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Syllogisms, Enthymemes, and Fallacies: Mastering Secured Transactions Through Deductive Reasoning

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**SYLLOGISMS, ENTHYMEMES AND FALLACIES:
 MASTERING SECURED TRANSACTIONS THROUGH
 DEDUCTIVE REASONING**

TIMOTHY R. ZINNECKER†

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It is tragic that our law schools do not have an orientation course in logic. We had that great line from Professor Kingsfield in *The Paper Chase*: ‘You come in here with a head full of mush and you leave thinking like a lawyer.’ The Socratic method is the most valuable tool to train students to think like a lawyer. Yet the students—and unfortunately too many of their professors—apparently do not know the elements of deductive and inductive reasoning.

*Hon. Ruggero J. Aldisert*¹

I. INTRODUCTION²

In 2007, the *University of Pittsburgh Law Review* published the essay *Logic for Law Students: How to Think Like a Lawyer*,³ co-authored by federal appellate judge Ruggero J. Aldisert⁴ and two of

† Harry and Helen Hutchens Research Professor, South Texas College of Law (prior to Fall 2011); Norman Adrian Wiggins School of Law, Campbell University (beginning Fall 2011). Several friends were generous with their time and offered helpful comments on an early draft, including John Blevins, Steve Clowney, John Dolan, Sharon Finegan, Adam Gershowitz, Ken Kettering, Bob Lloyd, Dru Stevenson and Steve Ware. South Texas College of Law graciously provided financial support.

1. Howard Bashman, *20 Questions for Senior Circuit Judge Ruggero J. Aldisert of the U.S. Court of Appeals for the Third Circuit*, HOW APPEALING (July 7, 2003, 12:00 a.m.), http://howappealing.law.com/20q/2003_07_01_20q-appellateblog_archive.html.

2. Much of the text and many of the accompanying footnotes in Parts I and II of this article also appear in the companion article referenced *infra* note 16 and accompanying text.

3. Ruggero J. Aldisert et al., *Logic for Law Students: How to Think Like a Lawyer*, 69 U. PITT. L. REV. 1 (2007).

4. Judge Aldisert was nominated by President Lyndon B. Johnson to a seat on the U.S. Court of Appeals for the Third Circuit on July 12, 1968, and confirmed by the Senate twelve days later. See Biographical Directory of Federal Judges: Aldisert, Ruggero John, FED. JUDICIAL CTR.,

his law clerks.⁵ The essay begins with the statement: “Logic is the lifeblood of American law.”⁶ It then asks the question prompted by Professor Kingsfield’s famous line above⁷—“What is thinking like a

www.fjc.gov/servlet/nGetInfo?jid=21&cid=999&ctype=na&instate=na (last visited Feb. 6, 2011). Cf. Nathan Koppel, *WSJ to the Senate: Confirm Judges Now!*, WALL ST. J. (Sep. 8, 2008), <http://blogs.wsj.com/law/2008/09/08/wsj-to-the-senate-confirm-judges-now/> (stating that President George W. Bush’s federal judicial nominees “waited 348 days, on average, from nomination to confirmation, as compared to 238 days for Clinton’s nominees”). He assumed senior status on December 31, 1986.

5. Co-authors Stephen Clowney and Jeremy D. Peterson were law clerks to Judge Aldisert during the 2006-07 term. Aldisert, *supra* note 3. The former is on the faculty at the University of Kentucky College of Law. See *Profile: Stephen Clowney*, UNIVERSITY OF KENTUCKY: COLLEGE OF LAW, www.law.uky.edu/index.php?hid=21.

6. Aldisert, *supra* note 3, at 1. Not everyone on the federal bench agrees. See Richard Posner, *The Jurisprudence of Skepticism*, 86 MICH. L. REV. 827, 833-34 (1988) (suggesting that “the life of the law really cannot be logic”). Cf. OLIVER WENDELL HOLMES, *THE COMMON LAW* 1 (1881) (“The life of the law has not been logic; it has been experience.”).

7. The quotation is from Professor Kingsfield’s remarks, early in the semester, to his first-year contracts class at Harvard Law School:

The study of law is something new and unfamiliar to most of you, unlike any schooling you have ever been through before. We use the Socratic method here: I call on you, ask you a question, and you answer it. Why don’t I just give you a lecture? Because through my questions, you learn to teach yourselves. Through this method of questioning, answering, questioning, answering, we seek to develop in you the ability to analyze that vast complex of facts that constitute the relationships of members within a given society. Questioning and answering. At times, you may feel that you have found the correct answer. I assure you that this is a total delusion on your part. You will never find the correct, absolute, and final answer. In my classroom, there is always another question, another question to follow your answer. Yes, you’re on a treadmill. My little questions spin the tumblers of your mind. You’re on an operating table; my little questions are the fingers probing your brain. We do brain surgery here. You teach yourselves the law, but I train your mind. You come in here with a skull full of mush, and you leave thinking like a lawyer.

THE PAPER CHASE (Twentieth Century Fox 1973).

For his portrayal of the “stuffy, crusty, brilliant, and despotic” law professor, the seventy-one-year-old John Houseman received the Oscar for Best Supporting Actor. See *1973 Awards Winners and History*, FILMSITE, <http://www.filmsite.org/aa73.html> (last visited Feb. 2, 2011). Houseman was cast as Professor Kingsfield only after Melvyn Douglas, John Gielgud, James Mason, Edward G. Robinson and Paul Scofield declined the opportunity. See *Trivia for The Paper Chase*, IMDB, <http://www.imdb.com/title/tt0070509/trivia> (last visited Feb. 2, 2011).

The movie is based on the book of the same title, published in 1970, and authored by John Jay Osborn Jr., who, coincidentally, clerked on the U.S. Court of

lawyer?”—and offers this reply: “It means employing logic to construct arguments.”⁸ The authors lament that “our law schools do not give students an orientation in the principles of logic[,]”⁹ a failure which “does violence to the essence of the law.”¹⁰ They then state the purpose of the essay:

[W]e endeavor to explain, in broad strokes, the core principles of logic and how they apply in the law school classroom. Our modest claim is that a person familiar with the basics of logical thinking is more likely to argue effectively than one who is not. We believe that students who master the logical tenets laid out in the following pages will be better lawyers and feel more comfortable when they find themselves caught in the spotlight of a law professor on a Socratic binge.¹¹

For twenty pages or so, the authors then elaborate on these “core principles of logic” with primary emphasis on deductive reasoning through syllogisms,¹² and inductive reasoning by analogy.¹³

I teach Secured Transactions once or twice each academic year. The course introduces students to many of the rules governing transactions in which personal property (*e.g.*, consumer goods, inventory, equipment and other non-realty) secures payment of a financial obligation. Our primary focus is on Article 9 of the Uniform Commercial Code¹⁴ and, time permitting, selected provisions of the U.S. Bankruptcy Code.¹⁵

Appeals for the Third Circuit during the 1971-72 term, during Judge Aldisert's tenure. The AALS Directory of Law Teachers 1089 (2009-10).

8. Aldisert, *supra* note 3, at 1.

9. *Id.* at 2.

10. *Id.*

11. *Id.* (footnote omitted).

12. *See id.* at 3-12.

13. *Id.* at 16-20.

14. One author has described Article 9 as “the crowning achievement of the UCC project, and perhaps the entire uniform law enterprise.” Edward J. Janger, *Predicting When the Uniform Law Process Will Fail: Article 9, Capture, and the Race to the Bottom*, 83 IOWA L. REV. 569, 571 (1998). *See also* Lawrence Ponoroff & F. Stephen Knippenberg, *Having One's Property and Eating it Too: When the Article 9 Security Interest Becomes a Nuisance*, 82 NOTRE DAME L. REV. 373, 374 (2006) (“Powerful, creative, comprehensive yet elegant, Article 9 is generally regarded as the most innovative of the Code's articles.”) (footnote omitted). My pupils use less flattering terms, often asking if Article 9 was penned in a foreign language and then translated. I do not have the heart to tell them that Grant Gilmore, the primary architect of Article 9, taught French at Yale University for a few years

This article, together with a recently-published companion article (*Socrates, Syllogisms, and Sadistic Transactions: Challenges to Mastering U.C.C. Article 9 Through Deductive Reasoning*¹⁶), respond to the plea for a renewed emphasis on logic and deductive reasoning in the classroom, from my perspective as a Secured Transactions professor. Both articles (including Part II herein) start with an introduction to the classic form of deductive reasoning: the syllogism. But the two articles then take divergent paths. The companion article offers and examines seven reasons why Article 9 itself may hinder the effective use of syllogisms in a Secured Transactions course.¹⁷ Notwithstanding these statutory roadblocks, this Article contends that Secured Transactions is an ideal course in which the subject matter can be introduced, analyzed, and mastered through deductive reasoning. Part III of this article illustrates—through ten examples covering each of the five major topics of the Secured Transactions course (attachment, perfection, priority, default, and bankruptcy)—how narrative analysis can be expressed as deductive syllogisms, and deductive syllogisms can be the foundation for enhanced narrative analysis. Part IV examines enthymemes (deductive reasoning which requires the audience to infer part of the argument), and Part V reviews the formal fallacies which undermine the logic of the syllogistic argument. Part VI offers a brief conclusion (in syllogistic form, no less).

before enrolling in its law school at the age of twenty-nine. See Robert M. Jarvis, *Gilmore and Black at 50*, 38 J. MAR. L. & COM. 135, 139-40 (2007).

15. See 11 U.S.C. §§ 101 *et seq.* (2006).

16. 13 CHAPMAN L. REV. 97 (2010).

17. Those seven reasons are summarized in the companion article as follows:

First, Article 9 occasionally redefines ordinary terms in an unconventional and counter-intuitive manner, which may lead students to reach logical, but incorrect, conclusions when crafting a syllogistic argument. Second, Article 9 sometimes fails to warn the reader that compliance with a straightforward statutory provision may dictate a conclusion that is logical, yet yields disastrous consequences. Third, Article 9 can lead to incorrect conclusions because selected rules cannot be read literally. Fourth, Article 9 occasionally adopts rules that are inconsistent with policy-based analysis, which may lead students to craft incorrect major premises and, accordingly, to reach erroneous conclusions. Fifth, sometimes a rule of Article 9 triggers a result so unexpected and inconsistent with the norm that a logical approach to its understanding is undermined. Sixth, Article 9 occasionally adopts a rule that is so illogical as to render futile any attempt to understand it logically. And seventh, many of the statutory rules of Article 9 are riddled with exceptions, frustrating the ability to easily craft the major premise of the syllogism.

Id. at 99-100.

II. DEDUCTIVE REASONING AND THE SYLLOGISM

Judge Aldisert and his co-authors offer an introduction to deductive reasoning by noting its prevalence, and thus its importance.¹⁸ They suggest that “90 percent of legal issues can be resolved by deduction”¹⁹ and state that “deductive reasoning . . . is the driving force behind most judicial opinions.”²⁰ In what specific form does this deductive reasoning most often appear? The syllogism—“a label logicians attach to any argument in which a conclusion is inferred from two premises.”²¹

The essay then introduces its audience to syllogisms by offering “the immortal example of logicians everywhere”²²:

All men are mortal.
Socrates is a man.
Therefore, Socrates is mortal.²³

The first sentence (“All men are mortal.”) is known as “the major premise,” which “states a broad and generally applicable truth[.]”²⁴ The second sentence (“Socrates is a man.”) is labeled “the minor premise” and “states a specific and usually more narrowly

18. See Aldisert, *supra* note 3, at 1.

19. Aldisert, *supra* note 3, at 2.

20. *Id.* at 3.

21. *Id.* See also LEWIS H. LARUE, GUIDE TO THE STUDY OF LAW: AN INTRODUCTION 172 (2d ed. 2001) (“In the kingdom of law, the syllogism reigns supreme.”); IRVING M. COPI & CARL COHEN, INTRODUCTION TO LOGIC 191 (8th ed. 1990) (“I consider the invention of the form of syllogisms one of the most beautiful, and also one of the most important, made by the human mind.” (quoting German philosopher and mathematician Gottfried Leibniz)); John Dewey, *Logical Method and Law*, 10 CORNELL L.Q. 17, 21 (1924) (stating that the form of logic “which has had greatest historic currency and exercised greatest influence on legal decisions, is that of the syllogism”). *But see* Robert F. Hanley, *Brush Up Your Aristotle*, 3 J. ASS’N LEGAL WRITING DIRECTORS 145, 147 (2006) (“Syllogisms are for professors. They have a tone of condescension.”).

22. Vincent Wellman, *Practical Reasoning and Judicial Justification: Toward an Adequate Theory*, 57 U. COLO. L. REV. 45, 91 n.206 (1985).

23. Aldisert, *supra* note 3, at 3. This example (sometimes in a slightly different format) has appeared now and then in reported judicial opinions. See, e.g., Tyler v. Cain, 533 U.S. 656, 672-73 (2001) (Breyer, J., dissenting); Dukes v. Wal-Mart, Inc., 474 F.3d 1214, 1245 (9th Cir. 2007) (Kleinfeld, J., dissenting); Russell v. Fort McDowell Yavapai Nation (*In re Russell*), 293 B.R. 34, 40 (D. Ariz. 2003).

24. Aldisert, *supra* note 3, at 4. Cf. PATRICK J. HURLEY, A CONCISE INTRODUCTION TO LOGIC 260 (6th ed. 1997) (defining the “major term” as “the predicate of the conclusion” and the “minor term” as “the subject of the conclusion”).

applicable fact[.]”²⁵ The third sentence (“Therefore, Socrates is mortal.”) is “the conclusion,” which “draws upon these premises and offers a new insight that is known to be true based on the premises[.]”²⁶ The authors then share this important revelation:

[T]he three parts of a syllogism—the two premises and the conclusion—are themselves built from three units. Logicians call these units ‘terms.’ Two terms appear in each statement: the ‘major term’ in the major premise and conclusion, the ‘minor term’ in the minor premise and conclusion, and the ‘middle term’ in the major and minor premises but not in the conclusion. Notice that the middle term covers a broad range of facts, and that if the conclusion is to be valid, the minor term must be a fact that is included within the middle term. Although the jargon can get confusing, the basic idea isn’t hard to grasp: Each statement in a syllogism must relate to the other two.²⁷

The syllogism appears to be a perfect fit as an instruction tool in a rules-based course, such as Secured Transactions. The dominant body of current law in Secured Transactions is statutory: U.C.C. Article 9. Article 9 explains how to create an enforceable security interest.²⁸ It provides rules governing perfection of a security interest.²⁹ The statute devotes twenty-three provisions to priority issues,³⁰ twenty-seven to filing matters,³¹ and twenty-eight to default concerns.³² In total, Article 9 defines eighty (EIGHTY!) terms!³³ Given Article 9’s exhaustive coverage and attention to detail, using syllogisms to teach Secured Transactions seems like an ideal approach. State the applicable rule (major premise). State the

25. Aldisert, *supra* note 3, at 4.

26. *Id.*

27. *Id.* at 6.

28. See generally U.C.C. § 9-203(a), (b). Statutory citations are to U.C.C. Article 9 as revised in 1999 and subsequently amended in 2001 and 2003 to reflect revisions to U.C.C. Article 1 and U.C.C. Article 7, respectively.

29. See generally *id.* §§ 9-301—9-316.

30. See *id.* §§ 9-317-39.

31. See *id.* §§ 9-501-27.

32. See *id.* §§ 9-601-28.

33. See *id.* § 9-102(a)(1)-(80). Article 9 also incorporates many definitions found elsewhere in the U.C.C. See *id.* § 9-102(b), (c).

relevant facts (minor premise). Draw a logical conclusion.³⁴ How hard can this be?³⁵

From my side of the podium, the approach appears quite workable. But, Article 9 has been my classroom companion for more than fifteen years, so maybe my perspective is not shared by the student who travels by my side for only fifteen weeks. Both of us can conclude that Socrates must be mortal if we know that Socrates is a man and all men are mortal. But using that simple illustration as a template to master a set of statutory provisions as complex and technical as Article 9 may appear impossible to the average student. The task is not impossible, but it may be difficult. Some of the difficulty may arise from the language of Article 9 itself, the major topic of my earlier companion article.³⁶ But unfamiliarity with syllogistic analysis may pose additional difficulty. Hopefully that difficulty is eased somewhat by the numerous examples offered in Part III.

III. SYLLOGISMS IN SECURED TRANSACTIONS: TEN EXAMPLES

The legal issues examined in a Secured Transactions course lend themselves, in significant part, to syllogistic analysis because the myriad legal rules are statutory in nature. Most law professors expect students to respond to essay questions in narrative, rather than syllogistic, form. Nevertheless, the quality of narrative answers may improve if students used the syllogism as a template to craft (at least

34. See James M. Boland, *Legal Writing Programs and Professionalism: Legal Writing Professors Can Join the Academic Club*, 18 ST. THOMAS L. REV. 711, 722 (2006) (suggesting that, when crafting a syllogism, “the most important concept to grasp is that the major premise states the rule of law, the minor premise states the facts relevant to the major premise, and the conclusion flows logically from the premises”).

35. Many have observed that the syllogism bears a striking resemblance to the traditional “IRAC” formula on which all law students cut their teeth. See, e.g., Adam Todd, *Neither Dead Nor Dangerous: Postmodernism and the Teaching of Legal Writing*, 58 BAYLOR L. REV. 893, 938 (2006) (observing that “the deductive syllogism [is] commonly known by the acronym IRAC”); Kristin K. Robbins, *Paradigm Lost: Recapturing Classical Rhetoric to Validate Legal Reasoning*, 27 VT. L. REV. 483, 485 (2002) (suggesting that the typical law student has “no idea” that IRAC “is a watered-down version of the syllogism”); Anita Schnee, *Logical Reasoning “Obviously,”* 3 LEGAL WRITING: J. LEGAL WRITING INST. 105, 106 (1997) (“For example, ‘IRAC’ is just another way of saying ‘the deductive syllogistic process.’”). Cf. Boland, *supra* note 34, at 723 (“When struggling to learn legal analysis, students often lose the forest for the trees. The forest is the legal argument (the syllogism), and the trees are the building blocks (IRAC).”).

36. See *supra* notes 16 and 17 and accompanying text.

mentally, if not in writing) their responses. As one professor has noted:

Doctrinal professors frequently complain that the weakest part of answers to their exam questions is the analysis, the application of the rule to the facts. Many students' answers just leap from the rule to the conclusion with no significant argument. Essentially what is missing is the minor premise and showing its relationship to the major premise. First-year students are simply not thinking syllogistically, and thus logical reasoning based on finding not just the rule, but also on applying the law to the facts, is frequently lacking.³⁷

The standard Secured Transactions course covers five broad topics: creating the security interest, perfecting the security interest, the priority of the security interest, default and foreclosure, and bankruptcy concerns. This Part III offers ten hypotheticals, a pair for each topic. In the first of each pair, a narrative response is suggested, followed by how that narrative response might be rewritten as one or more syllogisms. In the second of each pair, the response is initially sketched in syllogistic form, from which a narrative response is then crafted. Hopefully this dual approach better illustrates how syllogisms can be used as an effective teaching tool in the Secured Transactions course.

A. Attachment

The Secured Transactions course often begins with a discussion of the steps necessary to create an enforceable security interest in Article 9.

The following two hypotheticals address attachment issues (and are prefaced with a discussion of applicable law).

1. Hypothetical No. 1

Background: A security interest attaches, or becomes enforceable,³⁸ when value is given,³⁹ the debtor has rights in the

37. See Boland, *supra* note 34, at 726.

38. See U.C.C. § 9-203(b) (indicating when a security interest is "enforceable"); *id.* § 9-203(a) (stating that a "security interest attaches to collateral when it becomes enforceable").

39. *Id.* § 9-203(b)(1).

collateral⁴⁰ and (in the majority of cases) the debtor has authenticated a security agreement which describes the collateral⁴¹ in a manner that “reasonably identifies” it.⁴² The security agreement also should include (i) an “after-acquired property” clause if collateral will include assets acquired by the debtor after the security agreement is authenticated,⁴³ and (ii) a “future advance” clause if the collateral will secure repayment of credit extended after the security agreement is authenticated.⁴⁴

Hypothetical: ABC Company, a Delaware corporation, operates three toy stores in Denver, where it maintains its chief executive office. ABC needs a loan to purchase a new product line of stuffed animal toys: Webkinz.⁴⁵ On March 1, FinCo agrees to make a

40. *Id.* § 9-203(b)(2). Alternatively, the debtor must have “the power to transfer rights in the collateral,” a possibility discussed in § 9-203, cmt. 6.

41. *Id.* § 9-203(b)(3)(A). *See also* §§ 9-102(a)(7) (defining “authenticate”); 9-102(a)(73) (defining “security agreement”).

Three other “security agreement” options exist, but none of them have universal application to all forms of collateral. *See id.* § 9-203(b)(3)(B)-(D). One option permits an oral security agreement if the secured party (or its custodial agent) takes possession of the collateral, which may be impractical (e.g., a debtor’s vehicle or computer) or impossible (e.g., a debtor’s accounts or intellectual property). *Id.* § 9-203(b)(3)(B). Another option exists only if the secured party takes delivery of a certificated security in registered form. *Id.* § 9-203(b)(3)(C). The last option applies only if the secured party takes “control” of specific types of collateral: deposit accounts, electronic chattel paper, electronic documents, investment property, and letter-of-credit rights. *See id.* § 9-203(b)(3)(D).

42. *See id.* § 9-108(a) (indicating that a property description “is sufficient . . . if it reasonably identifies what is described”).

43. *See id.* § 9-203(b)(1)-(2). The clause is enforceable against all of the debtor’s personalty other than commercial tort claims and some consumer goods.

44. *See id.* § 9-204(c).

45. For readers who live in a cave, do not have young children or for some other reason are unfamiliar with this wildly popular product, “Webkinz pets are lovable plush pets that each come with a unique Secret Code. With it, you enter Webkinz World where you care for your virtual pet, answer trivia, earn KinzCash, and play the best kids games on the net!” WEBKINZ, http://www.webkinz.com/us_en/ (last visited Feb. 5, 2011). One news article describes Webkinz World as “a cross between an online gaming site, an educational site and the virtual world of Second Life, but with animals instead of people. Youngsters may also use the site for text chats with friends with whom they have shared their online identity.” Bob Tedeschi, *Fuzzy Critters With High Prices Offer Lesson in New Concepts*, N.Y. TIMES (March 26, 2007), <http://www.nytimes.com/2007/03/26/technology/26ecom.html?n=Top/News/Business/Small%20Business/E-Commerce>. Launched in 2005, “Webkinz have quietly grown into a phenomenon similar to Cabbage Patch Kids and Beanie Babies in years past—the type of toy that a parent will drive across the state to snag, or pay four times the selling price for on a Web site such as eBay.” Allison Linn, *Webkinz*

\$500,000 secured loan and ABC signs a written security agreement that includes the following language: "To secure repayment of all current and future obligations owed by Debtor to Secured Party, Debtor grants to Secured Party a security interest in all of its current and after-acquired inventory." ABC borrows the funds on March 6 and purchases a large shipment of the Webkinz toys on March 10.

Does FinCo have an enforceable security interest in the Webkinz toys?

In narrative form, the model answer might look like this:

Under section 9-203, FinCo has an enforceable security interest in the Webkinz toys if (i) value has been given, (ii) ABC has rights in the toys, and (iii) ABC has authenticated a security agreement which describes the Webkinz toys.⁴⁶ ABC is the "debtor" under section 9-102(a)(28) because it has a property interest in the collateral.

As defined in section 1-204, "value" includes (among other things) the binding commitment to extend credit, the extension of immediately available credit and any consideration sufficient to support a simple contract. FinCo gave value either when it promised to make the \$500,000 loan, made the loan immediately available for withdrawal or funded the loan.

ABC acquired rights in the toys when it purchased them on March 10.

ABC's execution of the written security agreement on March 1 constitutes "authentication," which is defined in section 9-102(a)(7) to include the act of signing. ABC owns and operates toy stores, so the Webkinz toys are part of its "inventory," defined in section 9-102(a)(48) to include goods held for sale. "Inventory" is a type of collateral, and section 9-108(b)(3) permits collateral to be described by type. ABC purchased the Webkinz toys after executing the security agreement, but the agreement expressly includes "after-acquired" inventory. So the description of collateral includes the Webkinz toys.

All three conditions are present, so FinCo has an enforceable security interest in the Webkinz toys when the last of the three conditions is met: March 10.

sparks a craze, and a shortage, MSNBC.COM (Apr. 27, 2007), <http://www.msnbc.msn.com/id/18274547/>.

46. U.C.C. § 9-203.

The foregoing narrative could be rewritten in the form of several syllogisms, such as the following:

The person who has a property interest in the collateral is a “debtor.” (*major premise*)

ABC has a property interest in the collateral (the Webkinz toys). (*minor premise*)

ABC is the debtor. (*conclusion*)

The debtor must authenticate any written security agreement. (*major premise*)

ABC is the debtor. (*minor premise*)

ABC must authenticate any written security agreement. (*conclusion*)

A signature is a form of authentication. (*major premise*)

ABC signed the written security agreement. (*minor premise*)

ABC has authenticated the written security agreement. (*conclusion*)

“Value” includes the binding commitment to extend credit, the extension of immediately available credit and the giving of any consideration sufficient to support a simple contract. (*major premise*)

FinCo made a binding commitment on March 1 to extend credit of \$500,000, the funds of which were borrowed by ABC on March 6 and serve as consideration sufficient to support a simple contract. (*minor premise*)

FinCo has given value. (*conclusion*)

A debtor has rights in collateral if the debtor has purchased the collateral. (*major premise*)

ABC (the debtor) purchased the Webkinz toys on March 6. (*minor premise*)

ABC has rights in the Webkinz toys. (*conclusion*)

Goods held for sale or lease by the debtor are inventory. (*major premise*)

The Webkinz toys are held for sale or lease by ABC (the debtor), a toy store. (*minor premise*)

The Webkinz toys are part of ABC's inventory.
(*conclusion*)

The security interest extends to inventory acquired by the debtor after the security agreement is executed if the agreement includes an after-acquired property clause. (*major premise*)

The collateral description in the security agreement executed on March 1 refers to "after-acquired" inventory. (*minor premise*)

The security interest extends to the inventory (Webkinz toys) acquired by ABC on March 6. (*conclusion*)

A security agreement reasonably identifies the collateral if it describes the collateral by type. (*major premise*)

"Inventory" is a type of collateral. (*minor premise*)

The agreement's description—"current and after-acquired inventory"—reasonably identifies the collateral. (*conclusion*)

A security interest attaches, or becomes enforceable, when the last of the following three conditions is met: (i) value is given, (ii) the debtor has rights in the collateral, and (iii) the debtor has authenticated a security agreement that reasonably identifies the collateral. (*major premise*)

FinCo gave value (as early as March 1 and no later than March 6), ABC acquired rights in the Webkinz (March 10), and ABC authenticated a security agreement that adequately described the Webkinz toys as collateral (March 1). (*minor premise*)

FinCo's security interest attached to the Webkinz toys on March 10. (*conclusion*)

2. Hypothetical No. 2

Background: An oral security agreement is effective if the secured party takes possession of the collateral or appoints a custodial agent, but the agent cannot be the debtor or a person too "closely connected to or controlled by the debtor."⁴⁷

47. See *id.* § 9-313, cmt. 3. See also § 9-203, cmt. 4 (indicating that "[p]ossession as contemplated by Section 9-313 is possession for purposes of subsection (b)(3)(B) . . .").

Hypothetical: Maris is an avid chess player⁴⁸ and collects unique chess sets. Yesterday, Maris borrowed \$4,000 from her father, Charles. Charles and Maris agreed that one of her chess sets, a 19th century Cantonese carved ivory “George III” set,⁴⁹ will serve as collateral. The parties agreed that Maris will retain custody of the set but will deliver it to Charles at his request if Maris defaults on the loan. Charles and Maris never memorialize their oral agreement in writing.

Absent possession, does Charles have an enforceable security interest in the chess set?

A response, in the form of a single syllogism, could be drafted as follows:

An oral security agreement is ineffective to create an enforceable security interest if the debtor (or someone too closely connected to or controlled by the debtor) possesses the collateral. (*major premise*)

Maris, the debtor, possesses the chess set. (*minor premise*)

The oral security agreement between Maris and Charles is ineffective to create an enforceable security interest in the chess set. (*conclusion*)

48. So, too, is (or was) composer Ludwig van Beethoven, opera star Enrico Caruso, actress Marilyn Monroe, actor Paul Newman, film director Alfred Hitchcock, author John Steinbeck, philosopher Bertrand Russell, basketball legend Wilt Chamberlain, tennis champion Roger Federer, British Prime Minister Winston Churchill, Soviet leader Josef Stalin, gangster Al Capone and supermodel Heidi Klum. See *Celebrities Play Chess*, MONROI (Mar. 8, 2008), <http://www.monroi.com/chess-info/44-in/446-celebrities-play-chess.html>. Yale law professor (and bestselling author) Stephen L. Carter also is an avid chess player and a member of the U.S. Chess Federation. See *Meet the Writer: Stephen L. Carter*, BARNES & NOBLE.COM, <http://www.barnesandnoble.com/writers/writerdetails.asp?cid'84255> (last visited Feb. 5, 2011).

49. An online search reveals that this set has a value of approximately \$4,183. See *Chess Sets*, ANITQUECHESSSHOP.COM, <http://www.antiquechessshop.com/> (“chess sets” and “Ref416”) (last visited Feb. 5, 2011). Looking for something more expensive? How about the Jewel Royale Chess Set, commissioned by a British custom jewelry company. With a value in excess of \$9 million, “this single chess set is the most expensive and exquisite game set of any kind in the world. Constructed of gold and platinum, it contains diamonds, emeralds, rubies, pearls and sapphires. The king piece alone weighs 165.2 grams of 18 carat yellow gold and has a spiraling mid-section graced by 73 rubies and 146 diamonds.” Hunter Davis, *Most Expensive Chess Set*, THE MOST EXPENSIVE JOURNAL (Mar. 22, 2007), <http://most-expensive.net/chess-set>.

A narrative response, using the premises and conclusion of the syllogism as a foundation, might be written as follows:

Charles and Maris have agreed that Charles will have a security interest in a particular chess set to secure repayment of the \$4,000 loan. This security agreement is oral, not written. An oral security agreement is ineffective to create an enforceable security interest in collateral that remains in possession of the debtor, or a party too closely connected to or controlled by the debtor (sections 9-203(b)(3)(B) and cmt. 4; 9-313 cmt. 3). The parties have agreed that Maris will possess the chess set until Charles makes a post-default request for its custody. Because the chess set remains in the possession of Maris, the debtor, the oral understanding of the parties fails to create an enforceable security interest in the chess set.

B. Perfection

After students master the rules for creating an enforceable security interest, they learn how to perfect the security interest. With few exceptions, the secured party can perfect its security interest by filing a financing statement with the appropriate state official.⁵⁰

The following two hypotheticals address perfection-by-filing issues (and are prefaced with a discussion of applicable law).

1. Hypothetical No. 3

Background: The two central issues confronted by the filer are: (1) what information must be provided on the filing, and (2) in which state must the filing be recorded. Students learn that the filing must provide the names of both the debtor and the secured party and a description of the collateral,⁵¹ but, to avoid discretionary rejection by the clerk, the filing also should provide other information (all

50. See U.C.C. § 9-310(a). Notable exceptions include: deposit accounts and letter-of-credit rights, which may be perfected only by control (*id.* § 9-312(b)(1), (2)); money, which may be perfected only by the creditor's possession (*id.* § 9-312(b)(3)); motor vehicles and other assets that are subject to certificate-of-title or other similar state law (*id.* § 9-311(a)(2)); and assets (*e.g.*, copyrights and airplanes) that are subject to federal filing laws (§ 9-311(a)(1)).

51. See *id.* § 9-502(a).

prompted by the standard filing form),⁵² such as a mailing address for both parties and specific information about a debtor that is an organization (rather than a natural person).⁵³ Students also discover that, as a general rule, the creditor should file the financing statement where the debtor is “located,”⁵⁴ which depends significantly on the type of debtor (*e.g.*, a natural person, a registered organization, etc.).⁵⁵

Hypothetical (which builds on the previous set of facts involving ABC Co. and FinCo in Hypothetical No. 1): FinCo files a standard-form financing statement with the appropriate Colorado official on March 15, listing the debtor by its legal name (“ABC Company”) and describing the collateral merely as “inventory.” FinCo correctly provides all other information requested by the form.

Does FinCo have a perfected security interest in the Webkinz toys purchased by ABC on March 10?

A model answer, in narrative form, might read as follows:

A secured party may perfect a security interest in inventory by filing a financing statement (section 9-310(a)). As previously discussed, ABC operates three toy stores, so the Webkinz toys are part of its inventory.

To be effective, a financing statement must provide all of the information required by Article 9. The facts indicate that the financing statement correctly provides all required information. The collateral description omits any reference to “after-acquired” inventory, but only the security agreement (and not the financing statement) must reference the after-acquired property clause (sections 9-204, cmt. 7; 9-502, cmt. 2).

The financing statement also must be filed in the correct place. Article 9 dictates that a financing statement must be filed in the state where the debtor is located (section 9-301(1)). This debtor, ABC, is a corporation created under Delaware law, so it is a “registered organization” (section 9-102(a)(70)). A registered organization is deemed located in

52. The standard financing statement form (also referred to as a UCC-1) appears in Section 9-521(a), and the standard amendment form (also known as a UCC-3) appears in Section 9-521(b).

53. *See id.* §§ 9-516(b); 9-520(a).

54. *See id.* § 9-301(1).

55. *See, e.g., id.* §§ 9-307(b) (stating the location of “an individual,” a single-office “organization” and a multiple-office “organization”); 9-307(e) (indicating the location of a “registered organization”).

the state of its incorporation (section 9-307(e)). ABC, therefore, is located in Delaware. FinCo filed its financing statement in Colorado, however, rather than Delaware. Because FinCo did not file its financing statement where ABC is located, its filing is ineffective to perfect its security interest in the Webkinz toys.⁵⁶

Using syllogisms, the analysis may be illustrated as follows:

Filing a financing statement may perfect a security interest in inventory. (*major premise*)

FinCo filed a financing statement. (*minor premise*)

FinCo has taken action which may perfect its security interest in the inventory of ABC Co. (*conclusion*)

A financing statement is substantively correct if it provides certain information required by Article 9 (which does not mandate any reference to the after-acquired property clause in the collateral description). (*major premise*)

According to the facts, FinCo's filing correctly provides all of the necessary information (although it describes the collateral as "inventory" rather than "current and after-acquired inventory"). (*minor premise*)

FinCo's filing is substantively correct. (*conclusion*)

A corporation organized under state law is a "registered organization." (*major premise*)

ABC Co. is a corporation organized under state law. (*minor premise*)

ABC Co. is a registered organization. (*conclusion*)

A registered organization that is a corporation is deemed located in the state of its organization. (*major premise*)

56. What I often read when grading exams is a correct, but conclusory, statement. For example, instead of the two-paragraph narrative answer, a student may answer the question with this single-sentence statement: "FinCo filed in the wrong place so its [sic] security interest is unperfected." Clients may prefer a bottom-line answer, but law professors favor the analysis necessary to reach the bottom-line answer.

In addition to the "its" v. "it's" error, my students also often misspell my last name on the Bluebook covers (e.g., Zimmberger, Zinkletter, Zimmermann, Redford, Clooney [I assume George, not Rosemary], SexyProf, etc.). Go figure.

ABC Company, a registered organization, is organized under Delaware law. (*minor premise*)

ABC Co. is deemed located in Delaware. (*conclusion*)

To be effective, a financing statement must be filed where the debtor is located. (*major premise*)

FinCo did not file its financing statement in Delaware (ABC Company's location), but rather in Colorado (store locations). (*minor premise*)

FinCo's filing is not effective. (*conclusion*)

An ineffective filing fails to perfect a security interest. (*major premise*)

FinCo's filing is ineffective. (*minor premise*)

FinCo's filing fails to perfect its security interest. (*conclusion*)

2. Hypothetical No. 4

Background: After the student masters the basic filing rules, the typical Secured Transactions course then focuses attention on events which may, or may not, affect the continued effectiveness of a financing statement and the related perfection of the security interest. One of these events arises when the debtor changes its name in a manner that frustrates the notice function of the filing. Students learn that if the name change renders the filing "seriously misleading," then the filing (i) continues to perfect a security interest in collateral acquired by the debtor before the name change and within four months after the name change,⁵⁷ but (ii) is ineffective to perfect a security interest in collateral acquired more than four months after the name change, absent a timely amendment.⁵⁸

Hypothetical (again involving ABC Co. and FinCo): FinCo perfects its security interest by filing a financing statement with the appropriate Delaware official on March 15. ABC Co. changes its legal name to "ToyCo" on June 1 without FinCo's knowledge or consent.

As of December 1, does FinCo's original filing (which has not been amended) continue to perfect its security interest in Webkinz

57. See U.C.C. § 9-507(c)(1). See also *id.* § 9-506(b), (c) (discussing when a filing becomes "seriously misleading").

58. See *id.* § 9-507(c)(2).

toy animals purchased by ABC/ToyCo on September 1 and LEGO products⁵⁹ purchased by ABC/ToyCo on November 15?

Drafted as syllogisms, the response might look like this:

A name change renders a financing statement seriously misleading if a search against the new name of the debtor (using the filing office's standard search logic) fails to reveal a filing recorded under the debtor's previous name. (*major premise*)

A search against the debtor's new name of "ToyCo" is not likely to reveal a financing statement filed against the previous name of "ABC Company" (assumed, absent an actual search report). (*minor premise*)

The debtor's name change from "ABC Company" to "ToyCo" has rendered FinCo's filing seriously misleading. (*conclusion*)

A financing statement that has become seriously misleading remains effective to perfect a security interest in collateral acquired by the debtor before, or within four months after, the name change. (*major premise*)

ToyCo purchased the Webkinz toys on September 1, within four months after ABC Co. changed its name to ToyCo on June 1. (*minor premise*)

FinCo's financing statement, although seriously misleading, continues to perfect its security interest in the Webkinz toys. (*conclusion*)

59. According to the company's web site, the founder (Ole Kirk Christiansen) created the "LEGO" name by putting together the first two letters of each of the Danish words, "leg godt" (meaning "play well"), not knowing that "LEGO" in Latin can mean "I put together." See *Company Profile: An Introduction to the Lego Group*, LEGO.COM 3 (2008), http://cache.lego.com/downloads/aboutus/LEGO_company_profile_UK.pdf.

Interesting facts include: (i) a column of 40 billion LEGO bricks will reach the moon; (ii) the number of LEGO bricks sold annually will circle the globe more than five times if laid end to end; (iii) there are approximately sixty-two LEGO bricks for each human in the world; and (iv) the world's children spend five billion hours each year playing with LEGO bricks. *Id.* at 18. The LEGO brick was named "toy of the century" in 2000 by both Fortune magazine and the British Toy Retailers Association. See Joseph Pisani, *The Making of ... a LEGO*, BLOOMBERG BUSINESSWEEK (Nov. 29, 2006), http://www.businessweek.com/bwdaily/dnflash/content/nov2006/db20061127_153826.htm.

Absent any amendment, a financing statement that has become seriously misleading is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the name change. (*major premise*)

ToyCo purchased the LEGO toys on November 15, more than four months after ABC Co. changed its name to ToyCo on June 1. (*minor premise*)

Absent any amendment, FinCo's financing statement, which has become seriously misleading, does not perfect its security interest in the LEGO toys. (*conclusion*)

A narrative response, borrowing heavily from the syllogisms, might read as follows:

A name change that renders a financing statement "seriously misleading" will adversely impact the continued effectiveness of the filing. A financing statement has become "seriously misleading" if a search against the debtor's new name (using the filing office's standard search logic) fails to disclose the filing against the previous name (section 9-506(b), (c)). Given the dissimilar nature of the two names (which do not start with the same letter), a search against "ToyCo" is not likely to reveal a filing against "ABC Company," so it will be assumed (absent an actual search) that the name change has rendered FinCo's filing "seriously misleading."

A financing statement that is seriously misleading remains effective to perfect a security interest in collateral acquired by the debtor before the name change and within four months after the name change, but the filing (absent an amendment) is no longer effective to perfect a security interest in collateral acquired thereafter (section 9-507(c)). ABC Co. changed its name on June 1, so the four-month period thereafter expires on or about September 30. ToyCo purchased the Webkinz toy animals on September 1, a date before September 30, so the original filing continues to perfect FinCo's security interest in that inventory. But ToyCo acquired the LEGO blocks on November 15, a date after September 30, so the original filing (absent amendment) is not effective to perfect FinCo's security interest in that inventory.

C. Priority

Students probably spend more time in a Secured Transactions course on the topic of “priority” than any other topic. Priority disputes arise when at least two parties each claim a superior interest in the same asset.⁶⁰ One of the litigants is always the Article 9 secured creditor.⁶¹ Other potential litigants include a host of characters, including a judicial lien creditor, a statutory creditor (*e.g.*, the Internal Revenue Service), another Article 9 secured creditor, a buyer of the collateral, a real estate creditor (arguing over fixtures), and the bankruptcy trustee.⁶²

Hypotheticals No. 5 and No. 6 address two priority disputes, the former rather simple, and the latter much more difficult. As before, a brief discussion of applicable law precedes each problem and its analysis.

1. Hypothetical No. 5

Background: Students learn that the baseline rule for resolving priority disputes between two or more perfected Article 9 creditors is this: The creditor who files or perfects first wins.⁶³

*Hypothetical:*⁶⁴ ABC Co. executes a security agreement, on March 1, which grants a security interest in its current and after-acquired inventory to FinCo, who makes a \$50,000 loan to ABC that day. FinCo files its financing statement against ABC’s inventory with the appropriate state official on March 15.

At this time, ABC Co. also is negotiating a secured loan with Lender. With ABC’s permission, Lender files a financing statement against ABC’s inventory with the appropriate state official on March 10. On March 18, ABC executes a security agreement which grants a

60. See WILLIAM H. LAWRENCE ET AL., UNDERSTANDING SECURED TRANSACTIONS 227-29 (4th ed. 2007).

61. *Id.*

62. *Id.* See generally U.C.C. §§ 9-317—9-339 (providing the Article 9 priority rules).

63. *Id.* § 9-322(a)(1). The two companion rules are (i) a perfected security interest trumps an unperfected security interest, and (ii) the first security interest to attach enjoys priority if both security interests are unperfected. *Id.* § 9-322(a)(2) and (3), respectively.

64. This hypothetical is inspired, in part, by a problem in the casebook I frequently use in my Secured Transactions course. See RAYMOND T. NIMMER ET AL., COMMERCIAL TRANSACTIONS: SECURED FINANCING—CASES, MATERIALS, PROBLEMS 210 (3d ed. 2003) (Problem 4.5).

security interest in its current and after-acquired inventory to Lender, who makes a \$35,000 loan to ABC that same day.

As of July 1, which secured party has priority in inventory acquired by ABC in February of the same calendar year?

The model answer will include a discussion of attachment and should reveal that FinCo's security interest attached to the inventory on March 1 and Lender's security interest attached to the inventory on March 18.⁶⁵ The discussion should then turn to perfection and priority. The narrative response might read as follows:

A secured party can perfect its security interest in inventory by filing a financing statement (section 9-310(a)). If the secured party files its financing statement before its security interest attaches, then perfection occurs at attachment (section 9-308(a)).

FinCo filed its financing statement on March 15, so its security interest (which attached on March 1) became perfected on the filing date of March 15.

Lender filed its financing statement on March 10, but its security interest did not become perfected until it attached on March 18.

Conflicting perfected security interests rank according to priority in time of filing or perfection, whichever is earlier (section 9-322(a)(1)). Lender filed first on March 10, before FinCo filed on March 15; FinCo's perfection date of March 15 is earlier than Lender's perfection date of March 18. Lender's filing date of March 10 is earlier than any other filing or perfection date, so Lender's security interest enjoys priority over FinCo's security interest.⁶⁶

65. This part of the model answer might take the following form:

A security interest attaches, or becomes enforceable, under § 9-203 when (i) value has been given, (ii) the debtor acquires rights in the collateral, and (iii) any written security agreement is authenticated by the debtor and adequately describes the collateral.

FinCo's security interest attached to the inventory on March 1. On that date, ABC authenticated a security agreement which described the collateral and FinCo gave value. ABC previously acquired rights in the inventory in February.

Lender's security interest attached to the inventory on March 18, when ABC executed its security agreement and Lender funded the loan. ABC previously acquired rights in the inventory in February.

66. Notwithstanding numerous in-class examples of similar exhaustive analysis, and a conspicuous reminder on the exam ("PLEASE REMEMBER TO WEAVE

The narrative response, rewritten as a series of syllogisms, might look like this:

A financing statement will perfect a security interest in inventory on the date of filing, or the date of attachment, whichever is later. (*major premise*)

FinCo's filing date is March 15 and its attachment date is March 1. (*minor premise*)

FinCo's filing perfected its security interest on March 15. (*conclusion*)

A financing statement will perfect a security interest in inventory on the date of filing, or the date of attachment, whichever is later. (*major premise*)

Lender's filing date is March 10 and its attachment date is March 18. (*minor premise*)

Lender's filing perfected its security interest on March 18. (*conclusion*)

Conflicting perfected security interests rank according to priority in time of filing or perfection, whichever is earlier. (*major premise*)

Lender's filing and perfection dates are March 10 and March 18, respectively, and FinCo's filing and perfection date is March 15. (*minor premise*)

Lender's security interest enjoys priority because its filing date of March 10 is earlier than any other filing or perfection date (March 15 or March 18). (*conclusion*)

2. Hypothetical No. 6

Background: One of the more challenging priority disputes arises when *X* sells assets to *Y*, both parties have granted security interests in those assets, and their respective creditors dispute the priority of those security interests. Article 9 describes this situation as the "double debtor" problem.⁶⁷ Students are directed to the priority rule

THE RELEVANT FACTS INTO YOUR ANALYSIS FOR FULL CREDIT."), several students will offer this one-sentence response: "Lender wins because it filed first." And then my hand takes on a life of its own and writes, in bright red ink, "Conclusory-EXPLAIN!!!"

67. See U.C.C. § 9-325, cmt. 2. I prefer the more catchy alliteration, "dual debtor dilemma."

in section 9-325 (“Priority of Security Interests in Transferred Collateral”) and learn that the security interest claimed by the buyer’s creditor is subordinated to the competing claim held by the seller’s creditor if (i) the buyer acquires the assets subject to the security interest created by the seller; (ii) the security interest created by the seller is perfected when the buyer acquires the collateral; and (iii) the security interest created by the seller has remained perfected.⁶⁸ Two companion provisions are sections 9-315 and 9-507. Under the former, the creditor’s security interest often survives the debtor’s unauthorized disposition of the collateral.⁶⁹ Under the latter, the creditor’s filing (against the seller) remains effective to perfect the security interest in the transferred assets (now owned by the buyer).⁷⁰

Hypothetical: Lender has an enforceable security interest in the current and after-acquired equipment owned by ABC Health Corp., a Delaware corporation that operates several hospitals. Lender’s security interest is perfected by a financing statement filed in March 2008.

FinCo has an enforceable security interest in the current and after-acquired equipment owned by XYZ Health Corp., a Delaware corporation that operates several hospitals. FinCo’s security interest is perfected by a financing statement filed in July 2007.

In November 2008, ABC ceases its kidney dialysis operations⁷¹ and sells twenty dialysis machines to XYZ without Lender’s knowledge or consent.

68. See *id.* § 9-325(a). The statute refers to a “debtor” and “another person” (or “other person”). One of the difficulties confronted by students in mastering the statute is application of those terms to specific parties, especially since this specific priority dispute involves two different debtors, the transferor and the transferee. In this statute, the “debtor” refers to the transferee. The phrase “another person” (or “other person”) refers to the transferor.

69. See *id.* § 9-315(a)(1) (indicating that, as a general rule, a security interest “continues in collateral notwithstanding sale, lease, license, exchange, or other disposition thereof unless the secured party authorized the disposition free of the security interest . . .”).

70. See *id.* § 9-507(a) (stating that a financing statement “remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of” if the security interest itself survives the disposition under § 9-315(a)(1) or otherwise, “even if the secured party knows of or consents to the disposition”).

71. Dutch-born physician Willem Kolff invented the first kidney dialysis machine during World War II while working in Nazi-occupied territory. *Inventor of the Week: Willen Kolff*, LEMELSON MIT PROGRAM (Mar. 2003), <http://web.mit.edu/invent/iow/kolff.html>. After the war he emigrated to the United States and accepted a position at the Cleveland Clinic, where he began working on an artificial heart. More than two decades later, while at the University of Utah, he

As of July 2009, determine which creditor's security interest in the twenty machines has priority.

The model answer will address basic attachment and perfection issues. The answer also will reflect that FinCo can claim priority under the baseline "first to file or perfect" rule because its filing date of July 2007 is earlier than Lender's filing date of March 2008 (which also will be its earliest possible perfection date). But the model answer should also observe that the basic priority rule of section 9-322(a) is subject to other priority rules found in Part 3 of Article 9.⁷² The priority rule applicable to this dispute is found in section 9-325.

Presented in the form of syllogisms, the analysis of section 9-325 might look like this:

A buyer acquires collateral subject to the security interest created by its seller unless the seller's creditor authorized the sale free and clear of its security interest (or the buyer is otherwise protected). (*major premise*)

Lender's lack of consent means that it did not authorize ABC's sale of the dialysis machines, and XYZ is not otherwise protected (it cannot invoke the protection afforded to buyers of collateral because the machines are held by healthcare providers ABC and XYZ as equipment, not as inventory or consumer goods). (*minor premise*)

XYZ acquired the dialysis machines subject to the security interest created by ABC. (*conclusion*)

A buyer purchases collateral subject to a perfected security interest created by its seller if the seller's creditor perfected that security interest by filing a financing statement before the sale. (*major premise*)

Lender perfected its security interest in ABC's kidney dialysis machines by filing a financing statement in March 2008, before ABC sold the machines to XYZ in November 2008. (*minor premise*)

supervised the first implant of an artificial heart into a human (Barney Clark) in 1982. *See id.* For a recent biography, see HERMAN BROERS, *INVENTOR FOR LIFE: THE STORY OF W. J. KOLFF, FATHER OF ARTIFICIAL ORGANS* (B&V Media Publishers, 2007).

72. *See* U.C.C. § 9-322(a) ("Except as otherwise provided in this section, . . ."); *id.* § 9-322(f) ("Subsections (a) through (e) are subject to: (1) . . . other provisions of this part; . . ."). The phrase "this part" refers to Part 3 of Article 9 (§§ 9-301 through 9-342).

XYZ purchased the kidney dialysis machines subject to Lender's perfected security interest. (*conclusion*)

A security interest in collateral perfected by filing remains perfected after its sale unless and until the filing's five-year period of effectiveness ceases or the seller and the buyer are located in different jurisdictions and more than one year has passed from the sale date. (*major premise*)

Lender's filing in March 2008 remains effective as of July 2009 because the five-year period of effectiveness will not expire until March 2013, and ABC and XYZ are located in the same jurisdiction (Delaware). (*minor premise*)

FinCo's security interest in the kidney dialysis machines remains perfected (as of July 2009). (*conclusion*)

A security interest created by a debtor which otherwise enjoys priority under the first-to-file-or-perfect rule is subordinate to a security interest created by the debtor's seller if the debtor acquired the collateral subject to that security interest and that security interest was perfected at the time of sale and has always remained perfected thereafter. (*major premise*)

FinCo's security interest enjoys priority under the first-to-file-or-perfect rule because its filing date of July 2007 is earlier than Lender's filing or perfection date, XYZ acquired the dialysis machines subject to the security interest claimed by Lender, and Lender's filing perfected its security interest in the machines at the moment of sale and has remained effective thereafter. (*minor premise*)

FinCo's security interest is subordinate to Lender's security interest (or rephrased, Lender's security interest enjoys priority). (*conclusion*)

Using the syllogisms as a foundation, the narrative analysis of section 9-325 might be written as follows:

Section 9-325 states that a security interest created by a debtor (XYZ) is subordinate, or junior, to a security interest in the same collateral (the twenty kidney dialysis machines) created by another person (ABC) if three conditions are met.

First, XYZ must have acquired the dialysis machines subject to the security interest created by ABC. This condition is met because: (i) the Lender-ABC security

agreement is effective against purchasers of the collateral (section 9-201(a)); (ii) the security interest survived the sale because Lender did not consent to the sale (section 9-315(a)); and (iii) the dialysis machines are equipment for healthcare providers ABC and XYZ, so XYZ cannot invoke the protection afforded to buyers of inventory (section 9-320(a)) or consumer goods (section 9-320(b)). No other Article 9 provision renders a contrary result, so XYZ acquired the dialysis machines subject to Lender's security interest.

Second, the security interest created by ABC must have been perfected when XYZ acquired the dialysis machines. This condition is met because: (i) Lender had perfected its security interest in the machines by filing a financing statement, and (ii) the filing remains effective after the sale (section 9-507(a)).

Third, Lender's security interest must never become unperfected after the sale. That condition is met. The five-year life of the original filing will not expire until March 2013, and the one-year concern raised by section 9-316(a)(3) is not relevant because ABC and XYZ are located in the same jurisdiction (Delaware). Even if the two healthcare providers were located in different states, the dispute resolution date of July 2009 is within one year of the sale date of November 2008.

All three conditions of section 9-325(a) are present. Therefore, FinCo's security interest—which would normally enjoy priority under the first-to-file-or-perfect rule of section 9-322(a)—is subordinate to Lender's security interest (section 9-325(b)). Lender's security interest in the kidney dialysis machines enjoys priority.

D. Default

Part 6 of Article 9 codifies the rights and remedies available to a secured party following the debtor's "default."⁷³ Article 9 does not define the term "default," so its intended meaning for any particular transaction must be addressed by the parties contractually.⁷⁴ Typical events of default by the debtor include nonpayment; breach of a

73. See U.C.C. §§ 9-601- 9-628; see also LAWRENCE, *supra* note 60, at 405.

74. See LAWRENCE, *supra* note 60, at 406.

warranty, covenant, or separate contract; lawsuits against the debtor; and bankruptcy.⁷⁵

Hypotheticals No. 7 and No. 8 address two common default issues. Each is prefaced with a brief discussion of applicable law.

1. Hypothetical No. 7

Background: Among its post-default remedies, Article 9 permits the secured party to dispose of the collateral,⁷⁶ subject to two requirements. First, all aspects of the disposition must be commercially reasonable.⁷⁷ Second, the secured party may be required to notify the debtor and other parties of the disposition.⁷⁸

Hypothetical: In 2007, Eirica Macintosh purchased a horse for personal enjoyment. Lender financed the purchase and obtained an enforceable security interest in the horse. Eirica named the horse *The Flying Scotsman* in honor of one of her homeland's greatest heroes, Eric Liddell.⁷⁹ Lender never filed a financing statement. Eirica's sister, Ainsley, guaranteed repayment of the \$20,000 debt.

75. *Id.*

76. *See* U.C.C. § 9-610(a).

77. *See id.* § 9-610(b). The parties cannot waive or vary this duty of commercial reasonableness. *Id.* § 9-602(7). The parties can, however "determine by agreement the standards measuring the fulfillment" of the duty of commercial reasonableness "if the standards are not manifestly unreasonable." *Id.* § 9-603(a).

78. *See id.* § 9-611(b). Notice is excused if the collateral is "perishable" (e.g., fruits and vegetables), "threatens to decline speedily in value" (e.g., tickets to an upcoming event), or "is customarily sold on a recognized market" (e.g., shares of publicly traded securities). *Id.* § 9-611(d). The debtor also can waive notice but must do so by authenticating the waiver after default. *Id.* § 9-624(a).

Article 9 provides suggested forms of notice. *See id.* §§ 9-613 (not a consumer-goods transaction); *id.* 9-614 (consumer-goods transaction). *See also id.* § 9-102(a)(24) (defining a "consumer-goods transaction" as a transaction in which consumer goods secure repayment of "a personal, family, or household" debt).

79. Eric Liddell was the first Scot to earn a gold medal in a track event when he won the 400-meter race in world-record time at the 1924 Olympics in Paris (a storyline chronicled in *Chariots of Fire*, which won the Oscar for Best Picture in 1981). *See Awards for Chariots of Fire*, IMDB, <http://www.imdb.com/title/tt0082158/awards> (last visited Feb. 5, 2011). The next year he returned to China, his birthplace, to serve as a missionary. E. MICHAEL RUSTEN & SHARON RUSTEN, *THE ONE YEAR BOOK OF CHRISTIAN HISTORY* 386-87 (2003). In 1943 he was interned at a Japanese prisoner of war camp in Shantung Province, where he remained until he died two years later, at the age of forty-three, after slipping into a coma triggered by an inoperable brain tumor. *Id.* at 104-05, 386-87.

Liddell's time in China partly overlapped that of medical missionaries Nelson and Virginia Bell. Their second daughter, Ruth, was born in Qingjiang in 1920.

In 2008, Eirica obtained a \$5,000 loan from FinCo. Eirica granted to FinCo an enforceable security interest in the horse. Eirica never disclosed Lender's security interest, and FinCo's search of the public records revealed no filings against her. Eirica borrowed the money to pay for some uninsured medical expenses.

In 2009, Eirica defaulted on the \$5,000 loan. With her permission, FinCo took possession of the horse, intending to sell it at a public auction. Eirica still owes \$8,000 to Lender.

To which party (or parties) must FinCo send its disposition notice?

The model response, in narrative form, might appear as follows:

FinCo must send its disposition notice to the debtor (section 9-611(c)(1)). Eirica is the debtor under section 9-102(a)(28) because she is the party who owns the collateral (the horse).

FinCo must also send its disposition notice to any secondary obligor (section 9-611(c)(2)). Ainsley, as a guarantor, is a "secondary obligor" (assumed, absent independent knowledge of the law of suretyship).⁸⁰

FinCo also must send its disposition notice to other creditors claiming an interest in the horse, but only if the collateral is not a consumer good (section 9-611(c)(3)). Eirica is using the horse for personal enjoyment—a personal, family, or household purpose—so the horse is a consumer good (section 9-102(a)(23)). Because the horse is a

While attending college near Chicago, she accepted a social invitation by another student to attend a performance of Handel's *Messiah*. This first date led to a courtship that blossomed into something special, and Ruth Bell became Mrs. Billy Graham in 1943. *See id.* at 76-77; *see also* Kristen Burke, *Ruth Bell Graham: A Life Well Lived, Part 1*, BILLY GRAHAM EVANGELISTIC ASS'N (Aug. 1, 2007), www.billygraham.org/articlepage.asp?articleid=848; *Papers of Lemuel Nelson Bell-Collection* 318, BILLY GRAHAM CTR.: ARCHIVES, [http://www.wheaton.edu/bgc/archives/GUIDES/318.htmNo. 3](http://www.wheaton.edu/bgc/archives/GUIDES/318.htmNo.3) (last revised Feb. 11, 2002).

80. "One must consult the law of suretyship to determine whether an obligation is secondary." U.C.C. § 9-102, cmt. 2.a. The general rule is that a guarantor is a secondary obligor. *See* RESTATEMENT (THIRD) OF SURETYSHIP AND GUARANTY § 15 (1996). *Cf.* 9A WILLIAM D. HAWKLAND ET AL., UNIFORM COMMERCIAL CODE SERIES [REV] § 9-102.2, at 9-82 (2000) (noting that a "secondary obligor" is "a surety (including a guarantor)"); U.C.C. § 9-101, cmt. 4.i. (observing that "secondary obligor" is defined "to include one who is secondarily obligated on the secured obligation, e.g., a guarantor").

consumer good, FinCo is not required to send a disposition notice to Lender.⁸¹

The analysis, in syllogistic form, could be drafted as follows:

A person who owns the collateral is the debtor. (*major premise*)

Eirica owns the horse (the collateral). (*minor premise*)

Eirica is the debtor. (*conclusion*)

A secured party must send a disposition notice to the debtor. (*major premise*)

Eirica is the debtor. (*minor premise*)

FinCo must send a disposition notice to Eirica. (*conclusion*)

A guarantor is a secondary obligor. (*major premise*)

Ainsley is a guarantor. (*minor premise*)

Ainsley is a secondary obligor. (*conclusion*)

A secured party must send a disposition notice to a secondary obligor. (*major premise*)

Ainsley is a secondary obligor. (*minor premise*)

FinCo must send a disposition notice to Ainsley. (*conclusion*)

A horse used by the debtor primarily for personal enjoyment is a consumer good. (*major premise*)

Eirica is using her horse for personal pleasure. (*minor premise*)

Eirica's horse is a consumer good. (*conclusion*)

81. Lender is claiming a purchase-money security interest in a consumer good, so its security interest is perfected automatically on attachment. See U.C.C. § 9-309(1). Lender's security interest enjoys priority over FinCo's security interest because Lender's perfection date (the attachment date) will be earlier than FinCo's filing or perfection date. See *id.* § 9-322(a)(1). Therefore, Lender's security interest will survive FinCo's disposition of the horse. See *id.* § 9-617(a)(3) (stating that a post-default disposition "discharges any subordinate security interest") (emphasis added). Lender also enjoys the right to halt (or, should I say, "rein" in?) disposition by FinCo, the junior creditor, and demand possession of the horse. FinCo's refusal to surrender the horse could trigger conversion liability. See *id.* § 9-609, cmt. 5.

A secured party need not send a disposition notice to any other creditor if the collateral is a consumer good. (*major premise*)

The horse is a consumer good. (*minor premise*)

FinCo need not send its disposition notice to any other creditor (including Lender). (*conclusion*)

2. Hypothetical No. 8

Background: The secured party who disposes of collateral after default can purchase the collateral at a public disposition, but it cannot purchase the collateral at a private disposition unless “the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations.”⁸²

Hypothetical: Harringtons buys and sells rare books for itself and its clients. Last year, Harringtons sold a rare, autographed, first edition of *To Kill a Mockingbird*⁸³ to Grace for \$15,000.⁸⁴ Grace

82. U.C.C. § 9-610(c). See also *id.* § 9-610, cmt. 7 (addressing “public” and “private” dispositions) and cmt. 9 (discussing “recognized market”).

83. See HARPER LEE, *TO KILL A MOCKINGBIRD* (J.B. Lippincott & Co., 1960). The author of the novel, Harper Lee (whose first name is Nelle, her grandmother’s name spelled backward), studied law at the University of Alabama in the late 1940s and greatly disliked the experience. Rather than pursue a legal career (as had her sister and father), she moved to New York City to pen the only novel she ever published. Working titles included “Go Set a Watchman” and “Atticus.” She based the lead character on her father, giving him the first name “Atticus” after Cicero’s friend, Titus Pomponius Atticus, and using her mother’s maiden name, “Finch” as his last. The book was published in 1960 and won the Pulitzer Prize for fiction in 1961. See Harper Lee, NAT’L ENDOWMENT FOR THE ARTS, <http://www.neabigread.org/books/mockingbird/mockingbird04.php> (last visited Feb. 1, 2011); see also *To Kill A Mockingbird*, INTERNET MOVIE DATABASE, <http://www.imdb.com/title/tt0056592/trivia> (last visited Feb. 2, 2011). Lee was awarded the Presidential Medal of Freedom, our nation’s highest civilian honor, in 2007. Kevin Howell, *Harper Lee Wins Presidential Medal of Freedom*, PUBLISHERS WEEKLY, Oct. 30, 2007, <http://www.publishersweekly.com/pw/by-topic/book-news/awards-and-prizes/article/14666-harper-lee-wins-presidential-medal-of-freedom-.html>.

Universal Pictures produced the popular film adaptation in 1962. After making offers to Rock Hudson and Jimmy Stewart, the producers offered the role of Atticus Finch to Gregory Peck. See NAT’L ENDOWMENT FOR THE ARTS, *supra*; INTERNET MOVIE DATABASE, *supra*. Although the film was not named Best Picture (that honor went to *Lawrence of Arabia*), Peck won the Oscar for Best Actor (the only time he received the award, having been nominated four previous times). Tim Dirks, *1962 Academy Awards Winners and History*, FILMSITE, <http://www.filmsite.org/aa62.html> (last visited Feb. 1, 2011). In 2003, the American Film Institute named Atticus Finch to the top spot (ahead of Indiana Jones and James Bond) on its list, “AFI’s 100 Years ... 100 Heroes & Villains.” In 2007, the AFI ranked the film at No. 25 on its

paid \$3,000 and Harringtons financed the \$12,000 balance. Harringtons retained and perfected a security interest in the book.

A few months later, Grace defaulted on the loan. She returned the book to Harringtons, who refused to forgive the debt, but agreed to try to find a buyer.

Two months later, Harringtons sold the book at its monthly “dealers only” auction. Harringtons participated in the auction and was the successful bidder for a price that left a \$2,500 deficiency.

If Harringtons complied with all notice requirements, and all aspects of the auction were commercially reasonable, has Harringtons complied with all of Article 9’s foreclosure requirements?

Drafted as syllogisms, the analysis might look like this:

A public disposition is a disposition at which the price is determined after the public has had a meaningful opportunity for competitive bidding. (*major premise*)

Harringtons sold the book at an auction attended only by dealers, not by the general public. (*minor premise*).

Harringtons did not sell the book at a public disposition. (*conclusion*)

A collateral disposition that is not a public disposition is a private disposition. (*major premise*)

Harringtons did not sell the book at a public disposition. (*minor premise*)

Harringtons sold the book at a private disposition. (*conclusion*)

A book is sold on a “recognized market” if the book is fungible and its price is not subject to individual negotiation. (*major premise*)

list, “AFI’s 100 Years ... 100 Movies (10th Anniversary Edition).” In 2008, the AFI named the film to the top “Courtroom Drama” spot (ahead of *12 Angry Men*) on its list, “AFI’s 10 Top Ten.” The Internet Movie Database, <http://www.imdb.com/title/tt0056592/trivia> (last visited Feb. 1, 2011). Also, in 2008, the *ABA Journal* named the film to its top spot on its list of “The 25 Greatest Legal Movies.” Richard Brust, *The 25 Greatest Legal Movies*, ABA JOURNAL, Aug. 1, 2008, http://www.abajournal.com/magazine/article/the_25_greatest_legal_movies/.

84. An online search at <http://www.abebooks.com/> on July 10, 2010, disclosed twenty autographed, first-edition copies of this classic novel available at prices ranging from just over \$700 to \$27,500.

This copy of *To Kill a Mockingbird* is unique and not completely identical to any other copy, so the book is not fungible and its price may be negotiated. (*minor premise*)

This copy of *To Kill a Mockingbird* is not sold on a “recognized market.” (*conclusion*)

Books may be subject to “widely distributed standard price quotations” (a phrase undefined by Article 9). (*major premise*)

This copy of *To Kill a Mockingbird* is unique and not completely identical to any other copy and is being sold at a “dealers only” auction. (*minor premise*)

This copy of *To Kill a Mockingbird* is not likely to be subject to a “widely distributed standard price quotation.” (*conclusion*)

Article 9 prohibits the secured party from purchasing collateral at a private disposition unless the collateral is typically sold on a “recognized market” or is the subject of “widely distributed standard price quotations.” (*major premise*)

This copy of *To Kill a Mockingbird* is not the type of collateral sold on a “recognized market” and is not likely to be “subject to widely distributed standard price quotations.” (*minor premise*)

Article 9 prohibits Harringtons from purchasing this copy of *To Kill a Mockingbird* at the “dealers only” private disposition. (*conclusion*)

Using the syllogisms as a framework, the model response in narrative form might read as follows:

Article 9 permits the foreclosing creditor to purchase collateral at a “public disposition” (section 9-610(c)(1)). A public disposition is a disposition “at which the price is determined after the public has had a meaningful opportunity for competitive bidding” (cmt. 7). Harringtons sold the book at a “dealers only” auction; the general public was not invited to attend. Therefore, Harringtons did not sell the book at a “public disposition.”

Instead, the auction was a “private disposition.” The creditor can purchase collateral at a “private disposition” only if the collateral is customarily sold on a recognized

market or is the subject of widely distributed standard price quotations (section 9-610(c)(2)). A “recognized market” is “one in which the items sold are fungible and prices are not subject to individual negotiation” (cmt. 9). The book is neither fungible nor identical to others. And even if this book or other books are the subject of a widely circulated price guide, or often disposed of through dealer auctions, the relevant market is not a “recognized market” (cmt. 9). So the book does not appear to be the type of collateral typically sold on a “recognized market.” Article 9 does not offer thoughts on the intended meaning of “widely distributed standard price quotations,” but the lack of an objective, fixed, non-negotiable price for a unique item suggests that this rare book does not fall within the exception.

As neither exception applies, Harringtons—by purchasing this copy of *To Kill a Mockingbird* at the “dealers only” auction—has violated the Article 9 rule which prohibits secured parties from purchasing collateral at a private disposition.⁸⁵

E. Bankruptcy

A debtor that falls on hard times may file a bankruptcy petition, seeking either to liquidate itself and its assets or to reorganize its financial affairs.⁸⁶ Whether the debtor seeks liquidation or reorganization, the bankruptcy trustee may challenge a creditor’s security interest under one of its statutory avoidance powers,⁸⁷ a topic often raised in a Secured Transactions course.

Hypotheticals No. 9 and No. 10 raise issues concerning two of the trustee’s avoidance powers. They are prefaced with a brief discussion of applicable law.

1. Hypothetical No. 9

Background: One of the trustee’s avoidance powers is codified in Bankruptcy Code section 544(a)(1).⁸⁸ This provision, often

85. Some students might extend the model answer to include an analysis of possible remedies available to Grace. The “call of the question” does not expressly solicit that information, however, and it is not included here.

86. See LAWRENCE, *supra* note 60, at 329-30.

87. *Id.* at 350-52.

88. See 11 U.S.C. § 544(a)(1) (2006).

referred to as the “strong arm clause,” effectively permits the trustee to avoid any security interest that is unperfected on the petition date.⁸⁹

Hypothetical: Lender has an enforceable security interest in all current and after-acquired inventory owned by Andersen Electronics Corp., a Texas corporation. Lender files its financing statement in Texas, naming the debtor as “Anderson Electronics Corporation.” After the debtor files a bankruptcy petition, the bankruptcy trustee orders a search report against the debtor’s legal name. The search fails to reveal Lender’s filing because of the misspelling (“Anderson” instead of “Andersen”).⁹⁰

89. See *In re R.F. Cunningham & Co., Inc.*, 355 B.R. 408, 417 (Bankr. E.D.N.Y. 2006) (“Under 11 U.S.C. § 544(a)(1), a debtor in possession (vested with the powers of a trustee by 11 U.S.C. § 1107(a)) has the so-called ‘strong arm power’ to cut off unperfected security interests such as secret liens.”); Margit Livingston, *A Rose by any Other Name Would Smell as Sweet (or Would It?): Filing and Searching in Article 9’s Public Records*, 2007 B.Y.U. L. REV. 111, 148 (observing that “the trustee has the power to avoid unperfected security interests” under Bankruptcy Code § 544(a), the “strong arm clause”); David Frisch, *Chatel Paper, Shakespeare, and the Insoluble Question of ‘Stripping,’* 40 U.C.C. L.J. 3, 25 n.27 (2007) (“The strong arm clause gives the bankruptcy trustee the rights and powers of a hypothetical judicial lien creditor. Since, under governing state law, an unperfected security interest would be subordinate to a judicial lien, U.C.C. § 9-317(a)(2)(A), section 544(a)(1) empowers the trustee to avoid that unperfected security interest.”); Charles J. Tabb, *The Brave New World of Bankruptcy Preferences*, 13 AM. BANKR. INST. L. REV. 425, 445-46 (2005) (noting that “the strong-arm clause, section 544(a), . . . avoids liens that are unperfected at the time of the bankruptcy filing”).

90. Query how many times former accounting firm Arthur Andersen & Co. had its name similarly misspelled. The mistake occurs numerous times in judicial opinions, including many federal decisions just from 2008. See, e.g., *New Eng. Health Care Emp. Pension Fund v. Woodruff*, 512 F.3d 1283, 1286 (10th Cir. 2008); *Cooper Tire and Rubber Co. v. Farese*, No. 3:02CV210-SA-JD, 2008 WL 5188235, at *2 (N.D. Miss. Dec. 9, 2008); *Miller v. Dyadic Int’l, Inc.*, No. 07-80948-CIV, 2008 WL 5070279, at *2 (S.D. Fla. Nov. 25, 2008); *Thomas H. Lee Equity Fund V, L.P. v. Grant Thornton, L.L.P.*, 586 F. Supp.2d 119, 123 (S.D.N.Y. 2008); *United States v. Lyon*, No. CV-F07-491-LJO-GSA, 2008 WL 2626814, at *7 (E.D. Cal. June 26, 2008); *In re Par Pharm. Sec. Lit.*, No. 06-CV-3226 (PGS), 2008 WL 2559362, at *1 (D.N.J. June 24, 2008); *Adelphia Recovery Trust v. Bank of Am., N.A.*, Nos. 05-civ-9050 (LMM), 03 MDL 1529, 2008 WL 1959542, at *1 (S.D.N.Y. May 5, 2008); *Hicks v. Midwest Transp., Inc.*, No. 07-cv-854-JPG, 2008 WL 1766523, at *1 (S.D. Ill. Apr. 14, 2008); *Cobalt Multifamily Investors I, L.L.C. v. Shapiro*, No. 06 civ. 6468 (KMW)(MHD), 2008 WL 833237, at *3 (S.D.N.Y. Mar. 28, 2008); *Giddy Up, L.L.C. v. Prism Graphics, Inc.*, No. 3:06-cv-0948-B, 2008 WL 656504, at *5 (N.D. Tex. Mar. 12, 2008); *United States v. Jensen*, 537 F. Supp.2d 1069, 1075 (N.D. Cal. 2008); *Regent Ins. Co. v. Storm King Contracting, Inc.*, No. 06 civ. 2879 (LBS), 2008 WL 563465, at *9 (S.D.N.Y. Feb. 27, 2008); *Liberty Mut. Ins. Co. v. N. Picco & Sons Contracting Co., Inc.*, No. 05 civ. 217 (SCR), 2008 WL 190310, at *6 (S.D.N.Y. Jan. 16, 2008); *Taylor v. Stratton*, No. CVF 04-6304 LJO

Can the bankruptcy trustee successfully avoid Lender's security interest under the "strong arm clause"?

The model answer, in narrative form, might read as follows (using "BC" to refer to the Bankruptcy Code):

The "strong arm clause" of the Bankruptcy Code permits the trustee to avoid any security interest which a hypothetical lien creditor may avoid as of the petition date (BC section 544(a)(1)). As a general rule, a lien creditor may avoid any subordinate security interest, *i.e.*, any security interest that is not perfected as of the dispute resolution date (the petition date) (section 9-317(a)(2)(A)). The answer to the question, then, turns on whether Lender's security interest is perfected on the petition date.

Lender attempted to perfect its security interest by filing a financing statement. To be sufficient, a financing statement must provide the name of the debtor (section 9-502(a)(1)). A

SMS HL, 2008 WL 149010, at *12, *13 (E.D. Cal. Jan. 14, 2008); Markey v. Kudelski S.A., No. 06-cv-1300 W (RBB), 2008 WL 65401, at *10 (S.D. Cal. Jan. 3, 2008); ASARCO, L.L.C. v. Ams. Mining Corp., 396 B.R. 278, 306 (S.D. Tex. 2008). The error also has been known to evade the scrutiny of editors at several of the best law journals. *See, e.g.*, Arnoud W.A. Boot and Jonathan R. Macey, *Monitoring Corporate Performance: The Role of Objectivity, Proximity, and Adaptability in Corporate Governance*, 89 CORNELL L. REV. 356, 371 (2004); Merritt B. Fox, *Gatekeeper Failures: Why Important, What To Do*, 106 MICH. L. REV. 1089, 1099 n.14 (2008); James D. Cox *et al.*, *There are Plaintiffs and . . . There are Plaintiffs: An Empirical Analysis of Securities Class Action Settlements*, 61 VAND. L. REV. 355, 362 (2008); John J. Donohue III, *Advocacy Versus Analysis in Assessing Employment Discrimination Law*, 44 STAN. L. REV. 1583, 1601 n.83 (1992); Lawrence J. Fox, *Accountants, the Hawks of the Professional World: They Foul Our Nest and Theirs Too, Plus Other Ruminations on the Issue of MDPs*, 84 MINN. L. REV. 1097, 1107 (2000); Daniel L. Goelzer and Susan Ferris Wyderko, *Rule 2(e): Securities and Exchange Commission Discipline of Professionals*, 85 NW. U. L. REV. 652, 674 n.131 (1991); Leonard Gross, *Ethical Problems of Law Firm Associates*, 26 WM. & MARY L. REV. 259, 277 n.86 (1985); Joseph A. Grundfest, *Why Disimply?*, 108 HARV. L. REV. 727, 746 n.96 (1995); Jennifer B. Lawrence & Jackson W. Prentice, *The SEC Form 8-K: Full Disclosure or Fully Diluted? The Quest for Improved Financial Market Transparency*, 41 WAKE FOREST L. REV. 913, 932 n.61 (2006); Richard I. Miller & Michael R. Young, *Financial Reporting and Risk Management in the 21st Century*, 65 FORDHAM L. REV. 1987, 2002 n.57 (1997); David Orentlicher, *Conflicts of Interest and the Constitution*, 59 WASH. & LEE L. REV. 713, 754 n.193 (2002); Randall S. Thomas *et al.*, *Megafirms*, 80 N.C. L. REV. 115, 165 (2001); Frederick Tung, *Leverage in the Board Room: The Unsung Influence of Private Lenders in Corporate Governance*, 57 U.C.L.A. L. REV. 115, 130 (2009); Harris Weinstein, *Attorney Liability in the Savings and Loan Crisis*, 1993 U. ILL. L. REV. 53, 58 n.19.

financing statement sufficiently provides the name of a debtor that is a registered organization (as is Andersen Electronics Corp.) if the filing reflects the name of the debtor as indicated in the state's public records (section 9-503(a)(1)). Therefore, Lender's filing should have listed the debtor as "Andersen Electronics Corporation," instead of "Anderson Electronics Corporation."

Whether Lender's spelling error renders the filing ineffective is dictated by whether the error renders the filing "seriously misleading" (section 9-506(a)). Normally, a filing that fails to provide the name of a corporation as reflected on its charter documents is deemed "seriously misleading" (section 9-506(b)). The filing will not be seriously misleading, however, if a search against the debtor's correct name discloses the original filing (section 9-506(c)).⁹¹

91. For recent decisions in which a court addressed whether a mistake in the debtor's name rendered a financing statement seriously misleading, see *Peoples Bank v. Bryan Bros. Cattle Co.*, 504 F.3d 549, 558-59 (5th Cir. 2007) (filing against "Louie Dickerson" instead of legal name of "Brooks L. Dickerson" was not seriously misleading); *Genoa National Bank v. Sw. Implement, Inc. (In re Borden)*, No. 4:07cv3048, 2007 WL 2407032, at *1-*3 (D. Neb. Aug. 20, 2007) (filing against "Mike Borden" instead of "Michael Borden" or "Michael R. Borden" was seriously misleading); *Host Am. Corp. v. Coastline Fin., Inc.*, No. 2:06cv5, 2006 WL 1579614, at *1, *3-*6 (D. Utah May 30, 2006) (filing against "K W M Electronics Corporation" instead of legal name of "K.W.M. Electronics Corporation" was seriously misleading); *In re Wing Foods, Inc.*, No. 09-40154-JDP, 2010 WL 148637, at *5 (Bankr. D. Idaho Jan. 14, 2010) (filing against "Wing Fine Food" rather than legal name of "Wing Foods, Inc." was seriously misleading); *Myers v. Am. Exch. Bank (In re Alvo Grain and Feed, Inc.)*, No. BK08-80876-TLS, 2009 WL 5538645, at *1 (Bankr. D. Neb. Nov. 20, 2009) (filing against "Alvo Grain & Feed, Inc." rather than "Alvo Grain and Feed, Inc." was seriously misleading); *In re C. W. Mining Co.*, No. 08-20105, 2009 WL 2601246, at *12 (Bankr. D. Utah Aug. 24, 2009) (filing against "CW Mining Company" instead of legal name of "C. W. Mining Company" was seriously misleading); *Hastings State Bank v. EDM Corp. (In re EDM Corp.)*, No. BK08-40788-TLS, 2009 WL 367773, at *1 (Bankr. D. Neb. Feb. 10, 2009) (filing against "EDM Corporation d/b/a EDM Equipment" rather than legal name of "EDM Corporation" was seriously misleading); *First Cmty. Bank of E. Tennessee v. Jones (In re Silver Dollar, L.L.C.)*, No. 06-50568, 2008 WL 3539790, at *1 (Bankr. E.D. Tenn. Aug. 11, 2008) (filing against "Silver Dollar Stores, LLC" instead of "Silver Dollar, LLC" was seriously misleading); *In re Jim Ross Tires, Inc.*, 379 B.R. 670, 674-79 (Bankr. S.D. Tex. 2007) (filings against "Jim Ross Tire Inc." and "Jim Ross Tires, Inc. dba HTC Tires & Automotive Centers" instead of correct name of "Jim Ross Tires Inc." were seriously misleading); *In re John's Bean Farm of Homestead, Inc.*, 378 B.R. 385, 386, 392-96 (Bankr. S.D. Fla. 2007) (filing against "John Bean Farms, Inc." instead of legal corporate name of "John's Bean Farm of Homestead, Inc." was seriously misleading); *Hopkins v. NMTC Inc. (In re Fuell)*, No. 06-40550, 2007 WL 4404643,

Here, the trustee ordered a search against “*Andersen Electronics Corporation*” but that search failed to reveal the filing against “*Anderson Electronics Corporation*.” Lender’s filing, therefore, is seriously misleading and ineffective. Absent an effective filing, Lender’s security interest is unperfected. As of the petition date, then, the trustee (as a hypothetical lien creditor) enjoys priority over Lender’s security interest and therefore can avoid that interest under the “strong arm clause” of the Bankruptcy Code.

Redrafted as syllogisms, the model answer might look like this:

^A secured party’s financing statement fails to sufficiently provide the name of a corporation if the filing does not utilize the debtor’s name as indicated in the state’s public records. (*major premise*)

Lender’s filing names the debtor as “Anderson Electronics Corporation,” whereas the debtor’s name as reflected in the state’s public records is “Andersen Electronics Corporation.” (*minor premise*)

Lender’s financing statement does not sufficiently provide the name of the corporate debtor. (*conclusion*)

A financing statement that does not sufficiently provide the name of the debtor is ineffective if the spelling error renders the filing “seriously misleading.” (*major premise*)

at *1, *3-*4 (Bankr. D. Idaho Dec. 13, 2007) (filing against “Andrew Fuel” instead of “Andrew Fuell” was seriously misleading); *The Official Comm. of Unsecured Creditors for Tyringham Holdings, Inc. v. Suna Bros. Inc. (In re Tyringham Holdings, Inc.)*, 354 B.R. 363, 364-68 (Bankr. E.D. Va. 2006) (filing against “Tyringham Holdings” instead of legal name of “Tyringham Holdings, Inc.” was seriously misleading); *Morris v. Snap-On Credit, LLC (In re Jones)*, No. 05-16909, 2006 WL 3590097, at *2-*3 (Bankr. D. Kan. Dec. 7, 2006) (filing against “Chris Jones” instead of full legal name of “Christopher Gary Jones” was seriously misleading); *Pankratz Implement Co. v. Citizens Nat’l Bank*, 130 P.3d 57, 59, 61-68 (Kan. 2006) (filing against “Roger House” instead of “Rodger House” was seriously misleading); *Corona Fruits & Veggies, Inc. v. Frozsun Foods, Inc.*, 48 Cal. Rptr. 3d 868, 869-71 (Cal. Ct. App. 2006) (filing against “Armando Munoz” instead of “Armando Munoz Juarez” was seriously misleading).

For an article that advocates new search logic that utilizes Social Security numbers of individual debtors, see Kris Fredrickson, *Amending UCC Article 9 to Fix the Name-Error Problem*, 40 U.C.C. L. J. 43 (2007).

Lender's filing does not sufficiently provide the name of the debtor. (*minor premise*)

Lender's filing is ineffective if the spelling error renders the filing "seriously misleading." (*conclusion*)

An incorrect debtor's name renders a financing statement "seriously misleading" (and ineffective) if a search against the correct name fails to reveal the filing against the incorrect name. (*major premise*)

A search against the correct name of "Andersen Electronics Corporation" fails to reveal the filing against the incorrect name of "Anderson Electronics Corporation." (*minor premise*)

The incorrect debtor's name renders Lender's filing "seriously misleading" (and ineffective). (*conclusion*)

An ineffective financing statement fails to perfect a security interest and leaves the security interest otherwise unperfected. (*major premise*)

Lender's financing statement is ineffective. (*minor premise*)

Lender's financing statement fails to perfect its security interest and leaves its security interest otherwise unperfected. (*conclusion*)

The "strong arm clause" of the Bankruptcy Code permits the bankruptcy trustee to avoid a security interest that is unperfected on the petition date. (*major premise*)

Lender's security interest is unperfected as of the petition date. (*minor premise*)

The "strong arm clause" of the Bankruptcy Code permits the bankruptcy trustee to avoid Lender's security interest. (*conclusion*)

2. Hypothetical No. 10

Background: Another of the bankruptcy trustee's avoiding powers is codified in Bankruptcy Code section 547, the "voidable preference" statute.⁹² The statute permits the trustee to challenge property transfers made by the debtor to the secured party within the

92. See 11 U.S.C. § 547.

ninety-day period preceding the petition date if certain conditions are met⁹³ and no exceptions apply.⁹⁴ Analysis of the statute requires students to determine the date of the transfer.⁹⁵ If the trustee is challenging a security interest transfer, possible dates of transfer are the date of attachment and the date of perfection. The preference statute assigns the attachment date as the transfer date if the security interest is perfected at attachment or within the following thirty days.⁹⁶ If the security interest is not timely perfected, then the preference statute assigns the perfection date as the transfer date.⁹⁷

Hypothetical: Lender made a \$75 million loan to the Wyndham Art Gallery on the morning of June 7, moments after Wyndham executed a security agreement that granted to Lender a security interest in all of Wyndham's current and after-acquired inventory of oil paintings. Lender filed its financing statement on July 20.

Wyndham filed a bankruptcy petition on October 1. The bankruptcy trustee is challenging Lender's security interest in a particular oil painting as a voidable preference. Wyndham acquired

93. The statute requires the trustee to prove that the debtor transferred property to (or for the benefit of) a creditor for a previous debt; the transfer must occur when the debtor is insolvent and normally within the ninety-day period preceding the petition date; and, as a result of the transfer, the creditor must receive more on its debt than it would receive in a Chapter 7 liquidation if the transfer had not been made. *Id.* § 547(b). *See also id.* § 547(g) (placing burden of proving avoidability of a transfer on the trustee). For a "preference primer," see Timothy R. Zinnecker, *Purchase Money Security Interests in the Preference Zone: Questions Answered and Questions Raised by the 1994 Amendments to Bankruptcy Code § 547*, 62 MO. L. REV. 47, 48-59 (1997).

In the context of a secured transaction, the typical transfers that are the subject of a preference attack are the debtor's loan payments and the debtor's security interests in its property.

94. Nine exceptions are codified in subsection (c). *See* 11 U.S.C. § 547(c). The creditor bears the burden of proving nonavoidability under an exception. *See id.* § 547(g).

95. Determining the transfer date is important because three of the preference requirements are time-sensitive: the transfer must concern antecedent (previous) debt; the transfer must be made while the debtor is insolvent; and the transfer must be made in the so-called preference period (usually 90 days preceding the petition date). *See id.* § 547(b)(2)–(4).

96. *See id.* § 547(e)(2)(A).

97. *See id.* § 547(e)(2)(B). By assigning the later perfection date (rather than the earlier attachment date) as the transfer date, the statute punishes the dilatory creditor by increasing the likelihood that the time-sensitive elements of a preference action are met.

the painting—*Breaking Home Ties* by Norman Rockwell—for \$16 million on June 28.⁹⁸

Can the trustee prove that the challenged transfer occurred within the preference period?

Written as syllogisms, the analysis might appear as follows:

A security interest attaches on the date on which the last of three events occur: value is given, the debtor acquires rights in the collateral, and the debtor authenticates a security agreement that describes the collateral. (*major premise*)

Lender gave value of \$75 million on June 7, Wyndham executed a security agreement on June 7 that described the

98. Lender's purchase price may represent a bargain. *Breaking Home Ties* sold for a record \$15.4 million at a Sotheby's auction in November 2006 to an undisclosed bidder. Rockwell had sold the 1954 painting for \$900 to a friend in 1960. A few months after the owner's death, his sons discovered the painting behind a false wall in their father's house. The sons suggested that perhaps their father hid the painting (a copy of which he had painted and passed off as the original) to prevent his estranged wife from taking possession. See Carol Vogel, "*\$15.4 Million at Sotheby's for a Rockwell Found Hidden Behind a Wall*," N.Y. TIMES, Nov. 30, 2006, available at http://www.nytimes.com/2006/11/30/nyregion/30rockwell.html?_r=1&oref=slogin. For additional (and fascinating) details, see NORMAN ROCKWELL MUSEUM, *A Rockwell Rediscovered: The Tale of Two Paintings* (Oct. 5, 2009), <http://www.nrm.org/2009/10a-rockwell-rediscovered-the-tale-of-two-paintings>.

Rockwell's paintings have been at the center of other news stories. In 2007, an oil-on-canvas painting entitled *Russian Schoolroom* that had been stolen in the 1970s was discovered in the art collection of film director Steven Spielberg, who had purchased the painting (without knowledge of its theft) from a legitimate art dealer in the 1980s. See *Stolen Rockwell Painting Found in Spielberg's Collection*, WASH. POST, March 3, 2007, at C4. Also, several Rockwell paintings (including *Saying Grace*, perhaps the artist's most beloved work) that were inherited by the three sons of the longtime art director of *The Saturday Evening Post* have been at the center of a sibling feud that has lasted more than a decade, traveled through several courts, and generated more than 20,000 pages of documentary evidence. See Alison Leigh Cowan & Matthew J. Malone, *A Family Scene Rockwell Wouldn't Have Painted*, N.Y. TIMES, Dec. 28, 2006, http://www.nytimes.com/2006/12/28/nyregion/28rockwell.htm?_r=2. For additional stories concerning thefts and forgeries of Rockwell's work, see Mark Durney, *Norman Rockwell Art Thefts*, THEFT CENT., Jan. 16, 2009, available at <http://artthefcentral.blogspot.com/2009/01/norman-rockwell-art-thefts.html>.

Beginning in 1916, and continuing for a period of nearly fifty years, Norman Rockwell illustrated more than 320 covers for *The Saturday Evening Post*. He received the Presidential Medal of Freedom in 1977. See *About Norman Rockwell*, NORMAN ROCKWELL MUSEUM, <http://www.nrm.org/about-2/about-norman-rockwell/> (last visited Feb. 2, 2011).

collateral as Wyndham's inventory of current and future oil paintings, and Wyndham acquired rights in the Rockwell painting on the acquisition date of June 28. (*minor premise*)

Lender's security interest in the Rockwell painting attached on June 28. (*conclusion*)

A security interest becomes perfected on the later of the attachment date and the filing date. (*major premise*)

Lender's security interest in the Rockwell painting attached on June 28, and Lender filed its financing statement on July 20. (*minor premise*)

Lender's security interest in the Rockwell painting became perfected on July 20. (*conclusion*)

The transfer date of a security interest is the date of attachment if the security interest is perfected at attachment or within thirty days thereafter. (*major premise*)

Lender's security interest in the Rockwell painting became perfected on July 20, a date within thirty days of the attachment date of June 28. (*minor premise*)

The transfer date of Lender's security interest in the Rockwell painting is June 28. (*conclusion*)

The preference period is the ninety-day period preceding the petition date. (*major premise*)

The petition date is October 1. (*minor premise*)

The preference period is from July 3 to October 1. (*conclusion*)

A security interest cannot be challenged as a voidable preference if its transfer date is outside the preference period. (*major premise*)

The transfer date of Lender's security interest in the Rockwell painting is June 28, a date outside the preference period of July 3—October 1. (*minor premise*)

Lender's security interest cannot be challenged as a voidable preference. (*conclusion*)

A narrative response, incorporating the deductive reasoning expressed in the preceding syllogisms, might be written as follows:

The preference period is the ninety-day period preceding the petition date (BC section 547(b)(4)). The petition date is

October 1, so the preference period runs from approximately July 3 to October 1.

The trustee is challenging Lender's security interest in the Rockwell painting as a voidable preference. The transfer date of a security interest is the date of attachment if the security interest is perfected on attachment or within thirty days thereafter; the transfer date of a security interest is the date of perfection if the security interest is perfected later than thirty days following the attachment date (BC section 547(e)).

Lender's security interest in the Rockwell painting attached on June 28, when Wyndham purchased the painting. Lender previously gave value in the form of a \$75 million loan on June 7, the same day that Wyndham executed a security agreement that described the collateral. So the last of the three conditions specified in the attachment statute (section 9-203(b)) occurred on June 28, when Wyndham acquired rights in the painting.

Lender's security interest in the Rockwell painting became perfected on July 20, when Lender filed its financing statement.

The perfection date of July 20 is within thirty days of the attachment date of June 28. Therefore, the preference statute assigns the attachment date of June 28 as the transfer date. The transfer date of June 28 is outside the preference period (which begins on or about July 3). Therefore, the trustee cannot successfully challenge Lender's security interest in the Rockwell painting as a voidable preference.

IV. ENTHYMEMES

We have seen that the syllogism consists of three parts: the major premise ("All men are mortal."); the minor premise ("Socrates is a man."); and the conclusion ("Therefore, Socrates is mortal."). Judge Aldisert and his co-authors acknowledge, however, that "[s]ometimes a legal writer doesn't mention all parts of the syllogism, leaving you to read between the lines. Logicians are certainly aware that an argument can be founded on a syllogism although not all parts of the syllogism are expressed."⁹⁹ This argument, often used when one of the premises is obvious, is known

99. Aldisert, *supra* note 3, at 7-8.

as an “enthymeme.”¹⁰⁰ For example, if it is generally understood that “good girls get stars on their foreheads,” a teacher may prefer to say “Lisa gets a star on her forehead because she is a good girl” rather than “Good girls get stars on their foreheads; Lisa is a good girl; Lisa gets a star on her forehead.”¹⁰¹ The omitted part of the syllogism is the “enthymeme.”¹⁰²

Students often use the enthymeme in responding to an essay question. They offer a correct conclusion based on two premises, one express and the other implied. I hate (dare I say “loathe”?) the enthymeme. As Judge Aldisert has observed, the enthymeme requires me “to read between the lines.”¹⁰³ Those of us who have been anointed to teach Secured Transactions have no desire “to read between the lines” when we grade all of our exams. We expect a statement of the law (the major premise), a brief discussion of relevant facts (the minor premise), and a conclusion drawn from both stated premises. We want a three-legged syllogism, not its two-legged “cousin.”¹⁰⁴ We find that the student who avoids the enthymeme and expressly (and correctly) states all premises on which her conclusion rests is a more persuasive writer.

The following are examples of enthymemes that may arise in a Secured Transactions course, one from each of the ten hypotheticals in Part III.

• *From Hypothetical No. 1:*

Goods held for sale by a debtor are inventory, so the Webkinz toys are part of ABC’s inventory. (Read between the lines: minor premise—ABC, a toy store, holds the Webkinz toys for sale.)

100. *Id.* at 8. See also Andrew Jay McClurg, *Logical Fallacies and the Supreme Court: A Critical Examination of Justice Rehnquist’s Decisions in Criminal Procedure Cases*, 59 U. COLO. L. REV. 741, 779 (1988) (“An argument that omits one of the premises necessary to sustain it is known as an enthymeme.”); Fred A. Simpson & Deborah J. Selden, *When to Welcome Greeks Bearing Gifts—Aristotle and the Rules of Evidence*, 34 TEX. TECH L. REV. 1009, 1012 (2003) (describing an “enthymeme” as “a syllogism in which one premise is implicit”).

101. Aldisert, *supra* note 3, at 8.

102. In the example, the teacher has omitted the major premise, known as an enthymeme of the first order. The omission of the minor premise (e.g., “Good girls get stars on their foreheads, [so] Lisa gets a star.”) is an enthymeme of the second order. See RUGGERO J. ALDISERT, *LOGIC FOR LAWYERS: A GUIDE TO CLEAR LEGAL THINKING* 54 (1989).

103. Aldisert, *supra* note 3, at 7.

104. See POSNER, *supra* note 6, at 831 (referring to “the syllogism, and its cousin the enthymeme”).

- *From Hypothetical No. 2:*

The oral security agreement between Maris and Charles is ineffective to create an enforceable security interest in the chess set because Maris possesses the chess set. (Read between the lines: major premise—an oral security agreement is ineffective to create an enforceable security interest if the debtor possesses the collateral.)

- *From Hypothetical No. 3:*

FinCo's act of filing a financing statement perfected its security interest in ABC's inventory. (Read between the lines: major premise—filing a financing statement will perfect a security interest in inventory.)

- *From Hypothetical No. 4:*

FinCo's financing statement, which has become seriously misleading following the name change from "ABC Company" to "ToyCo," does not perfect its security interest in the LEGO toys because a financing statement that has become seriously misleading is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the name change. (Read between the lines: minor premise—ToyCo purchased the LEGO toys on a date [November 15] more than four months after ABC Co. changed its name to ToyCo [June 1].)

- *From Hypothetical No. 5:*

Conflicting perfected security interests rank according to priority in time of filing or perfection, whichever is earlier, so Lender's security interest enjoys priority. (Read between the lines: minor premise—Lender's filing date [March 10] or perfection date [March 18] is earlier than FinCo's filing date [March 15] or perfection date [March 15].)

- *From Hypothetical No. 6:*

XYZ acquired the dialysis machines subject to the security interest created by ABC because Lender did not consent to ABC's sale of the dialysis machines, and XYZ cannot invoke the protection afforded to buyers of collateral because the machines are held by

healthcare providers ABC and XYZ as equipment, not inventory or consumer goods. (Read between the lines: major premise—a buyer acquires collateral subject to the security interest created by its seller unless the seller’s creditor authorized the sale free and clear of its security interest or the buyer is otherwise protected.)

- *From Hypothetical No. 7:*

A secured party must send a disposition notice to the debtor, so FinCo must send its disposition notice to Eirica. (Read between the lines: minor premise—Eirica is the debtor.)

- *From Hypothetical No. 8:*

Harringtons sold the book at an auction attended only by dealers, not the general public, so Harringtons did not sell the book at a public disposition. (Read between the lines: major premise—a public disposition is a disposition to which the general public must be invited.)

- *From Hypothetical No. 9:*

An incorrect debtor’s name renders a financing statement “seriously misleading” (and ineffective) if a search against the correct name fails to reveal the filing against the incorrect name, so Lender’s filing is “seriously misleading” (and ineffective). (Read between the lines: minor premise—a search against the debtor’s correct name [“Andersen Electronics Corporation”] failed to reveal Lender’s filing against an incorrect name [“Anderson Electronics Corporation”].)

- *From Hypothetical No. 10:*

The transfer date of Lender’s security interest in the Rockwell painting is June 28 because Lender’s security interest became perfected on July 20, a date within thirty days of the attachment date of June 28. (Read between the lines: major premise—the transfer date of a security interest is the date of attachment if the security interest is perfected at attachment or within thirty days thereafter.)

If a student fails to state the major premise (often the “rule” in a Secured Transactions course), then the professor may conclude that the student does not know the law. If a student fails to state the minor

premise (often a brief statement of relevant facts), then the professor may conclude that the student fails to appreciate which facts are important and why they are important. The professor cannot reach those conclusions if the student accurately states both the major and the minor premise of her argument. And a student who avoids the enthymeme and states both premises may be rewarded with a higher grade.¹⁰⁵

V. FALLACIES

In their essay, Judge Aldisert and his co-authors address “flawed syllogisms.” They offer this introductory example:

Some men are tall. (major premise)
Socrates is a man. (minor premise)
Therefore Socrates is tall. (conclusion)¹⁰⁶

The two premises are true, but the conclusion does not necessarily follow. “[K]nowing that *some* men are tall isn’t enough for you to conclude that a particular man is tall.”¹⁰⁷ A discussion of syllogistic errors, albeit very brief, follows in the essay.

105. One author suggests that the enthymeme has at least one redeeming value: it may improve the listening skills of an audience. See Ryan Patrick Alford, *Appellate Review of Racist Summations: Redeeming the Promise of Searching Analysis*, 11 MICH. J. RACE & L. 325, 348 (2006):

[W]hen all the premises of the syllogism (e.g. Socrates is a man, all men are mortal) are stated, the audience does not have to engage with the speaker; when a premise is unstated, (e.g. the truism that men suffer from mortality) the audience has to become an active listener to participate in the construction of meaning, to retrace the logic that leads to the conclusion (that Socrates will die). This technique is an effective means of encouraging not only active listening, but also of promoting persuasion.

Id. (footnote omitted). See also COPI & COHEN, *supra* note 21, 231 (suggesting that “it is not at all unusual for an argument to be rhetorically more powerful and persuasive when stated enthymematically than when enunciated in complete detail”); HURLEY, *supra* note 24, at 297 (suggesting that “[t]he listener or reader’s intelligence is called into play when he or she is required to supply a missing statement, and his or her interest is thereby sustained”).

I am in favor of encouraging “active listening,” but I fear that if I emphasize the enthymeme in the classroom, the students are more likely to respond in kind on the exam, costing themselves valuable points in the process.

106. Aldisert, *supra* note 3, at 9.

107. *Id.* (emphasis added).

Elsewhere, however, Judge Aldisert offers an extended discussion of the basic flaw of so many syllogisms: the “fallacy.”¹⁰⁸ He explains the term:

As stated before, logicians and members of the legal profession generally use the term “fallacy” in a narrower sense, to describe a type of incorrect argument, rather than to label a statement as false or erroneous. It is used to describe a flaw in the purported relations between several statements. There are several types of fallacies. One type of fallacy occurs when we neglect the rules of logic and fall into erroneous reasoning, often from true factual premises. Other fallacies, generally called informal or material fallacies, meticulously follow logical form but suffer from improper content or emphasis. A fallacy then is not merely an error, but a way of falling into an error. The name comes from the Latin, . . . *fallax* . . . which suggests a deliberate deception. But most fallacies are not intentional. Fallacies are dangerous, however, because they are false conclusions or interpretations resulting from processes of thinking that claim or appear to be valid, they fail to conform to the requirements of logic. A fallacy can be defined as . . . any argument that seems conclusive to the normal mind but that proves, upon examination, not to establish the alleged conclusion, or more succinctly, a form of argument that seems to be correct but which proves upon examination not to be so. . . .¹⁰⁹

For approximately eighty pages, Judge Aldisert then discusses the various types of “formal” fallacies (errors in the logic of the argument) and “material” fallacies (problems with the factual content of the argument). He identifies nine formal fallacies, each of which is associated with a particular syllogistic form (categorical, hypothetical, or disjunctive).¹¹⁰

This Part of the article examines the nine formal fallacies that Judge Aldisert addresses, illustrating how these fallacies may arise in a Secured Transactions course.¹¹¹

108. See generally LOGIC FOR LAWYERS, *supra* note 102, at 137-224.

109. *Id.* at 139-40 (footnotes omitted).

110. *Id.* at 141-42.

111. This article does not examine any of the material, or informal, fallacies identified by Judge Aldisert. He categorizes them as “fallacies of irrelevant

A. Categorical: Fallacy of Four Terms

One of the golden rules of deductive reasoning is that a valid categorical syllogism must have exactly three terms.¹¹² For example, in the syllogism that addresses the mortality of Socrates, the three terms are “all men” (or “man”), “Socrates,” and “mortal.” The fallacy of four terms (also known as *quaternio terminorum*¹¹³) occurs when one or more additional terms are introduced into the argument, preventing a logical conclusion to be drawn from the premises. For example:

All men are mortal.
Socrates is a fan of U.S. Supreme Court trivia.¹¹⁴
Therefore, Socrates is mortal.

The conclusion does not logically follow from the two premises because neither premise states that Socrates is a man, and together the two premises introduce four (rather than three) terms: all men, mortal, Socrates, and U.S. Supreme Court trivia.

The fallacy of four terms is no stranger to a Secured Transactions course, as the following two examples (based on earlier hypotheticals) illustrate.

evidence,” “miscellaneous material fallacies,” and “linguistic fallacies,” devoting several pages to their discussion. See LOGIC FOR LAWYERS, *supra* note 102, at 142-43, 169-224. See also HURLEY, *supra* note 24, at 118-81 (discussing twenty-two informal fallacies divided into five groups: eight fallacies of relevance, six fallacies of weak induction, four fallacies of presumption, two fallacies of ambiguity, and two fallacies of grammatical analogy).

112. LOGIC FOR LAWYERS, *supra* note 102, at 146.

113. See COPI & COHEN, *supra* note 21, at 206.

114. Identify the justice of the Supreme Court of the United States from these three clues. He replaced the justice who hired the first black law clerk. He is one of five justices to hire a law clerk who later became a member of the Court. After he resigned from the Court, he presented the oral argument to the Court on behalf of baseball star Curt Flood, who was challenging baseball’s reserve clause as a violation of antitrust law. (The answer is provided elsewhere in this article.)

For a fascinating account of Curt Flood’s personal and professional life, as well as his legal challenge that took him all the way to the Supreme Court of the United States, see Brad Snyder, A WELL-PAID SLAVE (2006). Snyder, who began his academic career as an assistant professor of law at the University of Wisconsin in August 2008, concludes in his book: “If ever a case had been lost at oral argument, Flood’s was it.” *Id.* at 282. Ouch!

1. Example No. 1

Hypothetical No. 3 raises perfection issues and requires some discussion of the proper place to file a financing statement.¹¹⁵ ABC Company, a Delaware corporation, is the debtor. The two statutes that govern filing location are U.C.C. sections 9-301 and 9-307. The former states that the secured party should file the financing statement in the jurisdiction where the debtor is located.¹¹⁶ The latter states that a registered organization (defined in U.C.C. section 9-102 in a manner which includes corporations¹¹⁷) is deemed located in the state of its creation.¹¹⁸ Based on these rules, FinCo should file its financing statement against ABC Co. in Delaware.

The fallacy of four terms, in the context of the previous discussion, can be illustrated as follows:

All corporations organized under state law are registered organizations.

A registered organization is deemed located in the state of its incorporation.

Therefore, ABC Co. is located in the state of its incorporation (Delaware).

The fourth term is “ABC Company,” which appears for the first time in the conclusion. And the conclusion does not logically follow from the two premises because neither reveals that ABC Co. is a corporation or a registered organization.

The problem is easily corrected by drafting the following two syllogisms:

All corporations organized under state law are registered organizations.

ABC Co. is a corporation organized under state law.

Therefore, ABC Co. is a registered organization.

115. *See supra* Part III.B.1.

116. *See* U.C.C. § 9-301(1).

117. *See id.* § 9-102(a)(70) (defining “registered organization”) and cmt. 11 (listing corporations, limited liability companies, and limited partnerships as examples).

118. *See id.* § 9-307(e).

A registered organization that is a corporation organized under state law is deemed located in the state of its organization.

ABC Company, a registered organization, is organized under Delaware law.

Therefore, ABC Company, a registered organization, is deemed located in Delaware.

2. Example No. 2

Hypothetical No. 7 examines the party (or parties) to whom a secured party must send its notice of collateral disposition.¹¹⁹ The collateral, a horse, is being used by debtor Eirica as a consumer good. Eirica's sister, Ainsley, is a guarantor. Article 9 requires a secured party to send its disposition notice to a secondary obligor (among other parties).¹²⁰ And the general rule (assumed in this case) is that a guarantor is a secondary obligor. Therefore, FinCo should send a copy of its disposition notice to Ainsley.

To illustrate the fallacy of four terms, consider the following:

FinCo must send a disposition notice to a secondary obligor.

Ainsley is a guarantor.

Therefore, FinCo must send a disposition notice to Ainsley.

The fourth term is "guarantor." And the conclusion does not logically follow from the two premises because neither expresses any relationship between guarantors and secondary obligors.

As before, however, the problem is easily corrected by drafting two syllogisms:

A guarantor is a secondary obligor.

Ainsley is a guarantor.

Therefore, Ainsley is a secondary obligor.

A secured party must send a disposition notice to a secondary obligor.

Ainsley is a secondary obligor.

119. See *supra* Part III.D.1.

120. See U.C.C. § 9-611(b), (c).

Therefore, FinCo must send a disposition notice to Ainsley.

B. Categorical: The Fallacy of the Undistributed Middle

Another universal rule states that a categorical syllogism is valid only if its middle term is “distributed” in at least one premise.¹²¹ In our paradigm, the major term is “mortal” (which appears in the major premise and the conclusion), the minor term is “Socrates” (which appears in the minor premise and the conclusion), and the middle term is “men/man” (which appears in both premises).¹²² But “appearing” in a premise does not necessarily mean that the term is “distributed” in a premise. Judge Aldisert explains:

It is critical, therefore, that the middle term encompass a larger universe than the minor term. Compared then to the minor term, which reflects only part of the class, the middle term is considered “distributed.” If the middle term does not represent the larger portion of the class being considered, and represents or is equivalent to the portion represented by the minor term, we say that the middle term is “undistributed.” When this occurs the connection to the conclusion cannot be justified; when this occurs we have the fallacy of the undistributed middle.¹²³

121. LOGIC FOR LAWYERS, *supra* note 102, at 147.

122. *Id.* at 45.

123. *Id.* at 148. Professors Copi and Cohen elaborate:

The conclusion of any syllogism asserts a connection between two terms. The premises justify asserting such a connection only if they assert that each of the two terms is connected with a third term in such a way that the first two are appropriately connected with each other through or by means of the third. For the two terms of the conclusion really to be connected through the third, at least one of them must be related to the whole of the class designated by the third or middle term. Otherwise, each may be connected with a different part of that class, and not necessarily connected with each other at all. . . . For [the middle term to connect the syllogism’s major and minor terms], all the class designated by it must be referred to in at least one premise, which is to say that in a valid syllogism the middle term must be distributed in at least one premise.

COPI & COHEN, *supra* note 21, at 208 (emphasis omitted). See also HURLEY, *supra* note 24, at 282 (using the syllogism—“All sharks are fish. All salmon are fish. All salmon are sharks.”—to illustrate and discuss the fallacy of the undistributed middle).

In the classic example, the middle term (“men”) represents an entire class (of which the minor term, “Socrates,” is a member) and, therefore, is “distributed.”

But consider this syllogism:

All philosophers can run a four-minute mile.¹²⁴
 Socrates can run a four-minute mile.
 Therefore, Socrates is a philosopher.

Here, however, the middle term (“four-minute mile”) is “undistributed” because neither premise tells us the universal class of

124. Roger Bannister was the first person to run a mile in under the magical barrier of four minutes, when he clocked a time of 3:59:4 on May 6, 1954. He held the world record for only 46 days, as Australian John Landy lowered the mark to 3:58 on June 21, 1954. The two athletes competed against each other later that year in Vancouver. Both men ran the mile in under four minutes, with Bannister (3:58:8) edging Landy (3:59:6). For a page-turning account of their quest (joined by American Wes Santee) to be the first runner to break the four-minute barrier, culminating in their head-to-head race, see NEAL BASCOMB, *THE PERFECT MILE* (2004).

Hicham El Guerrouj, of Morocco, is the current recordholder, running the mile in 3:43:13 in July 1999. See *Int'l Ass'n of Athletic Fed'ns, Records by Event*, INT'L ASS'N OF ATHLETIC FED'NS, <http://www.iaaf.org/statistics/records/inout=o/discType=5/disc=MILE/detail.html> (last visited Feb. 1, 2011). The best time clocked by a woman is 4:12:56, posted by Russian Svetlana Masterkova in August 1996. *Id.*

Kansas Jim Ryun was the first high school athlete to run the mile in under four minutes and is the only American to hold the world record in the event (July 17, 1966—May 17, 1975). See *Past AAU Sullivan Award Winners, James Ryun*, AAU SULLIVAN, http://www.aausullivan.org/winners_1966.html (last visited Feb. 1, 2011); *Progression of World Record Times for Males*, COLO. ST. UNIV., <http://www.stat.colostate.edu/~jah/teach/st540/data/mile.info> (last visited Feb. 1, 2011). *Sports Illustrated* named Ryun its “Sportsman of the Year” for 1966, an honor the magazine had inaugurally bestowed on Bannister in 1954. See *Sports Illustrated, Sportsman Master List*, SPORTS ILLUSTRATED, http://sportsillustrated.cnn.com/features/1999/sportsman/master_list/ (last visited Feb. 1, 2011). Between 1995 and 2006, Ryun was a member of Congress from Kansas. *Ryan, Jim (1947—)*, BIOGRAPHICAL DIRECTORY OF THE U.S. CONGRESS, <http://bioguide.congress.gov/scripts/biodisplay.pl?index=R000566> (last visited June 22, 2011).

In 2005, Forbes.com compiled “a list of the greatest athletic achievements of the last 150 years,” placing Roger Bannister’s historic achievement at the top (with positions No. 2—No. 5 honoring performances by Lance Armstrong, Jesse Owens, Nadia Comaneci and Joe Dimaggio, respectively). See David M. Ewalt & Lacey Rose, *Bannister’s Four-Minute Mile Named Greatest Athletic Achievement*, FORBES, http://www.forbes.com/2005/11/18/bannister-four-minute-mile_cx_de_lr_1118bannister.html (last visited Feb. 1, 2011).

four-minute milers.¹²⁵ The class includes all philosophers. But it also might include some golfers, ministers, and astronauts. Therefore, to conclude that Socrates is a philosopher just because he can run a four-minute mile is not necessarily true.¹²⁶ This syllogism, then, suffers from the fallacy of the undistributed middle.

To illustrate how this fallacy might occur in a Secured Transactions course, consider the following two examples.

1. Example No. 1

Rosetta has borrowed money from Lender to remodel her kitchen. Lender has a perfected security interest in 1,000 shares of ExxonMobil capital stock owned by Rosetta to secure repayment of the loan. After Rosetta defaults, Lender elects to sell the capital stock at a public auction. In drafting its disposition notice, Lender observes that U.C.C. section 9-613 proposes a model form for all transactions other than a consumer-goods transaction, and section 9-614 suggests a model form for all consumer-goods transactions. Lender is also aware that its transaction with Rosetta is a “consumer transaction” as defined by section 9-102(a)(26), which expressly includes within the scope of its meaning all consumer-goods transactions.

In determining which model disposition form Lender should adopt, a student may offer the following syllogism:

All consumer-goods transactions are consumer transactions.

Lender and Rosetta have engaged in a consumer transaction.

Therefore, Lender and Rosetta have engaged in a consumer-goods transaction.

From this, the student may believe that Lender should use the model form in section 9-614. That is incorrect because the conclusion in the syllogism is incorrect. While all consumer-goods

125. See HURLEY, *supra* note 24, at 204 (“A term is said to be distributed if the proposition makes an assertion about every member of the class denoted by the term; otherwise it is undistributed. Stated another way, a term is distributed if and only if the statement assigns (or distributes) an attribute to every member of the class denoted by the term.”).

126. Note, however, that tweaking the syllogism will correct its fallacy.
All philosophers can run a four-minute mile.
Socrates is a philosopher.
Socrates can run a four-minute mile.

transactions are consumer transactions, the reverse is not true.¹²⁷ The student made the mistake of thinking otherwise, committing the fallacy of the undistributed middle.

2. Example No. 2

Assume in Hypothetical No. 7¹²⁸ that both Eirica and Ainsley sign FinCo's written security agreement. FinCo will file a financing statement against the "debtor" to perfect its security interest in the horse.¹²⁹ FinCo knows that a written security agreement must be authenticated by the debtor.¹³⁰ Should FinCo, prompted by Ainsley's execution of the security agreement, file a financing statement against her?

In responding to the question, a student may offer the following syllogism:

The debtor must authenticate a written security agreement.

Ainsley authenticated FinCo's written security agreement.

Therefore, Ainsley is the debtor.

The student continues her analysis by contending that FinCo must file a financing statement against Ainsley because she is a debtor. But that is incorrect. Ainsley is not a debtor because she is not offering the horse as collateral. Eirica is offering the horse as collateral; therefore, she (and not Ainsley) is the debtor.¹³¹ While a security agreement must be signed by all debtors, it does not necessarily follow that everyone who signs the security agreement is

127. The Lender-Rosetta transaction is an example of a consumer transaction which is not a consumer-goods transaction because the collateral (the 1,000 shares of ExxonMobil's capital stock) is investment property, not a consumer good. A consumer-goods transaction requires the collateral to include a consumer good. See U.C.C. § 9-102(a)(24)(B).

128. See *supra* Part III.D.1.

129. See U.C.C. § 9-310(a) (stating that, absent any exception, "a financing statement must be filed to perfect all security interests"); *id.* § 9-502(a) (indicating that a financing statement must provide "the name of the debtor"); *id.* § 9-519(c)(1) (obligating the filing officer to index the financing statement "according to the name of the debtor").

130. See *id.* § 9-203(b)(3)(A).

131. See *id.* § 9-102(a)(28)(A) (defining "debtor" to include a "person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor").

a debtor.¹³² The student erred in thinking otherwise, an error that illustrates the fallacy of the undistributed middle.

C. Categorical: Fallacy of the Illicit Process of the Major and Minor Terms

Consider the following two syllogisms.

All Supreme Court justices are brilliant.¹³³

No commercial law professor is a Supreme Court justice.

Therefore, no commercial law professor is brilliant.

All philosophers are witty.

All philosophers wear togas.

Therefore, all toga-wearers are witty.

In both instances, neither conclusion necessarily follows from its respective premises.

132. Ainsley may authenticate the security agreement because she is agreeing to one or more representations, warranties, covenants or duties in the security agreement. FinCo, the secured party, may authenticate the security agreement for the same reason.

133. The answer to the question posed in footnote 114, *supra*, is Arthur Goldberg. President Kennedy nominated Goldberg to replace Felix Frankfurter. See *The Administration: The Old Order Changeth*, TIME, Sept. 7, 1962, available at <http://www.time.com/time/magazine/article/0,9171,870085,00.html>. Frankfurter hired William T. Coleman as the Court's first black law clerk. See Todd C. Peppers, *William Thaddeus Coleman, Jr.: Breaking the Color Barrier at the U.S. Supreme Court*, 33 J. SUP. CT. 353 (2008). Coleman was the first black to serve on the management board of the HARVARD LAW REVIEW, co-authored the brief the NAACP filed with the Court in *Brown v. Board of Education*, served as Thurgood Marshall's personal lawyer, was the second black to hold a cabinet-level position in the federal government (secretary of transportation under President Gerald R. Ford), and received the Presidential Medal of Freedom in 1995. See THE HISTORY MAKERS, <http://www.thehistorymakers.com/biography/biography.asp?bioindex=1589&category=CivicMakers&occupation=Corporate%20Lawyer&name=William%20T.%20Coleman>.

One of Goldberg's law clerks was current Associate Justice Stephen Breyer. See *Biographies of Current Justices of the Supreme Court*, THE SUPREME COURT OF THE UNITED STATES, <http://www.supremecourt.gov/about/biographies.aspx> (last visited Feb. 2, 2011). The other four law clerks who became members of the Court are John Roberts, who clerked for William Rehnquist, who himself clerked for Robert Jackson; John Paul Stevens, who clerked for Wiley Rutledge; and Byron White, who clerked for Fred Vinson. See JEFFREY TOOBIN, THE NINE 279 (2007).

In the first syllogism, the major term is “brilliant.” The term is distributed in the conclusion because of its universal application: gather all of the brilliant people in the world, and none of them will be a commercial law professor (how untrue!). As used in the major premise, however, the term is not distributed because the statement limits its application to only a segment of the whole: Supreme Court justices. The mistake is in believing that the terms in the major premise can be reversed and remain true. But not all brilliant people are Supreme Court justices (perhaps some are commercial law professors!). The conclusion extends beyond what can be drawn from the major premise. This syllogism illustrates the fallacy of the illicit major.¹³⁴

In the second syllogism, the minor term is “togas” (or those who wear togas). The term is distributed in the conclusion, which applies to all members of its group (all toga-wearers) a characteristic (witty). As used in the minor premise, however, the term is not distributed because the statement limits its application solely to philosophers. The error is that the conclusion states a universal truth about the minor term (all toga-wearers are witty), whereas the minor premise uses the minor term to describe only a segment of the whole: philosophers. The error is in believing that the terms in the minor premise can be reversed and remain true. But not all toga-wearers are philosophers (perhaps some are commercial law professors!). The minor term has limited application in the minor premise and does not support its universal application in the conclusion. This syllogism illustrates the fallacy of the illicit minor.¹³⁵

Consider the following two examples, which illustrate how these fallacies might occur in a Secured Transactions course.

134. See LOGIC FOR LAWYERS, *supra* note 102, at 154-56. See also COPI & COHEN, *supra* note 21, at 208-09; HURLEY, *supra* note 24, at 282-83 (using the syllogism—“All horses are animals. Some dogs are not horses. Some dogs are not animals.”—to illustrate and discuss the fallacy of the illicit major).

135. See LOGIC FOR LAWYERS, *supra* note 102, at 156. See also COPI & COHEN, *supra* note 21, at 208-09; HURLEY, *supra* note 24, at 283 (using the syllogism—“All tigers are mammals. All mammals are animals. All animals are tigers.”—to illustrate and discuss the fallacy of the illicit minor).

1. Example No. 1

For a security interest to attach, or become enforceable, the debtor must have rights in the collateral.¹³⁶ In Hypothetical No. 1,¹³⁷ ABC Co. has rights in the Webkinz toys when it acquires them, a point illustrated by this syllogism:

A debtor has rights in collateral if it acquires the collateral.

ABC acquired the Webkinz toys (the collateral) on March 10.

ABC has rights in the Webkinz toys (the collateral).

Assume that in addition to inventory, ABC Co. also offers as collateral all of its equipment. ABC leases, rather than owns, a photocopier. Does ABC have rights in leased property? Building on the previous analysis, a student may offer the following syllogism:

Ownership of equipment gives the debtor rights in the equipment.

Leased equipment does not give the debtor ownership of the equipment.

Therefore, leased equipment does not give the debtor rights in the equipment.

In addition to being wrong as a matter of law, the conclusion also does not necessarily follow from the premises. It incorrectly assumes that all rights in collateral stem from ownership of that collateral. Yes, a debtor has rights in equipment if the debtor owns the equipment. But ownership is not the necessary predicate to possessing rights. A leasehold interest in property also gives the debtor rights in the property sufficient to create a security interest.¹³⁸

136. See U.C.C. § 9-203(b)(2). Alternatively, the debtor must have “the power to transfer rights in the collateral to a secured party,” a phrase briefly discussed in *id.* § 9-203, cmt. 6.

137. See *supra* Part III.A.1.

138. See WILLIAM H. LAWRENCE ET AL., UNDERSTANDING SECURED TRANSACTIONS 84-85 (4th ed. 2007) (observing that a lessee’s “right to the exclusive use and enjoyment of the goods for the duration of the lease term . . . may be used as the basis for the security interest”); *Franklin Bank v. Tindall*, No. 07-13748, 2008 WL 937488, at *6 (E.D. Mich. Apr. 7, 2008) (acknowledging that “one who has a leasehold interest in collateral has sufficient rights in the collateral to transfer leasehold rights to a secured party” but observing that “the secured interest in such

The student erred in believing otherwise, a mistake that illustrates the fallacy of the illicit major.

2. Example No. 2

In Hypothetical No. 6, ABC Health Corp. sold twenty kidney dialysis machines to XYZ Health Corp.¹³⁹ The analysis revealed that ABC's creditor, Lender, continued to have a perfected security interest in the machines after the sale. As a general rule, Lender has an enforceable security interest in any identifiable proceeds received by ABC.¹⁴⁰ Lender's security interest in the identifiable proceeds is automatically perfected for twenty days.¹⁴¹ If the proceeds are "cash proceeds" (defined as "money, checks, deposit accounts, or the like"¹⁴²), then perfection continues after the twenty-day period.¹⁴³ If the proceeds are not "cash proceeds," then perfection *may* continue beyond the twenty-day period, but further analysis is necessary.¹⁴⁴

Assume that XYZ pays for the machines with a promissory note which qualifies as a "negotiable instrument" under U.C.C. Article 3¹⁴⁵ and, therefore, is an "instrument" under Article 9.¹⁴⁶ Is the promissory note a "cash proceed"? A student, hoping to conclude that Lender's perfection in the note continues for more than twenty days with as little analysis as possible, may genuinely believe that the note is a "cash proceed." The student may even offer the following syllogism to support her belief:

circumstances is limited to that which the debtor could convey, a leasehold interest, and the secured party's interest would be subject to ownership interest of the lessor"). Cf. U.C.C. § 9-203, cmt. 6 ("A debtor's limited rights in collateral, short of full ownership, are sufficient for a security interest to attach"). A secured party who insists on taking a security interest in leased property should review the lease to determine whether the debtor can offer the leased property as collateral without triggering a default under the lease.

139. See *supra* Part III.C.2.

140. See U.C.C. §§ 9-203(f); 9-315(a)(2). See also *id.* § 9-102(a)(64) (defining "proceeds").

141. See *id.* § 9-315(c)-(d).

142. *Id.* § 9-102(a)(9). Any proceeds that are not cash proceeds are "noncash proceeds." See *id.* § 9-102(a)(58) (defining "noncash proceeds" as "proceeds other than cash proceeds").

143. See *id.* § 9-315(d)(2).

144. *Id.* at (d)(1), (3).

145. See generally *id.* § 3-104(a) (defining "negotiable instrument").

146. See *id.* § 9-102(a)(47) (defining "instrument" to include "a negotiable instrument"); *id.* § 9-102(b) (incorporating definitions from elsewhere in the U.C.C., including the definition of "negotiable instrument" from § 3-104).

All checks are cash proceeds.
 All checks are instruments.
 Therefore, all instruments are cash proceeds.

The two premises are true,¹⁴⁷ so how can you argue with the logic? The error is in drawing from the minor premise, which applies the minor term (“instruments”) to only a segment of the population (“all checks” but only “all checks”), a conclusion that makes a universal proposition (“all instruments are”). True, all checks are instruments. But not all instruments are checks (some instruments are notes), and therefore not all instruments are cash proceeds. The student erred in believing that the minor premise would remain true if its terms were reversed, an error that illustrates the fallacy of the illicit minor.

D. Categorical: Fallacies of Negative Premises

A categorical syllogism is invalid if it has two negative premises.¹⁴⁸ Consider, then, the following syllogism:

U.C.C. courses are not popular.
 Popular courses are not boring.
 Therefore, U.C.C. courses are not boring.

The conclusion may be false (gasp!) or true (indeed!). But the conclusion cannot be drawn from the two premises, both of which are negative. As Judge Aldisert notes, “inference can proceed only where there is *agreement*. Two differences or disagreements lead to no conclusion. . . . If *both* premises are negative, we cannot determine anything regarding their relation to one another.”¹⁴⁹ This syllogism suffers from the fallacy of negative premises.

147. The major premise is true under the definition of “cash proceeds” at section 9-102(a)(9). The minor premise is true (absent the rare case arising from unorthodox language on the check) under sections 3-104 and 9-102(a)(47).

148. See LOGIC FOR LAWYERS, *supra* note 102, at 146 (Rule No. 4).

149. *Id.* at 157. Professors Copi and Cohen offer a more technical explanation of what they term “the Fallacy of Exclusive Premises”:

Where S, P, and M are the minor, major, and middle terms, respectively, two negative premisses can assert only that S is wholly or partially excluded from all or part of M, and that P is wholly or partially excluded from all or part of M. But these conditions may very well obtain no matter how S and P are related, whether by inclusion or exclusion, partial or complete. Therefore from two negative premisses no relationship whatever between S and P can validly be inferred.

A categorical syllogism also is invalid if the conclusion is positive and one of the premises is negative.¹⁵⁰ For example,

All commercial law professors are brilliant.
Richard Posner is not a commercial law professor.
Therefore, Richard Posner is brilliant.

No one doubts the truth of the conclusion.¹⁵¹ But the conclusion does not logically follow from the two premises, one of which is negative. As explained by one author:

If *S* [Richard Posner], *P* [brilliant], and *M* [commercial law professor] once again designate the minor, major, and

COPPI & COHEN, *supra* note 21, at 210. See also HURLEY, *supra* note 24, at 283-84 (using the syllogism—"No fish are mammals. Some dogs are not fish. Some dogs are not mammals."—to illustrate and discuss the fallacy of exclusive premises).

150. See LOGIC FOR LAWYERS, *supra* note 102, at 146 (Rule No. 5).

151. Nevertheless, the law review editors asked for some support. Would being deemed a "genius" by a legendary Supreme Court icon (and your former boss) suffice? See Kenneth W. Starr, *The Roberts Court Gets Down to Business: The Business Cases*, 34 PEPP. L. REV. 599, 601 (2007) (footnote omitted) ("Richard Posner was dubbed by William Brennan as one of two geniuses with whom he had had the privilege to labor or watch during his many years, indeed decades, on the Supreme Court. One was William Douglas and the other was his law clerk, Richard Posner."); David A. Logan, *The Man In the Mirror*, 90 MICH. L. REV. 1739, 1767 n.148 (1992) ("Justice William Brennan characterized Posner as one of only two 'authentic geniuses' he had met in his lifetime. (The other was William O. Douglas."); See also M. Todd Henderson, *Deconstructing Duff and Phelps*, 74 U. CHI. L. REV. 1739, 1759 (2007) (citing "Posner's genius"); Lawrence L. Piersol, *The Role of the Judiciary in a Democratic Society*, 52 S.D. L. REV. 444, 445 (2007) (describing Judge Posner as "a brilliant person with stimulating views"); Robert F. Blomquist, *Judge Posner's Dissenting Judicial Oeuvre and the Aesthetics of Canonicity*, 36 N.M. L. REV. 161, 212 (2006) (mentioning "the mind of a brilliant appellate judge"); Erik Luna, *Drug Exceptionalism*, 47 VILL. L. REV. 753, 800 n.223 (2002) (referring to "Seventh Circuit Judge Richard Posner, the distinguished legal scholar and conservative icon who was once described as 'the most brilliant judge in the country'"); Maurice J. Holland, *Ill-Assorted Musings About Regulatory Takings and Constitutional Law*, 77 OR. L. REV. 949, 975 (1998) (noting "the work of one extraordinarily brilliant individual, Richard A. Posner"); Mark M. Hager, *The Emperor's Clothes are not Efficient: Posner's Jurisprudence of Class*, 41 AM. U. L. REV. 7, 61 (1991) ("Posner is widely reported to be brilliant and creative and has been described by prominent observers, even those who disagree with him, as a 'genius.'"); Peter A. Bell, *Analyzing Tort Law: The Flawed Promise of Neocontract*, 74 MINN. L. REV. 1177, 1212 n.130 (1990) (describing Posner as "a serious and often brilliant scholar"); Paul M. Bator, *The Judicial Universe of Judge Richard Posner*, 52 U. CHI. L. REV. 1146, 1161 (1985) (referring to Posner as "one of our most brilliant and original judges").

middle terms, an affirmative conclusion always states that the *S* class is contained either wholly or partially in the *P* class. The only way that such a conclusion can follow is if the *S* class is contained either wholly or partially in the *M* class, and the *M* class wholly in the *P* class. In other words, it follows only when both premises are affirmative. But if, for example, the *S* class is contained either wholly or partially in the *M* class, and the *M* class is separate either wholly or partially from the *P* class, such a conclusion will never follow. Thus an affirmative conclusion cannot be drawn from negative premises.¹⁵²

This syllogism suffers from the fallacy of drawing an affirmative conclusion from a negative premise.

Both of these fallacies involving negative premises can appear in a Secured Transactions course, as illustrated by the following two examples.

1. Example No. 1

Hypothetical No. 3¹⁵³ examined where a secured party should file its financing statement against a debtor that is a registered organization: the state in which the entity is created.¹⁵⁴ If the debtor is an organization that is not a registered organization, then the secured party should file its financing statement in the state where the debtor has its sole place of business or, if the debtor has multiple places of business, its chief executive office.¹⁵⁵

Where should a secured party file its financing statement against a debtor that is a limited partnership? As part of her analysis, a student may offer the following syllogism:

152. HURLEY, *supra* note 24, at 284. *See also* COPI & COHEN, *supra* note 21, at 210 (“[T]o entail an affirmative conclusion, both premisses must assert class inclusion. But class inclusion can be stated only by affirmative propositions. So an affirmative conclusion logically follows only from two affirmative premisses. Hence, if either premiss is negative, the conclusion cannot be affirmative but must be negative also.”).

153. *See supra* Part III.B.1.

154. *See* U.C.C. §§ 9-301(1), 9-307(e).

155. *See id.* §§ 9-301(1), 9-307(b)(2), (3). *See also id.* § 9-307, cmt. 2 (defining the term “chief executive office” as “the place from which the debtor manages the main part of its business operations or other affairs. This is the place where persons dealing with the debtor would normally look for credit information, and is the appropriate place for filing.”).

Limited partnerships are not general partnerships.
General partnerships are not registered organizations.
Therefore, limited partnerships are not registered organizations.

Both premises are true.¹⁵⁶ The conclusion is false.¹⁵⁷ The problem with the syllogism, however, is not that the conclusion drawn from the premises is false. The flaw is that a conclusion—correct or incorrect—cannot logically be drawn from two negative premises. This syllogism, then, illustrates the fallacy of negative premises.

2. Example No. 2

Hypothetical No. 7 examined the party or parties to whom a foreclosing creditor must send its disposition notice.¹⁵⁸ Assuming no exceptions apply, the secured party must send its notice to the debtor.¹⁵⁹ Must FinCo send its notice to Ainsley, a guarantor? A student may offer the following syllogism in response:

All debtors are entitled to a disposition notice.
Ainsley is not a debtor.
Therefore, Ainsley is entitled to a disposition notice.

The conclusion is true, but not because of the premises.¹⁶⁰ The conclusion cannot follow from the premises because the middle premise is negative. When one premise is negative, the conclusion also must be phrased in the negative. The stated conclusion, however, is stated in the affirmative.¹⁶¹ The syllogism, then,

156. *See id.* § 9-102, cmt. 11 (including limited partnerships within, and excluding general partnerships from, the definition of “registered organization”).

157. *See id.*

158. *See supra* Part III.D.1.

159. Article 9 excuses notice if the collateral is perishable (e.g., fruits and vegetables), threatens to decline speedily in value (e.g., Christmas-related items unsold on December 24), or is customarily sold on a recognized market (e.g., shares of publicly traded securities). *See* U.C.C. § 9-611(d). Article 9 also permits the debtor to waive notice; to be effective, the debtor must authenticate the waiver after default. *Id.* § 9-624(a).

160. FinCo must send its disposition notice to Ainsley because, as a guarantor, she is a secondary obligor. *See id.* § 9-611(c)(2) and additional discussion at *supra* note 80.

161. A person reading the syllogism may conclude that its author erroneously omitted the word “not” from the conclusion and intended to state: “Therefore,

illustrates the fallacy of drawing an affirmative conclusion from a negative premise.

E. Categorical: Fallacy of Particular Premises

One of the basic rules of a categorical syllogism is this: “No valid categorical syllogism with a particular conclusion can have two universal premises.”¹⁶² For example, we can conclude that Socrates is mortal only if one of the premises mentions Socrates (*e.g.*, “Socrates is a man.”). But assume the major premise—“All men are mortal.”—is accompanied by a minor premise such as “All men are philosophers.” Both premises are universal (applying to “all men”), from which we are told nothing about Socrates. We cannot conclude from these premises that Socrates is a man because neither premise introduces us to Socrates. Such a conclusion assumes that Socrates does indeed exist, but neither premise proves that point. To draw any conclusion about Socrates from these premises is erroneous and illustrates the fallacy of particular premises.¹⁶³

Can a student commit the fallacy of particular premises in analyzing issues arising under Article 9? Yes. Consider the following two examples.

1. Example No. 1

Hypothetical No. 1 addresses the conditions necessary for a security interest to attach, or become enforceable.¹⁶⁴ In many, if not most, secured transactions, a written security agreement will evidence the debtor’s intent to grant a security interest in one or more of its assets. Article 9 mandates that any written security agreement must be authenticated by the debtor and include a description that reasonably identifies the collateral.¹⁶⁵ A student may

Ainsley is not entitled to a disposition notice.” That conclusion appears to better follow from the premises, but it would be incorrect as a matter of law. *See id.* It also would create a syllogism that suffers from the fallacy of the illicit major.

162. *See* LOGIC FOR LAWYERS, *supra* note 102, at 146.

163. Professors Copi and Cohen refer to this as “the Existential Fallacy,” observing that “[a] particular proposition asserts the existence of objects of a specified kind, so to infer it from two universal premisses that do not assert the existence of anything at all is clearly to go beyond what is warranted by the premisses.” COPI & COHEN, *supra* note 21, at 210-11.

164. *See supra* Part III.A.1.

165. *See* U.C.C. §§ 9-203(b)(3)(A), 9-108.

address whether the FinCo-ABC agreement meets these two requirements by offering the following syllogism:

All written security agreements must be authenticated by the debtor.

All written security agreements must provide an adequate description of collateral.

Therefore, the FinCo-ABC security agreement satisfies both conditions.

The conclusion may be (and actually is) correct, based on the facts provided. But the conclusion does not necessarily follow from the two premises, neither of which tells us anything about the FinCo-ABC security agreement (or if such an agreement exists). The two premises are universal, but the conclusion is particular, and the syllogism reveals the fallacy of particular premises.

2. Example No. 2

Hypothetical No. 4 addressed the continued effectiveness of a financing statement after a debtor changes its name.¹⁶⁶

If a search against the new name fails to reveal the filing under the original name, the financing statement has become seriously misleading.¹⁶⁷ A filing that has become seriously misleading will continue to perfect a security interest in collateral acquired by the debtor before, or within four months after, the name change.¹⁶⁸ But, absent a timely amendment, the filing will not perfect a security interest in collateral acquired more than four months after the name change.¹⁶⁹

In Hypothetical No. 4, ABC Co. changes its legal name to “ToyCo” on June 1 and purchases the LEGO blocks on November 15. In addressing whether FinCo’s filing remains effective after the name change to perfect a security interest in the LEGO blocks, a student may offer the following syllogism:

A financing statement rendered seriously misleading by the debtor’s name change continues to perfect a security

166. *See supra* Part III.B.2.

167. *See* U.C.C. § 9-506(b)-(c).

168. *See id.* § 9-507(c)(1).

169. *See id.* § 9-507(c)(2).

interest in collateral acquired by the debtor before, or within four months after, the name change.

A financing statement rendered seriously misleading by the debtor's name change does not (absent a timely amendment) continue to perfect a security interest in collateral acquired by the debtor more than four months after the name change.

Therefore, FinCo's financing statement¹⁷⁰ no longer perfects a security interest in the LEGO blocks.

The conclusion, although factually and legally correct, does not necessarily follow from the two premises. Each premise states a universal truth gleaned from one of the two parts of U.C.C. section 9-507(c). But neither premise tells us anything about when (or if) ToyCo purchased the LEGO blocks, and this means that the syllogism cannot offer a particular conclusion. However, this syllogism erroneously does so, illustrating the fallacy of particular premises.

F. Conditional: Denying the Antecedent and Affirming the Consequent

Many conditional syllogisms take the following form:

If *A*, then *B*.

A.

Therefore, *B*.

The major premise contains two conditional propositions. The "if" condition is the "antecedent," and the "then" condition is the "consequent."¹⁷¹

For example, (i) if Socrates is a man, then he is mortal; (ii) Socrates is a man; (iii) therefore, Socrates is mortal. The minor premise affirms the antecedent, allowing the conclusion to affirm the consequent. This argument form is known as "affirming the antecedent."¹⁷²

170. Hopefully, previous analysis reveals that FinCo's filing has been rendered seriously misleading by the debtor's change of name from "ABC Company" to "ToyCo."

171. See LOGIC FOR LAWYERS, *supra* note 102, at 160; COPI & COHEN, *supra* note 21, at 240.

172. See COPI & COHEN, *supra* note 21, at 240. This form also is known as *modus ponens*, from the Latin *ponere*, meaning "to affirm." *Id.*

Conditional syllogisms also can take the following form:

If *A*, then *B*.
 Not *B*.
 Therefore, not *A*.

For example, (i) if Socrates is a philosopher, then he wears a toga; (ii) Socrates does not wear a toga; (iii) therefore, Socrates is not a philosopher. The minor premise denies the consequent and allows the conclusion to deny the antecedent. This argument form is known as “denying the consequent.”¹⁷³

These two syllogisms may be written in flawed form, however. For example, (i) if Socrates is a man, then he is mortal; (ii) Socrates is mortal; (iii) therefore, Socrates is a man. Or consider this example: (i) if Socrates is a philosopher, then he wears a toga; (ii) Socrates is not a philosopher; (iii) therefore, Socrates does not wear a toga. In neither syllogism does the conclusion necessarily follow from the two premises. In the first, Socrates may—or may not—be a man. We do not know, because the minor premise does not affirm the antecedent. Instead, this syllogism suffers from the fallacy known as “affirming the consequent.”¹⁷⁴ In the second, Socrates may—or may not—wear a toga. We do not know, because the minor premise fails to deny the consequent. Instead, this syllogism suffers from the fallacy known as “denying the antecedent.”¹⁷⁵ Both fallacies can occur in a Secured Transactions course, as suggested by the following two examples.

1. Example No. 1 (affirming the consequent)

In a previous example,¹⁷⁶ Lender has a perfected security interest in 1,000 shares of ExxonMobil capital stock owned by Rosetta to

173. *Id.* at 241. This form also is known as *modus tollens*, from the Latin *tollere*, meaning “to deny.” *Id.*

174. See LOGIC FOR LAWYERS, *supra* note 102, at 161; COPI & COHEN, *supra* note 21, at 240-41; PATRICK J. HURLEY, A CONCISE INTRODUCTION TO LOGIC 335 (7th ed. 2007) (using the syllogism—“If Napoleon was killed in a plane crash, then Napoleon is dead. Napoleon is dead. Therefore, Napoleon was killed in a plane crash.”—to illustrate and discuss an argument which affirms the consequent).

175. See LOGIC FOR LAWYERS, *supra* note 102, at 160-61; COPI & COHEN, *supra* note 21, at 241; HURLEY, *supra* note 24, at 282 (using the syllogism—“If Napoleon was killed in a plane crash, then Napoleon is dead. Napoleon was not killed in a plane crash. Therefore, Napoleon is not dead.”—to illustrate and discuss an argument which denies the consequent).

176. See *supra* Part III.B.2.a.

secure repayment of a loan that permits her to remodel her kitchen. How did Lender perfect its security interest? The facts are silent. A student might use the following syllogism to respond to the question:

If Lender filed a financing statement, then its security interest in the 1,000 shares of ExxonMobil capital stock is perfected.

Lender's security interest in the 1,000 shares of ExxonMobil capital stock is perfected.

Therefore, Lender filed a financing statement.

The conclusion may or may not be true. A security interest in the ExxonMobil shares ("investment property" under Article 9¹⁷⁷) may be perfected by filing a financing statement.¹⁷⁸ But Lender can also perfect its security interest by achieving control of the shares¹⁷⁹ or taking delivery of the shares.¹⁸⁰ The syllogism does not state which option Lender exercised, and the minor premise fails to address the antecedent condition of the major premise. Instead, the syllogism suffers from the fallacy of "affirming the consequent."

2. Example No. 2 (*denying the antecedent*)

Hypothetical No. 7 addresses whether Article 9 requires FinCo to send its disposition notice to Eirica, Ainsley, or Lender.¹⁸¹ The facts indicate that Eirica owns the horse and Ainsley is a guarantor. In analyzing whether Ainsley is entitled to notice, a student may propose the following syllogism:

177. See U.C.C. § 9-102(a)(49) (defining "investment property"). If Rosetta purchased the shares directly from ExxonMobil, then the shares are "certificated securities" if evidenced by a certificate or "uncertificated securities" if not evidenced by a certificate. If Rosetta purchased the shares through a "securities intermediary," her property interest is a "securities entitlement" and Rosetta is an "entitlement holder." All five terms are defined in section 8-102(a).

178. See U.C.C. § 9-312(a).

179. See *id.* § 9-314(a).

180. See *id.* § 9-313(a). This option applies only if the shares are certificated securities. If the shares are in certificated form and bearer form and delivered to Lender, then delivery of the shares to Lender also gives Lender control of the shares. See *id.* § 8-106(a). But if the certificate is in registered form, delivery alone will not give Lender control. Additionally, the certificate must be either indorsed (in blank, or to the Lender) or registered in Lender's name. See *id.* § 8-106(b).

181. See *supra* Part III.D.1.

If Ainsley is a debtor, then she is entitled to a disposition notice.

Ainsley is not a debtor.

Therefore, she is not entitled to a disposition notice.

Both premises are true, but the conclusion does not necessarily follow. In fact, Ainsley is entitled to a disposition notice because she is a secondary obligor.¹⁸² The defect in the syllogism is that the minor premise fails to deny the consequent condition (the “then” clause in the major premise). Instead, the syllogism illustrates the fallacy of “denying the antecedent” (the “if” clause in the major premise).

G. Disjunctive: Fallacy of the Improper Disjuncts

A disjunctive syllogism consists of (i) a major premise which offers a disjunctive proposition (“Socrates is alive or dead.”), (ii) a minor premise which affirms or denies one of the options from the major premise (“Socrates is dead.”), and (iii) a conclusion which takes the opposite action with respect to the other option (“Socrates is not alive.”).¹⁸³

A disjunctive syllogism is valid only if the options are exhaustive and mutually exclusive.¹⁸⁴ Consider these two examples:

The film for which Meryl Streep won her only Oscar for Best Actress is *The Deer Hunter*, *Kramer vs. Kramer*, *The French Lieutenant’s Woman* or *Out of Africa*.

Meryl Streep did not win an Oscar for Best Actress for her work in *The Deer Hunter*, *Kramer vs. Kramer* or *The French Lieutenant’s Woman*.

Therefore, the film for which Meryl Streep won her only Oscar for Best Actress is *Out of Africa*.

Law professors are either outstanding teachers or productive scholars.

Law professor Smith is a productive scholar.

182. See *id.* § 9-611(c)(2).

183. See LOGIC FOR LAWYERS, *supra* note 102, at 163.

184. *Id.* (observing that the major premise of a disjunctive syllogism must “express a complete disjunction in the sense that its alternative terms be mutually exclusive and collectively exhaustive”).

Therefore, law professor Smith is not an outstanding teacher.

Neither syllogism is valid. The first offers a major premise which fails to provide an exhaustive list of all possibilities (including the correct response: *Sophie's Choice*), leading to an erroneous conclusion.¹⁸⁵ The second offers options which are not necessarily mutually exclusive (some law professors are both outstanding teachers and productive scholars), leading to a conclusion which may be invalid.

The following two examples illustrate that disjunctive syllogisms used to address Article 9 issues may fail to offer alternatives that are exhaustive or exclusive:

1. Example No. 1

Last week, Lisa purchased two award-winning books from a children's bookstore: *The Tale of Despereaux*, autographed by author Kate DiCamillo; and *The Polar Express*, autographed by author and illustrator Chris Van Allsburg.¹⁸⁶ The purchase was made on credit

185. An exhaustive list would not necessarily include all of the films in which Meryl Streep has appeared. A complete list would, however, include all thirteen of the films for which the screen icon has received an Oscar nomination for Best Actress: *The French Lieutenant's Woman*, *Sophie's Choice* (won), *Silkwood*, *Out of Africa*, *Ironweed*, *Evil Angels*, *Postcards from the Edge*, *The Bridges of Madison County*, *One True Thing*, *Music of the Heart*, *The Devil Wears Prada*, *Doubt*, and *Julie & Julia*. See *Awards for Meryl Streep*, IMDB, <http://www.imdb.com/name/nm0000658/awards> (last visited Feb. 3, 2011). Streep has also received an Oscar nomination for Best Supporting Actress for her work in *The Deer Hunter*, *Kramer vs. Kramer* (won), and *Adaptation. Id.* Her sixteen nominations are more than any other actor or actress has received (Jack Nicholson and Katharine Hepburn tie for second place with twelve nominations). See *All About Oscar: Academy Trivia and Statistics*, REEL CLASSICS, <http://www.reelclassics.com/Articles/General/oscar-trivia-article.htm> (last visited Feb. 4, 2010). And to think that one of our greatest film stars might have opted for law school if she had not slept through the LSAT! See *Meryl Streep Wanted to be a Lawyer*, A WORLD NEWS (Mar. 6, 2010), <http://www.aworldnews.com/meryl-streep-wanted-to-be-a-lawyer-25050>.

186. *The Tale of Despereaux* received the Newbery Medal in 2004, and *The Polar Express* won the Caldecott Medal in 1986. See *Newbery Medal Winners, 1922-Present*, ALA.ORG, <http://www.ala.org/ala/mgrps/divs/alsc/awardsgrants/bookmedia/newberymedal/newberywinners/medalwinners.cfm> (last visited Feb. 4, 2011); *Caldecott Medal Winners, 1938-Present*, ALA.ORG, <http://www.ala.org/ala/mgrps/divs/alsc/awardsgrants/bookmedia/caldecottmedal/caldecottwinners/caldecottmedal.cfm> (last visited Feb. 4, 2011). Both medals are

(but Lisa did not offer her credit card as a payment device). The bookstore intends to offer all of its payment receivables, including the amount payable by Lisa, as collateral for a loan. What term does Article 9 give to the bookstore's payment receivable owed by Lisa?

A student may respond by offering the following disjunctive syllogism:

A right to receive payment for goods sold is either an account or an instrument.

The right to receive payment from Lisa is not an account.

Therefore, the right to receive payment from Lisa is an instrument.

The minor premise may be correct, although the definition of "account" includes more than credit card receivables.¹⁸⁷ The conclusion may also be correct if Lisa's payment obligation is evidenced by a writing that falls within the definition of "instrument."¹⁸⁸ But the syllogism is flawed because its major premise fails to provide an exhaustive list of alternatives. Lisa's payment obligation may be an account. It also may be an instrument. But a third possibility exists: chattel paper. Perhaps Lisa signed a non-negotiable writing which evidenced both her monetary obligation and a security interest (in favor of the bookstore) in the

awarded annually by the Association for Library Service to Children, a division of the American Library Association. *Id.* The Newbery Medal (named for John Newbery, an 18th-century bookseller) honors "the author of the most distinguished contribution to American literature for children." See *Welcome to the Newbery Medal* [Home Page!](http://www.ala.org/ala/mgrps/divs/alsc/awardsgrants/bookmedia/newberymedal/newberymedal.cfm), ALA.ORG, <http://www.ala.org/ala/mgrps/divs/alsc/awardsgrants/bookmedia/newberymedal/newberymedal.cfm> (last visited Feb. 4, 2011). The Caldecott Medal (named for Randolph Caldecott, a 19th-century English illustrator), is presented to "the artist of the most distinguished American picture book for children." See *Welcome to the Caldecott Medal* [Home Page!](http://www.ala.org/ala/mgrps/divs/alsc/awardsgrants/bookmedia/caldecottmedia/caldecottmedal.cfm), ALA.ORG, <http://www.ala.org/ala/mgrps/divs/alsc/awardsgrants/bookmedia/caldecottmedia/caldecottmedal.cfm> (last visited Feb. 4, 2011).

187. See U.C.C. § 9-102(a)(2) (including eight specific payment rights within the definition of "account").

188. The definition of "instrument" includes a "negotiable instrument" as defined in section 3-104, as well as "any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment." *Id.* § 9-102(a)(47). See also *id.* § 9-102(b) (incorporating the definition of "negotiable instrument" from § 3-104).

two books. If so, the payment obligation is chattel paper,¹⁸⁹ rather than an account or an instrument.¹⁹⁰ The syllogism is invalid, then, because the major premise fails to offer an exhaustive list of alternatives.

2. Example No. 2

Hypothetical No. 4 addressed the continued effectiveness of a financing statement after the debtor, ABC Company, changed its legal name to "ToyCo."¹⁹¹ In analyzing whether this name change adversely affects FinCo's perfection, a student may offer this syllogism:

A financing statement rendered seriously misleading by the debtor's name change either continues to perfect, or ceases to perfect, a security interest in the collateral.

FinCo's financing statement, rendered seriously misleading by the debtor's name change from "ABC Company" to "ToyCo," no longer perfects a security interest in the collateral.

Therefore, FinCo's security interest in the collateral is unperfected.

The minor premise may be true, as may be the conclusion. Either or both may instead be false. The uncertainty arises because the major premise fails to accurately state the applicable law. The alternatives presented are "continues to perfect" or "ceases to perfect." Under the relevant law, however, the financing statement may continue to perfect (collateral acquired before or within four months after the name change) *and* fail to perfect (collateral acquired more than four months after the name change).¹⁹² The fallacy in the syllogism is that the options are not mutually exclusive (at least in the manner phrased in the major premise).

189. See *id.* § 9-102(a)(11) (defining "chattel paper").

190. The definition of "account" expressly excludes any payment rights "evidenced by chattel paper or an instrument." See *id.* § 9-102(a)(2). The "nonnegotiable" and secured nature of the hypothetical writing likely prevents the writing from falling within the definition of "instrument."

191. See *supra* Part III.B.2.

192. See U.C.C. § 9-507(c).

VI. CONCLUSION

Judge Aldisert and his co-authors call for law professors to apply core principles of logic in the classroom. A core principle of logic is deductive reasoning. Therefore, Judge Aldisert and his co-authors call for law professors to apply deductive reasoning in the classroom.

A syllogism draws a conclusion from two premises. Drawing a conclusion from two premises is the classic tool of deductive reasoning. Therefore, the syllogism is the classic tool of deductive reasoning.

The syllogism is very effective in mastering the law in a rules-based course. Secured Transactions is a rules-based course. Therefore, the syllogism is very effective in mastering the law in Secured Transactions.

Consummate deductive reasoning avoids the form of argument that omits one of the premises necessary to sustain its conclusion. The form of argument which omits one of the premises necessary to sustain its conclusion is an enthymeme. Therefore, consummate deductive reasoning avoids the enthymeme.

Syllogisms must avoid logical errors in the apparent relationship among its premises and conclusion. Logical errors in the apparent relationship among the premises and conclusion are known as formal fallacies. Therefore, syllogisms must avoid formal fallacies.

Proper syllogistic reasoning greatly improves the content of a narrative analysis. Improving the content of a narrative analysis leads to a better exam performance. Therefore, proper syllogistic reasoning leads to a better exam performance.

Law professors who teach Secured Transactions should seriously consider using learning tools that foster enhanced understanding of the subject matter and lead to better exam performance. A learning tool that fosters enhanced understanding of the subject matter and leads to better exam performance is the syllogism. Law professors who teach Secured Transactions should seriously consider using the syllogism as a learning tool.