

# COMMERCIAL LAW

## CLASS INFORMATION & SYLLABUS

Fall 2011

*Professor Gerry W. Beyer*

*Governor Preston E. Smith Regents Professor of Law*

*Texas Tech University School of Law*

### Course Materials – Required

DOUGLAS J. WHALEY, PROBLEMS AND MATERIALS ON COMMERCIAL LAW (9<sup>th</sup> ed. 2008).

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### Contact Information:

Office: Law 310

Telephone (office): (806) 742-3990, ext. 302 (If I am not in my office when you call, please leave a message on the voice mail system and I will return your call.)

Fax: (978) 285-7941

Home: (806) 698-9334 (If I am not home, please leave a message with Margaret or on our voice mail and I will return your call.)

E-mail: [gwb@professorbeyer.com](mailto:gwb@professorbeyer.com)

Website: <http://www.ProfessorBeyer.com>

Blog: <http://www.BeyerBlog.com>

Twitter: Gerry\_Beyer

### **Office Hours:**

Whenever I am in my office — below are typical times (but subject to change):

#### **Monday through Thursday:**

11:00 a.m. to noon; 1:00 p.m. to 4:00 p.m.

#### **Friday:**

No set times.

### **E-mail List:**

It is *essential* that you register for e-mail updates as these updates serve as the official source of all class announcements. Please submit your name and preferred e-mail address to me directly or via e-mail if you are not already receiving class announcements.

### **Class Attendance and Participation:**

Your grade can be affected by class participation and attendance. I reserve the right to raise or lower your grade based on class participation and/or absences. I also reserve the right to lower grades for students whose absences exceed my policy. This includes the possibility of being removed from the class prior to the final exam and not receiving credit for the course.

- You are expected to attend **every** class meeting.
- **Prompt Arrival:** You are expected to be in your seat and ready to begin when class is scheduled to start. It is unprofessional and impolite to arrive at or after the start of class.
- **Tardy:** You are tardy if you (1) arrive late, (2) leave early, or (3) leave in the middle of class and return. Three tardies equates to one absence. (If you are really creative, you could come late, leave and return during class, and then leave early and get one absence in one day even though you are in class for awhile!)
- **Excessive Absences:** Other than in exceptional circumstances, if you accrue eight (8) or more absences, you will be automatically dropped from this course. Notice will be provided after the seventh absence. You may petition for relief from this rule by submitting a sworn affidavit along with supporting materials to document the reason for your absences. Note that your petition must show a justifiable reason for *all* your absences, not just the eighth and subsequent absences.

- **Absences due to Religious Holy Days and University Business:** Section 51.911(b) of the Texas Education Code provides excused absences for religious holy days, and Texas Tech Operating Policy and Procedure 34.04 provides excused absences for students conducting official university business, with proper notice to the faculty member. Please notify me if either of these will affect your attendance.

**Class Preparation:**

- You must be prepared for every class.
- You must be prepared to discuss the assigned material.
- Your final grade is subject to a one level reduction (e.g., from a B to a C+) for being unprepared.

**Technology Etiquette:**

- Turn off all mobile communication devices such as cell telephone and pagers prior to the beginning of class.
- Boot up computers before class starts.
- Turn off computer audio.
- Disable distracting screen savers.
- Use an adequately charged battery or a power cord to avoid running out of power and the associated low battery warning noises.
- Do not use your computer for purposes that are not related to class. For example, do not write or reply to e-mail or instant messages, surf the Internet, work on your Facebook or MySpace page, tweet, etc.

**Syllabus:**

Assignments are subject to change. Updates will be sent to all students via e-mail.

<u>Date</u>	<u>Topic</u>	<u>Text</u>
	<b>PART I – COMMERCIAL PAPER (PAYMENT)</b>	
August 22, 2011	Introduction & Class Procedure Types of Negotiable Instruments	309-312
August 23, 2011	Negotiability – Introduction Negotiability – Elements	312-314 314-325

<u>Date</u>	<u>Topic</u>	<u>Text</u>
August 24, 2011	Negotiability – Elements (continued)	325-332
August 25, 2011	Negotiability – Elements (continued) Negotiation	333-339
August 29, 2011	Negotiation (continued) Holders in Due Course – Introduction	341-342
August 30, 2011	Holder in Due Course – Elements	342-359
August 31, 2011	Holder in Due Course – Elements (continued)	359-373
Sept. 1, 2011	Shelter Rule Defenses Against a Holder in Due Course	374-381 381-400
Sept. 5, 2011	No class – Labor Day	
Sept. 6, 2011	Defenses Against a Holder in Due Course (continued) Defenses Against a Non-Holder in Due Course Other Holder in Due Course Issues	400-404 404-410 410-412
Sept. 7, 2011	Liability – Introduction Underlying Obligation Maker’s Obligation	413-414 414-420 420-421
Sept. 8, 2011	Indorser’s Obligation Surety’s Obligation	421-424 424-435
Sept. 12, 2011	Surety’s Obligation (continued) Drawer’s Obligation	435-446 446-456
Sept. 13, 2011	Drawee’s Obligation	456-463
Sept. 14, 2011	Signature by Agent	463-471
Sept. 15, 2011	Banks and Their Customers – Introduction Checking Account – Introduction Properly Payable Rule	473 474 474-477
Sept. 19, 2011	Wrongful Dishonor Death or Incompetence of Customer Bank’s Right of Setoff	477-482 482-483 483-488
Sept. 20, 2011	Stop Payment Orders	488-504
Sept. 21, 2011	Bank Statements Bank Collection	504-506 506-518
Sept. 22, 2011	Check Truncation Final Payment Check Return	518-525 525-537 537-538

<u>Date</u>	<u>Topic</u>	<u>Text</u>
Sept. 26, 2011	Charge Back Undoing Final Payment Delays Restrictive Indorsements	538-546 546-548 548-549 549-550
Sept. 27, 2011	Priorities in the Bank Account Wrongdoing and Error – Introduction Forgery of the Payee’s Name	550-552 553 554-558
Sept. 28, 2011	Forgery of the Payee’s Name (continued) Forgery of the Drawer’s Name	558-565 565-578
Sept. 29, 2011	Forgery Validation – Introduction Impostor Rule	578-585 585-587
October 3, 2011	Impostor Rule (continued) Employee Indorsement Rule Negligence Rule	587-589 589-604
October 4, 2011	Bank Statement Rule	604-614
October 5, 2011	Alteration	614-615
October 6, 2011	“Catch Up” & Conclusion Mid-Term Exam Information  [end of material covered on mid-term exam]	
	<b>PART II – SECURED TRANSACTIONS</b>	
October 10, 2011	Introduction Bankruptcy Interface Pre-Code Security Devices	751-753 753-755 755-763
October 11, 2011	Scope of Article 9 – Generally Consignments Leases	765-766 766-770 770-780
October 12, 2011	Other Article 9 Transactions Exclusions from Article 9	780-781 781-789
October 13, 2011	Classifying Collateral	791-803
October 14, 2011	<b>Mid-Term Examination</b> – 4:00 p.m. to 6:00 p.m.	
October 17, 2011	Classifying Collateral (continued) Technical Validity of the Forms	803-814
October 18, 2011	Attachment	814-824

<u>Date</u>	<u>Topic</u>	<u>Text</u>
October 19, 2011	Perfection – Generally Perfection by Possession Automatic Perfection	825 826-828 828-837
October 20, 2011	Automatic Perfection (continued)	838-851
October 24, 2011	Perfection by Filing	852-855
October 25, 2011	Perfection by Control Multistate Transactions	855 857-867
October 26, 2011	Multistate Transactions (continued) Priority – Introduction Simple Disputes	869-878
October 27, 2011	Simple Disputes (continued) Purchase Money Security Interests	879-894
October 31, 2011	Purchase Money Security Interests (continued) Control	895-898
November 1, 2011	Buyers	898-911
November 2, 2011	Buyers (continued)	912-925
November 3, 2011	Leases Article 2 Claimants Statutory Lien Holders	925-927 927-936 936-937
November 7, 2011	Fixtures	937-952
November 8, 2011	Fixtures (continued) Accessions and Commingling	952-953
November 9, 2011	Federal Priorities for Debts and Taxes	953-972
November 10, 2011	Federal Priorities for Debts and Taxes (continued) Bankruptcy and Article 9 – Introduction The Trustee’s Status	973-975
November 14, 2011	Preferences	975-980
November 15, 2011	Preferences (continued) Floating Liens	980-989
November 16, 2011	Fraudulent Transfers Nonconsensual Liens Proceeds – Introduction	989 989-990 991-995
November 17, 2011	Priority in Proceeds	996-1007

<u>Date</u>	<u>Topic</u>	<u>Text</u>
November 21, 2011	Priority in Proceeds (continued)	
November 22, 2011	Default – Generally Pre-Default Duties of the Secured Party Default	1009-1010 1009-1010 1010-1016
November 23, 2011	Thanksgiving Break – no class	
November 24, 2011	Thanksgiving Break – no class	
November 28, 2011	Default (continued) Repossession and Resale	1016-1021 1021-1034
November 29, 2011	Repossession and Resale (continued)	1034-1059
November 30, 2011	Redemption and Strict Foreclosure	1059-1067
December 1, 2011	“Catch up” & Conclusion Final Exam Information	
December 14, 2011	<i>Final Exam</i> – 8:00 a.m. to 10:00 a.m.	

**Course Purpose:**

The purpose of this course is to provide students with a background in Commercial Law with emphasis on the commercial paper (payments) and secured transactions articles of the Uniform Commercial Code.

**Expected Learning Outcomes:**

Upon completion of this course, a student will have acquired knowledge of the operation of the commercial paper (payment) and secured transactions articles of the Uniform Commercial Code. The specific tasks the student will be able to complete include the following:

- Identify the different types of commercial paper and the parties involved.
- Determine whether commercial paper is negotiable.
- Ascertain whether commercial paper has been properly negotiated.
- Determine whether the holder of commercial paper qualifies as a holder in due course.

- Apply the applicable rules to determine whether an obligor's defense to payment is effective against the current holder of the commercial paper.
- Understand the obligations of a maker on a note.
- Understand the obligations of an indorser of a note or draft.
- Understand the obligations of a surety on a note or draft.
- Understand the obligations of a drawer on a draft.
- Understand the obligations of a drawee on a draft.
- Determine the personal liability of an agent who signs a note or draft.
- Ascertain the obligations of the parties to a bank account (customer and bank).
- Recognize the impact of stop payment orders.
- Understand the ramifications of a customer's failure to inspect bank statements in a timely manner.
- Appreciate the workings of the bank collection system.
- Understand the impact of a forgery of the payee's name on commercial paper.
- Understand the impact of a forgery of the drawer's name on commercial paper.
- Recognize how a forgery may be validated.
- Understand the obligations of the party whose name was forged.
- Determine the ramifications of alterations on commercial paper.
- Determine the transactions governed by Article 9 of the Uniform Commercial Code.
- Classify collateral.
- Ascertain when a security interest attaches.
- Know the different methods of perfection (possession, filing, automatic, control, certificate of title) and what types of collateral may be perfected using each method.
- Determine the applicable law when a secured transaction involves the law of more than one state.
- Resolve priority disputes over collateral between competing parties including creditors, purchasers, and statutory lien holders.
- Resolve priority disputes in fixtures between holders of real property interests and holders of personal property interests.



- Recognize the impact of federal priorities for debts and taxes.
- Understand the interface between bankruptcy law and state secured transactions law.
- Determine the party who has priority to proceeds.
- Recognize when a debtor is in default.
- Evaluate the validity of a repossession of the collateral from the debtor.
- Ascertain whether the creditor's resale of repossessed collateral is proper.
- Determine whether the creditor may strictly foreclose on the collateral.
- Understand how a debtor may cure the default and redeem the collateral.

### **Method of Assessing Learning Outcomes:**

Two exams will be given: a two hour mid-term exam on October 14, 2011 and a two hour final examination on December 14, 2011. Both exams will include essay and objective questions.

### **Criteria for Grade Determination:**

The following factors will be considered in grading the examinations: accuracy (e.g., legally correct), completeness (e.g., number of issues spotted), and analysis (including organization, clarity, quality, and presentation).

### **Academic Honesty**

It is the aim of the faculty of Texas Tech University to foster a spirit of complete honesty and high standard of integrity. The attempt of students to present as their own any work not honestly performed is regarded by the faculty and administration as a most serious offense and renders the offenders liable to serious consequences, possibly suspension.

“Scholastic dishonesty” includes, but it not limited to, cheating, plagiarism, collusion, falsifying academic records, misrepresenting facts, and any act designed to give unfair academic advantage to the student (such as, but not limited to, submission of essentially the same written assignment for two courses without the prior permission of the instructor) or the attempt to commit such an act.

- a. “Cheating” includes, but is not limited to:

- (1) Copying from another student's test paper;
- (2) Using during a test materials not authorized by the person giving the test;
- (3) Failing to comply with instructions given by the person administering the test;
- (4) Possession during a test of materials that are not authorized by the person giving the test, such as class notes or specifically designed "crib notes." The presence of textbooks constitutes a violation only if they have been specifically prohibited by the person administering the test.
- (5) Using, buying, stealing, transporting, or soliciting in whole or in part the contents of an unadministered test, test key, homework solution, or computer program;
- (6) Collaborating with or seeking aid or receiving assistance from another student or individual during a test or in conjunction with other assignment without authority;
- (7) Discussing the contents of an examination with another student who will take the examination;
- (8) Divulging the contents of an examination for the purpose of preserving questions for use by another when the instructor has designated that the examination is not to be removed from the examination room or not to be returned to or kept by the student;
- (9) Substituting for another person or permitting another person to substitute for oneself to take a course, a test, or any course-related assignment;
- (10) Paying or offering money or other valuable thing to or coercing another person to obtain an unadministered test, test key, homework solution, or computer program, or information about an unadministered test, test key, homework solution, or computer program;
- (11) Falsifying research data, laboratory reports, and/or other academic work offered for credit; and
- (12) Taking, keeping, misplacing, or damaging the property of the university or of another if the student knows or reasonably should know that an unfair academic advantage would be gained by such conduct.

b. “Plagiarism” includes, but is not limited to, the appropriation of, buying, receiving as a gift, or obtaining by any means material that is attributable in whole or in part to another source, including words, ideas, illustrations, structure, computer code, other expression and media, and presenting that material as one’s own academic work being offered for credit.

c. “Collusion” includes, but is not limited to, the unauthorized collaboration with another person in preparing academic assignments offered for credit or collaboration with another person to commit a violation of any section of the rules on scholastic dishonesty.

d. “Falsifying academic records” includes, but is not limited to, altering or assisting in the altering of any official record of the university and/or submitting false information or omitting requested information that is required for or related to any academic record of the university. Academic records include, but are not limited to, applications for admission, the awarding of a degree, grade reports, test papers, registration materials, grade change forms, and reporting forms used by the Office of the Registrar. A former student who engages in such conduct is subject to a bar against readmission, revocation of a degree, and withdrawal of a diploma.

e. “Misrepresenting facts” to the university or an agent of the university includes, but is not limited to, providing false grades or resumes; providing false or misleading information in an effort to receive a postponement or an extension on a test, quiz, or other assignment for the purpose of obtaining an academic or financial benefit for oneself or another individual; or providing false or misleading information in an effort to injure another student academically or financially.

### **Disability Statement: OP 34.22**

Any student who, because of a disability, may require special arrangements in order to meet the course requirements should contact the Associate Dean for Student Affairs and Diversity as soon as possible to make any necessary arrangements. Students should present appropriate verification from Student Disability Services during the Associate Dean’s office hours. Please note that classroom accommodations cannot be provided to a student until appropriate verification from Student Disability Services has been submitted. For additional information, you may contact the Student Disability Services office in 335 West Hall or 806-742-2405.