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Examples & Explanations: Secured Transactions 6th Edition

James Brook
New York Law School

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Secured Transactions

Sixth Edition

James Brook



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Secured Transactions

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Sixth Edition

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For Johanna and Andrew

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I start with a simple assumption. You come to this book because for one reason or another you want to learn the basic law relating to secured transactions involving personal property collateral as such transactions are governed by Article 9 of the Uniform Commercial Code. You may be trying to pick this up on your own, but more likely you are in a course — either a course devoted distinctly to the topic or a more expansive survey course in commercial law that will necessarily devote a great deal of time to the subject. The book may have been assigned or recommended as additional reading by the professor teaching the course, or you may have come upon it on your own as means of review. Whatever the circumstances, I hope this book is of help. If it is, it will not be simply because you bought it or even because of the considerable energy I put into writing it, but because of the time, energy, and thought you put into using it. Here are a few basic points you should understand from the outset if you are to make the best use of what I have written and what you have bought:

- This is not a review text. You may find it helpful to think of it as a kind of workbook, giving you an organized way of *working through* the various sections, definitions, concepts, and controversies that make up the modern law of secured transactions as rendered in Article 9 of the Uniform Commercial Code.
- This volume is not a substitute for your own copy of the Uniform Commercial Code (including Official Comments). I will be quoting snippets of the Code from time to time. At other points I may simply suggest that you “recall the rule of §9-322(a)(1)” or “look to §9-609(c).” What you have here should not distract you, however, from the fundamental proposition that the law you are learning is found in, not merely suggested by or illustrated through, the exact language of the Code as it has been enacted into law in the several states. I assume throughout that as you work through the material you will always have at your side and at the ready the primary text for the study of secured transactions, the Code itself.
- The general organization and sequence of chapters follows what is a fairly standard order in which the various topics are taken up in courses on secured transactions. You should certainly start with Chapter 1 and move on from there. If this book has been assigned or

recommended by your professor, you will of course follow his or her instructions as to which chapters to look to when and even as to which examples to do and which to leave for another day. If you are working through the book on your own and trying to coordinate it with your course, you should be able to determine fairly easily which chapters to take up just by the chapter headings. But if you are having any trouble finding where to turn, there is help available by topic in the index and a table showing which Uniform Commercial Code (U.C.C.) sections are dealt with, both at the back of the book.

- Each chapter is structured in the same way: with introductory text and a set of examples for you to ponder, followed finally by my own explanations of the questions asked and issues raised by the examples. It is very important that you appreciate that the introductory text does not purport to outline or give a full account of the chapter's topic. This is not the type of book in which you are given all the law up front and then asked to apply the rules and principles to the questions that follow. The law you are going to have to apply is to be found in the Uniform Commercial Code, which you have right there with you. In some chapters the introductory text can be very brief. In others it goes on for a while. But in any event the introductory text is meant only to set the stage; its purpose is to put you on the best possible course for learning through the examples. In other words, if you aren't prepared to go through the examples thoroughly on your own—if not writing down a carefully constructed answer to each one then at least jotting down an idea or two on how you see the situation and how you expect the Code would deal with it—then there's really not much point in your starting the chapter to begin with.

One final note on the examples: It will not surprise you if, when you get to my analysis in the explanations, you find I cannot offer a simple yes or no in many cases. I am, after all, a law professor, and this subject, like any other you have already studied, has its unresolvable questions, places where the statute seems to be of little or no help, and "subtle" difficulties. On the other hand, don't think just because this is the study of law that the answer to even the most simple question must necessarily be open to argument or subject to competing analyses. Sometimes—perhaps most of the time—a question can and should be answered in a word or two, directly and without any hedging. If the answer is yes, you should say yes. If no, say no. Beyond that, of course, you should go on to say *why*—citing the Code, chapter and verse—you respond as you do. I always give my students in commercial transactions courses some rules of thumb, which are in general good advice

when dealing with this material, to follow in writing their examination answers:

- Where an answer is given or suggested by a specific section of the Code, make reference to that section.
- Where a particular subsection is relevant, cite the subsection.
- Where a particular word or phrase in the section or subsection is of importance to your answer, identify that word or phrase exactly.
- Where an Official Comment answers—or seems to answer—the question, refer to it, reporting as you do whether you have any qualms or questions about the position taken in the Comment.
- Where the answer appears to be dictated by a single fact or a set of facts, make clear what facts those are.

If, as will sometimes be the case, the answer has to be “that depends,” say *on what you see the outcome depending*. If you need to know other facts to better analyze the situation, say *whom you would ask and what you would want to know*. If the answer seems to depend on how a court would interpret a particular provision or how it would settle a seeming conflict between two provisions, what are the various possible interpretations or resolutions? What argues for one resolution over the other?

As I have said, I hope and expect this book will be helpful. If at the same time you find it stimulating and even mildly entertaining, then so much the better.

James Brook
October 2013

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