

Unsecured Creditor Problem

Your next client in the pro bono clinic is Zeynab Habib, a modest and stern woman who tells you that she wants to pursue repayment of a \$5000 loan she made to her friend, Anastasia Zhukova (who goes by the nickname Nastya, but whom Zeynab has taken to calling “Nasty,” for reasons that will soon become clear). A few months ago, Nastya asked Zeynab to lend her \$5000 to buy a new car, as Nastya’s car had broken down, she would be unable to get to work and childcare without a car, and her sparse credit record prevented her from getting a reasonable loan from a bank or reputable car dealer. Zeynab agreed, but she insisted that Nastya sign a promissory note that Zeynab had obtained online from LegalZoom, “to make it official and to protect herself.” Nastya signed the note, Zeynab gave her the money, and Nastya bought the car, but six months have gone by with no payment from Nastya. Zeynab explains that her piousness and friendship can only be pressed so far, and she is ready to take action to collect the debt due her.

- (a) Zeynab tells you that her brother is an auto mechanic and could quite easily open the locked door of the car Nastya bought with Zeynab’s loan, so Zeynab asks you if she can “repossess” the car, as she has seen on late-night cable television. Advise her as to the legality of her proposed action and the steps she would need to go through to enforce her claim against Nastya.**

- (b) Would your advice be different if Zeynab’s loan to Nastya had been part of a “secured transaction”? If so, what would Zeynab have needed to do in addition to preparing the promissory note to make this a “secured transaction”?**

- (c) Loans like the one from Zeynab to Nastya are quite common, especially in immigrant communities. Do you think many of these are “secured transactions,” and if not, why not?**