

Secured Transactions

Fall, 2011

Professor Mary Anne Waldron

Introduction and Course Objectives:

Welcome to Secured Transactions (Law 316).

This course deals primarily with methods of business financing through the giving of security upon items of personal property. Businesses generally operate on borrowed money. For example, retail businesses would rarely have enough capital to purchase inventory without using the income from sale of that inventory to pay for it. But what creditor will trust the business with money to buy inventory without some recourse in case the business cannot repay the loan? The obvious solution is for the creditor to obtain from the borrower a right to seize and sell the inventory if the loan is not repaid. This is only one example of the common methods of business finance.

Most businesses do not own real estate. Generally, they rent premises and most of the value of their business is in inventory or in equipment. They may also have other assets such as accounts receivable (debts which others owe to them and have not yet paid). All these assets can be used as security for loans that the business will use to operate.

Because these methods of obtaining security can be complex, a system of creating and registering these security interests was created in the U.S. through provisions of the Uniform Commercial Code. The idea of a personal property security registry that would document the creation of these common forms of security has been adopted in many countries. In Canada, all provinces have adopted some form of personal property security legislation (PPSA). The Federal government also has a security registration system under the Bank Act. It is much older than the PPSA statutes, but still plays an important role in the Canadian economy and shares some features with PPSA.

These statutes not only govern the creation and documentation of security interests in personal property, they also sort out priorities among multiple creditors. Our business that needs to borrow to finance inventory purchases may also have other creditors who are financing other aspects of the business such as purchase of equipment or general operating expenses. It is important for creditors to know, in the event of business failure, how their priorities over various business assets will be sorted out. Generally, creditors with a higher priority over assets can afford to lend at lower rates because they are undertaking less risk.

In this course, you will learn a great deal about the methods of business finance and about the law regulating business borrowing. The law often appears complex, but if you

understand the business realities behind the law, it will generally make sense. PPSA legislation has been worked out over many years to provide a code that reflects, in most cases, the way in which business operates and that facilitates this operation. Don't be concerned if you have little experience in business issues. We will start from the assumption that you have no exposure to business finance and we will build the concepts gradually until you have a thorough understanding of the legislation and how it works.

At the end of the course, assuming time permits, we will also look briefly at the world of negotiable instruments. Although these have become less important in business due to the electronic age, you will still want to understand something about the law governing cheques and other bills of exchange (such as "cheques" written on credit unions) as they still form a part of our commercial system.

By the time you have finished this course you should be able to:

1. Know and understand the various principal methods of business finance that involve security on personal property;
2. Know and understand how the relevant legislation governs and affects these methods;
3. Understand the policy underlying the provisions of the relevant legislation;
4. Apply the legislation to real-life situations and be able to justify the results.

Materials

You will need the casebook, purchased from the CDC, and written by Professor MacDougall. You will also need a copy of the BC Personal Property Security Act. There are a number of resources on reserve for this course. You may find particularly helpful the text by Professor MacDougall, *Personal Property Security Law in British Columbia* (LexisNexis 2009).

Evaluation

You have four evaluation options for this course.

1. Option A
You will write a case comment (maximum 5,000 words) on one important case in the personal property security area for 20% of your grade. A list of appropriate cases and detailed instructions will be distributed by the end of October and you will be required to turn in the case comment on the last day of classes.

You will also write the three-hour final examination for 80% of your grade.

2. Option B

You will write a policy discussion (maximum 5,000 words) on one important aspect of the PPSA. A list of appropriate topics and detailed instructions will be distributed by the end of October and you will be required to turn in the policy paper on the last day of classes.

You will also write the three-hour final examination for 80% of your grade.

3. Option C

Option C requires you to write both the case comment and the policy paper. You will then write a two-hour final examination for 60% of your grade.

The two-hour examination will be identical to the three-hour paper, but you will not be required to write the final question.

4. Option D

You will write a three-hour final examination for 100% of your grade.

You must elect which option you wish to pursue by the last day of classes (when all papers are due). Your election will depend upon what you turn in on that day. If you turn in neither paper, you are **irrevocably deemed** to have opted for the 100% final; turning in one paper only means that you are **irrevocably deemed** to have taken the 80% option; if you turn in both papers, you will be writing the shorter exam for 60% and you will only write the two-hour paper. Please note that **normally, there will be no extensions granted** for either or both papers. You will simply be deemed to have taken the appropriate alternative option. If you require any accommodation or exceptions, please see me as soon as possible.

Methodology and Course Outline

We will progress through the MacDougall casebook in order of the materials presented as they form a logical progression to understanding the Act. Materials from the casebook and sections of the PPSA will be assigned at the end of each class and will be posted on the course website. Please be aware that some material may be omitted. As well, I will suggest that some material be read “generally” and some “with attention”. Material to be read “with attention” will form the primary basis of discussion in the next class.

The methodology in this class will primarily be that of lecture. However, I will use frequent examples and hypothetical problems to which I will expect the class to respond. It is important that you learn to work with the statute. These in class exercises will be designed to ensure that you do just that. As well, from time to time I will post or

distribute “The Ten (Almost) Weekly Questions”. These are a series of short self-tests for you to use to assess whether you are mastering the material as we go along. We will not always take these up in class. If you have doubts about whether you understand the material, make sure that you contact me for clarification.

Instructor and contact information:

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Email: mwaldron@uvic.ca. Please note that my ability to answer lengthy questions by email is limited. As well, unless the matter is urgent, you should not expect an immediate answer.

Course website is accessed through moodle.uvic.ca.