

SECURED TRANSACTIONS

LAWS 2204

Schulich School of Law
Dalhousie University

Winter 2019

Colin Jackson

COURSE SYLLABUS

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I. Overview

The course is about commercial transactions involving the financing activities of lenders, vendors and other “secured parties”. We will examine the law governing secured transactions in personal property, and, in particular, Nova Scotia’s *Personal Property Security Act*.

Nova Scotia’s *PPSA* is a helpful window into this area of law, as all of the common law provinces have similar statutes. These are largely modeled on the Article 9 of the American Uniform Commercial Code. Australia and New Zealand have similar statutes as well. Mastering the terminology, concepts, and principles underlying Nova Scotia’s legislation can, therefore, be helpful for practice in a variety of places.

In the design of the law school’s curriculum, this course sits alongside Sale of Goods to form the “Commercial Transactions” subject area recommended by the Nova Scotia Barristers’ Society. It also fulfils one of the “selected classes” slots for students completing the Business Law Specialization.

II. Learning Objectives

This course aims to help you develop the following knowledge and skills:

- You will understand the fundamental concepts of secured lending in Canada.
- You will be able to explain the benefits of secured credit and how a lender can practically achieve these benefits.
- You will be familiar with the policies and principles underlying contemporary legal regimes of secured lending, and how those are reflected in the legislation in common law Canada.
- You will be familiar with the Nova Scotia *Personal Property Security Act*, and will be able to read and interpret provisions of the applicable legislation in other jurisdictions in light of the principles underlying secured transactions.
- You will be able to apply the rules of the *Personal Property Security Act* to a set of hypothetical facts to determine a secured creditor’s position with respect to each item of collateral, the debtor, and other parties with an interest in that collateral.

III. Course Materials & Bibliography

Obligatory Casebook

The required text for the course is a casebook whose development over the years is credited to Professors Wood, Kindred, Nicholls, Khimji, and Loomer. The casebook is available on Brightspace.

Legislation

Personal Property Security Act, SNS 1995-96, c 13 [*PPSA*].

Textbook for Optional Reading

Ronald CC Cuming, Catherine Walsh & Roderick J Wood, *Personal Property Security Law*, 2d ed (Toronto: Irwin Law, 2012). (In the library's reference collection and available electronically through the library's website.)

IV. Coordinates

E-mail: colinjackson@dal.ca

Office: W429

Office Hours: Wednesdays, 1:30 – 4:00

The best way to reach me is via e-mail at colinjackson@dal.ca.

You should feel free to stop by my office, send an e-mail, or stop me in the hall to talk about law. I'll promise to be in my office during the scheduled office hours, and I'm happy to meet with you at other times. If you want to make sure that you catch me, send an e-mail to make an appointment.

V. Course Sessions

The scheduled hours for the course are 11:30 am – 12:50 pm on Mondays and 11:00 am – 12:20 pm on Wednesdays in room 204, starting with Monday, January 7th, 2019 and concluding on Monday, April 8th, 2019.

At this point, I do not anticipate needing to cancel any classes. Should the need arise, I will inform you via e-mail and give you as much notice as possible. Several classes have been designated as "Flex/Review" classes, which will be provide us with the flexibility to compensate for any classes cancelled due to weather.

VI. Teaching Format, Preparation, and Class Participation

In this course, we will move more or less methodically through the casebook that has been used here at the Schulich School of Law for the past several years. In our classroom sessions, I will expect that you have read the cases in advance, but I expect that we will need to spend some time clarifying the legal concepts and business relationships at play.

In addition to discussing the cases, classroom time will focus on group-based question formulation and problem solving.

What You Should Expect from Me

As teacher, I am committed to working hard to help you succeed in the course. You should expect me to come prepared to class and to lead in creating a positive, challenging, engaging, and inclusive learning environment.

I will ensure that the class begins and ends on time, that I am available to you outside of those hours, and that I respond to your e-mails promptly.

I will endeavour to provide regular feedback to you to help you gauge your progress in the course.

I am committed to improving my skills as a teacher and to improving this course. You should expect me to take seriously the feedback that you give me.

What I Expect From You

I expect you to contribute to the creation of a positive, respectful, and challenging learning environment.

Consistent with the pedagogical approach, I expect you to come to class having read and reflected on the assigned reading. I do not expect you to have understood everything you have read, but I do expect that you will have spent enough time in preparation to be able to articulate your questions.

I expect that you will have access to the assigned cases and the *Personal Property Security Act* during the class.

I expect that you will regularly monitor both the Brightspace site and your dal.ca e-mail for updates related to the class. I have been asked to advise you that you “will be deemed to have received anything sent” to your @dal.ca e-mail address.

I also expect you to make use of both formal and informal methods of providing feedback to me.

VII. Evaluation

Final Exam (75% or 100%)

The course will have a 3-hour open-book final exam, which has been scheduled for **Wednesday, April 17th, 2019**. The exam will be set with reference to the assigned readings, classroom discussions, material posted on Brightspace or circulated by e-mail, and the course’s learning objectives.

Optional Mid-term Assignment (25%)

An optional mid-term assignment will be due **Friday, February 15th, 2019**. If you choose to submit the assignment, it will be worth 25% of your final mark. The assignment will be available about 10 days in advance of the due date and will have a strictly enforced word limit.

Grading Guidelines

This course must have a median of 70 – 72 with the following grade distribution:

A	10 – 20%
B	40 – 60%
A & B together	60 – 75%
C	15 – 25%
D	0 – 15%
F	0 – 5%

VIII. Diversity and Inclusion – Culture of Respect

Every person at Dalhousie has a right to be respected and safe. We believe inclusiveness is fundamental to education. We stand for equality. Dalhousie is strengthened in our diversity. We are a respectful and inclusive community. We are committed to being a place where everyone feels welcome and supported. Please do not hesitate to speak with me if you have questions or concerns, read more about Dalhousie's Diversity & Inclusiveness Strategy at www.dal.ca/cultureofrespect.html, and see dal.ca/dalrespect for further information on resources and supports.

IX. Integrity

All students must read the University policies on plagiarism and academic honesty <http://academicintegrity.dal.ca/> and the Law School policy on plagiarism <http://www.dal.ca/faculty/law/current-students/jd-students/academic-regulations.html>. Any paper or assignment submitted by a student at the Schulich School of Law may be checked for originality to confirm that the student has not plagiarized from other sources. Plagiarism is considered a serious academic offence which may lead to loss of credit, suspension or expulsion from the law school, or even revocation of a degree. It is essential that there be correct attribution of authorities from which facts and opinions have been derived. Prior to submitting any paper or other assignment, students should read and familiarize themselves with the policies referred to above and should consult with the instructor if they have any questions. Ignorance of the policies on plagiarism will not excuse any violation of those policies.

X. Student Requests for Accommodation

Requests for special accommodation for reasons such as illness, injury or family emergency will require an application to the Law School Studies Committee. Such requests (for example, for assignment extensions) must be made to Associate Dean, Academic Michael Deturbide or the Director of Student Services and Engagement Dana-Lyn Mackenzie as soon as possible, before a scheduled exam or a deadline for an assignment, and will generally require documentation. Retroactive accommodation will not be provided. Please note that individual professors cannot entertain accommodation requests.

Students may request accommodation for either classroom participation or the writing of tests and exams due to barriers related to disability, religious obligation, or any characteristic under the Nova Scotia *Human Rights Act*. Students who require such accommodation must make their request to the Advising and Access Services Center (AASC) at the outset of the regular academic year. Please visit www.dal.ca/access for more information and to obtain the Request for Accommodation – Form A. Students may also contact the Advising and Access Services Centre directly at (902) 494-2836.

XI. Faculty Policy on the Submission of Major Papers and Assignments

Major papers and assignments must be submitted in hard copy. Students should hand papers in to the place stipulated by the instructor and ensure they are date and time stamped. Please read the law school policy on late penalties:

<https://www.dal.ca/faculty/law/current-students/jd-students/academic-regulations.html>

Please note students may also be required to provide an identical electronic copy of their paper to the instructor by the due date. Papers may be submitted by the instructor to a text-matching software service to check for originality. Students wishing to choose an alternative method of checking the authenticity of their work must indicate to the instructor, by no later than the add/drop date of the course, which one of the following alternative methods they choose:

- a) submit copies of multiple drafts demonstrating development of their work
- b) submit copies of sources
- c) submit an annotated bibliography

XII. Schedule of Classes and Readings

Please refer to the table below for important dates and assigned readings for the course. To maximize student learning, I may adjust the schedule and the assigned readings from time-to-time. If so, I will inform you via e-mail with as much notice as possible.

	Topic	PPSA Provisions	Casebook Readings	Textbook Readings (Optional)
Part I - Introduction				
January 7	Introduction		Course Syllabus	
January 9	Overview of the Personal Property Security Regime		<i>Giffen Innovation Credit Union (Issue 1)</i>	pp. 1-20, 64-70
Part II - Taking Security in Personal Property				
January 14	PPSA Terminology, Scope & Application of the PPSA	s. 2(1), "personal property", "security interest", 3(2), 4	<i>Saulnier Re Skybridge Holidays Westfield Industries</i>	pp. 20-32, 116-124, 133-143, 151-159
January 16	Scope & Application of the PPSA (cont.) and Exclusions from the PPSA	ss. 4-5	<i>Crop & Soil Service DaimlerChrysler Fairbanx (Issue 1)</i>	pp. 125-133, 159-161, 161-178

	Topic	PPSA Provisions	Casebook Readings	Textbook Readings (Optional)
January 21	Agreement, Attachment & Perfection – Part I	ss. 10-13, 14-19, 34, 66, 71	<i>iTrade Finance, Guntel, Sayani, Kodiak Energy Services</i>	pp. 240-250, 256-276, 285-295
January 23	Agreement, Attachment & Perfection – Part II	ss. 2(2), 11, 13, 13A, 18A, 20-20B, 24-28		pp. 33-37, 276-283, 296-317
January 28	Conflict of Laws – Part I	ss. 6-8	<i>Re Arseneau TCT Logistics Juckes</i>	pp. 180-213
January 30	Conflict of Laws – Part II	ss. 8A-9	<i>Cardel Leasing Re Northern Transportation</i>	pp. 216-231
February 4	Flex / Review			
February 6	Perfection by Registration – Part I	ss. 43-49, 51-53	<i>Fairbanx (Issue 2) Re Noriega Primus Automotive D'Eon Fisheries</i>	pp. 318-362
February 11	Perfection by Registration – Part II	s. 44	<i>Gold Key Pontiac Moncton Motor Home Robie Financial</i>	pp. 363-374
Part III – Prioritizing Security and Other Interests in Personal Property				
February 13	Effects of Non-Perfection and the Default Priority Rules	ss. 21, 23(4), 36(1), 36, 36A, 66	<i>Merit Energy Ont. Dairy Cow Carson Restaurants</i>	pp. 417-439, 469-479, 485-492

	Topic	PPSA Provisions	Casebook Readings	Textbook Readings (Optional)
February 15	Optional Assignment Due			
February 25	Purchase Money Security Interests - Part I	s.2(1) "purchase money security interest", 23, 35	<i>Wheatland Industries Pettyjohn (Issue 1)</i>	pp. 452-465
February 27	Purchase Money Security Interests - Part II	s. 35	<i>Clark Equipment Battlefords Credit Union, Unisource</i>	pp. 452-465
March 4	Subordination Agreements & Buyers of Collateral	ss. 41, 21(3), 29(1), 31	<i>Euroclean Canada Chiips Re Hickman Equipment Lanson</i>	pp. 479-485, 376-385
March 6	Buyers of Collateral (cont.)	s. 31	<i>216200 Alberta Spittlehouse Camco Wheaton Pontiac</i>	pp. 385-402
March 11	Flex / Review			
March 13	Security Interests in Proceeds - Part I	ss.2(1) "proceeds", 3(3), 11(5), 29, 36(3)	<i>Transamerica Pettyjohn (Issue 2) McCain Produce</i>	pp. 552-579, 283-285
March 18	Security Interests in Proceeds - Part II		<i>IPS Invoice Kerwin Capital</i>	pp. 314, 579-584
March 20	Holder/Purchasers of Negotiable Collateral	ss. 31A, 32, 32A, 42	<i>Flexi-coil CFI Trust</i>	

	Topic	PPSA Provisions	Casebook Readings	Textbook Readings (Optional)
Part IV – Related Legislation, Enforcement & Review				
March 25	Relationship of PPSA to Federal Legislation		<i>Contech Enterprises</i> <i>Innovation Credit Union</i> (Issue 2) <i>Radius Credit Union</i>	pp. 76-80, 692-716, 518-532
March 27	Enforcement of Security Interests – Part I	ss. 56-65, 66-68	<i>Kavcar Investments</i> <i>Copp</i> <i>Bayview Credit Union</i>	pp. 613-656
April 1	Enforcement of Security Interests – Part II		<i>Chestnut Hill Homes</i> <i>Loewen</i>	pp. 656-690
April 3	Flex / Review			
April 8	Exam Review			