

COMMERCIAL TRANSACTIONS: SALES AND LEASES
FALL 2008

PROFESSOR ALLEN BLAIR

Office Hours

Monday 9:00 – 10:00
Tuesday 11:00 – 12:00
Wednesday 9:00 – 10:00
Other Times By Appointment

Contact Information

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Required Texts

- RICHARD E. SPEIDEL & LINDA J. RUSCH, COMMERCIAL TRANSACTIONS: SALES, LEASES AND LICENSES (2d ed. 2004) (“Casebook”).
- CAROL L. CHOMSKY, CHRISTINA L. KUNZ, LINDA J. RUSCH & ELIZABETH R. SCHILTZ, SELECTED COMMERCIAL STATUTES (2008) (“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 law of domestic and international sales and leases of goods, relevant authorities, and your legal strategies in particular situations.

Preparation and Attendance

Your attention, hard work, and perseverance will be required in this class. The most important ingredient to success in this class is preparation. 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 critical. 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 complexity of many of the issues that we'll discuss, and I appreciate the practical significance of each of the rules and 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 make a good faith effort to engage in class-wide discussions and, at least occasionally, volunteer 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 reading assignments on TWEN (and any alterations to those assignments), 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 three in-class quizzes (30%).

The Final Examination

The examination will be a three-hour, self-scheduled, semi-open book examination (meaning 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 three in-class quizzes during the semester. I will give you a one-week advance warning to prepare for each of these quizzes. Two of them will take place before the middle of the semester, and one will take place towards the end of 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.

Reading Assignments

Rather than trying to predict how quickly we will move through the entire semester, I will only predict the first six assignments. I will continue to distribute assignments in six-class bundles every few weeks until the semester is over.

Please notice that I do not always expressly assign sections out of the Supplement. Even if I don't assign readings out of the Supplement, however, **you must review the portions of the Supplement relevant to the assigned 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.

It is 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.

1. **Casebook** 1-26

- Chapter One: Nature and Sources of Commercial Law

Supplement¹

UCC §§ 1-101; 1-102; 1-106.

Handouts on TWEN

- *Introduction to the Purpose and Philosophy of the UCC*

Guiding Questions²

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

¹ Unless otherwise indicated, please focus your attention on the 2000 version of Article 2 of the UCC. You should, however, pay attention to both the 2000 and 2003 versions of Article 1. Additionally, 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.

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

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 country'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?

2. Casebook 26 - 41

- Chapter One: Nature and Sources, cont'd
 - *B&W Glass, Inc. v. Weather Shield Mfg., Inc.* (26)
 - *Blue Valley Cooperative v. Nat'l Farmers Org.* (36)

Supplement

UCC §§ 1-103; 1-102(3); 1-105

Guiding Questions

1. 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?
2. Be prepared to articulate clearly what *B&W Glass* tells us about the relationship between the common law and the Code.

3. Casebook 43 - 82³

- Chapter Two: Scope: What Law Applies to the Transaction
 - *Coakley & Williams, Inc. v. Shatterproof Glass Corp.*

Focus on Problems: 2-1(A)-(D)

Supplement

UCC §§ 2-102; 2-105; 2-501; 2-106
CISG Arts. 1-3, 6, and 10

Handouts on TWEN

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

³ Just skim 43-56 and do not try to read every UCC section mentioned. You may want to flag this part of the text, however, and regularly return to it as we move through the semester. This part of the text provides a nice "roadmap" to the issues that we will be discussing throughout the semester.

4. Casebook 82 – 94

- Chapter Two: Scope, cont'd
 - *Zapatha v. Dairy Mart, Inc.*

Focus on Problem: 2-5

Supplement

UCC §§ 2-104(1) and (3); 1-201(19); 2-103(1)(b); 1-201(3); 1-201(11)

Guiding Questions

1. Please think about what, if anything, you would recommend that Dairy Mart do differently in the contract-negotiating process at issue in *Zapatha* if you were Dairy Mart's counsel.
2. Please articulate a basis for distinguishing between bad faith and unconscionability.

5. Casebook 95 - 124

- Chapter Three: Formation and Terms of the Contract
 - *Flanagan v. Consolidated Nutrition, L.C.*
 - *Daitom, Inc. v. Pennwalt Corp.*

Focus on Problem: 3-3

Supplement

UCC §§ 2-204; 2-205; 2-206; 2-207

6. Handouts on TWEN

- *Hill v. Gateway 2000, Inc.* (7th Cir. 1997)
- *Klocek v. Gateway, Inc.* (D. Kan. 2000)

Supplement

CISG Arts. 14-24