

## Scope of Article 9 Problems

In an effort to reorganize its faltering business, First Union bank sold all of its current credit card receivables [the right to collect amounts owing from people who had charged purchases on their credit cards issued by First Union] to MBNA America bank. First Union planned to remain in the credit card business, but it needed to liquidate its current receivables to infuse capital into its business. At the time, First Union's customers owed approximately \$100 million on their charge accounts, and MBNA paid First Union \$80 million for the right to collect these accounts. MBNA took no action to comply with Article 9 of the UCC, as this transaction involved not a secured loan, but an outright sale of First Union's current receivables. Six months after the sale documents were executed, while \$90 million of the affected credit card debts remained uncollected, First Union realized that its business was doomed, and it filed a Chapter 7 bankruptcy petition.

**a. You represent the trustee in bankruptcy assigned to First Union's case. Can you have the receivables returned to First Union's estate by attacking the sale to MBNA on any grounds under Article 9? If so, what is your best argument, and what is the likely outcome? See § 9-317(a).**

**b. Would your analysis change if First Union had sold MBNA only its "non-performing" accounts; i.e., only those on which the customers had failed to make minimum payments for 90 days or longer?**

**c. Would your analysis change if First Union had sold the right to collect \$100 million on 50,000 promissory notes signed by its customers? See § 9-309(4).**