

**COMMERCIAL TRANSACTIONS: SALES AND LEASES**  
**FALL 2009**

**PROFESSOR ALLEN BLAIR**

Office Hours

Tuesdays 8:30 – 9:30; 11:00 – 12:00

Wednesdays 9:30 – 11:00

Thursdays 8:30 – 9:30

*Other Times By Appointment*

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Required Texts

- JOHN E. MURRAY, JR. & HARRY M. FLECHTNER, SALES, LEASES AND ELECTRONIC COMMERCE (3d Ed. 2009) ("Casebook").
- CAROL L. CHOMSKY, CHRISTINA L. KUNZ, LINDA J. RUSCH & ELIZABETH R. SCHILTZ, SELECTED COMMERCIAL STATUTES (2009) ("Statutory Supplement").

Course Overview

This is an advanced course in contract law. We will focus on the regulation and planning of transactions for the sale and lease of goods. Most of our time will be spent working with Articles 1, 2 and 2A of the Uniform Commercial Code ("UCC"), a detailed statute with a distinctive philosophical approach. We'll also devote a fair amount of attention, however, to the U.N. Convention on Contracts for the International Sale of Goods ("CISG"), and, at least in passing, we'll deal with a few other specific federal and state statutes.

As a class focused on statutes, we will spend a significant amount of time mastering specific provisions of the UCC and the CISG. The class also provides us, however, with regular opportunities to consider the activities of commercial contracting parties — often sophisticated actors who bargain with one another at arms' length and who have the ability to obtain legal advice before entering into deal. Accordingly, we will explore a variety of conceptual and philosophical tools, including law and economics models, to study the law of private exchange and the decisions made by contracting parties.

Core Course Objectives

- ♦ First, this course will ground you in the fundamental statutory law of domestic and international sales and leases of goods.
- ♦ Second, this course will introduce you to some of the economic, political, and jurisprudential theories underlying and shaping the continuing development of the law of domestic and international sales and leases of goods.
- ♦ Third, this course will help you practice: (a) determining which body of substantive law applies to a particular situation; (b) reading carefully and thoughtfully the relevant authorities; (c) formulating a defensible strategy applicable to a particular situation; and (d) communicating your strategy and the rationale underlying it.
- ♦ Finally, this course will, I hope, prompt you to critically evaluate the existing law of domestic and international sales and leases of goods so that you can think constructively about how the that law should evolve to meet the challenges of the next decade and beyond.

### Preparation and Attendance

Success in this class requires your careful attention, hard work, and perseverance. The law governing sales and leases is not particularly hard, but it is intricate. Accordingly, you must come to class having read and thought about the assignments. (*Remember, this is a statutory class – you absolutely must read and reread the statutes. Every word of the statutory language needs to be accounted for in your analysis.*) While keeping up is, of course, important in all law school classes, I cannot overemphasize the importance of staying current on your reading assignments in this particular class. Each Code provision and concept builds on previous Code provisions and concepts. If you fall behind, you'll be very sorry.

Your attendance in class is also important. Missing more than four classes will constitute excessive absence for purposes of the Law School's attendance policy.

If a conflict arises with a particular class, please let me know as soon as possible. I will endeavor to make reasonable accommodations to folks who have personal, religious, or other conflicts and let me know about such conflicts in a timely manner.

### Participation

I adore this course. I enjoy the puzzle-like detail of many of the issues that we'll discuss, and I appreciate the practical significance of commercial law generally. I hope that you'll find all or parts of this class as exciting as I do. In any event, however, I expect that: (a) you will make a good faith efforts to answer questions that I direct at you randomly during classes; (b) you will regularly and voluntarily engage in class-wide discussions and, at least occasionally, offer relevant thoughts or comments; and (c) you will lead us off on analyzing several cases and Code provisions over the course of the semester.

### TWEN

All of you are, I suspect, familiar with TWEN. You will need to register for this course's page on TWEN as soon as possible. In addition to posting any revisions to reading assignments on TWEN, I will also be posting some preparation questions that are designed to help you focus on key information and concepts in the reading assignments and a few law review articles or portions of articles that you must read. Additionally, I will post any extra materials (like PowerPoint slides that I show in class).

### Computer Use

You may use laptop computers or other electronic devices in class to take notes and access course-related materials. You should not use your laptop or other electronic devices for other purposes.

### Grading

Your grade in this class will be based on a final examination (70%) and two in-class quizzes (30%). Additionally, I reserve the right to bump grades up or down based on exceptional participation.

#### *The Final Examination*

The examination will be a 2.5 hour, self-scheduled, semi-open book examination (meaning that you can have your class notes and the assigned reading materials). We will discuss the structure and format of the examination in more detail as the semester progresses.

### The Quizzes

I will give two in-class quizzes during the semester. The first quiz will be given on October 8. The second quiz will be given on November 10. The quizzes will be either a multiple-choice or short-answer format. We will discuss the quizzes in more detail during the semester.

*These quizzes are treated like the final exam. I cannot excuse you from taking them. If you have a conflict, you must seek a special accommodation from the Dean of Student and Multicultural Affairs. I will oppose any accommodation request unless: (a) you have a preexisting conflict and you have made arrangements with me in advance; or (b) you have a significant personal or family emergency and you contact me as expeditiously as possible.*

### Grade Bumps

I reserve the right to bump a final grade up or down one-half letter grade step for exceptional (either positive or negative) participation. Few, if any, grades will be bumped.

### Reading Assignments

Rather than trying to predict how quickly we will move through the materials for the entire semester, I have listed assignments for the first ten classes. I will distribute a list with assignments for the next eight-ten classes on or before September 14.

Please notice that I do not always expressly assign sections out of the Supplement and even when I do, I may not assign all of the sections relevant to the textbook assignment. Even if I don't assign readings out of the Supplement, however, **you must review the portions of the Supplement relevant to the assigned textbook readings.** If a case, for instance, references § 2-306 of the UCC, then I will expect that you have, as part of your preparation for the class, read and considered § 2-306 and its comments even if I have not expressly assigned 2-306.

*In addition to the assignments below, it is well worth your time, in the first two or three weeks of the semester, to skim through all of Article 1 and 2 of the UCC as well as the CISG. I wouldn't necessarily read every section in great detail, but skim through them so that you have a sense of the whole.*

8/20 Course Intro and Intro to Code Methodology

**Casebook 1-9**

**Supplement<sup>1</sup>**

UCC §§ 1-101; 1-102; 1-103; 2-102; 2-105; 2-106; 2-107

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<sup>1</sup> Unless otherwise indicated, I will provide cites to, and you should focus your attention on, the 2000 version of Article 2 of the UCC. I will, however, provide cites to the 2001 (or "Amended") version of Article 1. You should be aware, nonetheless, that both the unamended and 2001 versions of Article 1 are in force in various states. With only a few exceptions, most of the changes between unamended and amended Article 1 are merely organizational. I will flag the important exceptions as we move through the materials.

***If I take the time to assign a provision of the Code in the reading assignments, you should make sure to carefully read and reread the section and at least skim the Official Comments as well.***

**Handouts on TWEN**

- *Introduction to the Purpose and Philosophy of the UCC*
- *B&W Glass Case and Questions*

**Additional Guiding Questions<sup>2</sup>**

1. Contracts, as you recall, are, at bottom, legally enforceable promises. The study of contract law, then, can be thought of as the study of how to segregate enforceable from unenforceable promises. But why do we need to legally some enforce promises at all? Assuming that there are nonlegal sanctions that can be levied against promise breakers (please think for a moment about what these sanctions might be), why should government ever get involved in forcing people to keep some kinds of promises?
2. What are the benefits that a state's or a nation's economy can gain from enacting a commercial code as opposed to letting private agreement handle the details of all commercial dealings? In other words, why have a commercial code at all? Why not simply rely on the common law of contracts for all contractual relationships?
3. What role does Article 1 play in the overall structure of the UCC? In other words, what purpose does Article 1 serve?
4. How much weight should one jurisdiction give another jurisdiction's interpretation of a UCC provision? If you want to rely on persuasive authority, what's your argument? If you don't want the court to follow persuasive authority, what's your argument?

8/25 Intro to Scope of Article 2

**Casebook** 9 – 11 and Problem 1 on pages 19-20

**Supplement**

UCC §§ 2-102, 2-103(1)(a) and (1)(d), 2-105(1)-(2), 2-106(2), 2-107(1)-(2), 2-304, 2-501(1)

**Additional Guiding Questions/Comments**

1. You might think that you understand the scope of Article 2 from your first-year Contracts course. In that course, you were most likely told that Article 2 applies to the sale of goods. As this assignment shows, what you were told in Contracts was, perhaps, a bit of a simplification.

This assignment is complicated because it requires you to connect a variety of interlocking UCC provisions. As you'll see reading through the provisions that I've directed your attention to, many words in one section will be defined in another. You want to pay particular attention to these cross references. I highly recommend that you start annotating your supplement book early – mark it up! Also, please notice that, at the end of the Official Comments to each provision, there is a section listing "Definitional Cross References." This list can be helpful, but be aware that some defined words may not appear in the list. Also, please notice that 2-103 and 1-201 contain definitions of a variety of key terms in the UCC. You don't need to memorize these provisions,

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<sup>2</sup> Not every assignment will include Guiding Questions. When such questions are included, however, please spend fifteen minutes or so thinking about the questions carefully.

but I highly recommend book marking them for quick reference. You should get into the habit of quickly scanning these lists as you read provisions of the Code.

2. In this assignment, we will be trying to chart out the precise scope of Article 2 by walking through each word and phrase of 2-102. All of the provisions that I've directed your attention to are relevant to this task. Before class, focus particular attention on the definition of "goods", "sale" and "identification." I suggest that you try rewriting the provisions relevant to the definitions of these terms. Rewriting a statute can be tremendously effective in helping you understand and remember the statute. This technique, however, is only useful if you invest the time and effort to rewrite the statute in your own words and in a form that makes the provision clear to you, accounting for each of the words in the original provision.

8/27 The Scope of Article 2, Intro to the Scope of Article 2A and the Boundaries Separating Different Areas of Commercial Law

**Casebook** 11 - 28

*Focus on Problems 3 and 5<sup>3</sup>*

**Handouts on TWEN**

- *Introduction to Distinguishing Sales and Leases*
- *Introduction to Computer Software as a "Good"*

9/1 Intro to the Scope of the CISG

**Casebook** 28 - 32

*Focus on Problems 6 and 7*

**Supplement**

CISG Arts. 1, 2, 3(2), 4, 6, and 10

**Handout on TWEN**

- *BP Oil Case*

9/3 Contract Formation Under the Code: The Concepts of Agreement, Gap Fillers and Default Rules

**Casebook** 33 – 34

**Supplement**

UCC §§ 2-204; 1-201(3) and (12); 1-302; 1-303

**Handout on TWEN**

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<sup>3</sup> The textbook contains a number of problems. I will always direct you to the problems that we may focus on in class. You should read those problems carefully and think through answers to them before class. If I do not direct you to a problem, you need not prepare it for class. You may, however, want to read through and think about the problem to enhance your own understanding of the materials.

- *Gap Filler Hypos*

### **Additional Guiding Questions and Comments**

1. What are the differences between “agreements” and “contracts” under the Code?
2. Write an equation (or a couple of equations) that accurately reflects the relationships between the following seven concepts:

Agreement; Contract; Course of Dealing; Course of Performance; Parties’ Language; Usage of Trade; Rules Imposed by Law.

For instance, you might say (erroneously) that Agreement + Usage of Trade + Parties’ Language = Contract. (Please bear in mind that not all of the concepts must be present in any particular situation. In other words, some concepts can be a null or an empty set in the equation.)

3. In what respects are course of performance and course of dealing different? In what respects are they the same?
4. Not all “Rules Imposed by Law” are equal. An important skill in reading and applying the Code is determining whether a particular provision is mandatory, meaning that it cannot be abrogated by the parties, or merely a default (or a “gap-filler”), meaning that the provision becomes part of the parties’ contract unless the parties expressly or impliedly agree to modify or exclude it. Read 1-302 carefully and be prepared to discuss how the divide should be marked.

9/8 Contract Formation Under the Code: Offers and Acceptances and Firm Offers (Intro to the Merchant Concept)

**Casebook** 34 - 41

*Focus on Problem 8*

### **Supplement**

UCC §§ 2-204; 2-205; 2-206; 2-104(1)

### **Handout on TWEN**

- *Merchant Hypos*

9/10 NO CLASS – CONVOCATION

9/15 Contract Formation Under the Code: Battle of the Forms

**Casebook** 41 – 63

*Focus on Problems 9, 9A, 9B and 10*

### **Supplement**

UCC §§ 2-207; 2-204

9/17 Contract Formation Under the CISG and Article 2A; Intro to “Shrinkwrap” Contracts

**Casebook** 64 – 72

*Focus on Problems 11 and 11A*

**Handout on TWEN**

- *Klocek v. Gateway, Inc.* (D. Kan. 2000)

**Supplement**

CISG Arts. 14, 18, 19

9/22 The Statute of Frauds

**Casebook** 78 – 93

*Focus on Problems 13, 14, and 16*

**Supplement**

UCC § 2-201

9/24 The Statute of Frauds Cont’d; Open-Quantity Contracts (Intro to Good Faith)

**Casebook** 93 – 99

*Focus on Problem 17*

**Supplement**

UCC §§ 2-306; 1-304; 1-201(20); 2-103(b)

**Handout on TWEN**

- Statute of Frauds Hypos