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#### 2014 Edition

## Repossessions in Connecticut

A Guide to Resources in the Law Library

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A Guide to Resources in the Law Library

- "Repossession statutes are enacted to protect the consumer from well documented repossession abuses and to encourage and promote compliance with the laws governing such actions." <u>Jacobs v. Healey Ford-Subaru, Inc.</u>, 231 Conn. 707, 722 (1995).
- Retail Installment Sales Financing Act (RISFA): "General Statutes § 36a-785 sets out the procedure that a holder of a retail installment contract must follow in order to repossess goods after a retail buyer breaches the contract. This section provides, in pertinent part: '(a) Repossession. When the retail buyer is in default in the payment of any sum due under the retail installment contract . . . the holder of the contract may take possession thereof. . . .' General Statutes § 36a-785 (a)." GE Capitol Auto Lease, Inc. v. Blackwell, Superior Court, Judicial District of Ansonia-Milford at Milford, No. CV97-0059201S, (Sep. 5, 2001), 2001 Ct. Sup. 12397.
- **Uniform Commercial Code**: "A transaction subject to sections 36a-770 to 36a-788, inclusive [(RISFA)], 42-100b and 42-100c is also subject to the Uniform Commercial Code, title 42a, but in case of any conflict the provisions of sections 36a-770 to 36a-788, inclusive, 42-100b and 42-100c shall control." Conn. Gen. Stat. § 36a-770 (a) (2013).
- **Secured Transaction:** "A [business] transaction, regardless of its form, that creates a security interest in personal property or fixtures [collateral] by contract." Conn. Gen. Stats. § 42a-9-109 (a)(1) (2013).

### Section 1: What Can Be Repossessed

A Guide to Resources in the Law Library

#### SCOPE:

 Bibliographic resources relating to secured transactions under Article 9 of the Uniform Commercial Code as adopted by Connecticut and under the Connecticut Retail Installment Sales Financing Act (RISFA). Types of personal property or fixtures that can be repossessed thereunder in Connecticut.

#### **DEFINITIONS:**

- Applicability of Uniform Commercial Code: "A transaction subject to sections 36a-770 to 36a-788 (RISFA), inclusive...is also subject to the Uniform Commercial Code, title 42a, but in case of any conflict the provisions of sections 36a-770 to 36a-788, inclusive...shall control." Conn. Gen. Stat. § 36a-770(a) (2013).
- **Secured transaction:** "A [business] transaction, regardless of its form, that creates a security interest in personal property or fixtures [collateral] by contract." **Conn.** Gen. Stats. § 42a-9-109(a)(1)(2013).
- **Security interest:** "means an interest in personal property or fixtures which secures payment or performance of an obligation." Conn. Gen. Stat. § 42a-1-201(b)(35) (2013).
- **Security agreement:** "means an agreement that creates or provides for a security interest." Conn. Gen. Stat. § 42a-9-102(a)(74) (2013). (As amended by Public Act 11-108, Sec.1, January 2011 Regular Session, effective July 1, 2013).
- **Consumer goods transaction:** "means a consumer transaction in which:
  - (A) An individual incurs an obligation primarily for personal, family or household purposes; and
  - (B) A security interest in consumer goods secures the **obligation." Conn. Gen. Stat.** § 42a-9-102 (a)(24) (2013).
- **Goods**: "means (A) 'consumer goods' as defined in subsection (23) of subsection (a) of section 42a-9-102 and motor vehicles included under such definition, having an aggregate cash price of fifty thousand dollars or less, and (B) 'equipment', as defined in subdivision (33) of subsection (a) of section 42a-9-102, having an aggregate cash price of sixteen thousand dollars or less, provided such consumer goods or such equipment is included in one retail installment contract or installment loan contract." Conn. Gen. Stat. § 36a-770 (c)(6) (2013).

#### **DEFINITIONS:**

- Retail installment contract: "means any security agreement, as defined in subdivision (74) of subsection (a) of section 42a-9-102, made in this state....For the purposes of this subdivision, 'retail installment contract' does not include a rent-to-own agreement, as defined in section 42-240." Conn. Gen. Stat. § 36a-770 (c)(12) (2013).
- **Consumer debtor**: "means a debtor in a consumer transaction." Conn. Gen. Stat. § 42a-9-102(a)(22) (2013).
- **Consumer obligor:** "means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family or household purposes." Conn. Gen. Stat. § 42a-9-102(a)(25) (2013).
- Small Loan Lenders: "No licensee [small loan lenders] shall take . . . security interest in or assignment or pledge of household goods or an assignment of wages as security for any loan made under sections 36a-555 to 36a-573, inclusive. A licensee may take a security interest in chattels or personal property other than household goods, except a security interest in an automobile may not be taken as security for any loan where the cash advance is one thousand eight hundred dollars or less. A licensee may take a security interest in real estate on loans made under said sections where the cash advance is in excess of one thousand eight hundred dollars, but may not take such a security interest in real estate where the cash advance is one thousand eight hundred dollars or less."
  - "...The requirement of § 36a-785 shall apply to any repossession under §§ 36a-355 to 36a-573, inclusive, of property other than real estate." Conn. Gen. Stat. § 36a-568 (2013). (Emphasis added)
- Household furniture: "Any agreement for security in household furniture owned and in the possession of an individual and used primarily for housekeeping purposes shall be effective only to the extent that the agreement involves a purchase-money security interest as provided in section 42a-9-103a." Conn. Gen. Stat. § 42a-9-206a (2013).
- **Purchase-money security interest:** "In a consumergoods transaction, if the extent to which a security interest is a purchase-money security interest depends on the application of a payment to a particular obligation:
  - (A) The payment must be applied so that the secured party retains no purchase money security interest in any property as to which the secured party has recovered payments aggregating the amount of the sale price including any finance charges attributable thereto; and

(B) For the purposes of this subdivision only, in the case of items purchased on different dates, the first item purchased shall be deemed the first paid for and, in the case of items purchased on the same date, the lowest priced item shall be deemed the first paid for." Conn. Gen. Stat. § 42a-9-103a (e)(2) (2013).

#### FORMS:

• General contract requirements (RISFA) Conn. Gen. Stat. § 36a-771 (2013).

#### STATUTES:

Note: You can visit your local law library or search the most recent statutes and public acts on the Connecticut General Assembly website to confirm that you are using the most upto-date statutes.

- Conn. Gen. Stat. (2013)
  Chapter 668. Nondepository Institutuions
  Part III. Small Loan Lenders

  8 363 568. Form of socurity restricted.
  - § 36a-568. Form of security restricted. Loan content Chapter 669. Banking Law of Connecticut. Regulated activities
  - Part XI. Retail installment sales financing
    - § 36a-770. Applicability of Uniform Commercial Code (As amended by Public Act 11-108, Sec. 28, January 2011 Regular Session, effective July 1, 2013).
    - § 36a-771. General contract requirements
    - § 36a-774. Installment loan contract requirements
    - § 36a-775. Confession of judgment provision invalid
    - § 36a-776. Inclusion of other goods in contract void
    - § 36a-777. Acknowledgment of receipt of notice and
    - statement
    - § 36a-778. Delinquency and collection charges
    - § 36a-779. Assignment of contract
    - § 36a-780. Payments after assignment
    - § 36a-781. Statement of payments made. Receipts
    - § 36a-782. Cancellation of contract on payment in full
    - § 36a-783. Rebate and refund upon prepayment of contract
    - § 36a-784. Renewals and extensions
    - § 36a-785. Foreclosure
    - (a) Repossession
- Conn. Gen. Stat. (2013)
  - Title 42a. Uniform Commercial Code
  - Article 1. General provisions
  - § 42a-1-203. Lease distinguished from security interest Article 9. Secured transactions
    - § 42a-9-102. Definitions and index of definitions (As amended by <u>Public Act 11-108</u>, Sec., January 2011 Regular Session, effective July 1, 2013).
    - § 42a-9-103a. Purchase-money security interest
    - § 42a-9-109. Scope
    - § 42a-9-201. General effectiveness of security agreement
    - § 42a-9-202. Title to collateral immaterial
    - § 42a-9-203. Attachment and enforceability of security
    - interest. Proceeds. Supporting Obligations. Formal

requisites
§ 42a-9-206a. Effectiveness of security agreement in household furniture

#### **LEGISLATIVE:**

Note: Office of Legislative Research reports summarize and analyze the law in effect on the date of each report's publication.

 Daniel Duffy, <u>Retail Installment Sales Financing</u>, Connecticut General Assembly, Office of Legislative Research, OLR Research Report no. 2000-R-0687 (July 11, 2000).

#### **CASES:**

Note: Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can contact your local law librarian to learn about the tools available to you to update cases.

- Thorne et. al. v. Mackeyboy Auto, LLC et. al., Superior Court, Judicial District of New Haven, No. CV 11-6017210S (Oct. 11, 2013), 2013 WL 5879081. "...Mackeyboy Auto did not provide an executed retail installment sales contract to either of the plaintiffs."
- GE Capitol Auto Lease, Inc. v. Blackwell, Superior Court, Judicial District of Ansonia-Milford at Milford, No. CV97-0059201S (Sep. 5, 2001), 2001 Ct. Sup.12397. "In several cases, judges of the Superior Court have recognized that the issue of whether a transaction is a sale or a lease is a question of fact which must be decided before the court can determine whether RISFA applies to the transaction."
- New Haven Water Co. Employees Credit Union v. Burroughs, 6 Conn. Cir. Ct. 709, 710-711, 313 A.2d 82 (1973). "Likewise it is clear that the defendant is not considered a 'retail buyer' for the purposes of § 42-98 [now Conn. Gen. Stat. §36a-785]. Likewise it is clear that the promissory note executed by the defendant and cosigned by Benjamin Della Camera, whose 1968 automobile was put up as collateral, is neither a 'retail installment contract' nor a 'installment loan contract' within the meaning of § 42-98. Rather it appears from the record that the defendant obtained a loan and offered as collateral the automobile owned by Della Camera. The defendant was not purchasing the automobile, and no security interest was taken in any goods for the purchase of which money was loaned."
- Keyes et. al. v. Brown et.al., 155 Conn. 469, 473-474, 232 A.2d 486 (1967). "Obviously, the purpose of the contract provisions set forth in § 42-84 [now Conn. Gen. Stat. § 36a-771] is to protect retail buyers of goods from unknowingly assuming excessive charges by requiring that all charges and terms be fully set forth by the retail seller before the contract is signed by the buyer, and by requiring that the buyer be immediately given a copy of the complete and executed contract. The statute states that the written contract 'shall be completed as to all essential provisions prior to the signing of the contract by the retail buyer. The retail installment contract shall recite the number of

installment payments required and the amount and date of each payment."

#### WEST KEY NUMBERS:

- Secured Transactions
  - # 1-67. Nature, Requisites, and Validity
  - # 1-26. Nature and essentials
  - # 41-51. Security agreements
  - # 61-67. Validity

#### **DIGESTS:**

- West's Connecticut Digest: Secured Transactions
  - I. Nature, Requisites, and Validity
    - §1-26. Nature and essentials
    - §41-51. Security agreements
    - §61-67. Validity
- ALR Digest: Secured Transactions
  - I. Nature, Requisites, and Validity
    - §1-26. Nature and essentials
    - §41-51. Security agreements
    - §61-67. Validity
- Dowling's Digest: Secured Transactions
  - 1. Introduction
  - 2. What constitutes
  - 3. Validity and operation
  - 4. Rights and remedies of buyer and seller

#### **ENCYCLOPEDIAS:**

- 68A Am. Jur. 2d Secured Transactions (2003).
  - §§ 1-132. Introduction
  - §§ 102-132. Transactions Subject to Article 9
  - §§ 133-238. Creation of security interest; Security agreement
  - §§ 239-252. Attachment of security interest
  - §§ 253-258. Assignment of security interest
  - §§ 259-474. Perfection of security interest
  - §§ 475-513. Rights, duties, and liabilities of parties prior to default
- 79 <u>C.J.S.</u> Secured Transactions (2006).
  - §§ 7-19. Nature, requisites and validity
  - § 8. Property and rights subject to security interest
- Annotation, Secured Transactions: What Constitutes "Consumer Goods" Under UCC § 9-109(1), 77 ALR3d 1225 (1977).
- J. P. Ludington and A. L. Schwartz, Annotation, Construction And Effect of UCC Art 9, Dealing With Secured Transactions, Sales Of Accounts, Contract Rights, And Chattel Paper, 30 ALR3d 9 (1970).

# TEXTS & TREATISES:

<u>National Consumer Law Center, Repossessions</u> (8<sup>th</sup> ed. 2013).

Chapter 3. Enforceable security interests

- § 3.1. Valid security interest as precondition to seizure of personal property
- § 3.2. Elements of a valid security interest
- § 3.3. Limits on non-purchase money security interests
- § 3.4. Continued enforceability after security interest created
- § 3.5. Refinancings and consolidations
- § 3.6. Future advance and antecedent debt clauses
- § 3.7. Cross-collateral, pro rata application of payments, and consolidations
- § 3.8. Automobiles and manufactured homes as collateral
- § 3.9. Merchant card issuer's interest in goods purchased with card
- § 3.10. Consumer remedies when security interest is invalid
- Edward A. Weiss et al., Connecticut Secured Transactions
  Under Revised Article 9 Of The Uniform Commercial Code
  (2011).
  - § 11.8. Repossession

#### LAW REVIEWS:

 Henry Barkhausen, Regulating in the Shadow of the U.C.C.: How Courts Should Interpret State Consumer Protection Laws, 119 Yale L.J. 1329 (2010).

Table 1: Lease vs. Security Interest

#### Lease

(Article 2A of the Uniform Commercial Code)

VS.

# Security Interest (Article 9 of the Uniform Commercial Code)

- (a) Whether a transaction in the form of a lease creates a lease or a security interest is determined by the facts of each case.
- (b) A transaction in the form of a lease creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease and is not subject to termination by the lessee, and:
  - (1) The original term of the lease is equal to or greater than the remaining economic life of the goods;
  - (2) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;
  - (3) The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement; or
  - (4) The lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement.

Conn. Gen. Stats. § 42a-1-203 (2013).

• National Consumer Law Center, Repossessions (8th ed. 2013).

Chapter 14. Consumer Leases

§ 14.1. General

§ 14.1.2. When is a lease covered by UCC Article 9

§ 14.1.3. Applicable law when Article 9 does not apply

§ 14.1.3.1. UCC Article 2A

§ 14.1.3.2. The Federal Consumer Leasing Act

§ 14.1.3.3. State consumer statutes governing leases

§ 14.1.3.4. State deceptive practices and debt collection statutes

§ 14.2. Automobile leases

§ 14.2.1. Does Article 9 or Article 2A regulate lease repossessions?

§ 14.3. Rent-to-own transactions

Table 2: Security Interest and Automobiles

Security Interests and Automobiles		
Civil Rights and repossession of automobile	"The initial, and here the key question is whether or not the defendant Bank's peaceful repossession of the plaintiff's automobile on August 23, 1972, constitutes 'state action' so as to support a claim under 42 U.S.C. § 1983." Shirley v. State  Nat. Bank of Connecticut, 493 F.2d 739, 741 (1974), 1974 U.S.  App. LEXIS 10056.	
	"We see no other theory of state involvement here which is possibly applicable. We recognize that the problems involved in determining whether 'state action' is present are not susceptible of solution by facile formulae. Our examination of the Supreme Court decisions, as well as those of our own and other circuits, compels the conclusion, however, that none is present here." Ibid., 745.	
Late Payments, past acceptance of	"The plaintiff next claims that because Midland repeatedly demanded and accepted late payments it lost the right to repossess the vehicle without first giving the plaintiff written notice that the payment schedule would be strictly enforced and that late payments would no longer be tolerated. The gravamen of the plaintiff's argument is that Midland should not be permitted to invoke a formal provision of the agreement that the plaintiff reasonably believed would not be enforced.  Subsequent to the trial of the present case, our Supreme Court in <i>Gaynor v. Union Trust Co.</i> , 216 Conn. 458, 468-70, 582 A.2d 190 (1990), held that a creditor's toleration of one or more defaults does not require a creditor to indulge subsequent late payments." Velazquez v. Marine Midland Auto. Fin. Corp., 24 Conn. App. 455, 460-461, 590 A.2d 116 (1991).	
Notice of rights in repossession	"The plaintiff next claims that the notice sent by Midland after repossessing her car failed to satisfy the UCC and RISFA. She contends that the postrepossession notice misrepresented her redemption rights and inaccurately stated her accelerated balance. The plaintiff further maintains that Midland failed to send her notice of the sale proceeds as required by RISFA. We reject the plaintiff's arguments." Velazquez v. Marine Midland Auto. Fin. Corp., 24 Conn. App. 455, 461-462, 590 A.2d 116 (1991).	
Personal property in a repossessed automobile	"After review of the loan agreement, the court determined that the plaintiff had not consented to the defendant's possession of the personal property. The court concluded that the defendant was liable for conversion." Clark v. Auto Recovery Bureau Conn., Inc., 889 F. Supp. 543, 548 (1994), 1994 U.S. Dist. LEXIS 20428.	

Strict compliance
is mandatory

"In consumer transactions, strict compliance with statutory provisions that prescribe the informational content of retail installment contracts is mandatory and is not excused by inadvertence . . . . Although the trial court did not find that the plaintiffs had sustained actual damages, the defendant nonetheless statutorily forfeited its right to recover both its repossession and its storage costs because of the inaccuracy of its notice. The trial court should have reduced the defendant's recovery to reflect this statutory mandate in its entirety."

Gaynor v. Union Trust Co., 216 Conn. 458, 475-476, 582 A.2d 190 (1990)

### Section 2: Default and Repossession

A Guide to Resources in the Law Library

#### SCOPE:

 Bibliographic resources relating to default as a precondition of repossession under Article 9 of the Uniform Commercial Code as adopted by Connecticut and under the Connecticut Retail Installment Sales Financing Act (RISFA).

#### **DEFINITIONS:**

- Applicability of Uniform Commercial Code: "A transaction subject to sections 36a-770 to 36a-788 (RISF), inclusive...is also subject to the Uniform Commercial Code, title 42a, but in case of any conflict the provisions of sections 36a-770 to 36a-788, inclusive, ...shall control." Conn. Gen. Stat. § 36a-770 (a) (2013).
- "In consumer transactions, strict compliance with statutory provisions that prescribe the informational content of retail installment contracts is mandatory and is not excused by inadvertence." Gaynor v. Union Trust Co., 216 Conn. 458, 475, 582 A.2d 190, (1990).
- **Default:** "When the retail buyer is in default in the payment of any sum due under the retail installment contract or installment loan contract, or in the performance of any other condition that such contract requires him to perform, or in the performance of any promise, the breach of which is by such contract expressly made a ground for the retaking of the goods, the holder of the contract may retake possession thereof, provided the filing of a petition in bankruptcy under 11 USC Chapter 7 by a retail buyer of a motor vehicle, or such retail buyer's status as a debtor in bankruptcy, shall not be considered a default of a retail installment contract or ground for repossession of such **motor vehicle."** Conn. Gen. Stat. § 36a-785(a) (2013).
- Unaccelerated amount due: "During such [redemption] period the retail buyer, upon payment or tender of the unaccelerated amount due under such contract at the time of retaking and interest . . . and upon payment of the actual and reasonable expenses of any retaking and storing, may redeem such goods and become entitled to take possession of the same and to continue in the performance of such contract as if no default had occurred." Conn. Gen. Stat. § 36a-785(c) (2013).
- Electronic self-help: "means the use of electronic means to exercise a secured party's rights pursuant to subsection (a) of this section with respect to the security agreement, and 'electronic' means relating to technology that has electrical, digital, magnetic, or wireless optical electromagnetic properties or similar capabilities. 'Electronic self-help includes the use of electronic means to locate the

collateral." Conn. Gen. Stat. § 42a-9-609(d)(1) (2013).

"Electronic self-help [repossession] is permitted only if the debtor separately agrees to a term of the security agreement authorizing electronic self-help that requires notice of exercise as provided in subdivision (3) of the subsection." Conn. Gen. Stat. § 42a-9-609(d)(2) (2013).

#### **STATUTES**:

Note: You can visit your local law library or search the most recent statutes and public acts on the Connecticut General Assembly website to confirm that you are using the most upto-date statutes.

Conn. Gen. Stat. (2013)

Chapter 669. Banking Law of Connecticut. Regulated activities

Part XI. Retail installment sales financing

§ 36a-785. Foreclosure

- (a). Repossession
- (b). Notice of intention to repossess
- Conn. Gen. Stat. (2013)

Title 42a. Uniform Commercial Code

Article 9. Secured Transactions

Part 6. Default

§42a-9-601. Rights after default. Judicial enforcement

§42a-9-602. Waiver and variance of rights and duties

§42a-9-603. Agreement on standards concerning rights

and duties

§42a-9-609. Secured party's right to take possession

after default. Use of electronic self-help restricted

#### LEGISLATIVE:

Note: Office of Legislative Research reports summarize and analyze the law in effect on the date of each report's publication.

Connecticut General Assembly, Office of Legislative Research, OLR Research Report no. 2000-R-0687 (July 11, 2000).

Daniel Duffy, Retail Installment Sales Financing,

#### CASES:

Note: Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can contact your <u>local law librarian</u> to learn about the tools available to you to update cases.

Charter Oak Federal Credit Union v. Ladner et. al., Superior Court, Judicial District of Middlesex, No. CV10-6003853 (Sept. 19, 2011), 2011 WL 4716322. "The defendants have admitted that ...they executed a Retail Installment Contract...that as collateral for the Note they granted a security interest in a 1999 Jaguar VPP,...The defendants have also admitted that the plaintiff sent to them and they received a Notice of Intention to Repossess,... that the plaintiff repossessed the collateral and that the plaintiff sent and they received the Notice of Plan to Sell Property,...The defendants have also admitted that the plaintiff sent and they received a Statement Itemizing Disposition for Proceeds of Resale and Explanation of Deficiency,..."

"The plaintiff has also submitted evidence that as of the date of repossession the NADA Used Car Guide, Eastern Edition, Average Retail Value for the Jaguar was \$7,025, and the Average Trade-in Value for the Jaguar was \$3,275.

The average of the foregoing figures is \$5,150."

"Summary Judgment may enter in favor of the plaintiff..."

Raffone v. Industrial Acceptance Corp.et. al., 119 Conn. App. 261, 265-266, 987 A.2d 1059 (2010). "The defense consisted of testimony from the plaintiff and Dolores Caroche, the credit manager for the defendant.... Caroche testified that the defendant had a relationship with Auto Sales, Inc., the dealership from which the plaintiff purchased the vehicle, providing that the dealership would hold the defendant 'harmless and take recourse and assignment back on obligations that go bad,' Caroche further testified that the defendant routinely exercised that recourse 'with any dealer on a first payment default.' Caroche averred that the defendant played no role in repossessing the vehicle. Rather, she explained that the defendant had exercised its right of recourse and assigned it interest in the vehicle to Auto Sales, Inc., which, in turn paid the defendant the remaining balance of the plaintiff's loan."

# WEST KEY NUMBERS:

 Secured Transactions # 221-243. Default and enforcement # 221. Rights and remedies of secured party in general # 222. Default of debtor

#### **DIGESTS:**

- West's Connecticut Digest: Secured Transactions
  VII. Default and Enforcement
  §§221-243
- <u>Dowling's Digest</u>: *Secured Transactions*4. Rights and remedies of buyer and seller

#### **ENCYCLOPEDIAS:**

- 68A Am. Jur. 2d Secured Transactions (2003). §§ 514-726. Default of debtor; Rights, remedies, duties, and liabilities of parties upon default §§ 521-528. Rights and remedies of debtor upon default §§ 529-682. Rights, remedies, duties, and liabilities of secured creditor and other interested parties upon default
- 79 <u>C.J.S</u>. *Secured Transactions* (2006). §§ 178-233. Default and enforcement
- Jay M. Zitter, Annotation, Secured Transactions: Right Of Secured Party To Take Possession Of Collateral On Default Under UCC § 9-503, 25 ALR5th 696 (1994).

# TEXTS & TREATISES:

<u>National Consumer Law Center, Repossessions</u> (8<sup>th</sup> ed. 2013).

Chapter 4. Default as precondition to seizure § 4.1. Default and acceleration

- § 4.2. Limits on default and acceleration
- § 4.3. Creditor's waiver of right to declare default
- § 4.4. Relationship of default to consumer's defenses or counterclaims
- § 4.5. The right to cure a default
- § 4.6. A special case: Yo-Yo (spot delivery) Sales
- § 4.7. Remedies
- Edward A. Weiss et al., Connecticut Secured Transactions
  Under Revised Article 9 Of The Uniform Commercial Code
  (2011).
  - § 11.8. Repossession

#### **LAW REVIEWS:**

 Henry Barkhausen, Regulating in the Shadow of the U.C.C.: How Courts Should Interpret State Consumer Protection Laws, 119 Yale L.J. 1329 (2010).

### Section 3: Methods of Retaking Goods

A Guide to Resources in the Law Library

- **Self-help Repossession:** "Unless the goods can be retaken without breach of the peace, it shall be retaken by legal process, but nothing herein contained shall be construed to authorize a violation of the criminal law. In the case of repossession of any motor vehicle without the knowledge of the retail buyer, the local police department shall be notified of such repossession immediately thereafter. In the absence of a local police department or if the local police department cannot be reached for notification, the state police shall be promptly notified of such repossession." **Conn. Gen. Stat.** § 36a-785 (a) (2013).
- **Notice of intent to repossess:** "Not less than ten days prior to the retaking, the holder of such contract, if he so desires, may serve upon the retail buyer, personally or by registered or certified mail, a notice of intention to retake the goods on account of the buyer's default."
  - "... If the notice is so served and the buyer does not perform the conditions and provisions as to which he is in default before the day set for retaking, the holder of the contract may retake said goods...subject to the provisions... regarding resale, but without any right of redemption." Conn. Gen. Stat. § 36a-785(b) (2013).
- **Voluntary surrender**: "It is true that a voluntary surrender of a vehicle by a buyer in default may constitute a repossession by the holder of a retail installment contract, See, e.g., *Union Trust Co. v. Hardy*, 400 A.2d 384, 388 (ME. 1979)." <u>A-1 Auto Service, Inc. v. Horkavy</u>, Superior Court, Judicial District of New Haven at New Haven, No. CV96-0392187 (May 24, 2001), 2001 Ct. Sup. 6948.
- **Constructive repossession**: "This whole case comes down to whether a 'repossession' in fact took place here- that is what determines if previously mentioned statutes apply [Retail Installment Act and Uniform Commercial Code]. The fact finder found that there was a repossession apparently accepting the plaintiffs' view that for a repossession to occur, the motor vehicle need not come into the actual possession of a credit union or bank but repossession can be established by acts or steps taken to indicate control or dominion over a chattel- i.e. constructive repossession." <a href="Van Wormer v. Charter Oak Federal Credit Union">Van Wormer v. Charter Oak Federal Credit Union</a>, Superior Court, No. 114865 (Aug. 23, 2000), 2000 WL 1281530.

### Section 3a: Self-Help Repossessions in Connecticut

A Guide to Resources in the Law Library

#### SCOPE:

 Bibliographic resources relating to self-help procedures that lenders may follow to repossess goods under Article 9 of the Uniform Commercial Code as adopted by Connecticut and under the Connecticut Retail Installment Sales Financing Act (RISFA).

#### **SEE ALSO:**

Repossession by Notice of Intent

#### **DEFINITIONS:**

- Applicability of Uniform Commercial Code: "A transaction subject to sections 36a-770 to 36a-788 (RISF), inclusive...is also subject to the Uniform Commercial Code, title 42a, but in case of any conflict the provisions of sections 36a-770 to 36a-788, inclusive, ...shall control." Conn. Gen. Stat. § 36a-770 (a) (2013).
- History: "Private self-help remedies extend as far back as ancient Greece, where those entitled to seize chattels from a debtor were not prohibited from breaching the peace or physically injuring the debtor in the course of repossession . . . . Early Roman law permitted similar self-help remedies, including the right to seize the person of a debtor, without court action, after a default in payment . . . . Later, the right to repossess goods was recognized in the common law of England." <a href="State v. Indrisano">State v. Indrisano</a>, 29 Conn. App. 283, 286, 613 A.2d 1375 (1992).
  - "Today, the same common law principle is embodied in General Statutes 42a-9-503 [now 42a-9-609], which permits a secured party to forgo the judicial process and resort to self-help repossession, but without breaching the peace. Enticing as this mode of recovery may be to creditors, nonjudicial repossession nevertheless presents 'an element of inherent danger.' *Sanchez v. MBank of El Paso*, 792 S.W.2d 530, 532 (Tex. App. 1990). Because the repossessor may commit a trespass in attempting to recover goods without the owner's consent and, often, against his will, there is a considerable risk that breach of the peace, assault or other violence may occur. Id. With this brief historical background in mind, we commence our analysis." Ibid., pp. 286-287.
- "After default, a secured party may sell, lease, license or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing." Conn. Gen. Stat. § 42a-9-610 (a) (2013).

#### **STATUTES:**

Note: You can visit your local law library or search the most recent statutes and public acts on the Connecticut General Assembly website to confirm that you are using the most upto-date statutes.

• Conn. Gen. Stat. (2013)

Chapter 669. Banking Law of Connecticut. Regulated activities

Part XI. Retail installment sales financing

§ 36a-785. Foreclosure

- (a). Repossession
- (b). Notice of intention to repossess
- Conn. Gen. Stat. (2013)

Title 42a. Uniform Commercial Code

Article 9. Secured Transactions

§ 42a-9-609. Secured party's right to take possession after default. Use of electronic self-help restricted § 42a-9-610. Disposition of collateral after default

#### **LEGISLATIVE:**

Note: Office of Legislative Research reports summarize and analyze the law in effect on the date of each report's publication. Current law may be different from what is discussed in the reports.

Daniel Duffy, <u>Redeeming A Repossessed Motor Vehicle</u>,

Connecticut General Assembly, Office of Legislative Research, OLR Research Report no. 2002-R-0270 (February 26, 2002).

- George Coppolo, <u>Repossession of Motor Vehicles- Trespass</u>, Connecticut General Assembly, Office of Legislative Research, OLR Research Report no. 2000-R-0079 (January 28, 2000).
- Daniel Duffy, <u>Personal Belongings in a Repossessed Motor Vehicle</u>, Connecticut General Assembly, Office of Legislative Research, OLR Research Report no. 2002-R-0308 (March 4, 2002).

#### **FORMS:**

• Sample Complaint Alleging Violation of 42 U.S.C. § 1983, Conversion, and Breach of Peace, Appendix D.4, National Consumer Law Center, Repossessions (8<sup>th</sup> ed. 2013).

#### CASES:

Note: Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can contact your local law librarian to learn about the tools available to you to update cases.

- Thorne et. al. v. Mackeyboy Auto, LLC et. al., Superior Court, Judicial District of New Haven, No. CV11-6017210S (Oct. 11, 2013), 2013 WL 5879081. "... Chineal Thorne woke up to find her BMW missing. She did not know her car had been repossessed by the defendants. She called the dealership. She was told they took the car because she was not making her 'payments,' and that she would have to pay \$700 to get her car back... Her personal effects,... were all in the car."
- Van Wormer v. Charter Oak Federal Credit Union, Superior Court, No. 114865 (Aug. 23, 2000), 2000 WL 1281530.
   "The UCC in § 42a-9-503 [now 42a-9-609] talks about the secured party's right to take possession after default of a condition of the security agreement. Again, the statute says 'in taking possession,' the secured party can proceed without judicial process if this can be done 'without breach of the peace or may proceed by action.'"

- Gaynor v. Union Trust Co., 216 Conn. 458, 467, 582 A.2d 190 (1990). "We therefore construe 42-98 (a) [now 36a-785] as requiring no special contractual language to communicate the consequences of a default in payments, such as occurred in this case, or a nonperformance of a condition. The legislature might logically have deemed it important to require a consumer contract expressly to give warning of the risk of retaking in the event of a failure to perform 'any promise' because consumer buyers might otherwise not have understood that they might lose their collateral even though their payments were current and they had fulfilled all the conditions in their installment contract. That is not this case. We conclude, accordingly, that the defendant had the statutory authority to retake the plaintiffs' car."
- State v. Messier, 16 Conn. App. 455, 462, 549 A.2d 270 (1988). "A defendant in pursuit of the repossession of his property cannot burglarize another's home and assault him with impunity. We conclude, therefore, that a defendant cannot expect to avoid a conviction by employing such a defense."

#### WEST KEY NUMBERS:

Secured Transactions
VII. Default and Enforcement
§§ 221-243

#### **DIGESTS:**

- West's Connecticut Digest: Secured Transactions
   VII. Default and Enforcement
   §§ 221-243
- Dowling's Digest: Secured Transactions
  - 1. Introduction
  - 2. What constitutes
  - 3. Validity and operation
  - 4. Rights and remedies of buyer and seller

#### **ENCYCLOPEDIAS:** •

- 68A <u>Am. Jur. 2d</u> Secured Transactions (2003)
   § 546. Creditor's right to take possession generally
- 79 <u>C.J.S.</u> Secured Transactions (2006) §§178-233. Default and enforcement
- James L. Buchwalter, Annotation, *Cause Of Action For Wrongful Self-Help Repossession of Personal Property*, <u>COA 2d</u> (2010).
- Jay M. Zitter, Annotation, Secured Transactions: Right Of Secured Party To Take Possession Of Collateral On Default Under UCC § 9-503, 25 ALR5th 696 (1994).
- Gary D. Spivey, Annotation, *Validity, Under State Law, Of Self-Help Repossession Of Goods Pursuant To UCC* § 9-503,

75 ALR3d 1061 (1977).

- Russell J. Davis, Annotation, Private Person's Enforcement Of Lien Through Self-Help As Act "Under Color Of State Law" Within Meaning Of 42 USCS § 1983, 32 ALR Fed 431 (1977).
- Gary D. Spivey, Annotation, Validity, Under Federal Constitution And Laws, Of Self-Help Repossession Provision Of § 9-503 Of Uniform Commercial Code, 29 ALR Fed 418 (1976).

# TEXTS & TREATISES:

<u>National Consumer Law Center, Repossessions</u> (8<sup>th</sup> ed. 2013).

Chapter 6. Self-Help Repossessions

§ 6.1. Introduction

§ 6.2. Representing the client before repossession

§ 6.3. Bars to repossession

§ 6.4. Self-help repossession must not breach the peace

§ 6.5. Other self-help repossession restrictions

§ 6.6. Electronic repossessions

• Edward A. Weiss et al., Connecticut Secured Transactions
Under Revised Article 9 Of The Uniform Commercial Code
(2011).

§ 11.8. Repossession

#### **LAW REVIEWS:**

- Henry Barkhausen, Regulating in the Shadow of the U.C.C.: How Courts Should Interpret State Consumer Protection Laws, 119 Yale L.J. 1329 (2010).
- Ryan McRobert, *Defining "Breach of the Peace" in Self-help Repossessions*, 87 Wash. L. Rev. 569 (2012). (Available on the Law Libraries' HeinOnline database).
- Aaron Loterstein, *Law-enforcement Officers and Self-help Repossession: A State-action Approach*, 111 Mich. L. Rev 1361 (2013-2013).

### Section 3b: Repossession by Notice of Intent

A Guide to Resources in the Law Library

#### SCOPE:

 Bibliographic resources relating to repossession in Connecticut through the use of a notice of intent to repossess under Article 9 of the Uniform Commercial Code as adopted by Connecticut and under the Connecticut Retail Installment Sales Financing Act (RISFA).

#### **SEE ALSO:**

• Repossession in Connecticut
(Informational material provided by the 2-1-1 eLibrary)

#### TREATED ELSEWHERE:

• Self-Help Repossessions in Connecticut

#### **DEFINITIONS:**

- Applicability of Uniform Commercial Code: "A transaction subject to sections 36a-770 to 36a-788 (RISF), inclusive...is also subject to the Uniform Commercial Code, title 42a, but in case of any conflict the provisions of sections 36a-770 to 36a-788, inclusive, ...shall control." Conn. Gen. Stat. § 36a-770 (a) (2013).
- "When the retail buyer is in **default** in the payment of any sum due under the retail installment contract or installment loan contract . . . the holder of the contract may retake possession thereof . . . . " Conn. Gen. Stat. § 36a-785(a) (2013).
- Notice of intent to repossess: "Not less than ten days prior to the retaking, the holder of such contract, if he so desires, may serve upon the retail buyer, personally or by registered or certified mail, a notice of intention to retake the goods on account of the buyer's default. The notice shall state the default and the period at the end of which such goods will be retaken, and shall briefly and clearly state what the retail buyer's rights under this subsection will be in case such goods are retaken." Conn. Gen. Stat. § 36a-785(b) (2013).
- Without right of redemption: "If the notice [of intent to repossess] is so served and the buyer does not perform the conditions and provisions as to which he is in default before the day set for retaking, the holder of the contract may retake said goods and hold such subject to the provisions of subsections (d), (e), (f), (g) and (h) of this section regarding resale, but without any right of redemption." Conn. Gen. Stat. § 36a-785(b)(2013).

#### **STATUTES:**

• Conn. Gen. Stat. (2013)

Chapter 669. Banking Law of Connecticut. Regulated activities

Part XI. Retail installment sales financing

Note: You can visit your local law library or search the most recent statutes and public acts on the Connecticut General Assembly website.

§ 36a-785(b). Foreclosure. Notice of intent to repossess

• Title 42a. Uniform Commercial Code Article 9. Secured Transactions

§ 42a-9-609. Secured party's right to take possession after default. Use of electronic self-help restricted § 42a-9-610. Disposition of collateral after default § 42a-9-614. Contents and form of notification before disposition of collateral: Consumer-goods transaction.

#### **LEGISLATIVE:**

Note: Office of Legislative Research reports summarize and analyze the law in effect on the date of each report's publication. Current law may be different from what is discussed in the reports.

- Daniel Duffy, <u>Redeeming A Repossessed Motor Vehicle</u>, Connecticut General Assembly, Office of Legislative Research, OLR Research Report no. 2002-R-0270 (February 26, 2002).
- Daniel Duffy, <u>Personal Belongings in a Repossessed Motor Vehicle</u>, Connecticut General Assembly, Office of Legislative Research, OLR Research Report no. 2002-R-0308 (March 4, 2002).

#### **CASES:**

Note: Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can contact your local law librarian to learn about the tools available to you to update cases.

- Charter Oak Federal Credit Union v. Ladner et. al., Superior Court, Judicial District of Middlesex, No. CV10-6003853 (Sept. 19, 2011), 2011 WL 4716322. "The defendants have also admitted that the plaintiff sent them and they received a Notice of Intention to Repossess, a copy of which is attached to the complaint..."
- Moye v. Credit Acceptance Corp., Superior Court, No. X01-99-0157073 (Nov. 3, 2000), 2000 WL 1820617. "In Count One, plaintiffs . . . allege both that the post-repossession notice CAC provided to them violated RISFA by stating that the plaintiffs must pay the accelerated debt plus repossession costs and storage charges in order to redeem their vehicles. RISFA, at § 36a-785 (b), does not require a pre-repossession notice to the retail buyer but makes provision of such a notice discretionary with the holder of the contract: 'Not less than ten days prior to the retaking, the holder of such contract, IF HE SO DESIRES, MAY serve upon the retail buyer . . . a notice of intention to retake the goods . . .' Failure to provide such a notice is therefore not a violation of RISFA. The plaintiffs have alleged the lack of such a notice apparently only as preamble to the allegation of a violation of a requirement that applies where a holder has elected not to provide prior notice of a repossession."
- <u>Cadle Co. v. Prodoti</u>, 45 Conn. Supp. 325, 326, 716 A.2d 965 (1998). On November 8, 1991, the bank wrote to Prodoti informing him that he owed \$661.66 and that it intended to repossess his automobile unless he paid that sum by November 18, 1991. It further informed him that if repossession occurred, the property would be sold at

private sale pursuant to General Statutes (Rev. to 1991) § 42-98 (now Conn. Gen. Stat. § 36a-785) and that he would be responsible for any deficiency pursuant to § 42-98 (g). Prodoti made no payment, and the bank repossessed the automobile. (The actual repossession date does not appear in the documents submitted by the parties.) The automobile was sold on February 20, 1992, leaving a deficiency balance allegedly owed by Prodoti."

#### WEST KEY NUMBERS:

• Secured Transactions

# 228. Possession by secured party

#### **DIGESTS:**

- <u>Dowling's Digest</u>: Secured Transactions
  - 1. Introduction
  - 2. What constitutes
  - 3. Validity and operation
  - 4. Rights and remedies of buyer and seller

#### **ENCYCLOPEDIAS:** •

- 68A <u>Am. Jur. 2d</u> Secured Transactions (2003).
   § 546. Creditor's right to take possession generally
- 79 <u>C.J.S.</u> Secured Transactions (2006).
   §§ 178-233. Default and enforcement

# TEXTS & TREATISES:

- <u>National Consumer Law Center, Repossessions</u> (8<sup>th</sup> ed. 2013).
- Edward A. Weiss et al., Connecticut Secured Transactions
   Under Revised Article 9 Of The Uniform Commercial Code
   (2011).

#### **LAW REVIEWS:**

Henry Barkhausen, *Regulating in the Shadow of the U.C.C.: How Courts Should Interpret State Consumer Protection Laws*, 119 Yale L.J. 1329 (2010).

### Section 4: Redemption

A Guide to Resources in the Law Library

#### SCOPE:

 Bibliographic resources relating to redemption under Article 9 of the Uniform Commercial Code as adopted by Connecticut and under the Connecticut Retail Installment Sales Financing Act (RISFA).

#### TREATED ELSEWHERE: SEE ALSO:

- Section 2: Default and Repossession
- Repossession in Connecticut
  (Informational material provided by the 2-1-1 eLibrary)

#### **DEFINITIONS:**

- Applicability of Uniform Commercial Code: "A transaction subject to sections 36a-770 to 36a-788 (RISF), inclusive...is also subject to the Uniform Commercial Code, title 42a, but in case of any conflict the provisions of sections 36a-770 to 36a-788, inclusive, ...shall control." Conn. Gen. Stat. § 36a-770 (a) (2013).
- "Provisions of redemption are designed to avoid forfeiture
  of the amount paid by the conditional vendee and prevent
  unjust enrichment of the vendor on terms fair to both."

  <u>Auto Acceptance Corporation v. Veneziano</u>, 2 Conn. Cir. Ct.
  708, 713, 205 A.2d 788, cert. den. 152 Conn. 729 (1964).
- **Redemption**: "If the holder of such contract does not give the notice of intention to retake, described in subsection (b), he shall retain such goods for fifteen days after the retaking within the state in which they were located when retaken. During such period the retail buyer, upon payment or tender of the unaccelerated amount due under such contract at the time of retaking and interest, or upon performance or tender of performance of such other condition as may be named in such contract as precedent to the retail buyer's continued possession of such goods, or upon performance or tender of performance of any other promise for the breach of which such goods were retaken, and upon payment of the actual and reasonable expenses of any retaking and storing, may redeem such goods and become entitled to take possession of the same and to continue in the performance of such contract as if no default had occurred." Conn. Gen. Stat. § 36a-785(c) (2013).
- Curing the default: "This period of fifteen days (ten days in New York and New Jersey) is a grace period in which the buyer may cure his default." <u>Auto Acceptance Corporation v. Veneziano</u>, 2 Conn. Cir. Ct. 708, 713, 205 A.2d 788, cert. den. 152 Conn. 729 (1964).

- Computation: "In the computation of the fifteen-day retention period, the day of the taking must be excluded and the last day included; the must fully expire before a sale may be had; the buyer has until midnight of the fifteenth day in which to redeem; the statute requires the seller to retain the goods 'for fifteen days' not 'until the fifteenth day." Ibid., p.712
- 3 days after retaking: "The holder of such contract shall within three days of the retaking furnish or mail, by registered or certified mail, to the last known address of the buyer a written statement of the unaccelerated sum due under such contract and the actual and reasonable expense of any retaking and storing. For failure to furnish or mail such statement as required by this section, the holder of the contract shall forfeit the right to claim payment for the actual and reasonable expenses of retaking and storage, and also shall be liable for the actual damages suffered because of such failure."

Conn. Gen. Stat. § 36a-785(c)(2013).

- Perishable goods: "If such goods are perishable so that retention for fifteen days as herein prescribed would result in their destruction or substantial injury, the provisions of this subsection shall not apply and the holder of the contract may resell the goods immediately upon such retaking." Conn. Gen. Stat. § 36a-785(c)(2013).
- Conn. Gen. Stat. (2013)

Chapter 669. Banking Law of Connecticut. Regulated activities

Part XI. Retail installment sales financing

§ 36a-770 (As amended by Public Act 11-108, Sec. 28, January 2011 Regular Session, effective July 1, 2013). Applicability of Uniform Commercial Code. Filing and recording. Definitions

§ 36a-785. Foreclosure

- (a). Repossession
- (c). Redemption
- (d). Compulsory resale
- (e). Proceeds of resale
- (f). Deficiency on resale
- (g). Fair market value
- (h). Election of remedies
- (i). Recovery of part payments
- (j). Waiver of statutory protection
- (k). Loss

§ 36a-786. Recovery of charges barred by wilful violations

§ 36a-787. Penalty

§ 36a-788. Enforcement action

#### STATUTES:

Note: You can visit your local law library or search the most recent statutes and public acts on the Connecticut General Assembly website to confirm that you are using the most upto-date statutes.

• Conn. Gen. Stat. (2013)

Title 42a. Uniform Commercial Code

Article 9. Secured Transactions

§ 42a-9-609. Secured party's right to take possession

after default. Use of electronic self-help restricted.

§ 42a-9-610. Disposition of collateral after default

§ 42a-9-611. Notification before disposition of collateral

#### LEGISLATIVE:

Note: Office of Legislative Research reports summarize and analyze the law in effect on the date of each report's publication.

 Daniel Duffy, <u>Redeeming A Repossessed Motor Vehicle</u>, Connecticut General Assembly, Office of Legislative Research, OLR Research Report no. 2002-R-0270 (February 26, 2002).

#### **CASES:**

Note: Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can contact your local law librarian to learn about the tools available to you to update cases.

Connecticut Bank & Trust Co. v. Incendy, 207 Conn. 15, 23, 540 A.2d 32 (1988). "The basic rationales for these holdings are that (a) the mandatory nature of the notice provisions of 9-504 (3) [now Conn. Gen. Stat. 42a-9-611] of the Uniform Commercial Code require that when a creditor elects the remedy of repossession and subsequent sale, it is the creditor's obligation to notify the debtor and it is the creditor's burden to establish the reasonableness of such notice, and (b) the notice provisions were specifically adopted for the benefit of the debtor, to protect the debtor's interest in his statutory right to redeem the collateral, thereby helping to ensure that the best possible price will be obtained for the collateral, that the sale will be conducted in a commercially reasonable manner, and that the debtor will immediately be placed on notice of the possibility of a deficiency for which he may ultimately be held liable."

WEST KEY NUMBERS: Secured Transactions
 § 241. Redemption of collateral

**DIGESTS:** 

<u>Dowling's Digest</u>: Secured Transactions
 4. Rights and remedies of buyer and seller

#### **ENCYCLOPEDIAS:**

68A <u>Am. Jur. 2d</u> Secured Transactions (2003).

§§ 523-**528**. Debtor's right to redeem collateral

§ 523. Generally

§ 524. Scope of rights of redemption of collateral

§ 525. Time for redemption of collateral

§ 526. Tender of payment

§ 527. —Excuse of failure to tender payment

§ 528. Waiver of debtor's right to redeem

• 79 <u>C.J.S.</u> Secured Transactions (2006).

§ 226. Redemption of collateral

# TEXTS & TREATISES:

<u>National Consumer Law Center, Repossessions</u> (8<sup>th</sup> ed. 2013).

Chapter 4. Default as Precondition to Seizure

§ 4.2. Limits on default and acceleration

§ 4.5. The right to cure a default

§ 4.5.2. State statutory rights to cure

§ 4.5.2.2. The notice requirement

Chapter 9. Disposition of repossessed collateral other than

# by creditor's sale: Reinstatement, redemption, strict foreclosure, sheriff's sale, and consumer's sale

§ 9.3. Redemption of collateral

§ 9.3.1. Nature, advantages, and disadvantages of redemption

§ 9.3.2. Absolute right until disposition

§ 9.3.3. Debtor's continued ownership of the collateral during the redemption period.

§ 9.3.4. Who can redeem

§ 9.3.5. Notice of right to redeem

§ 9.3.6. Determination of redemption amount

§ 9.3.7. Tender

§ 9.3.8. Remedies for secured party's violation of redemption rights

§ 9.3.9. Waiver

Edward A. Weiss et al., Connecticut Secured Transactions
 Under Revised Article 9 Of The Uniform Commercial Code
 (2011).

§ 11.19. Right of redemption

#### **LAW REVIEWS:**

 Henry Barkhausen, Regulating in the Shadow of the U.C.C.: How Courts Should Interpret State Consumer Protection Laws, 119 Yale L.J. 1329 (2010).

### Section 5: Resale of Goods

A Guide to Resources in the Law Library

#### SCOPE:

 Bibliographic resources relating to resale of goods and dispossession of collateral under Article 9 of the Uniform Commercial Code as adopted by Connecticut and under the Connecticut Retail Installment Sales Financing Act (RISFA).

#### **DEFINITIONS:**

- Applicability of Uniform Commercial Code: "A transaction subject to sections 36a-770 to 36a-788 (RISF), inclusive...is also subject to the Uniform Commercial Code, title 42a, but in case of any conflict the provisions of sections 36a-770 to 36a-788, inclusive, ...shall control." Conn. Gen. Stat. § 36a-770 (a) (2013).
- Compulsory sale on self-help repossession: "If the retail buyer does not redeem such goods within fifteen days after the holder of the contract has retaken possession, the holder of the contract shall sell such goods at public or private sale which sale may be held not less than fifteen days and shall be held not more than one hundred eighty days after the retaking." Conn. Gen. Stat. § 36a-785(d) (2013).
- Compulsory sale on repossession by legal process:
  "When the holder of the contract retakes possession by legal process, and an answer is interposed, the holder of the contract may, at his election, hold such retaken goods for a period not to exceed thirty days after the entry of final judgment by a court of competent jurisdiction entitling the holder of the contract to possession of such goods before holding such resale." Conn. Gen. Stat. § 36a-785(d) (2013).
- Notice of sale: "The holder of the contract shall give the retail buyer not less than ten days' written notice of the time and place of any public sale, or the time after which any private sale or other intended disposition is to be made, either personally or by registered mail or by certified mail receipted for on mailing directed to the retail buyer at his last-known place of business or residence. The holder of the contract may bid for such goods at any public sale." Conn. Gen. Stat. § 36a-785(d) (2013).

#### **FORMS:**

 Contents and form of notification before disposition of collateral: Consumer-goods transaction. Conn. Gen. Stat. § 42a-9-614 (2013).

#### **STATUTES**:

Conn. Gen. Stat. (2013)
 Chapter 669. Banking Law of Connecticut. Regulated activities
 Part XI. Retail installment sales financing

Note: You can visit your local law library or search the most recent statutes and public acts on the Connecticut General Assembly website to confirm that you are using the most upto-date statutes.

§ 36a-770 (As amended by Public Act 11-108, Sec. 28, January 2011 Regular Session, effective July 1, 2013). Applicability of Uniform Commercial Code. Filing and recording. Definitions

§ 36a-785. Foreclosure

- (d). Compulsory resale
- (e). Proceeds of resale
- Conn. Gen. Stat. (2013)

Title 42a. Uniform Commercial Code

Article 9. Secured Transactions

§ 42a-9-614. Contents and form of notification before disposition of collateral: Consumer-goods transaction § 42a-9-616. Explanation of surplus or deficiency § 42a-9-620 (e), (f), (g), (h). Acceptance of collateral in full or partial satisfaction or obligation. Compulsory disposition of collateral § 42a-9-625. Remedies for secured party's failure to

§ 42a-9-625. Remedies for secured party's failure to comply with this article

§ 42a-9-626 (b). Action in which deficiency or surplus is in issue

#### **LEGISLATIVE:**

Note: Office of Legislative Research reports summarize and analyze the law in effect on the date of each report's publication.

 Daniel Duffy, <u>Redeeming A Repossessed Motor Vehicle</u>, Connecticut General Assembly, Office of Legislative Research, OLR Research Report no. 2002-R-0270 (February 26, 2002).

#### FORMS:

#### CASES:

Note: Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can contact your <u>local law librarian</u> to learn about the tools available to you to update cases.

- Complaint To Enjoin Sale, Appendix D.3, National Consumer Law Center, Repossessions (8<sup>th</sup> ed. 2013).
- Mountain States Adjustment A Division of MS Services, LLC v. Lindeborn, Superior Court, Judicial District of Waterbury, No. UWY CV10-6005965S (June 25, 2013), 2013 WL 3615669. "...Pursuant to RISFA [Retail Installment Sales Finance Act], such transactions are also subject to the Uniform Commercial Code, title 42a. See General Statutes § 36a-770(a). General Statutes § 42a-9-610 (b), provides, in relevant part, '[e]very aspect of a disposition of collateral, including the method, manner, time, place and other terms, must be commercially reasonable.'

Proof of commercial reasonableness 'generally requires evidence of such things as the amount of advertising done, the number of people contacted, normal commercial practices in disposing of particular collateral, the length of time between the repossession and the sale, whether any deterioration on the collateral has occurred, the number of bids received, and the price obtained.' (Internal quotation

marks omitted.) *Gaynor v. Union Trust Co. supra*, 216 Conn. At 478, 582 A.2d 190..."The reasonableness of a commercial resale is ordinarily a question of fact." Id.

- Mack Financial Corporation v. Crossley, 209 Conn. 163, 166, 550 A.2d 303 (1988). "For entirely consumer transactions, by contrast, Connecticut case law has assigned a more serious consequence to a failure to give the notification of sale that 42-98 (d) [now 36a-785(d)] makes a procedural requirement. We must bear in mind that we are dealing with consumer legislation, whose interpretation is to be guided by its remedial purpose of protection for retail buyers."
- Elm Buick Co. v. Moore, 150 Conn. 631, 633-634, 192 A.2d 638 (1963). "The defendant claims that the quoted provision of 42-98 (d) as to notice required that the written notice actually be received by him and that since it was not, he is not liable for any deficiency judgment.

The disjunctive phrase "or by" in 42-98 (d) clearly expresses a legislative intention that there shall be two separate methods of giving to the retail buyer written notice of a proposed resale of his car after a repossession because of a default in installment payments. The notice may be given personally wherever the buyer is found. It may also be given by registered or certified mail directed to the buyer at his last-known place of business or residence. Thus, the statute, by its express terms, provides that either method may be used at the option of the holder of the installment contract."

# WEST KEY NUMBERS:

- Secured Transactions
  - # 229. Dispossession of collateral
  - # 229.1. In general
  - # 230. Notice
  - # 231. Manner of disposition in general
  - # 232. Public or private sale
  - # 233. Purchase by secured party
  - # 234. Effect of disposition
  - # 235. Title and rights of purchaser
  - # 236. Setting aside
  - # 237. Application of proceeds
  - # 238. Compulsory disposition

#### **DIGESTS:**

- West's Connecticut Digest: Secured Transactions
  - VII. Default and Enforcement
    - §§229-238. Disposition of Collateral
- Dowling's Digest: Secured Transactions
  - 4. Rights and remedies of buyer and seller

#### **ENCYCLOPEDIAS:** •

68A <u>Am. Jur. 2d</u> <u>Secured Transactions</u> (2003).
 §§ 580-658. Right to dispose of collateral; Effect of

#### disposition

- 79 <u>C.J.S.</u> Secured Transactions (2006).
   §§ 201-218. Nonjudicial disposition of collateral by secured party
- Richard C. Tinney, Annotation, Failure Of Secured Party To Make "Commercial Reasonable" Disposition Of Collateral Under UCC § 9-504(3) As Bar To Deficiency Judgment, 10 ALR4th 413 (1981).
- Cause Of Action By Secured Creditor Under UCC § 9-504 To Recover Deficiency Following Repossession And Disposition Of Collateral, 12 COA 77 (1987).
  - § 11. Compliance with UCC § 9-504(3). Generally
  - § 12. Notice of disposition of collateral
  - § 13. —Content of notification
  - § 14. —Manner of notification
  - § 15. —Time of notification
  - § 16. —Right to sell without notification
  - § 17. Commercial reasonable disposition
  - § 18. —Method of disposition
  - § 19. —Manner of disposition
  - § 20. —Time of disposition
  - § 21. —Place of disposition
  - § 22. —Terms of disposition
  - § 23. —Other ways of showing commercial reasonableness
  - § 24. Rebutting presumption that deficiency resulted from noncompliance
  - § 25. Debtor's waiver of rights
  - § 26. Recovery from party secondarily liable. Generally
- Annotation, Construction Of Term "Debtor" As Used In UCC § 9-504(3), Requiring Secured Party To Give Notice To Debtor Of Sale Of Collateral Securing Obligation, 5 ALR4th 1291 (1981).
- Boyd J. Peterson, Annotation, Secured Transactions: What Is "Public" Or "Private" Sale Under UCC § 9-504(3), 60 ALR4th 1012 (1988).
- Richard C. Tinney, Annotation, Sufficiency Of Secured
   Party's Notification Of Sale Or Other Intended Disposition Of Collateral Under UCC § 9-504(3), 11 ALR4th 241 (1982).

# TEXTS & TREATISES:

<u>National Consumer Law Center, Repossessions</u> (8<sup>th</sup> ed. 2013).

#### Chapter 10. Creditor's sale of the collateral

- § 10.1. Creditor must sell, lease or otherwise dispose of collateral
- § 10.2. Commercial reasonableness standard
- § 10.3. Creditor's duties toward collateral

- § 10.4. Notice of sale
- § 10.5. Timing of sale
- § 10.6. Public versus private sale
- § 10.7. Requirements for a commercially reasonable sale
- § 10.8. Sale price and commercial reasonableness
- § 10.9. Purchase by creditor
- § 10.10. Wholesale disposition
- § 10.11. "Churning": revolving repossession schemes
- § 10.12. Rights of purchasers at repossession sales
- Edward A. Weiss et al., Connecticut Secured Transactions
  Under Revised Article 9 Of The Uniform Commercial Code
  (2011).

#### **LAW REVIEWS:**

Henry Barkhausen, *Regulating in the Shadow of the U.C.C.:*How Courts Should Interpret State Consumer Protection

Laws, 119 Yale L.J. 1329 (2010).

### Section 6: Action to Recover Deficiency

A Guide to Resources in the Law Library

#### SCOPE:

 Bibliographic resources relating to resale and an action to recover deficiency under Article 9 of the Uniform Commercial Code as adopted by Connecticut and under the Connecticut Retail Installment Sales Financing Act (RISFA).

#### **SEE ALSO:**

• Repossession in Connecticut

#### **DEFINITIONS:**

- Applicability of Uniform Commercial Code: "A transaction subject to sections 36a-770 to 36a-788 (RISF), inclusive...is also subject to the Uniform Commercial Code, title 42a, but in case of any conflict the provisions of sections 36a-770 to 36a-788, inclusive, ...shall control." Conn. Gen. Stat. § 36a-770 (a) (2013).
- "'Since RISFA is a remedial statute, [the court] must construe it liberally in order to implement its consumer protection policies.' Barco Auto Leasing Corp. v. House, 202 Conn. 106, 116, 520 A.2d 162 (1987). 'In consumer transactions, strict compliance with statutory provisions that prescribe the informational content of retail instalment contracts is mandatory and is not excused by inadvertence.' Gaynor v. Union Trust Co., 216 Conn. 458, 475, 582 A.2d 190 (1990)." Condor Capital Corp v. Faust, Superior Court, Judicial District of Fairfield at Bridgeport, No. CV99-036 04 61 (Aug. 25, 2000), 2000 Ct. Sup. 9808.
- **Deficiency on resale:** "Notwithstanding that the proceeds of the resale are not sufficient to defray the actual and reasonable expenses thereof, and also such actual and reasonable expenses of any retaking and storing of such goods and the balance due under the contract, the holder of the contract may not recover the deficiency from the retail buyer or any surety or guarantor for him, or from any one who has succeeded to the obligations of such retail buyer, **except** . . . [for **motor vehicle** or **boat**, the aggregate cash price of which was **more than two thousand dollars**. ]" **Conn. Gen. Stats**. § 36a-785(f) (2013). [emphasis added; see below].
- Fair market value. "If the goods retaken consist of a motor vehicle the aggregate cash price of which was more than two thousand dollars, the prima facie fair market value of such motor vehicle shall be calculated by adding together the average trade-in value for that motor vehicle and the average retail value for that motor vehicle and dividing that sum by two. Such average trade-in value and average retail value shall be determined by the values as stated in the National Automobile Dealers Association Used Car Guide, Eastern Edition, as of the date of repossession. If the goods

retaken consist of a **boat** the aggregate cash price of which was more than two thousand dollars, the prima facie fair market value of such boat shall be calculated by adding together the average trade-in value for that boat and the average retail value for that boat and dividing that sum by two. Such average trade-in value and average retail value shall be determined by the values as stated in the National Automobile Dealers Association Appraisal Guide for Boats, Eastern Edition, as of the date of repossession. In the event that the value of such motor vehicle or boat is not stated in such publication, then the fair market value at retail minus the reasonable costs of resale shall be determined by the court. The prima facie evidence of fair market value of such motor vehicle or boat so determined may be rebutted only by direct in-court testimony. If such value of the motor vehicle or boat is less than the balance due under the contract, plus the actual and reasonable expenses of the retaking of possession, the holder of the contract may recover from the retail buyer, or from anyone who has succeeded to his obligations, as a deficiency, the amount by which such liability exceeds such fair market value, as defined in this subsection. If the actual resale price received by the holder exceeds such fair market value, as defined in this subsection, the actual resale price shall govern." Gen. Stats. § 36a-785(g) (2013). [emphasis added]

judgment on the contract against the buyer unless the goods have been repossessed, with or without judicial process. Goods purchased under the contract shall not be executed upon to satisfy such judgment. When such judgment becomes final, the holder's security interest in the good shall be extinguished." Gen. Stats. § 36a-785(h) (2013).

#### **STATUTES**:

Note: You can visit your local law library or search the most recent statutes and public acts on the Connecticut General Assembly website to confirm that you are using the most upto-date statutes.

Conn. Gen. Stat. (2013)

Chapter 669. Banking Law of Connecticut. Regulated activities

Part XI. Retail installment sales financing § 36a-770 (As amended by Public Act 11-108, Sec. 28, January 2011 Regular Session, effective July 1, 2013).

Applicability of Uniform Commercial Code. Filing and recording. Definitions

§ 36a-785. Foreclosure

- (d). Compulsory resale
- (e). Proceeds of resale
- (f). Deficiency on resale
- (g). Fair market value
- (h). Election of remedies
- (i). Recovery of part payments
- (j). Waiver of statutory protection
- (k). Loss

§ 36a-786. Recovery of charges barred by wilful violations

§ 36a-787. Penalty

§ 36a-788. Enforcement action

• Conn. Gen. Stat. (2013)

Title 42a. Uniform Commercial Code

Article 9. Secured Transactions

§ 42a-9-610. Disposition of collateral after default

§ 42a-9-616. Explanation of surplus or deficiency

§ 42a-9-620 (e), (f), (g), (h). Acceptance of collateral in full or partial satisfaction or obligation. Compulsory

disposition of collateral

§ 42a-9-625. Remedies for secured party's failure to

comply with this article

§ 42a-9-626 (b). Action in which deficiency or surplus is in issue

§ 42a-9-627. Determination of whether conduct was commercially reasonable

#### FORMS:

- Sample Complaint, Cause Of Action By Secured Creditor Under UCC § 9-504 To Recover Deficiency Following Repossession And Disposition Of Collateral, 12 COA 77 § 52 (1987).
- Sample Answer And Counterclaims To Deficiency Action, Appendix D.1, National Consumer Law Center, Repossessions (8<sup>th</sup> ed. 2013).
- Additional Counterclaims and Defenses Based on UCC Section 9-615(f), Appendix D.2, National Consumer Law Center, Repossessions (8th ed. 2013).

#### CASES:

Note: Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can contact your local law librarian to learn about the tools available to you to update cases.

Sikorsky Financial Credit Union, Inc. v. Butts, 144 Conn. App. 755, 758, 760, 762, 75 A.3d 700 (2013). "After the defendant failed to pay the amount of the deficiency, the plaintiff filed suit for a deficiency judgment plus interest, reasonable attorney's fees and costs of suit."

"In this case, the contract between the parties provides for an 'annual percentage rate...of 9.14 percent. In its grant of prejudgment interest, the court awarded interest pursuant to § 37-1 at the rate of 9.14 percent, as contemplated under the contract. The contract does not, however, explicitly address postjudgment interest. Accordingly it was reasonable for the court to conclude that the rate of 9.14 percent applied only to prejudgment interest."

"Having decided that it could properly consider the issue of postjudgment interest under § 37-3(a), and not § 37-1, the court exercised its discretion to grant postjudgment interest at the rate of 2 percent pursuant to that statute. 'A decision to deny or grant postjudgment interest is primarily an

equitable determination and a matter lying within the discretion of the trial court."

Mountain States Adjustment A Division of MS Services, LLC v. Lindeborn, Superior Court, Judicial District of Waterbury, No. UWY CV10-6005965S (June 25, 2013), 2013 WL 3615669. "The Coachman was sold at auction ...for \$26,000. BOW received the net sum of \$24,477.59...By deficiency notice,...BOW demanded payment from the defendant in the amount of \$35,906.35."

"The defendant contends that the plaintiff has not met its burden to prove the amount of the debt, noting the net amount recovered in January 2009, \$24,477.59, compared with the July 2007 sale price of \$61,426.40."

"General Statutes § 42a-9-610(b), provides, in relevant part, '[e]very aspect of a disposition of collateral, including the method, manner, time, place and other terms, must be commercially reasonable."

- United Shoreline F.C.U. v. Sanchez, et. al., Superior Court, Judicial District of New Haven, No. CV10-6001828S (April 14, 2011), 2011 WL 1758964. "Simply put, there is nothing in the plain language of § 36a-785 that denies a deficiency judgment when there has been a voluntary surrender of a motor vehicle. Indeed, 'voluntary surrender of a vehicle by a buyer in default may constitute a repossession by the holder of a retail [installment] contract." A-1 Auto Service, Inc. v. Horkavy, Superior Court, Judicial District of New Haven, No. CV96-0392187 (May 24, 2001).
- Condor Capital Corp v. Faust, Superior Court, Judicial District of Fairfield at Bridgeport, No. CV99-036 04 61 (Aug. 25, 2000), 2000 Ct. Sup. 9808. "The sole issue before the court is whether the plaintiff complied with the provisions of the Retail Instalment Sales Financing Act (RISFA), General Statutes § 36a-770 et seq., thereby entitling it to recover a deficiency, pursuant to § 36a-785 (g).

#### WEST KEY NUMBERS:

Secured Transactions# 240. Deficiency and personal liability

#### **DIGESTS:**

- West's Connecticut Digest: Secured Transactions
   VII. Default and Enforcement
   §240. Deficiency and personal liability
   §241. Redemption of collateral
- <u>Dowling's Digest</u>: Secured Transactions
   4. Rights and remedies of buyer and seller

- **ENCYCLOPEDIAS:** 68A Am. Jur. 2d *Secured Transactions* (2003). §§ 649-658. Debtor's liability for deficiency; Deficiency judgment
  - 79 C.J.S. Secured Transactions (2006). §§ 223-226. Deficiency and personal liability: redemption of collateral
  - Richard C. Tinney, Annotation, Failure Of Secured Party To Make "Commercial Reasonable" Disposition Of Collateral Under UCC § 9-504(3) As Bar To Deficiency Judgment, 10 ALR4th 413 (1981).
  - Cause Of Action By Secured Creditor Under UCC § 9-504 To Recover Deficiency Following Repossession And Disposition Of Collateral, 12 COA 77 (1987).
  - Caroline Zane, Annotation, UCC: Value Of Trade-In Taken On Sale Of Collateral For Purposes Of Computing Surplus Or Deficiency, 72 ALR4th 1128 (1989).

#### **TEXTS &** TREATISES:

National Consumer Law Center, Repossessions (8th ed. 2013).

Chapter 11. Determining the deficiency or surplus

§ 11.1. General rules regarding deficiency or surplus

§ 11.2. Deficiency or surplus calculation must be explained to consumer.

§ 11.3. Calculating the deficiency or surplus

Chapter 12. Defending a deficiency action

§ 12.1. Introduction

§ 12.2. Creditor's right to a deficiency

§ 12.3. No deficiency when underlying debt is extinguished

§ 12.4. State anti-deficiency statutes

§ 12.5. Creditor's action may amount to strict

foreclosure and preclude a deficiency

§ 12.6. Defective disposition as defense to deficiency action

§ 12.7. Statute of limitations for creditor's deficiency claim

§ 12.8. Procedural defenses and state notice requirements

§ 12.9. Cosigners and other sureties' defenses to deficiency action

§ 12.10. Raising defenses to FDIC or RTC deficiency actions

Edward A. Weiss et al., Connecticut Secured Transactions Under Revised Article 9 Of The Uniform Commercial Code (2011).

#### **LAW REVIEWS:**

 Henry Barkhausen, Regulating in the Shadow of the U.C.C.: How Courts Should Interpret State Consumer Protection Laws, 119 Yale L.J. 1329 (2010).

### Section 7: Defenses to Repossessions

A Guide to Resources in the Law Library

#### SCOPE:

 Bibliographic resources relating to defenses of both debtor and creditor in repossessions under Article 9 of the Uniform Commercial Code as adopted by Connecticut and under the Connecticut Retail Installment Sales Financing Act (RISFA).

#### **SEE ALSO:**

• Repossession in Connecticut

#### **DEFINITIONS:**

- Applicability of Uniform Commercial Code: "A transaction subject to sections 36a-770 to 36a-788 (RISF), inclusive...is also subject to the Uniform Commercial Code, title 42a, but in case of any conflict the provisions of sections 36a-770 to 36a-788, inclusive, ...shall control." Conn. Gen. Stat. § 36a-770 (a) (2013).
- Violations: "The issue before the court is whether the defendant, who has violated General Statutes § 42-98 [now 36a-785] of the Retail Installment Sales Financing Act (RISFA) and General Statutes § 42a-9-504 of the Uniform Commercial Code (UCC), must pay damages under each statute to the injured plaintiff. We conclude that, because the remedies are not explicitly exclusive, there is no conflict between the two provisions. Accordingly, both must be given concurrent effect and cumulative remedies must be awarded." Jacobs v. Healey Ford-Subaru, Inc., 231 Conn. 707, 708-711, 652 A.2d 496 (1995).
- Commercially unreasonable disposition of collateral: "Every aspect of a disposition of collateral, including the method, manner, time, place and other terms, must be commercially reasonable. If commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms." Conn. Gen. Stat. § 42a-9-610(b) (2013).
- Recovery of part payments: "If the holder of the contract fails to comply with the provisions of [§§ 36a-785] (c), (d), (e), (f), (g) and (h), after retaking the goods, the retail buyer may recover from the holder of the contract his actual damages, if any, and in no event less than one-fourth of the sum of all payments which have been made under the contract." Conn. Gen. Stat. § 36a-785(i) (2013).
- No waiver of statutory protection: "No act or agreement of the retail buyer before or at the time of the making of a retail installment contract or installment loan contract nor any agreement or statement by the retail buyer in such contract shall constitute a valid waiver of the provisions of subsections [§§ 36a-785] (c), (d), (e), (f),

#### (g). (h) and (i)." Conn. Gen. Stat. § 36a-785 (2013).

#### STATUTES:

Note: You can visit your local law library or search the most recent statutes and public acts on the Connecticut General Assembly website to confirm that you are using the most upto-date statutes.

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• Conn. Gen. Stat. (2013)
    Chapter 669. Banking Law of Connecticut. Regulated
    activities
    Part XI. Retail installment sales financing
      § 36a-770 (As amended by Public Act 11-108, Sec. 28,
     January 2011 Regular Session, effective July 1, 2013).
      Applicability of Uniform Commercial Code. Filing and
      recording. Definitions
      § 36a-771. General contract requirements
      § 36a-774. Installment loan contract requirements
      § 36a-775. Confession of judgment provision invalid
      § 36a-776. Inclusion of other goods in contract void
      § 36a-777. Acknowledgment of receipt of notice and
      statement
      § 36a-778. Delinquency and collection charges
      § 36a-779. Assignment of contract
      § 36a-780. Payments after assignment
      § 36a-781. Statement of payments made. Receipts
      § 36a-782. Cancellation of contract on payment in full
      § 36a-783. Rebate and refund upon prepayment of
      contract
      § 36a-784. Renewals and extensions
      § 36a-785. Foreclosure
      (d). Compulsory resale
      (e). Proceeds of resale
      § 36a-786. Recovery of charges barred by wilful
```

Conn. Gen. Stat. (2013)

§ 36a-787. Penalty

violations

Title 42a. Uniform Commercial Code

§ 36a-788. Enforcement action

Article 9. Secured Transactions

§ 42a-9-602. Waiver and variance of rights and duties § 42a-9-609. Secured party's right to take possession after default. Use of electronic self-help restricted § 42a-9-610. Disposition of collateral after default § 42a-9-627. Determination of whether conduct was

commercially reasonable

#### **FORMS:**

- 2 Joel M. Kaye and Wayne D. Effron, Connecticut Practice Series, Connecticut Civil Practice Forms (4th ed. 2004). Form 304.65 (Complaint) Against secured party, after disposition of collateral.
- Sample answer and counterclaims, complaint to enjoin sale; section 1983 complaint. Appendix D, National Consumer Law Center, Repossessions (8<sup>th</sup> ed. 2013).
- Sample Automobile Repossession Discovery and Request For Admissions, Appendix E, National Consumer Law

Center, Repossessions (8<sup>th</sup> ed. 2013).

- Sample first set of interrogatories, Appendix E.1, National Consumer Law Center, Repossessions (8th ed. 2013).
- Sample Document Request, Appendix E.2, National Consumer Law Center, Repossessions (8<sup>th</sup> ed. 2013).
- Sample Supplemental Interrogatories for Dealer Only Auto Auction, Appendix, E.3, National Consumer Law Center, Repossessions (8<sup>th</sup> ed. 2013).
- Sample Second Document Request, Appendix E.4, National Consumer Law Center, Repossessions (8th ed. 2013).
- Sample Request for Admissions Regarding Vehicle Valuation, Appendix E.5, National Consumer Law Center, Repossessions (8<sup>th</sup> ed. 2013).

The court also determined that the \$700 fee itself was unlawfully inflated and that the fee actually incurred was \$350. At trial, the parties stipulated that Mackeyboy Auto did not provide an executed retail installment sales contract to either of the plaintiffs."

- Thorne et. al. v. Mackeyboy Auto, LLC et. al., Superior Court, Judicial District of New Haven at New Haven, No. CV 11-6017210S (Oct. 11, 2013), 2013 WL 5879081. "'...the defendants violated RISFA [Retail Installment Sales Financing Act] by: (1) failing to resell the vehicle after retaining the same for fourteen days; and (2) failing to furnish to the buyers, within three days of the re-taking, a written statement for the un-accelerated sum due under such contract (for sale) and the actual and reasonable expense of the re-taking....The court determined that the defendants actually demanded a significantly inflated 'total balance due' of \$5,294, 'plus [a] \$700 repossession fee.'
- Keyes v. Brown, 155 Conn. 469, 473-474, 232 A.2d 486 (1967). "Obviously, the purpose of the contract requirement provisions set forth in 42-84 [now 36a-771] is to protect retail buyers of goods from unknowingly assuming excessive charges by requiring that all charges and terms be fully set forth by the retail seller before the contract is signed by the buyer, and by requiring that the buyer be immediately given a copy of the complete, executed contract . . . . On the basis of the plain purpose of the statute and the language used therein, we construe the contract requirement provisions of this statute to be mandatory."

The Appellate Division correctly concluded that a retail buyer is entitled to seek a rescission of a retail installment contract when the retail seller has not complied with the

#### CASES:

Note: Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can contact your local law librarian to learn about the tools available to you to update cases.

provisions of 42-84 [now 36a-771]. It erred, however, in ordering a rescission of the present contract." Ibid. 476.

WEST KEY NUMBERS: Secured Transactions

# 242. Wrongful enforcement

# 242.1 — In general

# 243. — Damages and amount of recovery

#### **DIGESTS:**

• West's Connecticut Digest: Secured Transactions

VII. Default and Enforcement

§§242-243. Wrongful enforcement

• Dowling's Digest: Secured Transactions

4. Rights and remedies of buyer and seller

#### **ENCYCLOPEDIAS:**

68A <u>Am. Jur. 2d</u> Secured Transactions (2003). §§ 686-**726.** Effect of secured party's failure to comply with code

- Cause Of Action By Secured Creditor Under UCC § 9-504 To Recover Deficiency Following Repossession And Disposition Of Collateral, 12 COA 77 (1987).
  - § 2. Overview of creditor's remedies
  - § 3. Related and alternative actions
  - § 4. —Debtor's action for damages
  - § 27. Defenses
  - § 28. Wrongful repossession and sale
  - § 29. Lack of notice of disposition of collateral
  - § 30. —Untimely notice
  - § 31. —Incomplete or inaccurate notice
  - § 32. Disposition of collateral not commercially reasonable
  - § 33. —Improperly timed sale
  - § 34. —Inadequate public notice or private solicitation
  - § 35. —Self-Dealing or collusive sale
  - § 36. Satisfaction of indebtedness
  - § 37. Other defenses
- Richard C. Tinney, Annotation, Failure Of Secured Party To Make "Commercially Reasonable" Disposition Of Collateral Under UCC § 9-504(3) As Bar To Deficiency Judgment, 10 ALR4th 413 (1981).
- Gary D. Spivey, Annotation, *Uniform Commercial Code: Burden Of Proof As To Commercial Reasonable Disposition Of Collateral*, 59 ALR3d 369 (1974).
- Failure To Act In Commercially Reasonable Manner In Resale Of Goods, 13 POF2d 411 (1977).
- Richard C. Tinney, Annotation, Sufficiency Of Secured
   Party's Notification Of Sale Or Other Intended Disposition Of Collateral Under UCC § 9-504(3), 11 ALR4th 241 (1982).

### TEXTS & TREATISES:

- <u>National Consumer Law Center, Repossessions</u> (8<sup>th</sup> ed. 2013).
  - Chapter 2. Scope and sources of law
    - § 2.5.3.2. Federal civil rights law
  - Chapter 4. Default as precondition to seizure
    - § 4.7. Remedies
  - Chapter 8. Using bankruptcy to prevent repossessions
  - Chapter 13. Affirmative consumer remedies in
  - repossession cases
    - § 13.1. Introduction
    - § 13.2. UCC § 9-625 remedies
    - § 13.2.2. Injunctive relief
    - § 13.2.3. Actual damages
    - § 13.2.4. Statutory damages under UCC § 9-625(c)(2)
    - § 13.2.5. Supplemental \$500 damages for
    - miscellaneous violations
    - § 13.2.6. Class actions, multiple statutory damages, and interrelation with other damage awards
    - § 13.2.7. Barring a deficiency and recovering UCC actual and statutory damages
    - § 13.2.8. Statute of limitations for claims under § 9-625
    - § 13.3. Remedies for violation of UCC's good faith requirement
    - § 13.4. UDAP, RICO and unconscionability
    - § 13.4.5. Unconscionability
    - § 13.5. Laws regulating repossessions, collections, or credit
    - § 13.5.1. The Federal Fair Debt Collection Practice Act
    - § 13.5.2. State debt collection laws
    - § 13.5.3. Truth in Lending
    - § 13.5.4. Remedies under state consumer credit statutes
    - § 13.5.5. State limits on professional repossessors
    - § 13.5.6. State criminal laws
    - § 13.6. Common law tort, replevin, and contract claims
    - § 13.7. Civil rights violations and constitutional remedies
    - § 13.8. U.S. Bankruptcy code
    - § 13.9. Consumer remedies based on claims or counterclaims not related to repossession
    - § 13.10. Creditor defenses
    - § 13.10.1. Debtor's consent as defense to wrongful repossession  $% \left\{ 13.10.1.\right\} =0.001$
    - § 13.10.2. Debtor's contractual waiver of action for wrongful repossession
    - § 13.10.3. Contractual waivers of consumer's right to sue for personal property taken with collateral
    - § 13.10.4. Creditor's liability for the act of repossessors
    - § 13.11. Litigation issues
- Edward A. Weiss et al., Connecticut Secured Transactions
  Under Revised Article 9 Of The Uniform Commercial Code
  (2011).

### **LAW REVIEWS:**

 Henry Barkhausen, Regulating in the Shadow of the U.C.C.: How Courts Should Interpret State Consumer Protection Laws, 119 Yale L.J. 1329 (2010).

### Section 8: Wrongful Repossession

A Guide to Resources in the Law Library

#### SCOPE:

 Bibliographic resources relating to wrongful repossessions and remedies under Article 9 of the Uniform Commercial Code as adopted by Connecticut and under the Connecticut Retail Installment Sales Financing Act (RISFA).

#### **SEE ALSO:**

• Repossession in Connecticut

#### **DEFINITIONS:**

- he Applicability of Uniform Commercial Code: "A transaction subject to sections 36a-770 to 36a-788 (RISF), inclusive...is also subject to the Uniform Commercial Code, title 42a, but in case of any conflict the provisions of sections 36a-770 to 36a-788, inclusive, ...shall control." Conn. Gen. Stat. § 36a-770 (a) (2013).
- Violations: "The issue before the court is whether the defendant, who has violated General Statutes § 42-98 [now 36a-785] of the Retail Installment Sales Financing Act (RISFA) and General Statutes § 42a-9-504 [now Conn. Gen. Stat. 42a-9-610, 611, 615, and 618] of the Uniform Commercial Code (UCC), must pay damages under each statute to the injured plaintiff. We conclude that, because the remedies are not explicitly exclusive, there is no conflict between the two provisions. Accordingly, both must be given concurrent effect and cumulative remedies must be awarded." Jacobs v. Healey Ford-Subaru, Inc.., 231 Conn. 707, 708-711, 652 A.2d 496 (1995).
- Conversion: "The parties in their briefs agree with the definition of conversion as set forth in *Miller v. Guimaraes*, 78 Conn. App. 760, 778 (2003), which is quoted as follows: 'Generally, conversion is an unauthorized assumption and exercise of the right of ownership over goods belonging to another, to the exclusion of the owner's rights..." Rodriguez v. Corona's Auto Parts, Inc., J.D. Hartford, No. HHD CV 09600463 (Jan. 23, 2014), 2014 WL 783747.
- Recovery of part payments: "If the holder of the contract fails to comply with the provisions of [§§ 36a-785] (c), (d), (e), (f), (g) and (h), after retaking the goods, the retail buyer may recover from the holder of the contract his actual damages, if any, and in no event less than one-fourth of the sum of all payments which have been made under the contract." Conn. Gen. Stat. § 36a-785(i) (2013).
- Recovery of charges barred by wilful violations: A wilful violation of any provision of sections 36a-770 to 36a-788, inclusive,...shall bar recovery of any finance, delinquency or collection charge by the owner or holder of the retail installment contract or any interest, delinquency

or collections charge by the owner or holder of an installment loan contract involved, provided such owner or holder approved of or had knowledge of such violation and after such approval or knowledge retained the benefits, proceeds, profits or advantages accruing from such violation..." Conn. Gen. Stat. § 36a-786 (2013).

• **Penalty:** "Any person or any responsible officer, partner, or employee of such person who wilfully and deliberately fails to comply with or violates any of the provisions of sections 36a-770 to 36a-788, inclusive, shall, in addition to the penalty prescribed in 36a-786, be fined not less than twenty-five dollars nor more than five hundred dollars for each offense, except that in the case of a violation by a licensed motor vehicle dealer the penalty provided in section 14-64 shall apply." Conn. Gen. Stat. § 36a-787 (2013).

#### **STATUTES**:

Note: You can visit your local law library or search the most recent statutes and public acts on the Connecticut General Assembly website to confirm that you are using the most upto-date statutes.

• Conn. Gen. Stat. (2013)

Chapter 669. Banking Law of Connecticut. Regulated activities

Part XI. Retail installment sales financing

§ 36a-770 (As amended by Public Act 11-108, Sec. 28, January 2011 Regular Session, *effective July 1, 2013*). Applicability of Uniform Commercial Code. Filing and recording. Definitions

§ 36a-771. General contract requirements

§ 36a-774. Installment loan contract requirements

§ 36a-775. Confession of judgment provision invalid

§ 36a-776. Inclusion of other goods in contract void

§ 36a-777. Acknowledgment of receipt of notice and statement

§ 36a-778. Delinquency and collection charges

§ 36a-779. Assignment of contract

§ 36a-780. Payments after assignment

§ 36a-781. Statement of payments made. Receipts

§ 36a-782. Cancellation of contract on payment in full

§ 36a-783. Rebate and refund upon prepayment of contract

§ 36a-784. Renewals and extensions

§ 36a-785. Foreclosure

(d). Compulsory resale

(e). Proceeds of resale

§ 36a-786. Recovery of charges barred by wilful

violations

§ 36a-787. Penalty

§ 36a-788. Enforcement action

• Conn. Gen. Stat. (2013)

Title 42a. Uniform Commercial Code

Article 9. Secured Transactions

§ 42a-9-602. Waiver and variance of rights and duties

§ 42a-9-609. Secured party's right to take possession

after default. Use of electronic self-help restricted § 42a-9-610. Disposition of collateral after default § 42a-9-627. Determination of whether conduct was commercially reasonable

#### **FORMS:**

• Sample Complaint Alleging Violation of 42 U.S.C. § 1983, Conversions, and Breach of Peace, Appendix D.4, National Consumer Law Center, Repossessions (8<sup>th</sup> ed. 2013).

# CONNECTICUT SUPREME COURT RECORDS & BRIEFS:

- <u>Sample 1</u>: Second revised complaint (plaintiff)
   <u>Jacobs v. Healey Ford-Subaru, Inc...</u>, 231 Conn. 707 (1995)
- <u>Sample 2</u>: Answer to second revised complaint (defendant)
   <u>Jacobs v. Healey Ford-Subaru, Inc...</u>, 231 Conn. 707
   (1995)
- <u>Sample 3</u>: Answer to counterclaim
   <u>Jacobs v. Healey Ford-Subaru, Inc..., 231 Conn. 707</u> (1995)

#### **CASES:**

Note: Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can contact your local law librarian to learn about the tools available to you to update cases.

- Rodriguez v. Corona's Auto Parts, Inc., J.D. Hartford, No. HHD CV 09600463 (Jan. 23, 2014), 2014 WL 783747.
   "...As set forth in Miller v. Guimaraes, 78 Conn. App. 760,778 (2003), which is quoted as follows:...' To establish a prima facie case of conversion, the plaintiffs had to establish that (1) [p]roperty belonged to the plaintiffs (2) the defendant deprived the plaintiffs of their [p]roperty for an indefinite period of time (3) the defendant's conduct was unauthorized and (4) the defendant's conduct harmed the plaintiffs."
  - "Under Label Systems Corporation v. Aghamohammadi, 270 Conn. 291 (2004), punitive damages in a case of conversion are awardable if the evidence shows wanton or wilful malicious misconduct...Mr. Corona on behalf of Coronas [Auto Parts, Inc.] was angry at the plaintiff... and knowing that he was going to be in prison for a long period of time, decided that he was going to take possession of the plaintiff's tools. He knew that Snap-On did not own the property, that it still belonged to the plaintiff, and he purposely with wanton and wilful malicious misconduct converted the plaintiff's property to the use of his company."
- Thorne et. al. v. Mackeyboy Auto, LLC et. al., Superior Court, Judicial District of New Haven at New Haven, No. CV 11-6017210S (Oct. 11, 2013), 2013 WL 5879081. "The plaintiffs seek an award for treble damages pursuant to General Statutes § 52-564, the treble damages statute for conversion under CUTPA...In its decision granting summary judgment in favor of the plaintiffs regarding the claimed RISFA [Retail Installment Sales Financing Act] violations, the court described the defendants' flagrant violations of the consumer statutes in question as 'egregious' and

'serious rather than trivial."

"If not intentional, the conduct can surely be described as reckless and wanton. There is an imbalance of bargaining power between McNeilly, a sophisticated used car merchant, and the plaintiffs, as buyers."

- <u>Jacobs v. Healey Ford-Subaru, Inc.c.</u>, 231 Conn. 707, 652 A.2d 496 (1995).
- Fox v. First Bank, 198 Conn. 34, 35-36, 501 A.2d 747 (1985). "When the plaintiff defaulted in the payment of sums due under the retail installment contract, the defendant, on September 2, 1981, repossessed the car without judicial intervention in accordance with General Statutes 42-98. [fn2][ now Conn. Gen. Stat. §36a-785] On the same day that the car was repossessed, the plaintiff filed this action for wrongful repossession and the trial court, Hadden, J., without a hearing, issued a temporary restraining order to prevent the sale or transfer of the car."

#### WEST KEY NUMBERS:

- Secured Transactions
  - # 242. Wrongful enforcement
  - # 242.1 In general
  - # 243. Damages and amount of recovery

#### **DIGESTS:**

- West's Connecticut Digest: Secured Transactions
  - VII. Default and Enforcement §§242-243. Wrongful enforcement
- <u>Dowling's Digest</u>: Secured Transactions
   4. Rights and remedies of buyer and seller

#### **ENCYCLOPEDIAS:**

- 68A <u>Am. Jur. 2d</u> <u>Secured Transactions</u> (2003). §§ 686-**726.** Effect of secured party's failure to comply with code
- 79 <u>C.J.S.</u> Secured Transactions (2006).
   §§ 227-233. Remedies for wrongful enforcement.
- Jay M. Zitter, Annotation, Secured Transactions: Right Of Secured Party To Take Possession Of Collateral On Default Under UCC § 9-503, 25 ALR5th 696 (1994).
- Jonathan M. Purver, Annotation, Punitive Damages For Wrongful Seizure Of Chattel By One Claiming Security Interest, 35 ALR3d 1016 (1971).
- James L. Buchwalter, Annotation, Cause Of Action For Wrongful Self-Help Repossession of Personal Property, COA 2d (2010).

- Cause Of Action By Secured Creditor Under UCC § 9-504 To Recover Deficiency Following Repossession And Disposition Of Collateral, 12 COA 77 (1987).
  - § 28. Wrongful repossession and sale
- Liability Of Creditor And Repossession Agent For Wrongful Repossession And Tortious Acts Committed During Repossession, 42 POF 3d 355 (1997).

### TEXTS & TREATISES:

<u>National Consumer Law Center, Repossessions</u> (8<sup>th</sup> ed. 2013).

Chapter 2. Scope and sources of law

§ 2.5.3.2. Federal civil rights law

Chapter 4. Default as precondition to seizure

§ 4.7. Remedies

Chapter 8. Using bankruptcy to prevent repossessions

Chapter 13. Affirmative consumer remedies in

repossession cases

§ 13.1. Introduction

§ 13.2. UCC § 9-625 remedies

§ 13.2.3. Actual damages

§ 13.2.6. Class actions, multiple statutory damages, and interrelation with other damage awards

§ 13.2.8. Statute of limitations for claims under § 9-625

### § 13.3. Remedies for violation of UCC's good faith requirement

§ 13.4. UDAP, RICO and unconscionability

§ 13.4.5. Unconscionability

§ 13.5. Laws regulating repossessions, collections, or credit

§ 13.5.1. The Federal Fair Debt Collection Practices Act

§ 13.6. Common law torts, replevin and contract claims

§ 13.7. Civil rights violations and constitutional remedies

§ 13.8. U.S. Bankruptcy code

§ 13.9. Consumer remedies based on claims or counterclaims not related to repossession

§ 13.10. Creditor defenses

## $\S$ 13.10.2. Debtor's contractual waiver of action for wrongful repossession

§ 13.11. Litigation issues

Edward A. Weiss et al., Connecticut Secured
 Transactions Under Revised Article 9 Of The Uniform
 Commercial Code (2011).

#### **LAW REVIEWS:**

 Henry Barkhausen, Regulating in the Shadow of the U.C.C.: How Courts Should Interpret State Consumer Protection Laws. 119 Yale L.J. 1329 (2010). Sample 1: Complaint for Wrongful Repossession

CV 90 0031301 S : Superior Court

: Judicial District of Ansonia

DAWN JACOBS

v. : at Milford

HEALEY FORD-SUBARU, INC. : June 28, 1990

#### SECOND REVISED COMPLAINT

- 1. On October 17, 1988, the plaintiff bought a used 1937 Ford Tempo from defendant pursuant to a Retail Installment Contract which included a security interest in the vehicle.
- 2. The cash price was \$10,647.03, the amount financed was \$10,898.90, and the finance charge was \$4196.14.
- 3. On May 24, 1989, defendant's assignor purported to repossess the vehicle from defendant's premises for nonpayment.
- 4. The vehicle and contract were returned to defendant pursuant to a recourse or guarantee agreement.
- 5. Neither defendant nor its assignor complied with § 42a-9-504 or §42-98 C.G.S. in one or more of the following respects;
  - (a) Neither gave plaintiff advance notice of the proposed repossession which complied with § 42-98(a); or
  - (b) Neither gave plaintiff proper notice of the right to redeem under § 42-98(b); or
  - (c) defendant did not give reasonable notice of the proposed sale as required by § 42-98 or 42a-9-504; or
  - (d) defendant did not give plaintiff notice properly itemizing the disposition of the proceeds as required by § 42-98(e); or
  - (e) defendant did not credit plaintiff with the statutory fair market value of the vehicle as required by § 42-98(d); or
- (f) defendant did not sell the vehicle within 180 days of the repossession as required by §42-98(d) C.G.S.; or

- (g) defendant failed to repossess or resell the vehicle in a commercially reasonable method, manner, time, place or terms (§ 42-9-504 C.G.S.).
- 6. Plaintiff seeks minimum statutory damages of \$6,500, costs and attorneys fees, pursuant to the Uniform Commercial Code, § 42a-9-507 C.G.S, the Retail Installment Sales Financing Act, § 42-98 C.G.S.; and nominal actual and substantial punitive damages and attorneys fees under the Unfair Trade Practices Act, C.G.S. § 42-110a, the Creditors' Collection Practices Act, C.G.S. § 36-243a, and such other relief as is just and equitable.

BY THE PLAINTIFF
This is to certify that a copy of the foregoing was mailed postage prepaid, to:

Sample 2: Answer to Complaint

DN: CV 90 0031301 S : Superior Court

: Judicial District of Ansonia/Milford DAWN JACOBS

27 ..... 37 .0 0 2 0

v. : at

HEALEY FORD-SUBARU, INC. : APRIL 23, 1993

## ANSWER TO SECOND REVISED COMPLAINT SECOND REVISED COMPLAINT

- 1. The defendant, Healey Ford-Subaru, Inc. hereby denies Paragraphs 1, 3 and 6 of the Second Revised Complaint.
- 2. As to Paragraphs 2, 4 and 5 of the Second Revised the defendant, Healey Ford-Subaru, Inc. has insufficient knowledge to form a belief and therefore leaves to plaintiff to her proof

#### **COUNTERCLAIM**

- 1. On October 17, 1988 the plaintiff bought a used 1987 Ford Tempo from the defendant, and financed the purchase price of \$10,647.03. The Ford Motor Credit thereafter had a security interest in said vehicle.
- 2. Thereafter, the plaintiff defaulted on said payments of said retail installment contract, and said vehicle was repossessed by the Ford Motor Credit Company.
- 3. Thereafter, Ford Motor Credit Company reassigned said retail installment contract and vehicle to the defendant.
- 4. The plaintiff to date, has not paid the balance due on said retail installment contract, to wit: \$1,608.07.

WHEREFORE. the defendant prays that the plaintiff be ordered to pay the sum of \$1,608.07, and reasonable attorney's fees and interest.

THE DEFENDANT	

#### CERTIFICATION

I hereby certify that a copy of the foregoing was mailed to all counsel of record on the of aftersaid date.

Sample 3: Answer to Counterd	claim	
DN: CV 90 0031301 S	:	Superior Court
DAWN JACOBS	:	Judicial District of Ansonia/Milford
V.	:	at
HEALEY FORD-SUBARU, INC.	:	APRIL 23, 1993
ANSWER	то со	DUNTERCLAIM
1. Admitted.		
Plaintiff admits that the vehicle vehicle vehicle vehicle vehicles the balance company and denies the balance.	vas rep e of the	ossessed by the Ford Motor Credit allegation.
3. Admitted.		
4. Denied		
		THE PLAINTIFF
		BY
		Name ATTORNEY AT LAW Address Phone Number
This is to certify that a copy o	of the fo	oregoing was mailed postage prepaid, to:

Retail Installment Sales Financing Act (RISFA): "General Statutes § 36a-785 sets out the procedure that a holder of a retail installment contract must follow in order to repossess goods after a retail buyer breaches the contract. This section provides, in pertinent part: '(a) Repossession. When the retail buyer is in default in the payment of any sum due under the retail installment contract . . . the holder of the contract may take possession thereof. . . . " General Statutes § 36a-785 (a)." GE Capitol Auto Lease, Inc. v. Blackwell, Superior Court, Judicial District of Ansonia-Milford at Milford, No. CV97-0059201S, (Sep. 5, 2001), 2001 Ct. Sup. 12397.

Uniform Commercial Code (UCC): A nine-article act promulgated by the National Conference of Commissioners on Uniform State Laws and the American Law Institutes "relating to certain Commercial Transactions in or regarding Personal Property and Contracts and other Documents concerning them, including Sales, Commercial Paper, Bank Deposits and Collections, Letters of Credit, Bulk Transfers, Warehouse Receipts, Bills of Lading, other Documents of Title, Investment Securities, and Secured Transactions . . . ." Article 2A applies to leases and Article 9 to Secured Transactions. In Connecticut, the act is codified as Title 42a of the General Statutes of Connecticut. The UCC has been adopted in some way by all fifty states.