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## Security Interests in Personal Property

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# BOOK REVIEWS

SECURITY INTERESTS IN PERSONAL PROPERTY. By Grant Gilmore. Boston and Toronto: Little, Brown and Company. 1965. 2 vols. Pp. xii, 1508. \$45.00.

This two-volume treatise is devoted for the most part to an analysis of Article 9 of the Uniform Commercial Code. In the first half of Volume One, Professor Gilmore discusses in some detail the various security devices that were replaced by the Code, such as the chattel mortgage, the conditional sale, and the trust receipt. The major part of these two volumes is then devoted to a microscopic analysis of Article 9. This is accompanied by discussion of the related topics necessary for complete coverage of security transactions, such as circular priority systems, certificate of title acts, and the relationship between the Code and the Bankruptcy Act.

Professor Gilmore's work is a major contribution to the literature on the Code. His professional reputation and his service as Associate Reporter for Article 9 would probably create a favorable bias in any reviewer. Even discounting this, it is possible to praise his work with confidence.

These two volumes are beautifully written. The author has a style that makes most of the material a pleasure to read. For instance, his discussion of the development of the trust receipt is fascinating.<sup>1</sup> He is in no way burdened by his ponderous topic and often manages to enliven a tedious point. Everyone will presumably have his own favorite passages and phrases. I particularly enjoyed his reference to the 1938 amendment of section 60 of the Bankruptcy Act as "the classical example of overkill."<sup>2</sup>

Lawyers and law teachers will, however, expect more than pleasant style; and they will find it. It would be a disservice to Professor Gilmore to overemphasize the felicity of his writing. His book contains a very careful examination of Article 9. Sometimes the author's minute examination of sections may seem overlong, but there generally can be no complaint that he slights any aspect of a particular topic.

In his attempt to help the reader understand Article 9, Professor Gilmore has chosen to place a great deal of emphasis on the history of

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1. Pp. 86-99.  
2. P. 1302.

chattel securities. Article 9 is not a codification or recodification of existing case and statutory law. It is the product of a reform movement. Lawyers tired of the vagaries of nineteenth century chattel security devices hoped to bring order out of chaos. As the product of a reform movement, Article 9 can best be understood if prior chattel security law is understood.

In his preface Professor Gilmore admits but de-emphasizes his "own fondness for writing history."<sup>3</sup> This fondness probably was much more influential in the conception and execution of this treatise than the author is willing to admit. As a result he gives us more history than is necessary to identify the specific substantive changes made by the Code. Professor Gilmore is interested in Article 9 and its forerunners as legal institutions. He is fascinated by the operation of our legal system as demonstrated by the developments in this area of the law. This is one of the aspects of the treatise that raises it far above the level of competent but undistinguished legal scholarship.

The historical perspective which he gives us is necessary if we are to avoid repeating past mistakes. He notes that "Personal property security law has been, for a hundred years past, an unstable body of law. There is no reason to believe that, with the enactment of Article 9, this long period of dynamic growth has come to an end."<sup>4</sup> His characterization of the past performance of our legal system is somewhat charitable. Dynamic stagnation might sometimes be a better label. I have in mind, as a particular example, the doctrine of *Benedict v. Ratner*.<sup>5</sup> This rule of law is made largely inoperative by section 9-205 of the Code. Despite this Professor Gilmore discusses the rule at great length,<sup>6</sup> in detail that is unnecessary if we are only interested in current financing patterns and the operation of Article 9. But the discussion of *Benedict v. Ratner* is significant not only because it explains what we have today but because it is a perfect example of judicial non-response to the financing needs of the community. It is the type of response that we hope not to get when Article 9 is interpreted by the courts. By discussing the history of *Benedict v. Ratner* in great detail Professor Gilmore permits us to learn something from our past mistakes. Historical material of this type will be increasingly important as law schools phase out intensive study of pre-Code security transactions.

Since I teach a course in creditors' rights I was particularly interested in Professor Gilmore's last chapter, in which he discusses possible

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3. P. vii.

4. P. viii.

5. 268 U.S. 353 (1925).

6. Pp. 250-86.

conflicts between the Code and the Bankruptcy Act. Discussions of this type sometimes read like briefs for either the secured creditor or the trustee in bankruptcy. Professor Gilmore's association with Article 9 might have been expected to produce an analysis overly favorable to the secured creditor. It has not. He is reasonably detached and realistic in his appraisal of Article 9.

Of substantial interest is his analysis of section 9-108 of the Code, which, if effective against the trustee in bankruptcy, will protect certain security interests in after-acquired property. His analysis of the history of section 60 of the Bankruptcy Act leads him to the conclusion that there is nothing which would justify a court in holding that section 9-108 conflicts with any federal policy. In fact, he notes that section 9-108 restricts the rights of secured creditors by permitting the after-acquired property clause to operate only in a limited number of situations. The Supreme Court has not always been concerned with the history of bankruptcy legislation.<sup>7</sup> But if it is in this instance, Professor Gilmore makes a very strong argument for the validity of section 9-108.

Later Professor Gilmore turns to subsection 9-306(4)(d), which gives the secured party a limited interest in cash and bank accounts where there are non-identifiable cash proceeds from the sale of security. Professor Gilmore's discussion of the mechanics of the subsection is a model of clarity. But he falters when he examines the possible attacks that might be made by the trustee in bankruptcy. Although he discusses subsection 10(b) of the Uniform Trust Receipts Act and two cases involving it, *In re Harpeth Motors, Inc.*<sup>8</sup> and *In re Crosstown Motors, Inc.*,<sup>9</sup> he deals in a very summary fashion with possible preference problems and does not refer to possible problems with subsections 67(c)(2) and 70(c) of the Bankruptcy Act. It could be argued that whether the Code provision be attacked as an invalid priority, a statutory lien unaccompanied by possession, a preferential transfer, or a security interest subject to subsection 70(c), the basic issue is whether the states may manipulate property concepts to the detriment of the trustee in bankruptcy. Professor Gilmore in defending subsection 9-306(4)(d) from possible attack as a preference suggests that:

Factually, the possibility that the bank account will be made up of anything but deposits and collections of proceeds is small indeed. From this point of view, § 9-306(4)(d) merely dispenses with the tedious and artificial business of tracing money

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7. *E.g.*, *Corn Exch. Nat'l Bank and Trust Co. v. Klauder*, 318 U.S. 434 (1943).

8. 135 F. Supp. 863 (M.D. Tenn. 1955).

9. 272 F.2d 224 (7th Cir. 1959).

through bank accounts. In substance, the Code provision is a severe restriction or cut-back on the rights of a secured party who fails to police the debtor's affairs. As the Code's version of the principle which underlay the rule of *Benedict v. Ratner*, it would seem to be entitled to a favorable reception in the bankruptcy courts.<sup>10</sup>

The argument that subsection 9-306(4)(d) is only a substitute for tracing seems somewhat labored. The tedium of tracing is relieved only in insolvency proceedings, not where trusts or constructive trusts are involved. The fact that this property concept has such a limited effect suggests that it may be an attempt to tie the hands of the trustee. This doubt about the purpose of the legislation is not necessarily dispelled by the possibility that the trustee can gain at the same time the creditor gains. Perhaps we should put aside the conventional justification offered by Professor Gilmore and ask whether we have been too restrictive in adopting state property concepts for use in bankruptcy proceedings. We seem to have become progressively more skeptical of any state action which strengthens the hand of the secured creditor. Perhaps now is the time to reverse this trend and give the states greater responsibility for striking that delicate balance between the secured creditor and the unsecured creditor which is at the heart of our bankruptcy system.

Although I have minor reservations about this treatise, it is in general admirably done. Professor Gilmore has written about a subject that is difficult and often tedious. Although it remains difficult in his hands, it is rarely boring. His careful and authoritative analysis should cause this treatise to be widely consulted by lawyers and often cited by courts. For those who share Professor Gilmore's interest in the metamorphosis of the chattel security these two volumes will remain an unending source of pleasure.

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10. P. 1344.

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