Index

ABANDONMENT

Default, 3:18

ABSTRACT ASSET

Interstate perfection, 2:54 to 2:56

ACCEPTANCE

Foreclosure. See **Foreclosure** (this index)

ACCOUNTS

Article Nine, 2:11

ACTUAL PERFORMANCE TEST

Executory contracts, 4:90

ADEQUATE ASSURANCE

Executory contracts, 4:96

ADEQUATE PROTECTION

Estate and property outside estate, 4:29

ADMINISTRATIVE EXPENSE CLAIMS

Executory contracts, 4:115

ADMINISTRATIVE OBLIGATION

Executory contracts, 4:84

ADVERTISING

Foreclosure, 3:58

AFFIRMATIVE OBLIGATIONS

Executory contracts, 4:105

AFTER-ACQUIRED

Copyright collateral, security interests under § 205 of Copyright Act, recording, 2:81

Party, Article Nine, 2:23

Property. See Article Nine (this index)

"ALL LEGAL OR EQUITABLE INTERESTS OF DEBTOR IN PROPERTY"

Estate and property outside estate, 4:15

AMENDMENTS

Federal intellectual property, 1992 ABA Task Force Report and 1998 Drafts, **2:116**

"ANTECEDENT DEBT"

Estate and property outside estate, 4:40

"ANY RIGHT OF SETOFF"

Executory contracts, 4:114

APPLICABLE LAW

Executory contracts, 4:93

APPLICATIONS

Default, **3:20**

APPLICATIONS—Cont'd

Lanham Trademark Act, 2:107

ARTICLE NINE

Generally, 2:5 et seq.

Account defined, 2:11

After-acquired property

generally, 2:20 to 2:24

debtor's title, 2:24

derivative title, 2:21, 2:22

time of attachment, 2:23

Assignment. See subhead: Perfection and related prior-

ity questions, below in this heading

Attachment

perfection and related priority questions, 2:34

"proceeds" of intellectual property, effects of expanded definition in current Article Nine, 2:28

security interest. See subhead: Security interest, below in this heading

Bankruptcy Code § 547, preference under, 4:44

C Tek Software, Inc., interstate perfection in C Tek source code collateral under current Article Nine, 2:64

Collateral. See **Default** (this index)

Comprehensive scope, generally, 2:5 et seq.

Conflicting security interests. See subhead: Priority, below in this heading

Creditors. See subhead: Perfection and related priority questions, below in this heading

Default. See **Default** (this index)

Disposition concept. See subhead: Security interest, below in this heading

Estate and property outside estate, **4:44**

FCC license as property-less, 2:14

Federal intellectual property, 2:69 to 2:71

"Finance license," Article Nine and Model Computer Information Transactions Act, 2:15

Foreclosure. See **Foreclosure** (this index)

General intangibles, 2:8

"Goods," software as "goods" and software embedded in "goods," 2:9

Infringement, right to sue for, 2:12

Interstate perfection, 2:55, 2:56

Language used in current § 9-311(a)(1), limited filing deferral language, 2:72

Lanham Trademark Act, 2:108

License

"finance license," Article Nine and Model Computer Information Transactions Act, **2:15**

ARTICLE NINE—Cont'd

License—Cont'd

income streams resulting from transfer of interests, 2:11

nonassignable licenses and other rights to use, 2:13, 2:14

perfection and related priority questions. See subhead: Perfection and related priority questions, below in this heading

security interest, attachment in proceeds, 2:31

Lien creditor, security interests perfected against by Article Nine, **4:44**

Model Computer Information Transactions Act, "finance license," 2:15

Narrow purchase-money definition in current Article Nine § 9-103, 2:52

Nonassignable licenses and other rights to use, 2:13, 2:14

Patent Act. See **Patent Act** (this index)

Perfection and related priority questions

generally, 2:33 et seq.

assignment

prior security interest vs. subsequent assignees and licensees. See subhead: Prior security interest vs. subsequent assignees and licensees, below in this subheading

subsequent security interest against prior assignees and licensees. See subhead: Subsequent security interest against prior assignees and licensees, below in this subheading

attachment and notice event, **2:34** license

prior security interest vs. subsequent assignees and licensees. See subhead: Prior security interest vs. subsequent assignees and licensees, below in this subheading

subsequent security interest against prior assignees and licensees. See subhead: Subsequent security interest against prior assignees and licensees, below in this subheading

lien creditor, security interests perfected against by Article Nine, **4:44**

notice event, 2:34

prior assignees and licensees. See subhead: Subsequent security interest against prior assignees and licensees, below in this subheading

prior security interest vs. subsequent assignees and licensees

generally, 2:36 et seq.

Article Nine § 9-201 and 9-317(d), **2:38** federal transfer and recording statutes, **2:39** ordinary course transfers, assignment in, **2:40** U.C.C. § 9-201 and 9-301(1)(d) [old], **2:37**

§ 9-201 and 9-317(d), prior security interest vs. subsequent assignees and licensees, **2:38**

subsequent assignees and licensees. See subhead: Prior security interest vs. subsequent assignees

ARTICLE NINE—Cont'd

Perfection and related priority questions—Cont'd and licensees, above in this subheading

subsequent security interest against prior assignees and licensees

generally, 2:41 et seq.

bankruptcy, Article Nine perfection in, 2:45 current Article Nine, 2:43

judicial lien, 2:44

U.C.C. 9-201 and 9-301(1)(d) [old], 2:42

vulnerability of unperfected security interest to transferees, purchasers, and creditors

generally, 2:35

perfection in proceeds, 2:46

prior security interest vs. subsequent assignees and licensees. See subhead: Prior security interest vs. subsequent assignees and licensees, above in this subheading

subsequent security interest against prior assignees and licensees. See subhead: Subsequent security interest against prior assignees and licensees, above in this subheading

Post-default and pre-foreclosure control. See Post-Default and Pre-Foreclosure Control of Intangibles (this index)

Prior assignees and licensees. See subhead: Perfection and related priority questions, above in this heading

Prior security interest vs. subsequent assignees and licensees. See subhead: Perfection and related priority questions, above in this heading

Priority

conflicting security interests

generally, 2:47 et seq.

first-to-file rule, 2:48

narrow purchase-money definition in current Article Nine § 9-103, **2:52**

purchase-money priority, 2:49 to 2:52

U.C.C. § 9-312(4)[old] and intangible rights, purchase-money priority rule in, **2:51**

perfection and related priority questions. See subhead: Perfection and related priority questions, above in this heading

Private nontransferable, nonexclusive license as property-less, 2:14

Proceeds, attachment in. See subhead: Security interest, below in this heading

Purchases. See subhead: Perfection and related priority questions, above in this heading

Remedies. See **Default** (this index)

Residual definition, 2:8

Security interest

generally, 2:16 et seq.

after-acquired property, above in this heading agreement containing description of collateral, **2:19** attachment, generally, **2:17 et seq.** confluence of three events, **2:18**

ARTICLE NINE—Cont'd	ASSIGNMENT—Cont'd
Security interest—Cont'd	Executory contracts. See Executory Contracts (this
creating, generally, 2:16 et seq.	index)
debtor's title to intellectual property, generally, 2:24	Foreclosure, 3:69 , 3:74
et seq.	Lanham Trademark Act, 2:107
derivative title principle, 2:22	Patent Act, 2:95, 2:101
disposition concept. See subhead: Proceeds, attach-	ASSUMPTION
ment in, below in this subheading	See Bankruptcy (this index)
earlier form of collateral, rights in, 2:25	See Danki upicy (uns muex)
overarching principle of derivative title, 2:21	ATTACHMENT
perfection in proceeds, 2:46	Article Nine. See Article Nine (this index)
proceeds, attachment in	Interstate perfection, 2:67
generally, 2:26 et seq.	AUGMENTING PROPERTY OF ESTATE
assignments, 2:29	
definition of "proceeds," expansion, 2:28	See Estate and Property Outside Estate (this index)
disposition concept, generally, 2:27 et seq.	AUTHORIZATION
infringement, right to sue for, 2:32	Estate and property outside estate, 4:19
innovations in transition, 2:30	Executory contracts, 4:92
licenses, 2:31	Software contracts and electronic self-help, 3:28
rights in collateral, generally, 2:20 et seq.	•
time of attachment, 2:23	AUTOMATIC STAY
timing problems, 2:25	See Estate and Property Outside Estate (this index)
vulnerability of unperfected security interest to	AVOIDANCE POWERS
transferees, purchasers, and creditors, 2:35	See Estate and Property Outside Estate (this index)
Software as "goods" and software embedded in	
"goods," 2:9	BANKRUPTCY
Software contracts, 2:11, 3:33	Generally, 4:1 et seq.
State governmental licenses, property-less, 2:14	Article Nine, subsequent security interest against prior
Subsequent assignees and licensees. See subhead:	assignees and licensees, 2:45
Perfection and related priority questions, above in	Assignment
this heading	generally, 4:11
Subsequent security interest. See subhead: Perfection	assignor in bankruptcy, 4:8, 4:9
and related priority questions, above in this head-	assumption of obligation in consideration of assign-
ing	ment, 4:12
Substance over form, 2:6	terminate, attempt to, 4:12
Transfer of interests, income streams resulting from	Assumption
generally, 2:7 et seq.	generally, 4:12
account defined, 2:11	executory contracts. See Executory Contracts (this
general intangibles, 2:8	index)
income streams, generally, 2:10	Characterization in bankruptcy, 4:4
infringement, right to sue for, 2:12	Commercial asset, intellectual property as, 1:2
licensing of intellectual property, income streams	Complete transfer of intellectual property, license or
from, 2:11	assignment as, 4:8 to 4:10
property-less licenses, 2:14	Conceptual framework, generally, 4:2 et seq.
residual definition, 2:8	Contracts and agreements
software contract, income stream considered an	contractual nature of transfers, 4:3 to 4:6
account, 2:11	executory contracts. See Executory Contracts (this
Transfers. See subhead: Perfection and related priority	index)
questions, above in this heading	rights, property arising solely from, 4:6
Vulnerability. See subhead: Perfection and related	transfers, contractual nature of, 4:3 to 4:6
priority questions, above in this heading	Definitions, generally, 4:2
ASSIGNMENT	Discharge in. See Discharge in Bankruptcy (this
	index)
Article Nine. See Article Nine (this index)	Estate. See Estate and Property Outside Estate (this
Bankruptcy, 4:8, 4:9 Estate See Estate and Property Outside Estate (this	index)
Estate. See Estate and Property Outside Estate (this index)	Executory contracts. See Executory Contracts (this index)

BANKRUPTCY—Cont'd

License

generally, 4:11

enforcement of contract, 4:13

executory contract, 4:8, 4:10

licensor in bankruptcy, 4:8, 4:10

rejection of contract, 4:13

retaining rights against property, **4:13**

Property nature of transfers, 4:3 to 4:6

Res, property rights in, 4:5

Transfers, 4:3 to 4:6, 4:8 to 4:10, 4:52

BANKRUPTCY CODE

- § 101(35a), executory contracts, **4:116**
- § 362(a) as applied to secured creditors, estate and property outside estate, **4:22**, **4:25**
- § 362(d), estate and property outside estate—"for cause, including lack of adequate protection", **4:29**
- § 362(d), estate and property outside estate—interests of third persons, **4:26 et seq.**
- § 362(d), estate and property outside estate—no equity and no need, **4:28**
- § 363. See **Estate and Property Outside Estate** (this index)
- § 363(b), estate and property outside estate—licensing of intellectual property of estate, **4:71 et seq.**
- § 363(b)(1), estate and property outside estate—other than ordinary course transactions, **4:69**
- § 365, estate and property outside estate—licensing of intellectual property of estate, **4:66**
- \S 365(b), executory contracts—conditions when debtor in default, 4:80
- § 365(c), executory contracts—contracts and licenses not assumed under, **4:86 et seq.**
- § 365(c)(1)—executory contracts

generally, 4:88 et seq.

assignment by trustee or debtor in possession, **4:93**, **4:94**

cutting and pasting of $\S 365(c)(1)$, **4:87**

- § 365(f), executory contracts—assignment by trustee or debtor in possession, **4:92**
- § 365(f)(1), executory contracts—assignment by trustee or debtor in possession, **4:93**
- § 365(f)(2), executory contracts—assignment by trustee or debtor in possession, **4:96**
- § 365(n). See **Executory Contracts** (this index)
- § 365(n)(3), estate and property outside estate—software escrow, **4:63**
- § 523(a)(4) and (a)(6), discharge in bankruptcy, **4:133**, **4:134**
- § 541. See Estate and Property Outside Estate (this index)
- § 544(a), estate and property outside estate, **4:32 to 4:35**, **4:62**
- § 547, estate and property outside estate—typical software escrow, **4:61**

BANKRUPTCY CODE—Cont'd

- § 547. See Estate and Property Outside Estate (this index)
- § 547(b), estate and property outside estate—definition of preference, **4:38 et seq.**
- § 547(b)(2), estate and property outside estate—time debt incurred under § 547(b)(2), **4:41**
- § 547(c)(1), estate and property outside estate—preferences, **4:47**, **4:48**
- § 547(c)(2), estate and property outside estate—preferences, **4:47**, **4:49**
- § 547(c)(4), estate and property outside estate—preferential transfers followed by new value under, **4:50**
- § 547(c)(5), estate and property outside estate—preferences, 4:47, 4:51
- § 547(e), estate and property outside estate—preferences

payment transfers and § 547(e), 4:46

transfer of copyright ownership and § 547(e), 4:45

- § 553, executory contracts—"gap period" prior to assumption or rejection, **4:126**
- Preferential transfer with "aggregate value" of less than § 6,425 made by non-consumer debtor proposed Reform Act exception, **4:52**

BANKRUPTCY REFORM ACT

Termination of stay with respect to individual debtor's "personal property" under proposed Bankruptcy Reform Act, **4:30**

BONA FIDE PURCHASER RULE

Patent Act, 2:99

C TEK SOFTWARE, INC.

Current Article Nine, interstate perfection in C Tek source code collateral under, **2:64**

Facts, 2:62

Interstate perfection, generally, 2:61 to 2:66

Legal issues, 2:63

Old version of Article Nine, interstate perfection in source code collateral under, **2:61**

Unexplored federal preemption questions, **2:66**

CASE LAW

Executory contracts, "gap period" prior to assumption or rejection, **4:123**

CASH COLLATERAL

Estate and property outside estate, licensing of intellectual property of estate, **4:74**

CAUSE OF ACTION

Estate and property outside estate, **4:19**

CHOICE OF LAW

Interstate Perfection (this index)

CIVIL PENALTIES

Software contracts and electronic self-help, 3:32

COLLATERAL

Generally, 2:1 et seq.

COLLATERAL—Cont'd

Article Nine. See **Article Nine** (this index)

Bankruptcy Reform Act, termination of stay with respect to individual debtor's "personal property," **4:30**

Choice of law. See **Interstate Perfection** (this index)

Estate and property outside estate, 4:74

Exploitation of value, 2:1

Federal intellectual property. See **Federal Intellectual Property** (this index)

Foreclosure. See **Foreclosure** (this index)

Governing law as inadequate and confusing, **2:4** Interstate perfection. See **Interstate Perfection** (this

Necessity of collateral security to efficient owner exploitation, 2:2

Perfection. See **Interstate Perfection** (this index)

Preemption. See **Federal Intellectual Property** (this index)

Special information needed by secured lenders, **2:3** State choice of law. See **Interstate Perfection** (this index)

Transaction costs as unnecessarily high, 2:4

COLLECTIBLE INTANGIBLES

Foreclosure

generally, 3:71 et seq.

collateral transfers, right to collect certain receivable collateral—true sales vs. collateral transfers, 3:72

collectible general intangibles, **3:73 to 3:75** debtor/licensee's rights to use property collected, **3:75**

income stream from license or assignment sold with recourse, application of current § 9-502, **3:74**

COMMERCIAL LAW

Generally, 1:4 et seq.

Copyright property as commercial asset, **1:7** Domain names capable of being used as commercial

assets

generally, 1:15

contracts that restrict copying or use of otherwise nonproprietary factual information, **1:16**

Mask work property as commercial asset, 1:9

Misappropriation doctrines, 1:13

Patent property as commercial asset, 1:6

Primary commercial asset, intellectual property as, generally, 1:1

Property rights, generally, 1:5 et seq.

Publicity rights, 1:14

State law

actions for unfair competition as commercial asset, 1:11

misappropriation doctrines creating property capable of being used as commercial assets, 1:13

publicity rights creating property capable of being used as commercial assets, **1:14**

COMMERCIAL LAW—Cont'd

State law—Cont'd

trademarks, 1:11

Trade secret property as commercial property, 1:12 Trademarks

commercial asset, trademark property as, 1:10 state law trademarks and actions unfair competition,

Unfair competition, 1:11

Vessel hull designs, 1:8

COMMERCIALLY REASONABLE DISPOSITION

See **Foreclosure** (this index)

COMPLETE "STEP-BACK"

Federal intellectual property, U. C. C.§ 9-104(1) [old] and current § 9-109(c)(1), 2:70

COMPLETE TRANSFER

Bankruptcy, 4:8 to 4:10

COMPUTER SOFTWARE AND HARDWARE

Article Nine, 2:11

Copyright law. See Copyright Law (this index)

Estate. See **Estate and Property Outside Estate** (this index)

Interstate perfection, 2:60 to 2:63

Peregrine software decision. See **Copyright Law** (this index)

Software contracts. See Software Contracts and Electronic Self-Help (this index)

Uniform Computer Information Transactions Act. See Uniform Computer Information Transactions Act (this index)

CONCEALMENT

Discharge in bankruptcy, 4:130, 4:132

CONCEPTUAL DISSONANCE

Federal intellectual property, 2:68

CONCEPTUAL FRAMEWORK

See **Bankruptcy** (this index)

CONDITIONS

Discharge in bankruptcy, 4:129

Executory contracts, Bankruptcy Code § 365(b) conditions when debtor in default, 4:80

CONFLICT OF LAWS

State vs. federal, 1:20

CONFLICTING SECURITY INTERESTS

Article Nine. See **Article Nine** (this index)

Reform proposals, 1992 ABA Task Force Report and 1998 Drafts, 2:121

CONSEQUENCES

Executory contracts, 4:99

Foreclosure, 3:60 to 3:62

CONSIDERATION

Copyright Law, 2:85

CONSOLIDATED DRAFT

Federal intellectual property, 2:116

CONTRACTS AND AGREEMENTS

Article Nine, agreement containing description of collateral, 2:19

Bankruptcy. See Bankruptcy (this index)

Domain names, contracts restricting copying or use of otherwise nonproprietary factual information, 1:16

Estate and property outside estate, "contract as property of estate," 4:17 to 4:19

Executory contracts. See **Executory Contracts** (this index)

Foreclosure, remedies provided in agreement, 3:41 Software contracts. See Software Contracts and Electronic Self-Help (this index)

CONTROVERSY

Software contracts and electronic self-help, 3:30

CONVEYANCE

Estate and property outside estate, **4:35** Patent Act, **2:95**

COPYRIGHTS AND COPYRIGHT LAW

Generally, 2:74 et seq.

Avalon software decision, generally, 2:86

Commercial law, copyright property as commercial asset, 1:7

Complete preemption of Article Nine by Copyright Act, Peregrine makes early case for, **2:77**

Copyright Act

see also other entries throughout this topic

distinction between registered and unregistered copyright collateral, **2:79**

impoundment remedy, 3:34

§ 205, generally, 2:73, 2:75, 2:76, 2:80 to 2:83

§ 205, resolving priority disputes concerning security interests, 2:84 to 2:86

Creation documents. 2:87

Enforcement documents, 2:87

Estate and property outside estate, 4:34, 4:45

Federal intellectual property, 2:112

Federal priority rule in § 205 of Copyright Act, 2:84 to 2:86

General concept and context of Copyright Act "perfection," 2:77

Good faith qualification applicable to later transfer, 2:85

Initial reaction to Peregrine, 2:85

Logistical limits, 2:84

Nonexclusive license, security interest in registered copyright vs., **2:86**

Peregrine software decision, generally, **2:75 et seq.** Perfection, **2:77**

Preemption, World Auxiliary Power, Copyright Act does not preempt state filing on unregistered copyrights, 2:78

COPYRIGHTS AND COPYRIGHT LAW-Cont'd

Security interests

generally, 2:80 to 2:86

nonexclusive license after Peregrine vs. security interest. **2:84**

recording, 2:81 to 2:83

§ 205 of Copyright Act, security interest under, **2:80** Security Interests in Copyrights Financing Preservation Act, **App. 2**

Unregistered copyright collateral, preemptive effect as affected by, 2:78

Valuable consideration qualification applicable to later transfer, 2:85

Without notice qualification applicable to later transfer, 2:85

World Auxiliary Power software decision, generally, **2:75 et seq.**

CORE RIGHTS

Default, 3:5

COSTS

Collateral, transaction costs as unnecessarily high, 2:4

COVENANTS

Estate and property outside estate, restrictive covenants, **4:72**

CREATION DOCUMENTS

Copyright Act, 2:87

Lanham Trademark Act, 2:110

Patent Act, 2:103

CREDITORS

Article Nine. See **Article Nine** (this index) Estate and property outside estate, **4:44**

CRIMINAL PENALTIES

Software contracts and electronic self-help, 3:32

CYBERNETIC SERVICES, INC.

Patent Act, excluding security interests altogether from preemptive effect of § 261, 2:97

DATABASES

Federal intellectual property, 2:123, 2:124

Proposed federal legislation, databases as "property" capable of being used as commercial asset, **1:17**

DEBTOR IN POSSESSION

See **Executory Contracts** (this index)

DEFAULT

Generally, 3:1 et seq.

Article Nine, generally, 3:1 et seq.

Copyright Act's impoundment remedy, 3:34

Core rights of debtor, **3:5**

Current U.C.C. § 9-609, repossession, 3:23

Debtor, default by, generally, 3:8 et seq.

Debtor rights, 3:5

Definition of Article Nine as broad, 3:4

DEFICIENCY

Foreclosure, **3:60 to 3:62**

DEFAULT—Cont'd	DEFINITIONS
Embodiments of intellectual property and products that include intellectual property, repossession of, 3:22 to 3:24 Executory contracts, Bankruptcy Code § 365(b) conditions when debtor in default, 4:80 Federal intellectual property, 1992 ABA Task Force	Account, 2:11 Article Nine, 3:4 Bankruptcy. See Bankruptcy (this index) Executory contracts, 4:76, 4:116 Preference, 4:38 et seq. Property of the estate, 4:14 to 4:16
Report and 1998 Drafts, 2:122 Foreclosure	Residual, 2:8
foreclosure options. See Foreclosure Options on	DERIVATIVE TITLE
Default (this index)	Article Nine, 2:21, 2:22
post-default and pre-foreclosure control. See Post-	DESCRIPTION
Default and Pre-Foreclosure Control of Intangibles (this index)	Article Nine, 2:19
reacquiring possession, distinction between foreclo-	
sure on ownership and, 3:24	DESIGN
sequence of, 3:7	Federal intellectual property, 2:120
Infringement suit is not repossession devise, 3:6	DILUTION OF TRADEMARKS
Intangibles. See Post-Default and Pre-Foreclosure Control of Intangibles (this index)	Default, 3:19
Payment-related defaults	DISABLING COLLATERAL
generally, 3:10 et seq.	Software contracts and electronic self-help, 3:28
acceleration clauses, measuring obligation in default,	DISCHARGE IN BANKRUPTCY
3:12, 3:13	Generally, 4:129 et seq.
diminishing debtor's ability to pay or perform obligation secured, 3:13	Concealment of intellectual property as grounds for denial, 4:130 , 4:132
failure to pay or perform obligation secured, 3:11	Conditions, 4:129
insecurity, 3:14	Estate's trade secret, fraudulent concealment of estate's
measuring obligation in default, 3:12, 3:13	intellectual property after petition, 4:132
Realization, generally, 3:7	Exception from discharge in § 523(a)(4) and (a)(6) of
Reestablish ownership, right to, 3:6	Bankruptcy Code, 4:133 , 4:134
Repossession	Federal statutory right, infringement of, 4:136
generally, 3:7, 3:22 to 3:34	Fraudulent concealment of estate's intellectual property
current U.C.C. § 9-609, 3:23	after petition, 4:132
Foreclosure Options on Default (this index) infringement suit is not repossession devise, 3:6	Fraudulent transfer of intellectual property within year prior to petition, 4:131
U.C.C. § 9-503 [old], 3:23	Infringement of intellectual property, § 523(a)(6)
Salvage rules, 3:2 to 3:5	exception, 4:134 , 4:136
Security interest enforcement, 3:3 to 3:5	Misappropriation of intellectual property, § 523(a)(6)
State law, right to reestablish ownership, 3:6	exception, 4:134 , 4:135
Tangible collateral, repossession of, 3:22 to 3:24	Retained expertise of debtor, fraudulent concealment of
U.C.C. § 9-503 [old], repossession, 3:23	estate's intellectual property after petition, 4:132
U.C.C. § 9-609 [current], repossession, 3:23 Value of collateral, events threatening	Scope, 4:129
	Trade secret, misappropriation of, 4:135
generally, 3:15 et seq. abandonment, 3:18	Transfer of intellectual property as grounds for denial,
dilution of trademarks, 3:19	4:130, 4:131
failure to diligently prosecute patent application,	DISPOSITION
3:20	Article Nine. See Article Nine (this index)
infringement, 3:17	Foreclosure. See Foreclosure (this index)
Waiver by secured party after default, 3:21	
• •	DISTRIBUTION Fig. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1.
DEFERRAL Endemlistrally and appropriate 2:00 to 2:71	Foreclosure, order of distribution under § 9-504(1)
Federal intellectual property, 2:69 to 2:71	[old] and current § 9-615(a), 3:44 et seq.
Patent Act, 2:92	DOMAIN NAMES

Commercial law generally, **1:15**

DOMAIN NAMES—Cont'd

Commercial law-Cont'd

contracts restricting copying or use of otherwise nonproprietary factual information, 1:16

ELECTION

Executory contracts. See Executory Contracts (this index)

ELECTRONIC SELF-HELP

See Software Contracts and Electronic Self-Help (this index)

EMBODIMENTS

Default, 3:22 to 3:24

Executory contracts, 4:108, 4:109

Interstate perfection. See **Interstate Perfection** (this index)

ENFORCEMENT

Bankruptcy, 4:13

Default, 3:3 to 3:5

Estate and property outside estate, 4:21 to 4:23, 4:25

Foreclosure. See **Foreclosure** (this index)

Lanham Trademark Act, 2:110

ENFORCEMENT DOCUMENTS

Copyright Law, 2:87

Patent Act, 2:103

ENHANCEMENT TO INTELLECTUAL **PROPERTY**

Foreclosure, 3:59

EQUITABLE INTEREST

Estate and property outside estate, 4:15

ESCROW

See Estate and Property Outside Estate (this index)

ESTATE AND PROPERTY OUTSIDE ESTATE

Generally, 4:14 et seq.

"All legal or equitable interests of debtor in property," 4:15

Assignment

"assignment" of trademark registration, augmenting property of estate by avoiding third party interests, 4:35

licensing of intellectual property. See subhead: Licensing of intellectual property of estate, below in this heading

Augmenting "property of estate" by avoiding third party interests

generally, 4:31 et seq.

"assignment, grant or conveyance" of patent, 4:35 "assignment" of trademark registration, 4:35 preferences. See subhead: Preferences, Bankruptcy Code § 547, below in this heading

software escrow, below in this heading

strong arm clause, § 544(a), 4:32 to 4:35

transfers of copyright ownership, 4:34

ESTATE AND PROPERTY OUTSIDE ESTATE

-Cont'd

Automatic stay

executory license as "property of estate," 4:18 third persons. See subhead: Third persons, interests of, below in this heading

Avoidance. See subhead: Augmenting property of estate by avoiding third party interests, above in this heading

Bankruptcy Code

§ 363. See subhead: Licensing of intellectual property of estate, below in this heading

§ 541, generally, **4:14 et seq.**

§ 547. See subhead: Preferences—Bankruptcy Code § 547, below in this heading

Bankruptcy Reform Act, termination of stay with respect to individual debtor's "personal property" under, 4:30

Cause of action in contract, alleged unauthorized use by licensee as, 4:19

"Contract as property of estate," 4:17 to 4:19

Discharge in bankruptcy, 4:132

Escrow. See subhead: Software escrow, below in this heading

Executory license as "property of estate," 4:18

Fraudulent concealment of estate's intellectual property after petition, 4:132

Licensing

generally, 4:64 et seq.

assignment, generally, 4:67 et seq.

Bankruptcy Code

see also other entries throughout this subheading

§ 363, generally, **4:65**

§ 363(b)(1)—other than ordinary course transactions, 4:69

§ 365, **4:66**

§ 547, preferences, **4:55**

sale or assignment "free and clear" of other interests, 4:70

cash collateral. 4:74

cause of action in contract, alleged unauthorized use by licensee as, 4:19

executory license as "property of estate," 4:18

nonbankruptcy law restrictions on § 363(b) assignment or license, 4:71 et seq.

ordinary course transactions, 4:68

preferences—Bankruptcy Code § 547, 4:55

restrictive covenants and other restrictions on alienation, 4:72

software escrow, 4:63

trademarks, assignment in gross, 4:73

Perfection rule. See subhead: Preferences—Bankruptcy Code § 547, below in this heading

Preferences, software escrow, 4:59 et seq.

Preferences—Bankruptcy Code § 547

generally, 4:36 et seq.

"antecedent debt" requirement, 4:40

ESTATE AND PROPERTY OUTSIDE ESTATE—Cont'd Preferences—Bankruptcy Code § 547—Cont'd

assignments and licenses not intended for security,
Peregrine, 4:55

Bankruptcy Code § 547(b), definition of preference, **4:38 et seq.**

definition of preference, 4:38 et seq.

elements of preference, nature of transfer, 4:39

exceptions for worthy preferential transfers in \$547(c)(1), 547(c)(2), and 547(c)(5), **4:47**

floating lien exception in § 547(c)(5), **4:51**

intent, 4:54, 4:55

lien creditor, security interests perfected against by Article Nine, **4:44**

patents, security interests perfected against lien creditor by Article Nine, **4:44**

payment transfers and § 547(e), 4:46

perfection rule—§ 547(e), generally, 4:42 et seq.

Reform Act changes, 4:49

royalties and other payment transfers by debtor for use of intellectual property, **4:56**

state-created rights, security interests perfected against lien creditor by Article Nine, **4:44**

statutory structure, generally, 4:37 et seq.

substantially contemporaneous exchanges and substitutions of collateral under § 547(c)(1), 4:48

time debt incurred under § 547(b)(2), 4:41

timing transfer, generally, 4:42 et seq.

trademarks, security interests perfected against lien creditor by Article Nine, **4:44**

transfer of copyright ownership and § 547(e), **4:45** transfers, **4:49**, **4:50**, **4:53** et seq.

"Proceeds, product, offsprings, rents, or profits of or from property of estate" and "property that the estate acquires," 4:16

"Property of estate"

generally, 4:17 to 4:19

defined, 4:14 to 4:16

Sale, 4:64 et seq.

Security interest

automatic stay. See subhead: Third persons, interests of, below in this heading

preferences—U.C.C. § 547, 4:44

Software escrow

generally, 4:57 et seq.

Bankruptcy Code § 547 and typical software escrow, 4:61

licensee's rights under § 365(n)(3) when software escrow is unavoidable, **4:63**

strong arm clause—§ 544(a), **4:62**

transfers as preferences, 4:59 et seq.

Statutes. See subhead: Preferences—Bankruptcy Code § 547, above in this heading

ESTATE AND PROPERTY OUTSIDE ESTATE —Cont'd

Stay

automatic stay, executory license as "property of estate," 4:18

third persons. See subhead: Third persons, interests of, below in this heading

Strong arm clause—Bankruptcy Code § 544(a), **4:62** Taking property, alleged unauthorized use by licensee

Termination of stay with respect to individual debtor's "personal property" under proposed Bankruptcy Reform Act. **4:30**

Third persons, interests of

generally, 4:20 et seq.

actions and proceedings to enforce property and related rights, **4:21 to 4:23**

augmenting property of estate by avoiding third party interests. See subhead: Augmenting property of estate by avoiding third party interests, above in this heading

automatic stay. See subhead: Security interest in intellectual property and automatic stay, below in this subheading

Bankruptcy Code

§ 362(d)—"for cause, including lack of adequate protection", 4:29

§ 362(d)—no equity and no need, **4:28**

enforcement, 4:21 to 4:23

secured creditor, relief from stay under § 362(d), **4:26 et seq.**

security interest in intellectual property and automatic stay, **4:25**

generally, 4:24 et seq.

Bankruptcy Code

§ 362(d)—"for cause, including lack of adequate protection", **4:29**

§ 362(d)—no equity and no need, **4:28**

enforcement stay in § 362(a) as applied to secured creditors, **4:25**

secured creditor, relief from stay under § 362(d), **4:26 et seq.**

termination of stay with respect to individual debtor's "personal property" under proposed Bankruptcy Reform Act, **4:30**

stay. See subhead: Security interest in intellectual property and automatic stay, above in this subheading

stay for "cause," 4:23

Timing transfer. See subhead: Preferences—Bankruptcy Code § 547, above in this heading

Transfers

augmenting property of estate by avoiding third party interests, **4:34**

new value under Bankruptcy Code § 547(c)(4), **4:50** ordinary course, **4:49**

ESTATE AND PROPERTY OUTSIDE ESTATE —Cont'd Transfers—Cont'd preferences under Bankruptcy Code § 547. See subhead: Preferences—Bankruptcy Code § 547, above in this heading Reform Act changes, 4:49 software escrow, 4:59 et seq. underlying intellectual property, 4:53 et seq.

EXCEPTIONS

Use, 4:64 et seq.

Discharge in bankruptcy, **4:133**, **4:134**Estate and property outside estate, **4:47**, **4:51**, **4:52**

EXCHANGES

Estate and property outside estate, 4:48

EXCLUSIONS

Federal intellectual property, 2:119

EXCUSES

Executory contracts, 4:93

EXECUTORY CONTRACTS

Generally, **4:7**, **4:75** et seq.

Actual performance test, **4:90**Administrative obligation created, **4:84**Assignment

bankruptcy, assignment as, **4:8**, **4:9**hypothetical assignment test, **4:89**trustee or debtor in possession. See subhead: Assignment by trustee or debtor in possession, below in this heading

Assignment by trustee or debtor in possession generally, **4:91 et seq.**

adequate assurance requirement in § 365(f)(2), **4:96**Bankruptcy Code § 365(c)(1) prohibition of debtor/
licensee from assigning license, **4:94**limited authorization in § 365(f), **4:92**

nondebtor/licensee, assignment of license by, **4:95** reconciling Bankruptcy Code § 365(f)(1)'s nullification of anti-assignment "applicable law" with § 365(c)(1)'s excuse under "applicable law," **4:93**

Assumption, generally, 4:77 et seq.

Bankruptcy, generally, 4:75 et seq.

Bankruptcy Code

§ 365(c), contracts and licenses not assumed under, 4:86 et seq.

§ 365(c)(1) cases, **4:88 et seq.**

§ 365(n). See subhead: Elections of nondebtor/ licensees after debtor/licensor rejects—Bankruptcy Code § 365(n), below in this heading

Consequences of rejection, **4:99**

Cutting and pasting of Bankruptcy Code § 365(c)(1), 4:87

Debtor in possession. See subhead: Assignment by trustee or debtor in possession, above in this heading

```
EXECUTORY CONTRACTS—Cont'd
```

Decision to reject, 4:98

Default, § 365(b) conditions when debtor in, **4:80** Definition, **4:76**

Distinction between rejection and termination, **4:97** Effect of assumption, **4:83 et seq.**

Election to assume, Bankruptcy Court's approval of, 4:82

Elections of nondebtor/licensees after debtor/licensor rejects—Bankruptcy Code § 365(n)

generally, **4:100 et seq.**, **4:109**

administrative expense claims, waiver of, 4:115

affirmative obligations, 4:105

"any right of setoff" is deemed waived, 4:114

Bankruptcy Code § 101(35A), property outside of definition in, **4:116**

language, note on, 4:104

legislative history, **4:104**

negative obligations, 4:105

nonroyalty obligations of licensee, 4:112

obligations of licensee upon election, generally, 4:110

petition date, pegging licensee's rights as existed on, 4:106

"provide" intellectual property and embodiments in support of licensee's retained rights, licensor's obligation to, **4:108**

recoupment right distinguished from setoff, **4:114** residual rights of licensor, effect of licensee retention on, **4:107**

retention, election of

generally, 4:103 et seq.

administrative expense claims, waiver of, **4:115** affirmative obligations, **4:105**

"any right of setoff" is deemed waived, 4:114

interfere with turnover by others of intellectual property and embodiments under supplementary agreements, licensor's obligation not to, 4:109

language, note on, 4:104

legislative history, 4:104

negative obligations, 4:105

nonroyalty obligations of licensee, 4:112

obligations of licensee upon election, generally, **4:110**

petition date, pegging licensee's rights as existed on, **4:106**

"provide" intellectual property and embodiments in support of licensee's retained rights, licensor's obligation to, 4:108

recoupment right distinguished from setoff, **4:114** residual rights of licensor, effect of licensee retention on, **4:107**

royalties, obligation to pay, **4:111**

surrender, what does licensee give up when electing retention of rights, **4:113**

royalties, obligation to pay, **4:111**

EXECUTORY CONTRACTS—Cont'd Elections of nondebtor/licensees after debtor/licensor rejects—Bankruptcy Code § 365(n)—Cont'd scope of § 365(n), **4:102** summary of election, 4:101 surrender, what does licensee give up when electing retention of rights, **4:113** "Gap period" prior to assumption or rejection generally, 4:117 et seq. case law doctrines, 4:123 debtor's obligations in gap period, 4:128 debtor's remedies, 4:125 license, nondebtor party's obligations under license in gap period, generally, 4:118 et seq. nondebtor licensee's performance, 4:122 nondebtor licensor's performance, 4:121 nondebtor party's obligations under license in gap period, generally, 4:118 et seq. nondebtor's limited setoff rights under Bankruptcy Code § 553, **4:126** nondebtor's right of recoupment, 4:127 payment of money, 4:124 et seq. performance obligations, range of, 4:119 et seq. recoupment, nondebtor's right of recoupment, 4:127 risk of performing under terms of license in gap, 4:120 setoff, nondebtor's limited setoff rights under § 553, 4:126 Hypothetical assignment test, 4:89 License assignment by trustee or debtor in possession, 4:94, "gap period." See subhead: "Gap period" prior to assumption or rejection, above in this heading petition, contract or license is extant on date of, 4:81 Petition, 4:81 Petition date, 4:106 Possession. See subhead: Assignment by trustee or debtor in possession, above in this heading Property of the estate, 4:85 Rejection, generally, 4:77 et seq. Requirements for assumption, 4:79 et seq. Retention, election of. See subhead: Elections of nondebtor/licensees after debtor/licensor rejects-Bankruptcy Code § 365(n), above in this heading Termination distinguished from rejection, **4:97** Timetable for assumption or rejection, generally, 4:78 et seq. Trustee. See subhead: Assignment by trustee or debtor in possession, above in this heading

EXECUTORY LICENSE

Estate and property outside estate, "property of estate,"
4.18

EXPENSES

Executory contracts, 4:115

EXPERTISE

Discharge in bankruptcy, 4:132

EXPLOITATION OF VALUE

Collateral, 2:1

FACTS

C Tek Software, Inc., interstate perfection, 2:62

FEDERAL COMPUTER FRAUD AND ABUSE ACT

Criminal and civil penalties, 3:32

FEDERAL INTELLECTUAL PROPERTY

Generally, 2:68 et seq.

Article Nine

generally, 2:69 to 2:73

study committee report, 2:113

Complete "step-back" in U.C.C. § 9-104(1) [old] and current § 9-109(c)(1), **2:70**

Conceptual and structural dissonance, 2:68

Copyright Act. See **Copyright Act** (this index)

Deferral provisions of Article Nine, 2:69 to 2:71

Federal Intellectual Property Security Act. See

subhead: Reform proposals, below in this heading

Language used in current § 9-311(a)(1), limited filing deferral language, 2:72

Lanham Trademark Act. See Lanham Trademark Act (this index)

"Partial step-back" in U.C.C. § 9-302(3)(a) [old], 2:71

Patent Act. See **Patent Act** (this index)

Preemption

Article Nine by federal law, 2:73

1992 ABA Task Force Report and 1998 Drafts, 2:120

Reform proposals

generally, 2:111 et seq.

Article Nine study committee report, 2:113

database, 2:124

Federal Intellectual Property Security Act, 2:117 et seq., App. 1

1992 ABA Task Force Report and 1998 Drafts

generally, 2:114 et seq.

amendments, 2:116

consolidated draft, 2:116

federal coordination and creation of single database or index of databases, **2:123**

Federal Intellectual Property Security Act, generally, **2:117** et seq.

federal post-default transfer statement, 2:122

grace periods, elimination or drastic reduction of, 2:118

membership, 2:114

Peregrine, reversal of complete preemption holding in, 2:120

Task Force Act

exclusion of security interests from tract recording and prior provisions of all federal intellectual property statutes except Lanham Act, 2:119

FEDERAL INTELLECTUAL PROPERTY—Cont'd

Reform proposals—Cont'd

1992 ABA Task Force Report and 1998 Drafts
—Cont'd

Task Force Act—Cont'd

grace periods, elimination or drastic reduction of, 2:118

priority rule for security interest, 2:120

separate discrete "race" priority rule for conflicts between security interests rights and transferees of these rights, **2:121**

Task Force Report, 2:115

Transportation Design, limiting partial priority preemption rule in, 2:120

Security Interests in Copyright Financing Preservation Act, 2:112

Task Force Act. See subhead: 1992 ABA Task Force Report and 1998 Drafts, above in this subheading

Security interest, 2:112, 2:120

Task Force Act. See subhead: Reform proposals, above in this heading

FEDERAL INTELLECTUAL PROPERTY SECURITY ACT

See **Federal Intellectual Property** (this index)

FEDERAL LAW

Conflict of laws, 1:20

Intellectual property. See **Federal Intellectual Property** (this index)

FEDERAL LEGISLATION

Databases as "property" capable of being used as commercial asset, 1:17

FEDERAL POST-DEFAULT TRANSFER STATEMENT

Federal intellectual property, 2:122

FEDERAL PREEMPTION

Interstate perfection, 2:66

FEDERAL PRIORITY RULE

Copyright Law, § 205, 2:84, 2:85

FEDERAL STATUTORY RIGHT

Discharge in bankruptcy, 4:136

FEDERAL TRANSFER AND RECORDING STATUTES

Article Nine, 2:39

FILING

Interstate perfection. See **Interstate Perfection** (this index)

"FINANCE LICENSE"

Article Nine and Model Computer Information Transactions Act, 2:15

FINANCING

Federal intellectual property, 2:112

FIRST-TO-FILE RULE

Article Nine. 2:48

FLOATING LIEN

Estate and property outside estate, 4:51

FORECLOSURE

Collateral transfers, 3:72

Commercial asset, intellectual property as, **1:2** Default

foreclosure options. See Foreclosure Options on Default (this index)

post-default. See Post-Default and Pre-Foreclosure Control of Intangibles (this index)

sequence of foreclosure, 3:7

FORECLOSURE OPTIONS ON DEFAULT

Generally, 3:35 et seq.

Acceptance of collateral in complete satisfaction of debt

generally, 3:64 et seq.

involuntary strict foreclosure

generally, 3:66 to 3:68

Article Nine [old], 3:66

cases, **3:67**

current Article Nine, involuntary strict foreclosure rejected by, **3:68**

secured party's proposal and debtor's obligation to object, **3:65**

strict foreclosure, involuntary, 3:66 to 3:68

strict foreclosure by proxy, post-default assignment of security interest to assignee user, **3:69**

Agreement, remedies provided in, 3:41

Article Nine

acceptance of collateral in complete satisfaction of debt, **3:65**

collectible intangibles, 3:72, 3:74, 3:75

notice and commercially reasonable disposition, right to, **3:49**, **3:59**

other security interests and lienholders under current Article Nine, **3:47**

resale of collateral or other disposition of collateral, 3:43, 3:44, 3:47

transfer statement proposed in current Article Nine, 3:70

Collectible intangibles

generally, 3:71 et seq.

collateral transfers, right to collect certain receivable collateral—true sales vs. collateral transfers, 3:72

collectible general intangibles, 3:73 to 3:75

debtor/licensee's rights to use property collected, 3:75

income stream from license or assignment sold with recourse, application of current U.C.C. § 9-502, 3:74

Commercially reasonable disposition. See subhead: Notice and commercially reasonable disposition, right to, below in this heading

FORECLOSURE OPTIONS ON DEFAULT—Cont'd Disposition notice. See subhead: Notice and commercially reasonable disposition, right to, below in this heading resale of collateral. See subhead: Resale of collateral or other disposition of collateral, below in this

Enforce by any available judicial procedure, U.C.C. § 9-601(a)(1)

generally, 3:36 et seq.

heading

judgment on secured debt, obtaining and enforcing, 3:37

pre-judgment judicial devices for tangible and intangible collateral, **3:40**

relation back to Article Nine perfection date: § 9-601(e), **3:38**

special issue: trademarks in gross, 3:39

Notice and commercially reasonable disposition, right to

generally, 3:48 et seq.

advertising and other approaches to market, **3:58** commercially reasonable disposition, generally, **3:54** et seq.

enhancement or improvement to intellectual property prior to disposition, **3:59**

guarantor "debtors," 3:52

invisible elephant, 3:55

language of U.C.C. § 9-504(3) [old] and current § 9-610(b), **3:49**

notification of disposition, 3:53

price, invisible elephant, 3:55

principle debtor, 3:51

private sale, 3:57

public sale, 3:57

reasonable standards in security agreement, **3:50 to 3:52**

timing of disposition, 3:56

Post-default. See **Post-Default and Pre-Foreclosure**Control of Intangibles (this index)

Reacquiring possession, distinction between foreclosure on ownership and, **3:24**

Repossession and control, alternative remedies, **3:35 et seq.**

Resale or other disposition of collateral

generally, 3:42 et seq.

consequences to secured creditor for non-compliance generally, **3:60 to 3:62**

Article Nine [old], three approaches to loss or impairment of right to deficiency, **3:60**

current Article Nine, three approaches to loss or impairment of right to deficiency, **3:61**

current Article Nine, three approaches under, **3:61** deficiency, loss or impairment of right to, **3:60** to **3:62**

express "rebuttable presumption" rule, 3:61

FORECLOSURE OPTIONS ON DEFAULT—Cont'd

Resale or other disposition of collateral—Cont'd notice. See subhead: Notice and commercially reasonable disposition, right to, above in this heading

order of distribution under § 9-504(1) [old] and current § 9-615(a), **3:44 et seq.**

"other" security interests and lienholders under current Article Nine, order of distribution, **3:47**

"other" security interests under Article Nine [old], order of distribution, **3:46**

statutory damages and express "rebuttable presumption" rule, **3:61**

U.C.C. § 9-504, [old], 3:43

Satisfaction of debt. See subhead: Acceptance of collateral in complete satisfaction of debt under U.C.C. § 9-505, above in this heading

Transfer statement proposed in current Article Nine, **3:70**

FRAUD

Software contracts and electronic self-help, 3:32

FRAUDULENT CONCEALMENT

Discharge in bankruptcy, 4:132

FRAUDULENT TRANSFER

Discharge in bankruptcy, 4:131

"GAP PERIOD"

See Executory Contracts (this index)

GENERAL INTANGIBLES

Article Nine, 2:8

GOOD FAITH

Copyright Law, 2:85

"GOODS"

Article Nine, software as "goods" and software embedded in "goods," 2:9

GOVERNING LAW

Collateral, 2:4

GRACE PERIODS

Federal intellectual property, 2:118

GROSS, ASSIGNMENT IN

Estate and property outside estate, **4:73**

GROSS, TRADEMARKS IN

Foreclosure, 3:39

GUARANTOR "DEBTORS"

Foreclosure, 3:52

HISTORY

Executory contracts, 4:104

HYPOTHETICAL ASSIGNMENT TEST

Executory contracts, 4:89

IMPOUNDMENT

Default, 3:34

IMPROVEMENT TO INTELLECTUAL PROPERTY

Foreclosure, 3:59

INCOME STREAM

Article Nine. See **Article Nine** (this index) Foreclosure, 3:74

INDEX

Federal intellectual property, 2:123

INFRINGEMENT

Article Nine, 2:12, 2:32

Default, 3:17

Discharge in bankruptcy, 4:134, 4:136

INNOVATIONS IN TRANSITION

Article Nine, 2:30

INTANGIBLE COLLATERAL

Foreclosure, 3:40

INTANGIBLE RIGHTS/TANGIBLE EMBODIMENT

Generally, 1:19, 2:51

INTANGIBLES

Collectible. See Collectible Intangibles (this index)

Default. See **Default** (this index)

Foreclosure. See **Foreclosure** (this index)

Estate and property outside estate, 4:54, 4:55

INTERFERENCE

Executory contracts, 4:109

INTERSTATE PERFECTION

Abstract asset, place to file as, 2:54 to 2:56

Duality of property in single product. See subhead: Embodiment in product, finding right place to file, below in this heading

Embodiment in product, classification of property for attachment and perfection purposes, 2:67

Embodiment in product, finding right place to file generally, 2:57 et seq.

duality of property in single product

generally, 2:58 et seq.

C Tek facts, software as product, 2:62

C Tek legal issues, 2:63

In re C Tek Software, Inc.

Article Nine [old], interstate perfection in source code collateral under, 2:61

current Article Nine, interstate perfection in source code collateral under, 2:64

software as product, 2:60 to 2:63

two ownerships, baseline principle of, 2:59

unexplored federal preemption questions in C Tek, 2:66

Filing, generally, 2:53 et seq.

INTERSTATE PERFECTION—Cont'd

Intrastate filing, U.C.C. § 9-401(1) [old] and current § 9-501, **2:55**

Office, finding right office in state, 2:53

Place to file

abstract asset, filing as, 2:54 to 2:56

embodiment in product. See subhead: Embodiment in product, finding right place to file, above in this heading

U.C.C. § 9-103 [old] and current § 9-307, interstate perfection, 2:56

U.C.C. § 9-401(1) [old] and current § 9-501, intrastate filing, 2:55

INTRASTATE FILING

U.C.C. § 9-401(1) [old] and current § 9-501, interstate perfection, 2:55

INVISIBLE ELEPHANT

Foreclosure, 3:55

INVOLUNTARY STRICT FORECLOSURE

Acceptance of collateral in complete satisfaction of debt. 3:66 to 3:68

JUDGMENT

Enforce by any available judicial procedure, U.C.C. § 9-601(a)(i), 3:37

JUDICIAL LIEN

Article Nine, 2:44

LANGUAGE

Executory contracts, 4:104

LANHAM ACT

Generally, 2:104 et seq.

Assignment of trademark registrations and applications not reaching Article Nine security interest, 2:107

Creation documents and enforcement documents, 2:110 Lanham Trademark Act § 1060, perfection and recorda-

tion, 2:106 to 2:108 Perfection, 2:106 to 2:108

Priority. 2:109

Recordation, 2:106 to 2:108

§ 1060, perfection and recordation, 2:106 to 2:108 Subsequent purchaser, narrow preemption for Article Nine security interest under § 1060, 2:108

LEGAL INTEREST

Estate and property outside estate, 4:15

LEGISLATION

Databases as "property" capable of being used as commercial asset, 1:17

LEGISLATIVE HISTORY

Executory contracts, 4:104

LICENSE

Article Nine. See **Article Nine** (this index)

Bankruptcy. See **Bankruptcy** (this index)

LICENSE—Cont'd

Copyright Law, 2:84

Estate. See Estate and Property Outside Estate (this

Executory contracts. See Executory Contracts (this index)

Foreclosure, **3:74, 3:75**

LIEN CREDITOR

Estate and property outside estate, 4:44

LIENS

Article Nine, 2:44

Estate and property outside estate, 4:51

Foreclosure options on default, resale or other disposition of collateral—other security interests and lienholders under current Article Nine, 3:47

LOGISTICAL LIMITS

Copyright Act, 2:84

Copyright Act § 205, 2:84

MARKET APPROACHES

Foreclosure, 3:58

MASK WORK PROPERTY

Commercial asset, mask work property as, 1:9

MISAPPROPRIATION

Commercial law, 1:13

Discharge in bankruptcy, 4:134, 4:135

MODEL COMPUTER INFORMATION TRANSACTIONS ACT

"Finance license," Article Nine, 2:15

MONEY

Executory contracts, 4:124 et seq.

NATIONAL DATABASE

Federal intellectual property, 2:124

NECESSITY

Collateral security, 2:2

NEGATIVE OBLIGATIONS

Executory contracts, 4:105

NEW VALUE

Estate and property outside estate, **4:50**

NONASSIGNABLE LICENSES

Article Nine, 2:13, 2:14

NOTICE

Article Nine, 2:34

Copyright Law, 2:85

Foreclosure. See **Foreclosure** (this index)

NULLIFICATION

Executory contracts, 4:93

OBJECTIONS

Foreclosure, 3:65

OFFSPRINGS

Estate and property outside estate, **4:16**

ORDER OF DISTRIBUTION

Foreclosure, order of distribution under § 9-504(1) [old] and current § 9-615(a), 3:44 et seq.

ORDINARY COURSE

Article Nine, 2:40

Estate and property outside estate, 4:49, 4:68 Reform Act changes, 4:49

OVERARCHING PRINCIPLE

Article Nine, 2:21

OWNERSHIP

Default, 3:6, 3:24

Estate and property outside estate, 4:34, 4:45 Interstate perfection, 2:59

PARTIAL PREEMPTION

Patent Act. See **Patent Act** (this index)

PARTIAL PRIORITY

Federal intellectual property, 2:120

"PARTIAL STEP-BACK"

Federal intellectual property, U.C.C. § 9-302(3)(a) [old], **2:71**

PARTIES

Article Nine, 2:23

PATENT ACT

Generally, 2:88 et seq.

Article Nine, partial preemption of

generally, 2:93 et seq.

"assignment, grant or conveyance" within recording mandate of § 261, 2:95

In re Cybernetic Services, Inc., case for excluding security interests altogether from preemptive effect of § 261, 2:97

non-statutory federal bona fide purchaser rule, 2:99

other lower court decisions suggesting partial

preemption, 2:98

subsequent purchaser or mortgagee, 2:94

Waterman v. Mackenzie, 2:96

Article Nine deferral, extent of, 2:92

Creation documents and enforcement documents, 2:103

Cybernetic Services, Inc., case for excluding security interests altogether from preemptive effect of § 261, 2:97

Partial preemption. See subhead: Article Nine, partial preemption of, above in this heading

Patent Act § 261 and Patent and Trademark Office regulations, 2:91

Preemption. See subhead: Article Nine, partial preemption of, above in this heading

Priority rule under Patent Act § 261, 2:100 to 2:102

Recording, scope of, 2:89 to 2:91

PATENT ACT—Cont'd

§ 261

"assignment, grant or conveyance" within recording mandate, 2:95

Patent and Trademark Office regulations and, 2:91 priority rule, ordering security interest under, 2:100 to 2:102

Secured parties, 2:101, 2:102

Security interests

Cybernetic Services, Inc., case for excluding security interests altogether from preemptive effect of § 261, 2:97

ordering security interest under priority rule in § 261, 2:100 to 2:102

Structural background, 2:90

PATENT AND TRADEMARK OFFICE

Regulations, 2:91

PATENT PROPERTY

Commercial asset, patent property as, 1:6

PATENTS

Act governing. See Patent Act (this index)

Default, failure to diligently prosecute patent application, **3:20**

Estate and property outside estate, 4:35, 4:44

PAYMENT-RELATED DEFAULTS

Generally, 3:10 et seq.

Acceleration clauses, measuring obligation in default, 3:12, 3:13

Diminishing debtor's ability to pay or perform obligation secured, **3:13**

Failure to pay or perform obligation secured, **3:11** Insecurity, **3:14**

Measuring obligation in default, 3:12, 3:13

PAYMENTS

Default. See **Payment-Related Defaults** (this index) Estate and property outside estate, **4:46**, **4:56** Executory contracts, **4:111**, **4:124** et seq.

PENALTIES

Software contracts and electronic self-help, 3:32

PENDING LEGISLATION

Databases as "property" capable of being used as commercial asset, 1:17

PEREGRINE SOFTWARE DECISION

Copyright law. See **Copyright Law** (this index) Estate and property outside estate—U.C.C. § 547, **4:55** 1992 ABA Task Force Report and 1998 Drafts, **2:120**

PERFECTION

Article Nine. See Article Nine (this index)

Copyright Law, 2:77

Estate. See **Estate and Property Outside Estate** (this index)

Foreclosure, 3:38

PERFECTION—Cont'd

Interstate perfection. See **Interstate Perfection** (this index)

Lanham Trademark Act, 2:106 to 2:108

PERFORMANCE

Default, **3:11**

Executory contracts, 4:90, 4:119 et seq.

PETITION

Discharge in bankruptcy, **4:131**, **4:132** Executory contracts, **4:81**

PETITION DATE

Executory contracts, 4:106

POSSESSION

Executory contracts. See **Executory Contracts** (this index)

POST-DEFAULT

Foreclosure, strict foreclosure by proxy, post-default assignment of security interest to assignee user, **3:69**

POST-DEFAULT AND PRE-FORECLOSURE CONTROL OF INTANGIBLES

Generally, 3:25 et seq.

Current § 9-609, 3:26

Rights of transferee of intellectual property collateral under, **3:63**

Software collateral under U.C.C. § 9-503 [old] or current § 9-609, **3:26**

Software contracts and electronic self-help

generally, 3:27 et seq.

Article Nine and provision in Model Computer Information Transactions Act, 3:33

controversy over electronic self-help, 3:30

criminal and civil penalties under Federal Computer Fraud and Abuse Act, **3:32**

early cases on electronic self-help, 3:31

rendering software unusable, generally, **3:29 et seq.** statutory authorization for repossession by disabling collateral, **3:28**

PREEMPTION

Copyrights and copyright law, World Auxiliary Power, Copyright Act does not preempt state filing on unregistered copyrights, 2:78

Federal intellectual property

Article Nine by federal law, 2:73

1992 ABA Task Force Report and 1998 Drafts, 2:120

Interstate perfection, 2:66

Lanham Trademark Act, 2:108

Patent Act. See **Patent Act** (this index)

PREFERENCES

Estates. See **Estate and Property Outside Estate** (this index)

PRICE

Foreclosure, right to notice and commercially reasonable disposition, **3:55**

PRIMARY COMMERCIAL ASSET

Generally, 1:1

PRINCIPLE DEBTOR

Foreclosure, right to notice and commercially reasonable disposition, **3:51**

PRIOR PROVISIONS

Federal intellectual property, 2:119

PRIOR SECURITY INTEREST

Article Nine. See **Article Nine** (this index)

PRIORITY

Article Nine. See Article Nine (this index)

Copyright Law, resolving priority disputes, 2:84 to 2:86

Federal intellectual property, 2:120, 2:121

Lanham Trademark Act, 2:109

Patent Act, 2:100 to 2:102

PRIVATE SALE

Foreclosure, right to notice and commercially reasonable disposition, **3:57**

PROCEEDS

Article Nine. See Article Nine (this index)

Estate and property outside estate, **4:16**

PRODUCT

Estate and property outside estate, 4:16

PROFITS

Estate and property outside estate, 4:16

"PROPERTY OF THE ESTATE"

Generally, 4:17 to 4:19

Defined, 4:14 to 4:16

Executory contracts, 4:85

PROPERTY RIGHTS

Commercial law, generally, 1:5 et seq.

"PROPERTY THE ESTATE ACQUIRES"

Estate and property outside estate, definitions and scope, **4:16**

PROSECUTION

Default, failure to diligently prosecute patent application, **3:20**

PROTECTION

Estate and property outside estate, 4:29

PROXY

Strict foreclosure by proxy, 3:69

PUBLIC SALE

Foreclosure, right to notice and commercially reasonable disposition, **3:57**

PUBLICITY RIGHTS

Commercial law, 1:14

PURCHASE-MONEY PRIORITY

Article Nine, priority among conflicting security interests, 2:49 to 2:52

PURCHASES

See Sales and Purchases (this index)

QUALITY OF PROPERTY

Interstate perfection. See **Interstate Perfection** (this index)

RACE PRIORITY

1992 ABA Task Force Report and 1998 Drafts, 2:121

REACOUIRING POSSESSION

Default, 3:24

REALIZATION

Default. See **Default** (this index)

REASONABLE STANDARDS

Foreclosure, right to notice and commercially reasonable disposition, **3:50 to 3:52**

RECEIVABLE COLLATERAL

Copyright receivables, recording security interests under § 205 of the Copyright Act, **2:83**

Foreclosure, right to collect certain receivable collateral—true sales vs. collateral transfers, **3:72**

RECONCILIATION

Executory contracts, 4:93

RECORDING AND RECORDATION

Article Nine, 2:39

Copyright Act, § 205, recording security interest, 2:81 to 2:83

Federal intellectual property, 2:119

Lanham Trademark Act, 2:106 to 2:108

Patent Act, 2:89 to 2:91, 2:95

RECOUPMENT

Executory contracts, **4:114**, **4:127**

RECOURSE

Foreclosure, 3:74

REESTABLISH OWNERSHIP

Default, 3:6

REFORM PROPOSALS

Federal intellectual property. See **Federal Intellectual Property** (this index)

REGISTRATION

Estate and property outside estate, **4:35** Lanham Trademark Act, **2:107**

REJECTION

Bankruptcy, 4:13

Executory contracts. See **Executory Contracts** (this index)

RELATION BACK

Foreclosure, 3:38

RENTS

Estate and property outside estate, 4:16

REPORTS

Federal intellectual property, 2:113

REPOSSESSION

Default. See **Default** (this index)

Foreclosure Options on Default (this index)

Software contracts and electronic self-help, 3:28

"RES," PROPERTY RIGHTS IN

Bankruptcy, 4:5

RESALE

Foreclosure. See Foreclosure (this index)

RESIDUAL DEFINITION

Article Nine, 2:8

RESIDUAL RIGHTS

Executory contracts, 4:107

RESTRICTIVE COVENANTS

Estate and property outside estate, 4:72

RETAINED EXPERTISE

Discharge in bankruptcy, 4:132

RETAINED RIGHTS

Bankruptcy, 4:13

RETENTION

Executory contracts. See **Executory Contracts** (this index)

REVERSAL

Federal intellectual property, 2:120

ROYALTIES

Estate and property outside estate, 4:56

Executory contracts, 4:111

SALES AND PURCHASES

Article Nine. See **Article Nine** (this index)

Estate and property outside estate, **4:64 et seq.**

Foreclosure

collectible intangibles, 3:72, 3:74

notice and commercially reasonable disposition, right to, **3:57**

Patent Act, partial preemption of Article Nine, 2:94, 2:99

SALVAGE RULES

Default, 3:2 to 3:5

SATISFACTION OF DEBT

Foreclosure. See **Foreclosure** (this index)

SECURED CREDITOR

Enforcement stay in § 362(a) as applied to secured creditors, **4:25**

SECURED CREDITOR—Cont'd

Estate and property outside estate, **4:25 et seq.** Foreclosure. **3:60 to 3:62**

SECURED DEBT

Foreclosure, obtaining and enforcing judgment on secured debt, 3:37

SECURED OBLIGATION

Default, failure to pay or perform obligation secured, **3:11**

SECURED PARTIES

Default, waiver by secured party after, 3:21

Foreclosure, acceptance of collateral in complete satisfaction of debt, **3:65**

Patent Act, 2:101, 2:102

SECURED TRANSACTIONS

Commercial asset, intellectual property as, 1:2

SECURITY

Collateral. See Collateral (this index)

Estate and property outside estate, Bankruptcy Code § 547, 4:54, 4:55

SECURITY AGREEMENT

Article Nine, 2:19

Foreclosure, **3:50 to 3:52**

SECURITY INTEREST

Article Nine. See Article Nine (this index)

Copyright law. See Copyrights and Copyright Law (this index)

Default, security interest enforcement, 3:3 to 3:5

Estate. See **Estate and Property Outside Estate** (this index)

Federal intellectual property, 2:112, 2:120

Lanham Trademark Act, 2:107, 2:108

Patent Act. See **Patent Act** (this index)

SELF-HELP

See Software Contracts and Electronic Self-Help (this index)

SETOFF

Executory contracts, **4:114**, **4:126**

SOFTWARE

Generally. See Computer Software and Hardware (this index)

Contracts and electronic self-help. See Software
Contracts and Electronic Self-Help (this index)

SOFTWARE CONTRACTS AND ELECTRONIC SELF-HELP

Post-default and pre-foreclosure control of intangibles generally, **3:27 et seq.**

Article Nine and provision in Model Computer Information Transactions Act, **3:33**

controversy over electronic self-help, 3:30

SOFTWARE CONTRACTS AND ELECTRONIC SELF-HELP—Cont'd

Post-default and pre-foreclosure control of intangibles —Cont'd

criminal and civil penalties under Federal Computer Fraud and Abuse Act. **3:32**

early cases on electronic self-help, 3:31

rendering software unusable, generally, **3:29 et seq.** statutory authorization for repossession by disabling collateral, **3:28**

SOURCE CODE COLLATERAL

C Tek Software, Inc., interstate perfection in source code collateral under current version of Article Nine, 2:61

STATE CHOICE OF LAW

Interstate perfection. See **Interstate Perfection** (this index)

STATE LAWS

Commercial law, 1:11, 1:13, 1:14

Conflict of laws, 1:20

Default, right to reestablish ownership, 3:6

Estate and property outside estate, security interests perfected against lien creditor by Article Nine, **4:44**

Federal intellectual property, 2:124

Interstate perfection. See **Interstate Perfection** (this index)

STATE-CREATED RIGHTS

Estate and property outside estate, security interests perfected against lien creditor by Article Nine, 4:44

STATUTES

Article Nine, 2:39

Discharge in bankruptcy, 4:136

Estate. See **Estate and Property Outside Estate** (this index)

Federal intellectual property, 2:119

Software contracts and electronic self-help, 3:28, 3:32

STAY

Estates. See **Estate and Property Outside Estate** (this index)

STEP-BACK

Federal intellectual property

complete "step-back" in U.C.C. § 9-104(1) [old] and current § 9-109(c)(1), **2:70**

"partial step-back" in U.C.C. § 9-302(3)(a) [old], 2:71

STRICT FORECLOSURE

Acceptance of collateral in complete satisfaction of debt, **3:66 to 3:69**

STRONG ARM CLAUSE, BANKRUPTCY CODE § 544(A)

Augmenting property of estate by avoiding third party interests, **4:32 to 4:35**

Software escrow. **4:62**

STRUCTURAL BACKGROUND

Patent Act. 2:90

STRUCTURAL DISSONANCE

Federal intellectual property, 2:68

SUBSEQUENT ASSIGNEES AND LICENSEES

Article Nine. See Article Nine (this index)

SUBSEQUENT PURCHASER

Lanham Trademark Act, 2:108

Patent Act. 2:94

SUBSTANTIALLY CONTEMPORANEOUS EXCHANGES AND SUBSTITUTIONS

Estate and property outside estate, preferences—Bankruptcy Code § 547, **4:48**

SUBSTITUTIONS

Estate and property outside estate, preferences—Bankruptcy Code § 547, **4:48**

SUPPLEMENTARY AGREEMENTS

Executory contracts, 4:109

TAKING PROPERTY

Estate and property outside estate, 4:19

TANGIBLE

See also **Intangible Collateral**; **Intangibles** (this index)

Intangible rights/tangible embodiment, 1:19

TANGIBLE COLLATERAL

Default, 3:22 to 3:24

Foreclosure, 3:40

TASK FORCE ACT

Creation of separate discrete "race" priority rule for conflicts between security interests in federal intellectual property rights and transferees of these rights, 2:121

Elimination or drastic reduction of grace periods, 2:118 Exclusion of security interests from tract recording and prior provisions of all federal intellectual property statutes except Lanham Act, 2:119

Priority rule for security interest, 2:120

TASK FORCE REPORT

1992 ABA Task Force Report and 1998 Drafts, 2:115

TERMINATION

Bankruptcy, assignment, **4:12** Rejection distinguished, **4:97**

THIRD PERSONS

Estates. See **Estate and Property Outside Estate** (this index)

THIRD PERSONS—Cont'd

Executory contracts, 4:109

TIME

Copyright Law, good faith qualification applicable to later transfer, 2:85

Discharge in bankruptcy, 4:131

Estate and property outside estate, time debt incurred under Bankruptcy Code § 547(b)(2), 4:41

Executory contracts. See Executory Contracts (this index)

Foreclosure, relation back to Article Nine perfection date, 3:38

TIMING

Article Nine, security interest—time of attachment, 2:23 to 2:25

Estates. See Estate and Property Outside Estate (this index)

Foreclosure, right to notice and commercially reasonable disposition, 3:56

TITLE

Article Nine, security interest, 2:21, 2:22

TITLE THEMES

Generally, 1:18

TRACT RECORDING

Federal intellectual property, 2:119

TRADE SECRET

Commercial law. 1:12

Discharge in bankruptcy, 4:132, 4:135

TRADEMARKS

Commercial Law (this index)

Default, dilution of trademarks, 3:19

Estate and property outside estate, 4:35, 4:44, 4:73

Foreclosure, 3:39

Lanham Act. See Lanham Act (this index)

TRANSACTION COSTS

Collateral. 2:4

TRANSACTIONS

Software contracts and electronic self-help, 3:33

TRANSFERS

Article Nine. See **Article Nine** (this index)

Bankruptcy, 4:3 to 4:6, 4:8 to 4:10

Copyright Law, 2:81 to 2:83

Discharge in bankruptcy, 4:130, 4:131

Estate. See Estate and Property Outside Estate (this index)

Federal intellectual property, 2:122

Foreclosure, 3:70, 3:72

TRANSFERS—Cont'd

Reform proposals, 1992 ABA Task Force Report and 1998 Drafts, 2:121

TRANSPORTATION DESIGN

Reform proposals, 1992 ABA Task Force Report and 1998 Drafts, 2:120

TRUE SALES

Foreclosure, collectible intangibles, 3:72

Executory contracts. See Executory Contracts (this index)

TWO OWNERSHIPS

Interstate perfection, 2:59

U.C.C. § 9

See Article Nine (this index)

UNDERLYING INTELLECTUAL PROPERTY

Estate and property outside estate, 4:53 et seq.

UNFAIR COMPETITION

Commercial law. 1:11

UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT

Post-default and pre-foreclosure control of intangibles, 3:33

VALUABLE CONSIDERATION QUALIFICATION

Copyright Law, 2:85

VALUE

Collateral

abandonment, 3:18

dilution of trademarks, 3:19

events threatening value of, generally, 3:15 et seq. exploitation of value, 2:1

failure to diligently prosecute patent application, 3:20

infringement, 3:17

Estate and property outside estate, 4:50

VESSELS

Hull designs, commercial law, 1:8

VULNERABILITY

Article Nine. See Article Nine (this index)

WAIVER

Default, 3:21

Executory contracts, 4:114, 4:115

WATERMAN v. MACKENZIE

Generally, 2:96

WORLD AUXILIARY POWER SOFTWARE DECISION

Copyright law. See **Copyright Law** (this index)