

Commercial Law: Secured Transactions, Fall 2023
Professor Stephen Ware
<https://sware.ku.edu/commercial-law-secured-transactions/>

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

When and Where our Class Meets. Our course is scheduled for 3:10-4:05 on Wednesdays, and 2:40-3:35 on Thursdays and Fridays in Room 107. In addition to our regularly scheduled sessions, our class is scheduled to meet Mon. Oct. 23 and Fri. Oct. 27, both 12:30-1:25 in 107.

Talking with Me. Mondays, Tuesdays, and Thursdays, I intend to be fully available to students in the afternoons, except right before our Thursday class. I will be available plenty of other times as well, and you are always welcome to schedule an appointment or stop by my office (414C), call 785-864-9209, or email ware@ku.edu. Please do not be shy. Talking with students is an important part of my job, and I enjoy it.

Required Reading and Grading. You may use either paper or digital versions of the following books. The required casebook is LYNN M. LOPUCKI ET AL., SECURED TRANSACTIONS: A SYSTEMS APPROACH (9th ed., 2020). The recommended statutebook is ELIZABETH WARREN, BANKRUPTCY AND ARTICLE 9 (2023). You may use a different statutebook if it has current versions of these statutes: (1) Articles 1 and 9 of the Uniform Commercial Code, (2) the Uniform Motor Vehicle Certificate of Title and Anti-Theft Act, and (3) the Bankruptcy Code. The 2021 and 2022 versions of the recommended statutebook have the current versions of these statutes, as do several other books. Other required readings will be provided by me or easily found by you.

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

Your grade for the course will consist of the final exam (64%), mid-term exam, (21%), your classroom performance (7%), and two other graded assignments (8%).

Exams. You may use any written material (such as outlines, books, notes) during the midterm and final exam. They are completely “open book,” “open computer,” and “open internet,” except that you may not communicate with anyone except me during the exam. You may take the exams on your computer if you do so with the exam software supported by the law school. I expect each exam to have a word limit.

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

I prefer that the entire class take the exams at their scheduled times. I will provide alternate exam times only to the extent the school's rules require for individual students.

Classroom performance. Should law professors use class time to lecture or to question students? I believe some lecture is fine to convey information, but you should not need to acquire much information during class. You can acquire nearly all the relevant information before class by doing the assigned reading, thinking about it, and discussing it with your classmates. (Study groups help many law students.) In short, you should come to each class knowing the material we will discuss in that class.

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

Another very important purpose of class time is to give you opportunities to “learn by doing.” Speaking about the law, like writing about the law, is central to many lawyers’ careers. While our exams should help develop your skills writing about the law, our class sessions should help develop your skills speaking about the law. And class discussion tends to improve as it includes more voices and viewpoints. So, the classroom performance part of the course grade rewards students who frequently volunteer (raise their hands) and contribute well, and I may call on students who have not raised their hands, as well as students who have.

If you are unable to prepare for a particular class, no worries if you tell me ahead of class (“May I have a pass today?”) and you have been volunteering good contributions to our class discussion throughout the semester. By contrast, if you have gone a few days without volunteering in class then you should not be asking for a pass. If you have gone a few days without volunteering and are unable to prepare for a particular class, then you should contact me to discuss the situation.

Are you a bit stressed by a course in which the professor may call on any student at any time, and classroom performance is graded, albeit lightly? Similarly, many lawyers find aspects of their jobs, including speaking to large audiences, stressful. Compared to most types of law practice, a law school class is a relatively safe, low-stakes environment in which to develop important professional skills. Please challenge yourself to get the most out of it, rather than

shying away from it. I am here to help you with that, so if you ever find me demanding or critical, please know that I am trying to help you develop important professional skills.

Attendance and lateness. Accreditation standards governing the Law School say that “[a] law school shall require regular and punctual class attendance.” Perfection is not required, so you may miss a class or two because you have transportation problems, a job interview, illness, a death in the family, or something similar. This sort of absence is no worry and you do not need to contact me about it. Just borrow class notes from a classmate and then let me know if you have any questions about the material we covered. Similarly, you may be late or leave early once or twice for reasons like those listed above. Again, this is no worry and no need to contact me about it.

By contrast, if you are going to miss class or be late or leave early more than a couple of times during the course that is a worry. If that happens, you should take the initiative and contact me to discuss how we can address the situation and keep you on track with the course and your classmates. If you miss some or all of a class session three or more times, I may send you an email warning. If after I do that, you miss some or all of a class session two more times, I may exclude you from the final exam.

Computers and other electronics in class. Subject to exceptions I will announce, you may use a computer in class, but only for working on this course. Audio or video recording of class is prohibited without my written permission.

Accommodations. Classroom and testing accommodations are available to eligible students registered with the Student Access Center. You may contact access@ku.edu or Assistant Dean for Academic and Student Affairs, Leah Terranova, leaht@ku.edu or 785-864-4357.

Lunch. I like to have lunch with students. We can go across the street to the DeBruce Center Cafe, and within limits the school will buy our lunches. I find that these lunches work best with groups of two or three students at a time. If you would like to do this, please send me an email suggesting a day or two that works for all the students in the group at noon (so we’ll be back to the Law School well before 1:30) and please copy the other student(s) on that email message.

The numbers in the right column refer to pages and problems in the LoPucki et al. casebook.

<u>CLASS</u>	<u>ASSIGNMENT</u>
Chapter 1 - Creditors' Remedies Under State Law	
1.	xxxi-xxxvii, 3-4
2.	4-13 (think "garnishment" while reading <i>Ellerbee</i>), Overview of judicial collection law, and both pieces of additional reading on debt collection in Kansas, all three of which are at https://sware.ku.edu/commercial-law-secured-transactions/
3.	13-19, do 1.1-3, 5. (Do 1.5b assuming no mortgage and then assuming the mortgage)
4.	Canvas module on Post-Judgment Enforcement in MO and KS
5.	22-24, 33-37, 606-10, do 2.1
6.	40-50, 52-54 (section F.1.), <i>McLinn</i> case at https://sware.ku.edu/commercial-law-secured-transactions/ ; do 3.1-4
7.	31-33 (Sales of Accounts and Asset Securitization), 50-52, do 3.5-6. Read § 9-102(a)(65), (47), (11), (29) in that order. Then diagram transactions in which Deare grants Firstbank security interests in promissory notes, chattel paper, and deposit accounts. Each diagram should detail at least three relevant parties.
8.	33 (section C.) -37 (re-read), 57-73 (skip <i>Klein</i>), and <i>Mortgage lenders pursue homeowners even after foreclosure</i> at https://sware.ku.edu/commercial-law-secured-transactions/ , do 4.1-3, (then redo 4.1 in a state that allows deficiency judgments)

<u>CLASS</u>	<u>ASSIGNMENT</u>
9.	<p>76-87 and Kan. Stat. § 16a-5-103, §§ 16a-5-109-111; do 5.1, 3.</p> <p>1st Graded Assignment. At least an hour before class, submit as a pdf the full text of a:</p> <ul style="list-style-type: none"> A. post-2012 case, B. not mentioned in our book, C. discussing an Article 9 foreclosure sale (not some other sort of forced sale), D. of personal property other than a vehicle (so no cars, trucks, planes, tractors, etc., unless you specifically identify the non-vehicle personal property also sold in C), E. in which the debtor whose property was sold in C is a business entity (such as a corporation), rather than an individual. <p>Also submit a document with your name and four numbered sentences answering, with cites to pages of the pdf,</p> <ul style="list-style-type: none"> 1. the name of the debtor whose property was sold in C, 2. the name of the creditor holding the sale in C, 3. the property sold at the foreclosure sale in C, and 4. how you know it was an Article 9 foreclosure sale, as distinguished from some other sort of sale. <p>On the pdf, highlight in yellow the portions of the case you cite in support of your four sentences.</p> <p>Your grade on this assignment may be affected by the number of students who turn in the same case you do—the fewer students using your case, the higher your grade. This encourages you to research well beyond the first few easy-to-find cases. Hopefully, in doing this assignment, you will read and compare several cases before choosing to submit one.</p>
Chapter 2 - Creditors' Remedies in Bankruptcy	
10.	93-108, do 6.1-4 (skip <i>In re Omni Lion's Run</i>)
11.	110-116, do 7.1-2, then do 7.2 assuming Argosy is reorganizing in Chapter 11
12.	116-125, do 7.3-4
Chapter 3 - Creation of Security Interests	
13.	129-143, do 8.1-4
14.	148-157, 250 paragraph 4, do 9.1, 4, 6
15.	160-176, do 10.1-2, 5-6

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16.	192-209, skip <i>In re Tracy Broadcasting</i> , do 12.4-5 (for 12.5, read Rules of Prof'l Conduct on 148-49), do 12.7 in Casebook's Supplemental Problems at https://sware.ku.edu/commercial-law-secured-transactions/
Chapters 4 and 5 - Default, Acceleration and Cure	
17.	213-230 and reread Kansas Uniform Consumer Credit Code §§ 16a-5-109-111; do 13.1, 4, then 13.7 (in Casebook's Supplemental Problems at https://sware.ku.edu/commercial-law-secured-transactions/) and 13.3
18.	120-123 (re-read), 234-243, do 14.1, 3a-b
19.	247-266 (read the contract carefully), do 15.5
20.	Midterm Exam
21.	Discuss midterm exam
Fall break	
Chapter 6 – Perfection	
22.	269-279 (focus on <i>Peerless</i>), 285-286, 9-317(a)(2); do 16.3, 16.4a, 16.4d(1)-(3), 16.5. Read 338-343.
23.	2nd Graded Assignment. At least an hour before class, submit a document including both (1) a detailed, numbered list of what you found when you searched Arizona financing statements for a debtor named “Ware Manufacturing, Inc.”, and (2) a paragraph or two summarizing what you learned from these filings. Do this graded assignment on your own, as you would take an exam.
24.	319-334, 359-360 (sections 3 and 4). Do 19.1a, b, d. Diagram these transactions; each diagram should detail at least three relevant parties. Do 19.1f, 19.4a.
Chapter 7 - Maintaining Perfection	
25.	367-381, do 22.4-5
26.	384-388, do 23.2; 289-301, skip <i>EDM</i> , 398-405, skip <i>Dayka</i> , do 24.1a-d
27.	405-408, do 24.2a-d, f, 24.3a-b, 24.4a
28.	413-418, 422-427, do 25.2-3. If you can bring your/a Certificate of Title (or a scan/photo of it) to class, please do. You can keep it as private as you choose.

<u>CLASS</u>	<u>ASSIGNMENT</u>
Chapter 8 - Priority	
29.	431-435, do 26.1-2
30.	437-444, skip <i>Legacy Bank</i> but focus on <i>Frierson</i> on p.442, do 26.3-4. P.442 typo: first word after <i>Legacy Bank</i> case should be Appellees rather than Thompson.
Chapter 9 - Competitions for Collateral	
31.	463-471, skip <i>Green</i> , do 28.4, 5-6a, then 28.2
32.	474-485, do 29.3-4, then 29.1-2. In 29.3 assume Mortgagee records.
33.	Review 95-96, 110-123 487-500, skip <i>Midlantic</i> , do 30.1a-b & f
34.	504-511, do 31.1b, then 31.1a, c
35.	178-180, 188-189, do 31.1d-f, 31.4
36.	514-527, skip <i>In re Reckart</i> , do 32.3, 6
37.	Review 16.3. Read 587-602, skip <i>Daniel</i> and <i>RFC Capital</i> , do 36.5,6 a-b then 36.1-2a-d
38.	338-343, 470 (section D), review 28.4; 494 (section 3), 530-536
39.	Review.