

Thomas E. Plank
Joel A. Katz Distinguished Professor of Law
University of Tennessee College of Law
1505 W. Cumberland Ave.
Knoxville, Tennessee 37996
(865) 974-6849; tplank@tennessee.edu

EDUCATION:

Princeton University, 1968, A.B. in History, with honors; Certificate of Proficiency in Russian Area Studies. Senior Thesis: *Lenin and the Jacobins*. Woodrow Wilson Fellow designate 1968.

University of Maryland School of Law, 1974, J.D., with honors.
Editor-in-Chief, *Maryland Law Review*, 1973-74. Order of the Coif. Rank: 5th/203.

EMPLOYMENT:

Joel A. Katz Distinguished Professor of Law, University of Tennessee College of Law, 2004-present (Professor, 2002-2004; Associate Professor, 1994-2002). Courses taught:
Debtor-Creditor (Fall 1994-2001, 2003-present)
Commercial Law (Fall 1995-2001, 2003-present; Spring 1995, 2006)
Property (Spring, 2001-2002, 2004-2005, 2007-present)
Representing Enterprises (securitization module) (Spring 1996-2000, 2005)
International (Comparative) Business Transactions (Spring 2002)
Contracts II (Spring 1995-1998, 2000)
Academic Success Program, Contracts II (Spring 1996-1998, 2000)

Visiting Professor of Law, Notre Dame Law School, 2002-2003.
Courses taught: Bankruptcy; Secured Transactions; Payment Systems; Securitization.

Partner, Kutak Rock, 1986-1994, associate, 1985, Washington, D.C.
Finance (commercial, real estate and public), bankruptcy (transactional planning), and securities. Served as issuer's, bankruptcy, and underwriter's counsel for the issuance of mortgage-backed and asset-backed securities and tax-exempt housing bonds for low income families; counsel for the purchase, sale, and servicing of mortgage loans; lender's counsel in direct real estate and commercial lending.

Assistant Attorney General and Counsel to the Maryland Department of Economic and Community Development (later split into two Departments), 1982-1984, Annapolis, Maryland.
Finance (real estate, commercial, public), legislation, and public law. Represented state agencies in: originating, purchasing, and insuring single family, multifamily, and commercial mortgage loans; issuing tax-exempt housing bonds for low income families and industrial development bonds; insuring working capital and equipment loans for minority owned small businesses; and selling, leasing, and financing real estate. Drafted legislation and regulations and provided advice to the Department on all legal matters.

Associate, Piper & Marbury (now DLA Piper), 1981-1982, Baltimore, Maryland.

Commercial litigation (contracts, warranty, letters of credit, negotiable instruments, real estate partnership, dealer franchise regulation, odometer fraud, anti-trust). One jury trial, summary judgments, motions to dismiss, one preliminary injunction, one administrative agency appeal.

Assistant Attorney General and Counsel to the Maryland Department of Budget and Fiscal Planning, 1978-1981, Baltimore, Maryland.

Drafted Opinions of the Attorney General and letters of advice on and litigated governmental law issues (constitutional law, administrative law, legislation, public finance). Closed several real estate and revenue bond transactions. Drafted and reviewed legislation. Briefed and argued *Forsham v. Harris*, 445 U.S. 169 (1980), and eight other federal and state appellate cases. Four-month trial on the constitutionality of Maryland's public school financing system.

Associate, Piper & Marbury (now DLA Piper), 1975-1978, Baltimore, Maryland.

Governmental law, including the issuance of general obligation and revenue bonds, drafting state and federal legislation, and environmental, public utility, local health, and zoning regulation; appellate and trial litigation; and real estate and corporate transactions. Briefed and argued *Secretary of Transportation v. Mancuso*, 278 Md. 81, 359 A.2d 79 (1976).

Law clerk, Chief Judge Robert C. Murphy, Court of Appeals of Maryland, 1974-1975.

SCHOLARSHIP:

Regulation and Reform of the Mortgage Market and the Nature of Mortgage Loans: Lessons from Fannie Mae and Freddie Mac, 60 So. Car. L. Rev. 779 (2009), part of a Symposium, "1.9 Kids and a Foreclosure: Subprime Mortgages, the Credit Crisis, and Restoring the American Dream."

Sense and Sensibility in Securitization: A Prudent Legal Structure and a Fanciful Critique, 30 Cardozo L. Rev. 617 (2008), responding to Kenneth Kettering's fanciful criticism of securitization in *Securitization and Its Discontents: The Dynamics of Financial Product Development* 29 Cardozo L. Rev. 1553 (2008).

Toward a More Efficient Bankruptcy Law: Mortgage Financing Under the 2005 Bankruptcy Amendments, 31 S. Ill. U. L.J. 641 (2007) (part of the Symposium on Shredding the Safety Net: A Critical Examination of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005) (solicited article) (discussed below).

State Sovereignty in Bankruptcy after Katz, 15 Amer. Bankr. Inst. L. Rev. 59 (2007) (solicited article) (part of the Symposium on Federalism and Bankruptcy) (discussed below).

Assignment of Receivables Under Article 9: Structural Incoherence and Wasteful Filing, 68 Ohio St. L.J. 231-271 (2007) (part of symposium on Commercial Calamities).

The Key to Securitization: Isolating the Assets to Be Securitized from the Risk of An Insolvency Proceeding (ch. 7, pages 1-1 through 1-128), in John Arnholz and Edward E. Gainor, eds., *Offerings of Asset Backed Securities* (Aspen Pub. 2005).

The Security of Securitization and the Future of Security, 25 *Cardozo L. Rev.* 1655-1741 (2004) (solicited article) (part of the Symposium on Threats to Secured Lending and Asset Securitization).

The Erie Doctrine and Bankruptcy, 79 *Notre Dame L. Rev.* 633-92 (2004), reprinted in 13 *J. Bankr. L. & Prac.* 55-113 (2004).

Bankruptcy and Federalism, 71 *Fordham L. Rev.* 1063-1131 (2002).

Bankruptcy Professionals, Debtor Dominance and the Future of Bankruptcy: A Review and a Rhapsody on a Theme, 18 *Bankr. Dev. J.* 337-71 (2002) (sponsored by Emory Law School) (solicited article) (reviewing David A. Skeel, Jr., *Debt's Dominion: A History of Bankruptcy Law in America* (2001)).

The Limited Security Interest in Non-Assignable Collateral Under Revised Article 9, 9 *A.B.I. L. Rev.* 323-49 (2001) (solicited article).

More Muddy Water from Whiting Pools: In re Greene Contends with the Errors of a Higher Court, *Norton Bankruptcy Law Advisor* (Feb. 2001) (solicited short article).

The Bankruptcy Trust as a Legal Person, 35 *Wake Forest L. Rev.* 251-293 (2000).

The Creditor in Possession Under the Bankruptcy Code: History, Text, and Policy, 59 *Md. L. Rev.* 253-351 (2000).

Why Bankruptcy Judges Need Not and Should Not Be Article III Judges, 72 *Am. Bankr. L.J.* 567-639 (1998) (solicited article).

The Outer Boundaries of the Bankruptcy Estate, 47 *Emory L. J.* 1193-1287 (1998).

The Essential Elements of Judicial Independence and the Experience of Pre-Soviet Russia, 5 *Wm. & Mary Bill of Rights J.* 1-74 (1996).

Peter M. Pantaleo, et. al, *Rethinking the Role of Recourse in the Sale of Financial Assets*, 52 *Bus. Law.* 159-98 (1996) (one of ten co-authors).

The Constitutional Limits of Bankruptcy, 63 *Tenn. L. Rev.* 487-584 (1996).

Sacred Cows and Workhorses: The Sale of Accounts and Chattel Paper Under Article 9 of the U.C.C. and the Effects of Violating a Fundamental Drafting Principle, 26 *Conn. L. Rev.* 397-520 (1994).

When a Sale of Accounts Is Not a Sale: A Critique of Octagon Gas, 48 *Consumer Fin. L. Q. Rep.*

45-53 (1994) (solicited article).

The True Sale of Loans and the Role of Recourse, 14 George Mason U. L. Rev. 287-359 (1991) (published fall 1992).

Appeals to Court from Administrative Agencies, MARYLAND APPELLATE PRACTICE HANDBOOK, E-117-128a (1977) (principal co-author with Henry R. Lord).

Student Note: *Baltimore City's Liability for Riot Damage: The Mayor as Conservator of the Peace*, 33 Md. L. Rev. 73-96 (1973).

Works in Progress

The Mortgage Market, Securitization and The Bankruptcy Code: A Proposal For Reform,

AWARDS AND RECOGNITION:

2005 Carden Award for Outstanding Achievement in Scholarship, by the University of Tennessee College of Law (for distinguished record of scholarship over a period of years).

2005 Southeastern Bankruptcy Law Institute Distinguished Visiting Professor, Georgia State University College of Law (two week long visits, one each semester 2005, to participate in classes, meet individually with students writing papers, make presentations to law faculty, bankruptcy bar and judges and advise faculty members on their current research).

2004 Marilyn V. Yarbrough Faculty Award for Writing Excellence, by the University of Tennessee College of Law (for *The Erie Doctrine and Bankruptcy*, as best article by faculty member in preceding year).

2002 Grant Gilmore Award For Writing Excellence on Commercial Finance Topics, by the American College of Commercial Finance Lawyers (for *Creditors in Possession Under the Bankruptcy Code: History, Text, and Policy*, as best article published or accepted for publication in 2000 or 2001 on commercial finance topics).

1999 Marilyn V. Yarbrough Faculty Award for Writing Excellence, by the University of Tennessee College of Law (for *Why Bankruptcy Judges Need Not and Should Not Be Article III Judges*, as best article by faculty member in preceding year).

1999 Carden Award for Outstanding Achievement in Scholarship, by the University of Tennessee College of Law (for distinguished record of scholarship over a period of years).

PRESENTATIONS:

Securitization and the Mortgage Market, as part of the “The Current State of the Mortgage and Credit Markets,” Southeastern Association of Law Schools annual meeting, August 5, 2009.

The Mortgage Market, Securitization and The Bankruptcy Code: A Proposal For Reform, January 2009, at the Joint Program of the Section on Creditors’ and Debtors’ Rights and the Section on Real Estate Transactions, “Real Estate Transactions In Troubled Times,” at the 2009 annual meeting of the Association of American Law Schools in San Diego, California. This article was selected as a response to a call for papers.

Regulation and Reform of the Mortgage Market and the Nature of Mortgage Loans: Lessons from Fannie Mae and Freddie Mac, October 24, 2008, at the Symposium of the South Carolina Law Review, “1.9 Kids and a Foreclosure: Subprime Mortgages, the Credit Crisis, and Restoring the American Dream.”

Sales of Mortgage Loans and Securitizations, Wednesday, March 5, 2008, as part of a panel the Federal Judicial Conference educational program, “The Current State of the Capital Markets: an FJC Program for Bankruptcy Judges,” on March 3-5, 2008, in New Orleans, LA.

Sovereign Immunity: What is Left After Katz, co-Panelist with Karen Cordry, on the January 2006 Supreme Court decision, *Central Virginia Community College v. Katz*, which held that a state’s sovereign immunity did not prevent a bankruptcy trustee from recovering from a state agency a preferential transfer to the state agency under the Bankruptcy Code, as part of the “Bankruptcy From A Government Perspective Seminar” sponsored by the National Association of Attorneys General (NAAG) and States’ Association Of Bankruptcy Attorneys (SABA), Chicago, Illinois, October 14-17, 2007.

Legislative Proposals for Regulating Mortgage Finance—Federal v. State Regulations, Subprime Mortgages, and Predatory Lending, as part of the “United States Supreme Court and Legislative Preview: Economic Rights and Regulation,” Southeastern Association of Law Schools annual meeting, July 31, 2007.

Cutting-Edge Issues Involving Securitizations, the Financing of Accounts, Payment Intangibles and Other Rights to Payment, and Implications for Bankruptcy Law, Annual Seminar of the Financial Lawyers Conference of Southern California for 2007, April 20-22, 2007, Rancho Bernardo Inn, San Diego, California.

Toward a More Efficient Bankruptcy Law: Mortgage Financing under 2005 Bankruptcy Amendments, Spring 2007 Southern Illinois University Law Journal Symposium, “Shredding the Safety Net: A Critical Examination of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005,” February 16, 2007, at the Southern Illinois University Law School in Carbondale, Illinois.

State Sovereignty in Bankruptcy after Katz, at the “Symposium on Federalism and Bankruptcy,” February 9, 2007, St. Johns Law School, New York, New York, with Professors Martin Redish of Northwestern University Law School and Ralph Brubaker of the University of Illinois School

of Law (focusing on the January 2006 Supreme Court decision, *Central Virginia Community College v. Katz*, which held that a state's sovereign immunity did not prevent a bankruptcy trustee from recovering from a state agency a preferential transfer to the state agency under the Bankruptcy Code).

Cost Savings From Securitization: Avoiding the Bankruptcy Tax on Secured Credit, as part of Teaching Consumer Law: The Past, Present and Future of Consumer Law, sponsored by University of Houston Law Center, Center for Consumer Law, May 19, 2006.

United States Supreme Court and Legislative Preview: Economic Rights and Regulation (discussing *Watters v. Wachovia Bank* [cert. granted on preemption of state law by Comptroller of the Currency's interpretation of the National Bank Act and OCC regulations], and *Marrama v. Citizens Bank* [cert. granted on denial of debtor's right to convert from chapter 7 liquidation to chapter 13 arrangement on non-statutory bad faith grounds]), Southeastern Association of Law Schools, July 18, 2006.

Exacting Change Through Law, Howard Baker, Jr. Center of Public Policy, University of Tennessee, October 18, 2005 (as part of the Open World Leadership Program).

Implications of the Definition of Property of the Estate—a Contrarian View, Georgia State University College of Law, September 26, 2005 (as the Southeastern Bankruptcy Law Institute Distinguished Visiting Professor, Georgia State University College of Law).

Panel, *Law Review Publishing*, Southeastern Association of Law Schools, July 20, 2005, August 2, 2004, and July 23, 2003.

The Constitutional Limits on Using Bankruptcy Law As An Alternative Legal System, Georgia State University College of Law, January 26, 2005 (as the Southeastern Bankruptcy Law Institute Distinguished Visiting Professor, Georgia State University College of Law).

Eastern District of Pennsylvania Bankruptcy Conference Annual Forum, January 30-31, 2004 (analyzing provisions of Bankruptcy Code governing swaps and forward merchant contracts).

The Security of Securitization and the Future of Security, Symposium on Threats to Secured Lending and Asset Securitization, Cardozo Law School, April 7, 2003 (New York, NY).

Perfection of Security Interests—Electronic Chattel Paper and Forms of Opinions, Revised Article 9: Questions from the Perplexed: Common Drafting Problems, American Bar Association Business Law Section Annual Meeting, April 4, 2003 (Los Angeles, Cal).

The Efficiency of Securitization: The Inefficiency of Bankruptcy, Notre Dame Law School, October 2002.

Supreme Court and Legislative Update (discussing *United States v. Craft*, *United States v. Young*, and *SEC v. Zandford*), Southeastern Association of Law Schools, July 28, 2002.

Eastern District of Pennsylvania Bankruptcy Conference Annual Forum, January 25-26, 2002

(analyzing the new value exception to absolute priority rule).

What Revised Article 9 Tells Us About the Bankruptcy Code, Debtor-Creditor Section Program on Teaching, Scholarship, and Revised Article 9 of the Uniform Commercial Code, Association of American Law Schools, Annual Meeting, January 4, 2002 (New Orleans, La.).

The Efficiency of Securitization and the Implications for Bankruptcy Law, Southeastern Association of Law Schools, July 15, 2001.

Bankruptcy, Federalism, and the New Common Law, Southeastern Association of Law Schools, July 31, 2000.

Legal Issues in Securitizing Equipment Leases, First Annual Rocky Mountain Leasing Conference, January 27, 2000 (Denver, CO).

The Firm Legal Foundations of Securitization, ABA Section of Real Property, Probate and Trust Law, 10th Annual Spring CLE & Committee Meeting, May 19-21, 1999 (Washington, D.C.).

Advantages of Law Review Publication at The University of Tulsa 12th Annual Comparative Literature Symposium, "The Sociomaterial Turn: Excavating Modernism" on March 5-7, 1998.

PUBLIC SERVICE:

Member, The American Law Institute (1993-present). I am currently a member of the Members Consultative Group and an observer of the Joint Article 9 Review Committee current drafting amendments to and comments to Article 9 of the UCC. I submitted comments on certain proposed comments to current article and drafted proposed amendments to several sections of Article 9.

Member, Editorial Advisory Board, *American Bankruptcy Law Journal* (2005-2007).

Member, Editorial Advisory Board, *American Securitization* (2006-present), publication of the American Securitization Forum, a forum for participants in the U.S. securitization market.

Peer Reviewer, *American Bankruptcy Law Journal* (2002-present).

Member, ALI Consultative Groups.

Joint Article 9 Review Committee (2009-present); Revision of Articles 3, 4, & 4A (Current Payment Methods) of the UCC (2000-2002); Transnational Insolvency Project (1999-2000), Revision of Article 9 of the UCC (1993-1998), Restatement (Third) of Property (Mortgages) (1993-1996).

OTHER LEGAL EXPERIENCE:

Consultant for law firms (1994-present): I provide legal advice and draft legal opinions on security interests, bankruptcy, real estate, and other legal issues in connection with

mortgage backed and asset backed securities and other real estate, commercial, and public finance transactions.

Expert witness, December 2006-May 2007, on behalf of Tenaska, Inc. and affiliate sellers of certain upstream ownership interests in a co-generation power facility to a special purpose entity on use and characteristics of special purpose entities and other matters, *Brazos Electric Power Cooperative, Inc. v. Tenaska, Inc.*, D. Ct, Johnson Co., TX, 249th Jud. D., No. C-2002-00267 [expert report filed; deposited; case settled]

Expert witness, January 2006-August 2008, for Bank of America, N.A., the lender to a special purpose entity sponsored by Enron Corp., to finance the purchase of natural gas, on use and characteristics of special purpose entities, *AEP Energy Services Gas Holding Co. v. Bank of America, N. A.*, U.S. S. D. Tex., No. NO. H-03-4973 [expert report filed; deposited; deposition formed part of basis for successful motion for final summary judgment]

Expert witness, January-November 2005, for General Electric Capital Corporation, the investor in a monetization of payments under a contract for telecommunication services, on the meaning of the term “monetization”, *Qwest Communications International Inc., et al., v. KMC Telecom LLC, et al.*, Dist. Ct, Denver, Co, Case No. 04CV0445 [expert report filed; deposited; case settled]

Appellant’s Counsel, *Lifewise Master Funding v. Telebank*, 374 F.3d 917 (10th Cir. 2004) (drafted the appellant and reply briefs and presented oral argument on the issue of interpretation of condition to funding commitment in securitization of loans secured by life insurance policies, on behalf of finance company; obtained reversal of district court grant of motion for directed verdict).

Expert witness, February 2001, for Abbey National Treasury Services, the investor in a trade receivables securitization, on the true sale of receivables and structuring of securitization, *In re LTV Steel Co.* (Bankr. N. D. Ohio, No. 00-43866) [expert report filed under seal; case settled].

Expert witness, December 1998-May 1999, for the United States on the fraudulent issuance of mortgage backed securities in a criminal racketeering trial, *U. S. v. Weiss et al.* (M. D. Fla., No. 98-99-Cr-Orl-19A) [qualified and testified; defendants convicted].

PART-TIME TEACHING EXPERIENCE:

George Mason University School of Law: Bankruptcy, 1993, 1994.

University of Maryland School of Law: Real Estate Transactions, 1988; Legislation, 1983, 1984; Legal Method-Property (assisted Prof. Goldberg), 1982; Legal Writing, 1978, 1979.

TEACHING INTERESTS:

Commercial Law (combined course or separate courses on secured transactions and payment systems); Bankruptcy, Securitization, Property, Real Estate Transactions, Comparative Business Law, Commercial Legal History.

INSTITUTIONAL SERVICE (UNIVERSITY OF TENNESSEE):

Member, College of Law Governance Committee (2008-2010).
Chairman (2005-2006, 2006-2007, 2007-2008) and Member (2001-2002, 2003-2004), Faculty Appointments Committee, College of Law.
Delegate, Association of American Law Schools (2001; 2002, 2004, 2006).
Member, Academic Standards and Curriculum Committee, College of Law (1995-2001).
Member, Entrepreneurial Law Center working group, College of Law (1994-2001).
Senator, University of Tennessee at Knoxville Faculty Senate (1998-2001).

BAR MEMBERSHIP: Maryland (1974-present; inactive since 2009); Tennessee (1995-present); District of Columbia (1985-1995) (resigned in good standing).

PERSONAL: Married, five children (born 1977-1992). Lieutenant, United States Marine Corps, 1968-1971 (eight months in Vietnam as a combat infantry platoon commander). Languages studied: Russian (4 years); elementary Vietnamese; elementary Spanish. Hobbies: history (currently focusing on American 19th Century, European Medieval, and Islamic History); 19th century literature; team statistician, Knoxville Cheetahs, Knoxville High School girls lacrosse team; boating; cycling.