every day. I reserve the right to reward exceptional class participation or penalize exceptionally poor class participation in determining the final grade.

From time to time, I may offer students an opportunity to research legal or business questions that arise during the course of the semester. Participation will be open to any member of the class who is interested. I will share high quality answers with the rest of the class. Participation in such research assignments and quality of output will be considered for possible upward discretion.

During class, you may be connected to the Internet only for purposes related to class. This would include, for example, looking at a court opinion we are discussing or searching for information relevant to a point we are discussing. This does not include, for example, reading the news, e-mailing classmates, or sending instant messages. I very much encourage the use of computers in the classroom and encourage you to be active learners. Like any technology, however, computers can be misused. Please do not let your computer become a distraction to you or your classmates.

### Office Hours:

I will stay after class to answer any questions. If you cannot meet at the end of class, please email me to set up an appointment on Monday afternoon or Wednesday afternoon, or contact **johnlee@law.usc.edu**. If it is inconvenient to meet in person, we can also schedule remote office hours by phone or through video conferencing, using either Google voice or Skype.

We can also schedule group lunches or coffee on class days if students are interested (2 to 4 students per lunch/coffee).

<sup>1</sup> "Perfection" will be taken to mean that the security interest would beat the bankruptcy trustee if I (as the debtor) filed bankruptcy the day after you submit the document and ignoring preferential transfer issues. We will not have covered the interaction of bankruptcy with security interests at this point in the course. For purposes of Problem 18.7, there is only one thing you need to know: a financing statement that has been defectively perfected does not protect in bankruptcy the security interest it covers.

### Name Placards and Seating

Please bring your name tent card to class and place it in front of you. If you lose your name tent card, you may obtain a free replacement from [johnlee@law.usc.edu](mailto:johnlee@law.usc.edu). Please keep the back-row empty for guests and visitors.

### Guest Lectures

There may be guest lectures from USC alumni or others working in industry. Students should attend these guest lectures, the same as any other class.

### Syllabus Revisions

I may post revisions to the syllabus or announce changes in class. Please check the course website regularly!

### Course Outline

The book is divided into forty (40) assignments. Each assignment is designed to be read as a whole before attempting any of the problems. I anticipate that we will cover roughly the first 20 to 25 assignments, perhaps concluding on assignment 22 or 23.

I will announce and/or post weekly assignments on blackboard and try to adjust as we go along. Because of the textbook's design, I may sometimes have to ask you to read ahead. We will likely complete approximately one problem set per hour and a half of class (so approximately two per week), perhaps a bit slower toward the beginning and faster toward the end.

At the end of each assignment is a problem set. It is vitally important that you attempt to answer the problems in the problem set before coming to class. A list of problems to skip is provided below. Because the problem method might be a new experience for your legal education, I will say a few words about it. Be aware that the problems are the primary way you will learn the material. Note the word "attempt." If you have the right answer, that is fine, but the point of the problems is to learn the material. I do not consider class discussion to be a quiz show where the point is to reward the person with the right answer. The whole point of the problems is that they are hard and often won't have an obvious answer.

Sometimes the answer will come to you, and sometimes, it will not. When it does not, we'll work through any difficulties in class, but class discussion is unlikely to be helpful if you're paging through the statute for the first time during class. You will see that the casebook directs you to the relevant statutory sections to answer the problem. If you do not try to work through the problems and read the statute before coming to class, you probably will have difficulty understanding the material.

Here is a general outline of our course coverage. Please complete all problems in each assignment listed, except for those assignments and problems that we are skipping, as noted below.

I. Creditors & Debtors

a. Chapter 1: Creditor's Remedies Under State Law

1. Assignment 1: Remedies of Unsecured Creditors under State Law
2. Assignment 2: Security and Foreclosure  
SKIP problems 2.6, 2.7, 2.8
3. Assignment 3: Repossession of Collateral  
SKIP problems 3.8, 3.9, 3.10
4. Assignment 4: Judicial Sale and Deficiency  
SKIP problem 4.6
5. Assignment 5: Article 9 Sale and Deficiency  
SKIP problems 5.5, 5.6, 5.8

b. Chapter 2: Creditor's Remedies in Bankruptcy

6. Assignment 6: Bankruptcy and the Automatic Stay
7. Assignment 7: The Treatment of Secured Creditors in Bankruptcy

c. Chapter 3: Creation of a Security Interest

8. Assignment 8: Formalities for Attachment  
SKIP problems 8.5
9. Assignment 9: What Collateral and Obligations Are Covered?  
SKIP problems 9.5, 9.7
10. Assignment 10: Proceeds, Products, and Other Value-Tracing Concepts  
SKIP problem 10.7

11. Assignment 11: Tracing Collateral Value During Bankruptcy  
SKIP problem 11.5

12. SKIP

d. Chapter 4: Default

13. Assignment 13: Default, Acceleration, and Cure under State Law; skip 13.7

14. SKIP

e. Chapter 5: The Prototypical Secured Transaction

15. Assignment 15: The Prototypical Secured Transaction

SKIP problem 15.5.a (but be sure to do 15.5.b., c., and d), skip 15.6

II. Creditors & Third Parties

a. Perfection

16. Assignment 16: The Personal Property Filing Systems

SKIP problem 16.3

17. Assignment 17: Article 9 Financing Statements: The Debtor's Name

SKIP problem 17.7

18. Assignment 18: Article 9 Financing Statements: Other Information

SKIP problems 18.3 to 18.6 (but complete the drafting exercise, 18.7).

19. Assignment 19: Exceptions to the Article 9 Filing Requirement

SKIP problems 19.5 to 19.7

20. SKIP

21. SKIP

[Note: if we have extra time, we may return to 20 and/or 21 later in the semester]

b. Maintaining Perfection

22. Assignment 22: Maintaining Perfection Through Lapse and Bankruptcy  
SKIP Problems 22.3 to 22.9 (but complete 22.1 and 22.2).

23. Assignment 23: Maintaining Perfection Through Changes of Name, Identity  
SKIP Problems 23.5 and 23.6 (focus on 23.1 and 23.2)  
NOTE: we may end around problem 23.

24. Assignment 24: Maintaining Perfection Through Relocation of Debtor or  
Collateral  
SKIP Problems 24.3 to 24.6 (only do 24.1 and 24.2)

25. SKIP

c. Priority

26. Assignment 26: The Concept of Priority: State Law  
SKIP Problems 26.5 to 26.7 (do only problems 26.1 to 26.4)

27. SKIP

d. Competing Rights in Collateral

28. Assignment 28: Lien Creditors Against Secured Creditors: the Basics  
SKIP Problems 28.7 to 28.9

29. Assignment 29: Lien Creditors Against Secured Creditors: Future Advances

30. SKIP

31. Assignment 31: Preference [we may skip if time is short]

32. Assignment 32: Secured Creditors against Secure Creditors: The Basics  
SKIP Problems 32.8-32.9.

33. SKIP

34. Assignment 34: Marshaling Assets, PMSI / Cross Collateralization  
Skip Problems 34.6-34.8

35. SKIP

36. Assignment 36: Buyers Against Secured Creditors  
Up to problem 36.6 (skip 36.7 and beyond)

**Problems to skip:**

2.6, 2.7, 2.8

3.8, 3.9, 3.10

4.6

5.5, 5.6, 5.8

8.5

9.5, 9.7

10.7

11.5

Problem set 12

Problem set 14

15.5.a (but be sure to do 15.5.b., c., and d), 15.6

16.3

17.7

Problems 18.3 to 18.6 (but complete the drafting exercise, 18.7).

Problems 19.5 to 19.7

Problem sets 20, 21

Problems 22.3 to 22.9 (but complete 22.1 and 22.2).

Problems 23.5 and 23.6 (focus on 23.1 and 23.2)

Problem 24.3 to 24.6 (only do 24.1 and 24.2)

Problem set 25

26.5 to 26.7 (do only problems 26.1 to 26.4)

Problem Set 27

28.7 to 28.9

Problem set 30

32.8 to 32.9

Problem Set 33

34.6 to 34.8

Problem Set 35

36.7 to 36.8

I look forward to a great semester!

### Class recordings

Class recordings will be available during the semester to students who miss class because of illness, death of a family member or other serious family emergencies, or a job interview that could not be scheduled to avoid missing class. If one of these situations arises, to request the recording please email me, John J. Lee, and IT (David Dihn, [ddinh@law.usc.edu](mailto:ddinh@law.usc.edu)) with the name of the class, the room number, day and times, and the reason for the absence. Class recordings will be made available to all students during the last week of class to be used for exam review purposes.

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## **USC Statement on Academic Conduct and Support Systems**

Plagiarism – presenting someone else’s ideas as your own, either verbatim or recast in your own words – is a serious academic offense with serious consequences. Please familiarize yourself with the discussion of plagiarism in *SCampus* in Part B, Section 11, “Behavior Violating University Standards” <https://policy.usc.edu/scampus-part-b/>. Other forms of academic dishonesty are equally unacceptable. See additional information in *SCampus* and university policies on scientific misconduct, <http://policy.usc.edu/scientific-misconduct>.

### **Support Systems:**

*Student Counseling Services (SCS) - (213) 740-7711 – 24/7 on call*

Free and confidential mental health treatment for students, including short-term psychotherapy, group counseling, stress fitness workshops, and crisis intervention. <https://engemannshc.usc.edu/counseling/>

*National Suicide Prevention Lifeline - 1-800-273-8255*

Provides free and confidential emotional support to people in suicidal crisis or emotional distress 24 hours a day, 7 days a week. <http://www.suicidepreventionlifeline.org>

*Relationship & Sexual Violence Prevention Services (RSVP) - (213) 740-4900 - 24/7 on call*

Free and confidential therapy services, workshops, and training for situations related to gender-based harm. <https://engemannshc.usc.edu/rsvp/>

*Sexual Assault Resource Center*

For more information about how to get help or help a survivor, rights, reporting options, and additional resources, visit the website: <http://sarc.usc.edu/>

*Office of Equity and Diversity (OED)/Title IX compliance – (213) 740-5086*

Works with faculty, staff, visitors, applicants, and students around issues of protected class. <https://equity.usc.edu/>

*Bias Assessment Response and Support*

Incidents of bias, hate crimes and microaggressions need to be reported allowing for appropriate investigation and response. <https://studentaffairs.usc.edu/bias-assessment-response-support/>

*Student Support & Advocacy – (213) 821-4710*

Assists students and families in resolving complex issues adversely affecting their success as a student EX: personal, financial, and academic. <https://studentaffairs.usc.edu/ssa/>

*Diversity at USC – <https://diversity.usc.edu/> Tabs for Events, Programs and Training, Task Force (including representatives for each school), Chronology, Participate, Resources for Students P*