Supplemental Problems

SECURED TRANSACTIONS A Systems Approach

Ninth Edition

LYNN M. LOPUCKI
Security Pacific Bank Distinguished Professor of Law
UCLA School of Law

ELIZABETH WARREN
Leo Gottlieb Professor of Law Emeritus
Harvard University

ROBERT M. LAWLESS
Max L. Rowe Professor of Law
University of Illinois College of Law

Published by Wolters Kluwer Law & Business in New York.

Wolters Kluwer Law & Business serves customers worldwide with CCH, Aspen Publishers, and Kluwer Law International products. (www.wolterskluwerlb.com)

Copies of these Supplemental Problems are available in electronic form. Teachers who have adopted the casebook may obtain a copy of the files, free of charge, by calling a Wolters Kluwer Law & Business sales assistant at 1-800-950-5259, or by emailing legaledu@wolterskluwer.com.

How to Use the Supplemental Problems

This document contains supplemental problems for the Ninth Edition of the *Secured Transactions: A Systems Approach*. All of the supplemental problems had previously appeared in the textbook's Eighth Edition.

In the textbook, we have a default problem set for each of the assignments that we recommend instructors cover. Instructors looking for more detailed coverage of particular topics will find the supplemental problems useful. The answers to all of the supplemental problems appear in the Teacher's Manual for the textbook. If instructors would like to identify supplemental problems to add to their course, we recommend that instructors review the answers in the Teacher's Manual to understand the coverage of each problem.

We have designed the Supplemental Problems so that instructors can conveniently use the problems they want. Each problem appears on its own page. Instructors can simply distribute the pages they wish to use or incorporate these pages into their own materials. We have not put page numbers in the supplemental problems and recommend using the search/find function (Ctrl+F or Command-F for the Apple users) to locate a problem number. We have asked Aspen to make this document available in both PDF and Microsoft Word versions. Instructors are welcome to distribute problems in paper form as photocopies or in electronic form.

Table of Contents

1.6. During a deposition in aid of execution, you, as Benning's lawyer, asked Martin whether anyone owed her (Martin) any money. Martin hesitated briefly in a way that made you suspicious, and then answered "Not that I can remember." You'd like to jog her memory, or maybe even set up a perjury charge, by following up with some questions that suggest specific kinds of debts that might be owing to her. What questions might you ask? If she does remember a debt, such as a bank account, how and when will you pursue that asset further?

2.7. You are on the staff of state Senator Candy Rowsey. Rowsey sees herself as an activist reformer, and she is concerned about the high cost and excessive litigation involved in mortgage foreclosure. The state currently permits only judicial foreclosure, and the statute has no mandatory waiting periods. But debtors struggling to save their homes or businesses often raise petty issues in the hopes of obtaining delays, much like what happened in the Davet story. Because Rowsey gets her campaign money from the banks and her votes from the farmers, she doesn't want to do anything that will harm either interest, but she is appalled at the waste of money and judicial effort as the parties fight over issues of no real importance. She wants you to come up with something that will be neutral in its effect but more efficient. Any ideas?

2.8. Arakaki, a general contractor, subcontracted work to C&S Electric. C&S subcontracted part of the work to Consolidated. Consolidated, C&S, and Arakaki also entered into a joint check agreement. The agreement provided that Arakaki would pay Consolidated's invoices by checks made payable jointly to C&S and Consolidated. (The effect of making a check payable to two payees is that neither of them can collect the check until the other indorses the check.) Arakaki promised to deliver the checks to Consolidated, and C&S agreed to indorse them to Consolidated. The agreement stated that its sole purpose was to provide for payment of Consolidated's invoices and that the agreement did not constitute an assignment of funds. Does this agreement constitute a security interest in favor of Consolidated in the corresponding accounts owing from Arakaki to C&S? UCC §§1-201(b)(35), 9-109(a)(1) and Comment 2.

3.7. As you were cleaning the sludge from your spam filter, your eye caught an email with the subject "Notice of Assignment of Account." The notice instructed you to pay your MasterCard bill to American Financial Corporation at a post office box in Phoenix, Arizona. As you stretched your finger toward the Delete key, you noticed that the email contained the last four digits of your MasterCard account number.

a. Is it possible that this is an effective notification to pay an assignee pursuant to UCC §9-406(a) and (b)? UCC §1-202(e).

b. What should you do next? UCC §9-406(c) and Comment 4 to §9-406.

3.8. You have been counsel for Ronald Silber, the owner of Sound Emporium, for several years. Silber tells you that the business is experiencing some temporary cash-flow problems and he would like your advice on how to deal with them. You elicit the following list of problems:

a. The business owes Southern Savings about $520,000 against the business premises, which are worth about $600,000. The mortgage is at 9 percent, and payments are $4,182 a month. Silber is two payments in arrears, and a third one is due next week. He received a notice from Southern's lawyers stating that if the payments are not brought up to date within ten days, Southern will foreclose. Assumed that, under the law of the state, if the mortgage is accelerated, the acceleration can later be reversed by paying the arrearage at any time "before foreclosure."

b. The business owes about $180,000 to Citizen's Bank. The loan is secured by the trade fixtures and equipment of the business. The loan is at 11 percent per year and the quarterly interest payment in the amount of $5,150 is 45 days past due. The loan officer says it must be brought current or "legal action will be taken."

c. The utility bill is almost two months past due. The total amount owing for the two-month period is about $2,400. Silber has received the standard form notice that unless payment is made within ten days, utility service will be cut off.

d. Two suppliers are hounding Silber to pay invoices that are now more than 120 days old. Silber owes each about $40,000. One supplier has a security interest in the inventory it sold to Sound Emporium; the other does not. Both suppliers have hired local attorneys and are threatening immediate legal action. Silber says he could purchase similar inventory elsewhere, but he would have to pay cash.

There are several other creditors, but none are really pushing for immediate payment. Silber wants desperately to keep the doors open because he thinks that in four to six months he can turn the business around. But over the next two or three months, he will have only about $8,000 a month to devote to the payments listed above. Silber says bankruptcy is "absolutely out of the question," and, from the way he says it, you know he means it (at least for now). Instead, he wants your opinion on how to allocate the money among these creditors and he also wants to know "what they can do if they don't get paid." What are your questions for Silber? What do you need to know about the law of your state? Based

on what you now know and assuming your state's law is in accord with the majority, what's your advice? See UCC §9-609.

> **Model Rules of Professional Conduct, Rule 3.2: Expediting Litigation** — A lawyer shall make reasonable efforts to expedite litigation consistent with the interest of the client.
>
> Official Comment: Dilatory practices bring the administration of justice into disrepute. . . . Nor will a failure to expedite be reasonable if done for the purpose of frustrating an opposing party's attempt to obtain rightful redress or repose. It is not a justification that similar conduct is often tolerated by the bench and bar. The question is whether a competent lawyer acting in good faith would regard the course of action as having *some substantial purpose other than delay*. Realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client. (Emphasis added.)

In light of these provisions, can you counsel Silber at all?

3.9. Your firm represents Stanley Zabriskie and Zabriskie Autos. When Zabriskie sells a car, he arranges financing. The loans are made by a separate financing company. When the buyer defaults, Zabriskie usually has to buy the loan back from the finance company and enforce it himself. (This procedure is known as recourse financing.) After a default and repurchase, Zabriskie typically refers the matter to Auto Repossessors. If Auto Repossesors can get possession of the car peacefully, Zabriskie pays them $300; if not, Zabriskie refers the matter to Tyler & Yin, a law firm that specializes in small collection cases. Tyler & Yin will file an action for replevin and, as permitted under local law, obtain the writ of possession without prior notice to the debtor. Provided that the debtor does not defend the replevin action, they charge a flat $600 for the case; otherwise they charge on an hourly basis.

Five months ago, Zabriskie Autos sold a car to Sandra Evans. Evans made the first two payments, then missed the next three. On the few occasions that Stanley Zabriskie has been able to contact her, she has complained about the quality of the car, the representations the salesperson made to her, and the financing Zabriskie obtained for her. Stanley Zabriskie thinks her complaints are just an excuse to keep him from repossessing, but when you press him, he admits there may be some truth to her claims. He'd like to "run this one through the regular procedure." As corporate counsel, what's your advice? UCC §9-609.

3.10. Your client, Rudy Russo, sells used cars to customers with bad credit. After encountering all sorts of problems with repossessions, he has found a technical solution. He wants to install a GPS device and a starter interrupt mechanism in each car he sells on credit. The technology will allow Russo to remotely disable the ignition of a car owned by any person who falls behind on his or her payments. If working correctly, the interrupt mechanism will not disable the car while it is moving, but a borrower could be left stranded in a remote location. If the borrower pays up, Russo can re-activate the car. If not, the GPS will tell Russo's employees where the car is located. Rudy wants to know if his idea would be legal under the UCC. Do you have any advice for him? UCC §§9-102(a)(33), 1-302(a) and (b), 9-602, 9-603(b), 9-609(a) and (b).

4.5. You received a call from Paul Tosci, a senior lending officer for Seal Rock Bank. The bank has been approached by a shopping center developer, Margo Marshak, who would like a $2.5 million standby commitment to enable her to bid on a shopping center that is to be sold at a judicial foreclosure sale. On the basis of recent sales of roughly comparable shopping centers, Tosci estimates the value of this one to be $5.1 million. He explains that Marshak will pay a $25,000 nonrefundable fee for the bank's legally binding commitment to lend $2.5 million against the shopping center in the event that the developer wins the bid. The bank will also earn the market rate of interest on the loan if the bank is called on to make it. Marshak will provide title insurance at her own expense and invest at least $500,000 of her own money in the shopping center. What advice do you give Tosci? Is this likely to be good business for Seal Rock? What problems do you foresee? Would you feel better about the deal if (1) Marshak was the one who originally developed the shopping center and her brother-in-law is the debtor being foreclosed against, or (2) Marshak is an outsider with no priorities to the shopping center?

4.6. You continue in your job as chief legislative aide to state Senator Candy Rowsey. A recent state supreme court decision has ruled that creditors can recover deficiency judgments from their debtors following any kind of foreclosure sale. Several newspaper editorials have decried this result, focusing on hapless homeowners caught in a real estate market downturn. Senator Rowsey chairs the judiciary committee, and she wants a recommendation from you on whether she should propose legislation to restrict deficiency judgments. Give her an outline of your point of view, including the kinds of restrictions you would choose if some proposal to limit deficiency judgments went forward.

5.7. You represent the Chavers, who have repossessed a Learjet from the Frazier Group, Inc. The debtor is insolvent. Even if a deficiency judgment is entered, it will be uncollectible. The Chavers estimate that the jet is worth about $800,000. The debt is about $850,000. The Chavers would like to avoid the expenses of sale and just keep the jet for their personal use.

a. What should they do? UCC §§9-610, 9-611, 9-620, 9-621.

b. What if the debtor objects to their retention of the collateral and they simply ignore the objection? See UCC §§9-619, 9-622. Will they have a title problem if they later decided to sell or encumber the plane? Model Rules of Professional Conduct Rule 1.16 provides: "[A] lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if: (1) the representation will result in violation of the rules of professional conduct or other law."

c. What if the Chavers simply announced that they have sold the jet to themselves for $800,000? UCC §§9-610(c), 9-617.

5.8. Assume that on the facts of Problem 5.4, Grizzly Bear Bank throws the hull away and sues the guarantors for the full amount of the debt. Through expert testimony, the guarantors prove that if Grizzly had spent $245,000 to install an engine and electronics in the hull, the helicopter would have sold for $345,000. To what deficiency judgment, if any, would Grizzly have been entitled? UCC §§9-102(a)(64), 9-626(a)(3).

9.8. The Gillams are also raising sheep on the property. They sell the wool and sometimes the cuddly little lambs themselves. (You've heard of lamb chops, right?) They would like your written opinion that the sheep are not covered by First Bank's security interest. With the opinion letter, they say that PCA will make a loan against the sheep. Can you give it? UCC §9-102(a)(34) and Comment 4.a. to UCC §9-102.

11.6. Your client, Globus Real Estate Investment Trust (Globus) holds a security interest against Hotel Sierra Vista. The description of collateral includes the real property, equipment, inventory, and "all income, rents, royalties, revenues, issues, profits, fees, accounts, deposit accounts, general intangibles, and other proceeds (including without limitation, room sales and revenues from sales of services, food and drink), presently owned or after acquired." Hotel Sierra Vista filed for bankruptcy on October 14 and on that same day the court entered an order that the hotel segregate and account for any cash collateral in the hotel's possession, but also permitting the hotel to "meet its operating expenses from those funds." The value of all collateral for the loan is substantially less than the amount owing to Globus. In accord with the order, the hotel opened a new bank account, deposited all receipts in it, and paid all expenses from it. The hotel's attorney sent you the following list of revenues and expenses for the first 17 days after bankruptcy. Globus wants to know how much money you think should be segregated as cash collateral under Bankruptcy Code §363(c)(4) and why:

	Type	Amount
Revenues	Room charges	$510,000
	Food and drink	121,000
	Total	631,000
Expenses	Room-related	410,000
	Food and drink—labor	70,000
	Food and drink—cost of goods	30,000
	Total	520,000
Operating Profit		$111,000

Some of the food and drink is served in the bar and restaurant, some of it is served in the rooms. Assume that neither the value of the hotel nor the value of the food and drink inventories on hand changed during the 17-day period since the filing of bankruptcy.

a. If the court follows *Gunnison Center Apartments*, what is your answer?

b. If the court applies the "equities of the case" exception in Bankruptcy Code §552(b), what is your answer?

c. If the court applies Bankruptcy Code §552(b)(2) literally to the room revenues and declines to make an exception based on the equities of the case, what is your answer?

12.7. a. Zelda Pirosky has come to see you about her financial problems. She owes a considerable amount of money on charge cards, charge accounts, and personal loans. The creditor that is giving her the most trouble is Incredibly Friendly Finance (IFF). Zelda borrowed $2,500 from IFF two years ago. Even though her payments on the account seem to her substantial, interest is running at 36 percent per year (which is the maximum legally permissible rate in your state) and the balance is now over $3,000. The loan application Zelda made asked for a detailed listing of all the property she owned. Zelda listed clothing, furniture, appliances, her four-year-old Toyota automobile, and numerous other items. After IFF approved her application, they asked her to sign a security agreement granting them an interest in the following items: video game set (replacement cost $500), a collection of pictures drawn by her children (no market value), old family photographs dating back to the Civil War (market value unknown), her jewelry (replacement cost about $500), her Toyota automobile (market value $2,000), her portable computer (market value $500), and any "replacements or substitutions." Zelda signed because she wanted the loan. Has IFF done anything illegal? 16 C.F.R. 444.

b. A few months ago, the video game set broke and Zelda replaced it with a new one, which she bought for $500. "I know I shouldn't have bought it, but the kids were hassling me more than Bob White," Zelda says. (After the pet lending business in Problem 12.6 did not work out, Bob started working as a collection officer for and IFF assigned him to Zelda's account.) Does IFF have a security interest in the new video game set? UCC §9-204(b)(1).

c. During her last conversation with Mr. White, White reminded Zelda of the terms of the security agreement and told her that if she did not get $250 to him by Monday, he very reluctantly would be forced to call the loan and take the collateral. Zelda is frantic. "I can't do without any of these things," she says, "but even if I paid Mr. White the $250, he'll just want more." What do you advise? Bankr. Code §522.

13.7. Teresa Revez, a personal friend of yours, recently resigned her position in a software development firm in order to start her own golf course supply business. She seeks your advice regarding a number of start-up concerns, including the acquisition of financing. She estimates her capital need (beyond the amount she can invest) at about $300,000 at the peak of the season in May and at about $150,000 at the minimum point in January. To hold her capital needs to that level, she will need to buy her inventory on credit, and perhaps pay the inventory suppliers a little slower than the 60 to 90 days the suppliers want. Teresa has tentatively arranged for a $300,000 line of credit loan from the Bank of Orange, through David Walker, another friend of hers who is a loan officer at the bank.

a. Teresa was surprised to learn from David that the proposed line of credit would be payable "on demand." Once she is in business, she will have every dime of her money tied up in this business; if the Bank called the loan, she would have no way to meet the call. When she raised this point with David, he told her that line loans are all on demand and it was not something she should worry about. "Bank of Orange has been serving the community for 75 years and has a reputation to protect," he said. "We're not going to do anything unfair or unreasonable." Teresa believes that David is 100 percent sincere, but still wants your opinion as to whether she should enter into this arrangement. What do you advise? Are there any terms that might alleviate Teresa's concerns and still be acceptable to the bank?

b. Teresa was also bothered by David's statement that she would be signing a note for $300,000, but drawing only half that much money initially. David said that the Bank always has customers sign a note for the line limit, as a matter of convenience. "You don't want to be coming into the bank every time you want a draw," he said. Should Teresa sign a note for $300,000 when she is only drawing $150,000? Would you in such circumstances?

13.8. Assume that the facts are the same as in Problem 13.3, except that Arthur relates these additional facts: Six months ago Walt asked for an increase in his line of credit, and Arthur told him he "thought there would be no problem." The loan committee saw it differently and refused the increase. Walt then wrote an angry letter to the bank, asserting that the bank had "reneged on their commitment" and had also "given false information [about Rebel] on a credit reference." Arthur thinks the "false information" reference is to a conversation Arthur had with a loan officer from First National Bank shortly after the loan committee refused the increase. Rebel applied to First National for a line of credit and First National had, naturally, called Second National. "I didn't tell her anything that wasn't true," Arthur says. Would these facts change your advice?

14.5. a. David Walker (from Problem 13.7) has come up with alternatives for Teresa Revez. He now says the bank can lend Teresa the $300,000 she needs on either of two arrangements. The first is to lend her the money at prime plus 2 percent on a demand note. The second is to lend her the money at prime plus 3.25 percent on an arrangement that provides for 30 days' notice prior to call if she is not then in default. Teresa wants your advice on choosing between these options. Considering only these two, what do you recommend? Bankr. Code §§1123(a)(5)(E), 1124, 1129(b)(2)(A)(i).

b. Teresa's expression of concern about having the entire $300,000 outstanding at such a high rate of interest, even when she did not need it, prompted David Walker to sweeten the deal. Now the bank is offering a line of credit for $300,000 on the same terms that they were offering to lend her $300,000 fixed. That is, she can choose between prime plus 2 percent on a demand note or prime plus 3.25 percent on a note with 30 days' notice before cancellation. Having this loan in the form of a line of credit entitles Teresa to pay back to the bank what she doesn't need, and draw it out again when she does need it. Under the options in part (a) of this problem, Teresa would have put the money she didn't need in a bank account at a relatively low rate of interest, so the savings offered by these line of credit options are substantial. Do you see any disadvantages? Which of the two line of credit arrangements seems more attractive?

15.6. As an arbitrator for the American Arbitration Association, you have been assigned a case in which Otis seeks to enforce provisions of the Agreement for Wholesale Financing against a dealer who signed it five years ago and has been borrowing under it since that time. The dealer's attorney argues that the contract is "void for lack of consideration" and "illusory" because nowhere in it does Otis agree to make a loan or necessarily do anything else. What do you think of this argument? See Agreement for Wholesale Financing, section 1.

15.7. It has been a year since Otis entered into this financing arrangement with Bonnie's Boat World. Otis is not happy with the arrangement, in part because Bonnie has been difficult to deal with and in part because the boat business has been bad and Otis would like to get out of it altogether. Bonnie's, however, is not in breach. Can Otis get out of this deal? If so, how does Otis do it? Agreement for Wholesale Financing, section 20. What will be the effect on Bonnie's?

17.6. As the newest associate in the Office of the General Counsel of the Secretary of State, your first assignment is to make a recommendation regarding the search logic for a new computer program that will be used as the exclusive means of searching the UCC filings.

a. The computer consultants want to know which of the following names should be considered the equivalent of "John Phillip Smith": John Phillip Smyth, John Phillip Smith, Jr., John Philip Smith, Jack Smith.

b. What is the advantage of returning more names? Fewer names?

17.7. You are a member of your state's Law Revision Commission. The Commission is now preparing the 2010 Amendments to the Uniform Commercial Code for adoption. The Amendments require that the state choose between two versions of UCC §9-503(a). Which Alternative do you prefer, and how would you argue your choice to the other Commission members?

17.8. a. If the filing office receives an original financing statement on Wednesday, by what day must the filing office index it (and thereby render it searchable)? UCC §§9-519(a) and (h).

b. If the filing office complies with these sections, the last search report that did not include reference to this financing statement would go out on the following Wednesday. Can you see why? UCC §§9-523(c) and (e).

c. What happens to a filing office that does not comply with these sections? UCC §§9-524, Comment 8 to UCC §9-523.

18.7. When Kenneth Kettering applied to First National Bank to borrow money against his restaurant, Fisherman's Pier, the first thing the bank did was to file a financing statement on the form set forth in UCC §9-521. The bank told Kenneth they were filing the statement and Kenneth said that was OK, but nobody thought to get him to sign it because the form has no place for a signature. The bank filed the financing statement on March 1 and conducted a search through that date. The search was clean, and the bank closed on the $320,000 loan on March 15. At the closing, Kenneth signed a security agreement. Two days after the closing, Kenneth disappeared. When the bank searched the title to Fisherman's Pier to prepare for foreclosure, it discovered a financing statement in favor of NationsBank that had been filed March 10. Further inquiry revealed that Kenneth had borrowed $330,000 from NationsBank just before he disappeared. First National Bank consults you because NationsBank has asked to see the authenticated record authorizing the filing of First National's financing statement.

a. Exactly what record would that be? UCC §§9-322(a)(1) and Comment 4, 9-502(d), 9-509(a) and (b), 9-510(a).

b. Should First National change its procedures? If so, how?

19.6. Janet Dakin is in financial trouble. The only bright spot in her financial dealings is that her lawsuit against her former financial adviser, Adam Hershey, goes to trial next week. Adam was on painkillers for most of the three years he managed Janet's investments, and the performance of Janet's investment portfolio shows it. In several instances, Adam promised to make particular investments for her but did not. During the three years, $2.5 million turned into $450,000. Adam has offered Janet $800,000 in settlement, but she thinks she can win more. In the meantime, Janet wants to borrow $100,000 from her brother, Will Dakin, using the lawsuit as collateral. Will asks what he should do to perfect. What do you tell him? UCC §§1-201(25), 9-109(d)(12), 9-102(a)(2), (13), (42), (61), 9-309(2).

19.7. Your client, Sabine Music Manufacturing (Sabine), wants to sell its electronic music tuning equipment to Jersey Music Associates, Inc. (Jersey) for $168,000, payable over seven years with no money down, with the equipment to serve as security for payment of the purchase price. Jersey wants to put the equipment to use immediately, but insists that no financing statement be filed. "Our bank lender will see it on the credit report and go nuts," says Bill Jersey, president of Jersey. Is there any way Sabine can do the deal without taking the risk of Jersey's bankruptcy? Bill Jersey suggests that he can put the music tuning equipment in a separate room, sublease the room to Sabine, and agree that the manufacturing equipment is "at all times in Sabine's possession." Bill, "as Sabine's agent, will control access to the room on behalf of Sabine, permitting Jersey workers to enter the room and use the equipment only as authorized from time to time by Sabine." All this will be in large print, on a sign posted on the door of the room. Sabine wants to do the deal, unless you tell them it won't work. Will it? UCC §9-313(a).

20.3. Your client, Folds Mobile Homes, sells about 200 mobile homes a year at an average price of about $25,000. When Folds sells a home, it has the buyer execute a promissory note, security agreement, and an authorization to file a standard UCC-1 financing statement. In accord with the advice of its former attorneys, Folds always describes the collateral as "[brand] mobile home, [serial number]" and files the financing statement in the Office of the Secretary of State, UCC Division, the place specified in UCC §9-501(a)(2). (The state does not permit perfection in a mobile home by notation on a certificate of title.)

Folds repossesses from five to ten mobile homes a year. Until the Bob Barker case, Folds had never had any legal problems with the repossessions. Barker bought a mobile home from Folds about a year ago. He put the home on a lot he owned about four miles outside the city. After Barker disappeared, Folds was served with a summons and complaint in a mortgage foreclosure brought by Pacific Security Finance (PSF). It seems that PSF financed Barker's purchase of the lot and Barker defaulted on his mortgage to them. PSF's complaint alleges that the mobile home is a fixture and hence covered under PSF's mortgage. It also alleges that Fold's security interest in the mobile home is unperfected because it was not filed "in the office where a mortgage on the real estate would be filed or recorded," citing UCC §9-501(a), and "fails to comply with the requirements of" UCC §§9-502(a) and (b).

a. Allison Folds, the president of Folds, is very upset by the allegation that Folds' interest is unperfected and asks if the allegation is correct. What do you tell Allison?

b. Does Folds win or lose against PSF? UCC §9-334(e)(1).

c. Would Folds win or lose if the challenger was a trustee in bankruptcy? UCC §9-334(e)(3).

d. How should Folds perfect its interest in the mobile homes it sells in the future? UCC §§9-102(a)(41), 9-502(a) and (b).

20.4. Sam Stoney, owner of Stoney's Pizza Parlour, is refinancing his business with Western Commercial Bank and has asked you to take a look at the documents. A portion of paragraph 20 of the real property mortgage reads as follows:

> In addition, Borrower agrees to execute and deliver to Lender, upon Lender's request, any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Instrument in such form as lender may require to perfect a security interest with respect to [the collateral]. Borrower shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements Lender may reasonably require.

A later provision in the mortgage defines "lender" as including the bank's "successors and assigns."

Sam says that when he read this paragraph in the bank's form mortgage agreement, he was a little irritated. But considering the time and effort he has already put into this refinancing, he doesn't want to pull out and start over unless the clause presents a real and substantial problem. Does it?

21.4. Monte Publishing Company has asked your client, Flexible Finance, to finance Monte's acquisition of a custom-built four-color printing press. The press will be manufactured by Thien Tool Company. The cost of the press will be $1.2 million. The parties have agreed that Monte will pay all closing costs and pay Flexible 10 percent interest on the amount of financing outstanding at any given time. Payment will be in equal monthly installments over seven years. Because of sizeable losses Flexible took as a secured creditor in two recent bankruptcy cases, Flexible insists that the transaction be structured as a lease. Flexible would like you to draft the lease and render an opinion that the transaction will be effective as a lease.

Monte and Flexible agree that the expected useful life of the press is probably between five and 15 years, but no one can be sure how long it will in fact be useful and used because the technology is changing rapidly. Monte would like to use the press throughout its useful life; Flexible has no use for the press and does not want possession. If the press has to be resold, the commission on the sale probably would be about 25 percent of the value of the press at the time of sale. As its value approaches zero, brokers will be increasingly unwilling to undertake its sale.

Flexible understands that the lease might not give it exactly what it wants, but it would like you to come as close as possible. What wording do you recommend for the provisions of the lease controlling the lease term and the amount of rent payable? If you recommend that Flexible have a reversionary interest, how should Flexible deal with reversion? UCC §1-201(35).

21.5. Your client, Fidelity Assurance, plans to purchase $26 million of chattel paper presently held by Auto Finance, LLC. What should Fidelity do to assure itself that Auto Finance hasn't stripped the payment obligations from the chattel paper and sold them to someone else?

22.8. Harry Montague, a senior partner in your firm, heard that you took a course in secured transactions in law school and has invited you to lunch. The governor recently appointed Harry to the Uniform Law Commission. (Surely you remember that bunch that shares control of the official text of the UCC and the other uniform and model acts.) The ULC is considering revisions to Article 9. Harry didn't take secured transactions in law school and cheerfully admits that he knows nothing about the subject. Nonetheless, a ULC committee of which Harry is a member is about to vote on a proposed amendment to UCC §9-515 that would permit the filers of financing statements to choose the length of time for which they would be effective. The options would be 5, 10, 15, or 20 years. After that time, the secured parties could still file continuation statements. Harry, whose background is in real estate, doesn't see why there ought to be any time limit on the effectiveness of filings at all. If they need a limit on regular filings, Harry says, how come they don't need one on mortgages that reach fixtures? UCC §9-515(g). Harry asks your opinion. What do you tell him?

22.9. As a new associate at Simpson Thacher, you have been assigned to clear the title to the assets of General Motors in preparation for closing on a $1.5 billion loan from Simpson Thacher's client, JPMorgan. You discover three termination statements. Two are in connection with financing statements filed more than five years ago and not continued. One is in connection with a financing statement filed within the past five years on behalf of CitiBank. What, if anything, will you do to make sure those terminations statements were authorized? UCC §§9-102(a)(80), 9-509(d), 9-510(a).

23.5. a. You represent October National Bank. ONB lent $1 million to Beaver Manufacturing, a local concern that produces and services commercial pumping equipment. The loan documents included a security agreement and financing statement, both of which describe the collateral as "equipment, inventory, accounts, chattel paper, general intangibles, fixtures, money, and bank accounts." You estimate the total value of all collateral at about $750,000. One of Beaver's assets is a bank account at Gargantuan Bank and Trust that contains $85,097. Does ONB have a security interest in the account? UCC §§9-102(a)(29) and (64), 9-109(d)(13), and 9-203(a) and (b); Comment 16 to UCC §9-109.

b. If ONB has a security interest in the bank account, is it perfected? UCC §§9-104, 9-312(b)(1), 9-314, and 9-315(d)(2).

c. Does it matter that some of the proceeds have been in the account for as long as 45 days? UCC §§9-315(c) and (d).

d. Does it matter if Beaver commingled $100 of its own money into the GBT account? UCC §9-315.

23.6. Although GBT has never had formal procedures for discovering its debtors' name changes, GBT's recent loss of a name-change case has Monette from Problem 23.1 thinking about adopting some procedures. She has three questions:

a. How often would she have to check the corporate records to make sure she could amend GBT's financing statements in time to avoid loss of collateral? UCC §9-507(c).

b. To be effective, must a continuation statement include the new name of a debtor that changed its name since the original filing? UCC §§9-102(a)(27), 9-512(a), 9-516(b)(3) and (5), form for Amendments in UCC §9-521.

c. In the investigation of a loan applicant, how old a change of name could be relevant? UCC §9-515(e).

24.6. You are working for a politically connected firm in Wilmington, Delaware, that does a lot of corporate work, including big bankruptcy cases that come from all over the United States. Carol Lynn Murphy, the youngest partner in the firm, explains that the firm got its start in the 1920s shortly after Delaware replaced New Jersey as the jurisdiction of choice for the incorporation of large public companies. The firm got a big boost in the early 1990s when the Delaware Bankruptcy Court began attracting the bankruptcy reorganization cases of those same large public companies. Today, Delaware is the place of incorporation for over half of all large public companies and the venue for over half of the bankruptcies of large public companies. When the 2001 revision to Article 9 changed the place of filing to the place of incorporation, Delaware enjoyed another round of prosperity.

a. Murphy asks what you think would happen on the following facts. The other 49 states and the District of Columbia retain Article 9 as promulgated, but Delaware adopts a non-uniform amendment that excuses filing altogether. The Delaware law simply declares all security interests "perfected without filing." Cherokee, Inc., a Delaware corporation whose assets and operations are all located in New York, borrows money from a New York bank and grants the New York bank a security interest. The New York bank does not file a financing statement. A year later, Cherokee, Inc. files under Chapter 11 of the Bankruptcy Code in New York and seeks to avoid the New York bank's security interest as unperfected. UCC §§9-301(1), 9-307.

b. Would a law that successfully excused some or all UCC filings make Delaware a more or less attractive place for debtors to incorporate? Murphy notes a study by attorney Meredith Jackson, reported in Peter Alces, Abolish the Article 9 Filing System, 79 Minn. L. Rev. 679, 690-691 (1995), indicating that the costs of filing and searching average about $25,000 for loans in the range of $20 million to $70 million.

24.7. A U.S. government affiliated think tank has been asked to imagine how the world's filing systems will be, or should be, organized 20 or 50 years from now. They would like your opinion on these alternatives: Will there be a single, world-wide filing system? Several worldwide filing systems, each for a different type of collateral? National filing systems with the proper place for filing specified in international treaties? If the latter, will the system be collateral- based or debtor-based?

25.6. Your client was recently injured in an automobile accident. The car that caused the accident was rendered inoperable. Before the police arrived, the driver removed the registration and the license plates from the car and fled the scene on foot. The accident report, which you obtained from the highway patrol, shows only the make and model of the car and the VIN. The police don't seem to be doing much to discover the name of the owner. Can you find it yourself, working only from the public records? Will your method discover the name of the owner if the car is from out of state? From Canada where no certificates of title are issued and the transfer of ownership of a motor vehicle is not recorded on any public record?

26.7. You represent Commercial Finance, a commercial lender. It holds a second mortgage in the amount of $2.3 million against an industrial plant. (That amount includes principal, interest, attorneys fees, and the estimated costs of conducting the mortgage foreclosure sale.) The plant is the only asset of the debtor, Industrial Manufacturers, Inc. (Industrial). The principals of Industrial have personally guaranteed payment of the mortgage debt, but it is unclear whether any deficiency against them will be collectible. The foreclosure of Commercial's mortgage is complete and the sale is set for next week. The first mortgage in the amount of $4.1 million in favor of City State Bank is in default, but the bank has not yet begun to foreclose. Commercial has asked you to prepare the bidding strategy for the upcoming sale. It believes that if the property were marketed and sold privately, it would bring between $4.2 million and $5.6 million, with the most likely resale price being about $5 million. Commercial estimates its out-of-pocket costs of buying, holding, and reselling the plant at $200,000, and an additional $300,000 of interest and attorneys fees will accrue on the first mortgage during the time it would take to resell the plant. How much should Commercial bid at the sale? Organize your answer by assuming a resale of the property for exactly $5 million, then explain how the numbers change if the property actually brings more or less.

28.9. You are a member of the UCC Drafting Committee. The committee is considering a proposal to incorporate provisions permitting judgment creditors to obtain liens by filing their judgments in the statewide UCC filing systems. The provisions are similar to California Civil Procedure Code §§697.310 and 697.530 set forth in section A. Do you think such provisions are in the public interest? Why or why not?

30.4. The court in *Midlantic v. Bridge* rested its ruling on the greater protection given to a bona fide purchaser of real estate for value than to a judicial lien creditor. Thus, the case probably comes out differently if the property had been personal property rather than real property. Should the rule in Bankruptcy Code §544(a) be the same for real property and personal property? If so, what should the uniform rule be?

32.7. John A.E. "Potsie" Pottow is under a lot of pressure in his job at Centurion National Bank. Pottow's freewheeling lending policies have generated a number of "nonproducing assets." (To put it as politely as possible.) "One more," Potsie says, "and I may no longer be viable in my current position."

Potsie tells you this in the context of a discussion of the Paul Grumman loan. Until yesterday, Grumman's deteriorating financial condition looked like it would be the bale of straw that broke the camel's back. Centurion's loan to Grumman is in the amount of $1 million and is unsecured. The financial statements Grumman has given Centurion from time to time have always shown Centurion's principal competitor, First National Bank, as the holder of a $5 million security interest in all of Grumman's assets (principally equipment, inventory, and accounts). In the event of liquidation, Potsie is sure the assets will yield less than $5 million. Two weeks ago, desperate for ideas, Potsie ran a UCC search under Grumman's name.

Yesterday, a miracle happened. Potsie received the Secretary of State's search report in the mail. The certificate, which Potsie has laid gently on the desk in front of you, shows no filings against Paul Grumman. Potsie says he is sure that the assets are in Grumman's possession and that "Paul Grumman" is the correct name of the debtor — sure enough to bet his career on it.

To seize his opportunity, Potsie has tentatively cut a deal with Grumman. Centurion is to advance an additional $400,000 to Grumman. In return, Grumman will grant a security interest in favor of Centurion that will secured both the $1 million advance already outstanding and the new $400,000 loan. "The way I figure," Potsie says, "that will leave us with a $1.4 million first on almost $5 million in collateral."

The bankruptcy expert in your firm tells you that the old $1 million advance will remain vulnerable as a preference for 90 days, but the new $400,000 advance will not. From her point of view, Centurion has something to gain and nothing to lose by making the new loan — provided that Centurion will have priority over First National. Potsie would like you to give your opinion that Centurion will have priority. If Potsie loses his job, you worry that the firm may not be able to hang onto Centurion's business, perhaps putting your job in jeopardy as well.

a. Is there any way that First National could have an effective financing statement that doesn't show up on an official search in the state in which Grumman's business is located? UCC §§9-307(a) and (b), 9-316(a) and (b), 9-338, 9-502(d), 9-506(c), 9-507(a), 9-515(c), 9-516(d), 9-517.

b. How can you find out if such a financing statement exists, without shooting yourself in the foot? UCC §9-322(a)(1) and Comment 4 to that section. For example, what if you search under "Gruman" (an incorrect spelling) and find First National's filing?

c. What should you do?

d. Is there an ethical issue here?

32.8. Potsie Pottow, who is still hanging on at Centurion National Bank, has made an appointment with you to discuss a letter he received from Mark Kauffman, attorney for Weil's Feed and Seed (WFS). For years, WFS has been the only feed supplier to Potsie's borrower, the now-defunct Murray Cattle Company. Now WFS has surprised the bank by claiming a security interest "of equal priority with the bank" in Murray's cattle and its inventory of manure, and a prior security interest in the feed on hand. WFS has a financing statement on file against Murray, but WFS filed it two years after Centurion's and it covers only "feed." Potsie says he is sure that WFS never served a §9-324 notification on the bank. Centurion's financing statement and security agreement cover essentially all of Murray's assets.

Kauffman's letter contains copies of WFS's security agreement and financing statement. His argument is that when the cattle ate the feed, WFS's collateral became part of the "mass" (the cow) and, some time later, part of the collateral became the "product" (the manure). Kauffman cites UCC §9-336. Potsie wants to know if he should take the Kauffman letter seriously or whether "it's just bullshit." What do you tell him? UCC §§9-102(a)(34) and (48), 9-324.

32.9. Your new client, the Equitable Lending Group (ELG), specializes in high-risk, high-profit lending. It lends to debtors in possession under Chapter 11 and buys nonperforming loans from other institutions and restructures them. ELG is now interested in a new lending concept and would like your opinion on it. Potsie Pottow, who recently moved to ELG from his position at Centurion and brought ELG to you, explains a typical case.

Silicon Microchip (SM) is a manufacturer of computer components. Its business is fundamentally sound, but the company is overburdened with debt. First National Bank has a perfected security interest in its inventory and accounts, worth about $6 million, securing First National's loan in the amount of $8.2 million. The SM-First National relationship is currently in a holding pattern while the parties attempt to renegotiate. While they are doing that, ELG wants to finance SM's acquisition of new inventory and have purchase-money priority over First National in both the inventory and the accounts that arise when that inventory is sold. Potsie says he can handle the problem of monitoring the collateral, but wants you to tell him whether ELG can get the priority it seeks without agreement from First National. Potsie says the folks at First National will be "mad as hell" when they see what ELG is doing, but "they're so conservative they'll still be having meetings about it six months from now. In the meantime, we'll be making six points over prime. As long as we've got first priority, it's zero risk." Can ELG get priority? UCC §§9-324, 9-401(b).

33.7. Three years ago, your client, Barney Wells, loaned $75,000 to his brother Wilbur to help Wilbur buy a small apartment building in New York. Wilbur executed a mortgage against the property to Barney at the time, but Barney did not record it because he thought recording might offend Wilbur. Since then, Wilbur's financial condition and Barney's relationship with him have grown progressively worse. Concerned about rumors of profligacy and financial ruin, Barney finally recorded his mortgage two weeks ago and purchased a title and encumbrance search. The search shows four encumbrances against the property:

1. A mortgage in favor of Walter Weyrauch in the amount of $45,000 recorded four years ago (the mortgage is actually on a different piece of property owned by Wilbur; it shows up on your search because the mortgage contains an after-acquired property clause).
2. A judgment for $38,000 in favor of Talbot Financial Services, Inc., recorded two years ago.
3. A mortgage in favor of Allie Toklas, recorded one year ago in the amount of $60,000.
4. The mortgage to Barney Wells.

Each of the four documents is regular on its face. Barney says Toklas is a close friend of Wilbur; he does not recognize the other two names. Barney estimates that the property is worth about the amount of his mortgage. Barney acknowledges that he "screwed up" by not bringing this matter to you at the time of the loan, but he wants to know if there is anything you can do for him now. Is there? Can you imagine any facts consistent with what Barney has told you that would make his mortgage valuable? Or is he, as Wilbur told him yesterday, "dead in the water"? New York Real Property Laws §291. Assume that New York defines "purchase-money mortgage" in accord with 42 Pennsylvania Consolidated Statutes §8141 and gives it priority in accord with California Civil Code §2898 (all three sections are reproduced in Assignment 33).

34.7. Willard Kurtz, a friend of yours from college, asks that you take a look at a contract for him before he signs. For several years, Willard has been looking for a five-acre tract of wooded land on a river at a reasonable price—not an easy bill to fill—and he has finally found it. The document he shows you is titled "Contract for Deed." The contract provides for a sale price of $300,000, payable with interest at 9 percent in equal monthly installments of $3,800.30 over a period of ten years. Upon payment of the full purchase price, the owner, Rancho Mirage Development, Inc., will transfer the property by deed, free and clear of all encumbrances. The contract gives Willard the right to prepay the outstanding balance at any time and to receive his deed at the time of payment. The title search you ordered on the property shows a mortgage in the original face amount of $9.4 million. The mortgage is signed by Rancho Mirage Development, Inc. and is in favor of Robert L. Henderson, the former owner of the property. It encumbers about 60 five-acre parcels, in addition to the tract Willard is buying. Based on your knowledge of real estate in the area, you estimate that all 60 tracts together are probably worth more than $20 million.

a. What are your concerns as you advise Willard whether to buy under this contract?

b. Would it change your mind if Rancho Mirage had already sold over half the tracts in this development and was receiving monthly payments from purchasers that were well in excess of the payment Rancho Mirage must make each month to Henderson?

34.8. In a parallel universe, you represent Rancho Mirage in the scenario described in the previous problem. Willard Kurtz has just refused to close and Mr. Mirage is worried about whether he can sell any of his tracts. What do you recommend?

36.8. Robert and Edward Sherrock are partners in Sherrock Brothers, a Toyota dealership. Ed tried to call you early this afternoon, but you were in a meeting and he was unable to get through. You just listened to the lengthy voicemail that Ed left for you. Ed called from Dover Motors, the Toyota dealership in a nearby city. He bought two cars from Dover and made arrangements to pay for them by transfer of funds later this afternoon. Dover agreed to keep the cars for a few days until Sherrock Brothers could send a couple of drivers to move them. After he left Dover's lot, Ed had second thoughts. He had heard some rumors that Dover was in financial difficulty, so he called you to find out if it's okay to leave the cars there until he gets back from Chicago in two days. Actually, you were on your way out of town as well. Does this have to be dealt with now? UCC §§9-320, 1-201(b)(20), 2-102, 2-403(2) and (3). Consider two possibilities:

a. Dover sells the two cars to buyers in the ordinary course of business and then files bankruptcy.

b. Dover files bankruptcy, and Dover's inventory lender claims the cars.

37.8. Jean Widdington bought a car for $8,000. Ally lent Widdington $7,000 of the purchase price and secured the loan with a purchase-money security interest. Ally had its lien noted on the certificate of title. When the engine overheated, Widdington took it to Central Auto Repair. Although Widdington's contract with Ally required that she notify Ally and obtain their permission before contracting for any repair costing more than $2,500, she did neither. The repair cost $3,500. Central Auto Repair asserted a lien under the following Wisconsin statute, gave proper notice under Wisconsin Statute §779.48, and eventually sold the car at auction for $5,500.

Wisconsin Statutes Annotated—Mechanic's Liens
(2019)

§779.41

(1) Every mechanic and every keeper of a garage or shop, and every employer of a mechanic who transports, makes, alters, repairs or does any work on personal property at the request of the owner or legal possessor of the personal property, has a lien on the personal property for the just and reasonable charges therefor, including any parts, accessories, materials or supplies furnished in connection therewith and may retain possession of the personal property until the charges are paid. The lien provided by this section is subject to the lien of any security interest in the property which is perfected as provided by law prior to the commencement of the work for which a lien is claimed unless the work was done with the express consent of the holder of the security interest, but only for charges in excess of $1,500.

§779.48 ENFORCEMENT . . .

(2) Every person given a lien by §779.41 . . . may in case the claim remains unpaid for two months after the debt is incurred . . . enforce such lien by sale of the property substantially in conformity with [UCC §§9-601 through 9-628] and the lien claimant shall have the rights and duties of a secured party thereunder. . . .

---

a. Does Central have a lien?

b. If so, with what priority in relation to Ally? UCC §9-333.

c. Is the buyer's title free and clear of Ally's security interest? UCC §9-617.

d. Who is entitled to the $5,500? UCC §9-615.

e. What would the result be under Maine law? See 10 Me. Rev. Stat. Ann. §§3801-3802, set forth in section A of Assignment 37.