

---

# TABLE OF CONTENTS

PREFACE.....	V
TABLE OF CASES.....	XVII
<b>Chapter 1. Introduction.....</b>	<b>1</b>
A. Organization of the Book and Goals of the Course.....	1
B. Background and History of the UCC.....	2
1. Sponsors.....	2
a. The National Conference of Commissioners on Uniform State Laws .....	2
b. The American Law Institute .....	3
2. The Initial Drafting History .....	4
Malcolm, The Uniform Commercial Code in the United States .....	4
3. Scope of the Uniform Commercial Code .....	5
4. Permanent Editorial Board .....	6
C. The Code as “Code” .....	7
Hawkland, Uniform Commercial Code Methodology .....	7
Kripke, Principles Underlying the Drafting of the Uniform Commercial Code .....	9
<b>Chapter 2. Scope of Article 2 .....</b>	<b>13</b>
A. The Sales-Service Hybrid .....	13
BMC Industries, Inc. v. Barth Industries, Inc. ....	14
Questions and Notes .....	19
B. Computer Software .....	26
Advent Systems Ltd. v. Unisys Corp. ....	26
Questions .....	28
Architectronics, Inc. v. Control Systems, Inc. ....	28
Questions and Notes .....	30
C. Relationship of Article 2 to Other Law.....	39
1. Application of Article 2 Rules in Non-Goods Transactions .....	39
2. Distinguishing Real Estate from Personal Property for Purposes of the Application of the UCC .....	40
3. Primacy of Other Statutes.....	41
Pet Dealers Association of New Jersey, Inc. v. Division of Consumer Affairs, Dept. of Law and Public Safety, State of New Jersey.....	42
Questions and Notes .....	42
D. Territorial and Temporal Limitations and Choice of Law .....	44
1. Choice of Law .....	44
2. Transitional Provisions.....	45
<b>Chapter 3. Formation of the Sales Contract.....</b>	<b>47</b>
A. Introduction.....	47
B. Offer and Acceptance.....	47
Questions and Notes .....	49
C. Statute of Frauds .....	52
Southwest Engineering Co., Inc. v. Martin Tractor Co., Inc.....	52

	Questions and Notes.....	58
	Brooks Cotton Company, Inc. v. Williams.....	61
	Questions and Notes.....	68
D.	The Battle of the Forms.....	74
	Belden Inc. v. American Electronic Components, Inc. ....	75
	Questions and Notes.....	79
	Northrop Corporation v. Litronic Industries .....	83
	Questions and Notes.....	89
E.	Layered Contracting.....	91
	Hill v. Gateway 2000, Inc. ....	91
	Klocek v. Gateway, Inc. ....	95
	Questions and Notes.....	100
F.	Electronic Contracting.....	104
	1. Formation .....	104
	2. Terms.....	107
	Nguyen v. Barnes & Noble, Inc.....	107
	Questions and Notes.....	111
G.	Contract Modification .....	111
	Wisconsin Knife Works v. National Metal Crafters .....	112
	BMC Industries, Inc. v. Barth Industries, Inc. ....	124
	Questions and Notes.....	127
H.	Options Without Consideration (Firm Offers).....	132
	Friedman v. Sommer .....	132
	Questions and Notes.....	133
<b>Chapter 4. Terms of the Sales Contract.....</b>		<b>137</b>
A.	Terms of the Agreement .....	138
	1. The Concept of Agreement .....	138
	2. Express Terms and the Limitations on Them.....	138
	a. Unconscionability .....	139
	A & M Produce Co. v. FMC Corp. ....	140
	Questions and Notes .....	148
	b. Choice of Law.....	154
	Wright-Moore Corporation v. Ricoh Corporation.....	154
	Notes .....	158
	3. The Hierarchy of the Various Components of Agreement.....	158
	a. The Parol Evidence Rule.....	159
	ARB, Inc. v. E-Systems, Inc. ....	159
	Questions .....	163
	Noble v. Logan-Dees Chevrolet-Buick, Inc. ....	163
	Questions .....	165
	b. Trade Usage, Course of Dealing, Course of Performance....	170
	Nanakuli Paving & Rock Co. v. Shell Oil Co., Inc. ....	170
	Questions and Notes .....	177
B.	Terms Outside the Agreement: “Statutory Terms” .....	179
	1. Price .....	181
	a. Background.....	181
	b. Variable-Price Terms .....	182
	c. Drafting Open-Price Terms .....	183

d.	Mutuality of Obligation .....	183
	Mathis v. Exxon Corporation.....	185
	Questions and Notes .....	191
2.	Quantity.....	198
a.	Introduction .....	198
b.	Requirements and Output Contracts.....	199
	Empire Gas Corp. v. American Bakeries Co. ....	202
	Questions and Notes .....	209
3.	Payment.....	212
4.	Delivery.....	213
	Luedtke Engineering Co., Inc. v. Indiana Limestone Co., Inc. ...	214
	Questions .....	217
5.	Risk of Loss.....	218
	A.M. Knitwear Corp. v. All America Export-Import Corp.....	220
	Questions and Notes .....	226
	Jakowski v. Carole Chevrolet, Inc. ....	232
	Questions and Notes .....	235
6.	Special Arrangements.....	236
a.	Sale or Return; Sale on Approval.....	236
b.	Auctions .....	237
	Drew v. John Deere Co. of Syracuse, Inc. ....	237
	Questions and Notes .....	239
<b>Chapter 5. Warranties.....</b>		<b>241</b>
A.	Introduction.....	241
B.	Express Warranties .....	242
	Doug Connor, Inc. v. Proto-Grind, Inc. ....	242
	Questions .....	245
	Royal Business Machines, Inc. v. Lorraine Corp. ....	245
	Questions and Notes .....	249
C.	The Implied Warranty of Merchantability.....	257
1.	Historical Background .....	257
2.	The Standards .....	259
	Ambassador Steel Co. v. Ewald Steel Co.....	260
	Questions and Notes .....	263
	Bethlehem Steel Corp. v. Chicago Eastern Corp. ....	263
	Questions and Notes .....	266
3.	The Implied Warranty of Merchantability and Strict Liability in Tort .....	277
	Denny v. Ford Motor Company .....	279
	Questions and Notes .....	291
D.	The Implied Warranty of Fitness for Particular Purpose .....	293
	Tyson v. Ciba-Geigy Corp.....	293
	Questions and Notes .....	294
E.	Implied Warranties in Leases .....	299
	All-States Leasing Co. v. Bass .....	301
	Questions and Notes .....	305
F.	Warranty of Title .....	307
1.	The Obligation to Provide Good Title .....	307

2.	Disclaimer of the Warranty.....	311
3.	Warranty Against Infringement .....	311
4.	Leases .....	313
5.	CISG.....	313
<b>Chapter 6. Disclaimers and Other Limitations on Warranties.....</b>		<b>315</b>
A.	Disclaimers.....	315
	Sierra Diesel Injection Service, Inc. v. Burroughs Corporation.....	315
	Questions and Notes.....	319
	Gindy Manufacturing Corp. v. Cardinale Trucking Corp. ....	322
	Questions and Notes.....	329
B.	Privity and Warranty .....	334
1.	Express Warranty .....	335
	Randy Knitwear, Inc. v. American Cyanamid Co. ....	335
	Questions and Notes.....	340
2.	Implied Warranties.....	346
	Tex Enterprises, Inc. v. Brockway Standard, Inc. ....	346
	Morrow v. New Moon Homes, Inc. ....	351
	Questions and Notes.....	358
3.	Disclaimers.....	360
	Patty Precision Products Co. v. Brown & Sharpe Manufacturing Co. ....	360
	Questions and Notes.....	363
4.	Is Privity Enough? .....	364
	Erie Insurance Co. v. Amazon.com, Inc. ....	367
	Questions.....	372
C.	Causation, Contributory Negligence, and Assumption of Risk .....	372
1.	Causation.....	372
2.	Contributory Negligence and Assumption of Risk.....	377
D.	Federal and State Statutes Applying Special Rules to Consumer Transactions.....	380
1.	The Magnuson-Moss Consumer Warranty Act.....	380
a.	Introduction.....	380
b.	Invalidation of Disclaimers.....	381
c.	Impact on the Requirement of Privity .....	383
d.	Leases.....	389
2.	State Statutes Modifying Article 2 for Consumer Transactions.....	391
<b>Chapter 7. Buyer's Remedies for Breach by the Seller.....</b>		<b>395</b>
A.	Introduction.....	395
B.	Rejection, Cure, and Revocation of Acceptance .....	396
1.	Single-Delivery Contracts .....	396
	D.P. Technology Corp. v. Sherwood Tool, Inc.....	397
	Questions and Notes.....	400
2.	Installment Contracts.....	403
	Questions.....	405
	Midwest Mobile Diagnostic Imaging, L.L.C. v. Dynamics Corporation of America.....	406

	Questions and Notes .....	413
3.	Procedure for Effective Rejection and Duties After Rejection ....	414
	Miron v. Yonkers Raceway, Inc. ....	415
	Questions and Notes .....	422
4.	Cure.....	428
	Problems .....	429
	Zabriskie Chevrolet, Inc. v. Smith .....	429
	Questions .....	434
5.	Revocation of Acceptance.....	441
	Jorgensen v. Pressnall .....	442
	Questions and Notes .....	445
	Accettura v. Vacationland, Inc. ....	449
	Accettura v. Vacationland, Inc. ....	452
	Questions and Notes .....	455
C.	Remedies When the Buyer Does Not Have the Goods .....	456
1.	The Right to Get the Goods .....	456
	Sedmak v. Charlie's Chevrolet, Inc. ....	457
	Hilmor Sales Co. v. Helen Neushaefer Div. of Supronics Corp. ....	461
	Questions and Notes .....	461
2.	The Right to Damages .....	464
	Valley Die Cast Corp. v. A.C.W. Inc. ....	466
	Questions and Notes .....	471
	Allied Cannery & Packers, Inc. v. Victor Packing Co. ....	473
	TexPar Energy Inc. v. Murphy Oil USA, Inc. ....	478
	Questions and Notes .....	480
D.	Remedies When the Buyer Gets and Keeps the Goods .....	481
1.	Damages .....	481
2.	The Requirement of Notice.....	484
	Eastern Air Lines, Inc. v. McDonnell Douglas Corp. ....	484
	Questions and Notes .....	486
E.	Contractual Limitations of Remedies .....	490
	Questions .....	490
1.	Refund of the Price.....	491
	Tokyo Ohka Kogyo America, Inc. v. Huntsman Propylene Oxide LLC .....	491
	Questions and Notes .....	497
2.	Repair or Replacement .....	498
	Smith v. Navistar International Transportation Corporation ....	499
	Questions and Notes .....	505
<b>Chapter 8. Seller's Remedies for Breach by the Buyer.....</b>		<b>513</b>
A.	Introduction.....	513
B.	Remedies on Wrongful Rejection or Repudiation .....	513
1.	Action for the Price .....	513
	Industrial Molded Plastic Products, Inc. v. J. Gross & Son, Inc. ....	513
	Questions and Notes .....	516

2.	Action for Damages.....	519
	Questions .....	520
	Peace River Seed Co-Operative, Ltd. v. Proseeds Marketing, Inc.....	521
	Questions and Notes .....	529
	Neri v. Retail Marine Corp.....	532
	Questions and Notes .....	535
3.	Contracted-For Remedies .....	540
a.	Liquidated Damages .....	540
	Kvassay v. Murray .....	540
	Questions and Notes .....	543
b.	Take-or-Pay .....	543
	Hemlock Semiconductor Corporation v. Kyocera Corporation.....	545
	Questions and Notes .....	550
c.	Specific Performance.....	551
	Martin v. Sheffer .....	551
	Questions and Notes .....	553
<b>Chapter 9. Repudiation and the Prospect of Breach .....</b>		<b>559</b>
A.	Introduction.....	559
B.	The Prospect of Breach.....	560
	Clem Perrin Marine Towing, Inc. v. Panama Canal Co.....	560
	Questions and Notes .....	562
C.	Repudiation .....	565
1.	Definition .....	565
2.	Damages .....	570
	Hess Energy, Inc. v. Lightning Oil Co., Ltd. ....	571
	Questions and Notes .....	575
<b>Chapter 10. Discharge by Impracticability .....</b>		<b>579</b>
	United States v. Wegematic Corp.....	579
	Questions and Notes.....	582
	Chase Precast Corporation v. John J. Paonessa Company, Inc. ....	583
	Questions.....	587
	Waldinger Corp. v. CRS Group Engineers, Inc. ....	587
	Questions and Notes.....	596
<b>Chapter 11. Rights and Liabilities of Third Parties .....</b>		<b>601</b>
A.	Title.....	601
	Home Indemnity Co. v. Twin City Fire Insurance Co.....	601
	Questions.....	604
B.	Situations in Which the Buyer Gets Better Title than the Seller Had.....	604
1.	Rights of the Buyer Against a Secured Creditor of the Seller ....	604
	Snap-On Tools Corporation v. Rice .....	606
	Questions and Notes .....	609
	Fordyce Bank & Trust Co. v. Bean Timberland, Inc. ....	610
	Questions and Notes .....	614

2. Rights of the Buyer When the Seller Does Not Own the Goods:  
 Entrustment ..... 617  
 Best Signs, Inc. v. King ..... 618  
 Questions and Notes ..... 620

C. Situations in Which the Buyer Gets Worse Title than the Seller  
 Had..... 628

1. Fraudulent Conveyances ..... 628

    a. Seller’s Retention of Possession After the Sale ..... 628  
     Lefever v. Mires ..... 629  
     Questions ..... 630  
     Blumenstein v. Phillips Insurance Center, Inc. .... 630  
     Questions and Notes ..... 637

    b. Sales Made with Actual Intent to Defraud Creditors ..... 639

    c. Sales for Less than Fair Value by Sellers Who Are  
     Insolvent or Who Are Left with Insufficient Capital ..... 640

2. Bulk Sales ..... 641

    a. Transactions Covered..... 642

    b. Transfers Excepted ..... 643

    c. Compliance with the Act..... 643  
     (1) Compliance Procedures ..... 643  
     (2) Effect of Failure to Comply ..... 644

D. Right of the Seller, as Against Creditors of the Buyer, to Recover  
 Goods from a Buyer Who Is Insolvent ..... 644

    1. Rights Against Lien Creditors and the Trustee in  
     Bankruptcy ..... 644

    2. Rights Against Secured Creditors..... 645

**Chapter 12. Documentary Transactions.....649**

A. Introduction..... 649

B. Obligations of Carriers ..... 650  
 Fine Foliage of Florida, Inc. v. Bowman Transportation, Inc. .... 651  
 Notes ..... 656  
 G.A.C. Commercial Corp. v. Wilson..... 658  
 Questions and Notes ..... 663  
 Rountree v. Lydick-Barmann Co. .... 664

C. Shipments Under Reservation ..... 666

D. Letters of Credit..... 669  
 Courtaulds North America, Inc. v. North Carolina National Bank ... 671  
 Questions and Notes ..... 676  
 United Bank Ltd. v. Cambridge Sporting Goods Corp. .... 677  
 Note..... 680

INDEX ..... 681