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Payment Rights as Article 9 Collateral

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Almost 150 years ago, Scottish economist Henry Dunning Macleod wrote that “If we were asked – who made the discovery which has most deeply affected the fortunes of the human race? We think, after full consideration, we might safely answer – the man who first discovered that Debt is a Saleable Commodity.” 1 Macleod, *Principles of Economical Philosophy* 481 (2d ed. 1872). Several years later, Macleod expanded the point a bit: “When Daniel Webster said that Credit has done more a thousand times to enrich nations than all the mines of the world, he meant the discovery that Debt is a saleable Chattel; and may be used like Money, and produce all the effects of Money.” 1 Macleod, *The Elements of Economics* 327 (1881).

In the decades after Macleod expressed these views about the value of debt, the phenomenon that he identified broadened to include not only the sale of debt (more precisely, the sale of the right to receive payment) but also the use of payment rights as collateral to obtain credit.

In light of the economic importance of the use of debt as a commodity to be sold or borrowed against, it is not surprising that the topic is addressed by Article 9 of the Uniform Commercial Code in some detail. Not only is the subject addressed in great detail, but it is addressed with great complexity. Consider that:

- Of the 13 primary types of personal property identified in Article 9, eight of them consist, in whole or in part, of payment rights.
- Taking into account subcategories, at least 14 categories or subcategories of personal property include payment rights
- Notwithstanding the fact that one of the great advances brought about by Article 9 is its treatment of all security devices under the same framework governed by essentially the same rules, no two property categories that include payment rights are governed by identical rules

Accordingly, thoughtful representation requires attorneys both to accurately classify payment rights in terms of Article 9 property types and to master the differences in rules that apply to each of those property types. While many of the issues raised by this collection of classifications and

rules have simple and straightforward resolutions that have long been settled, others are complex, obscure, or uncertain, or are affected by recent developments.

This program will briefly summarize the Article 9 issues that are unique to payment rights and the Article 9 rules that are specific to payment rights, and, through use of a series of hypothetical problems, address challenging issues with respect to classification of payment rights and the substantive rules applicable to those rights.