

# TABLE OF CONTENTS

---

|   |           |
|---|-----------|
| Preface to Students .....   | v         |
| Acknowledgments .....   | vii       |
| Table of Cases .....  | xxvii     |
| Table of Statutes, Regulations, and Treaties.....   | xxxiii    |
| Table of Secondary Authorities.....   | xlix      |
| <b>Chapter 1: Introduction and Overview: The Uniform Commercial Code and<br/>UCC Article 2.....</b> | <b>1</b>  |
| A. The Uniform Commercial Code as a Source of Law .....   | 2         |
| B. The Structure of Article 2 .....   | 4         |
| C. Overview of the Book.....  | 6         |
| D. Engaging with the Material and Learning Article 2.....   | 8         |
| <b>Assignment 1: Construing and Applying the UCC</b>  |           |
| <b>§§ 1–103, 1–106, 1–107, 1–201, 1–202, 1–205 .....</b>  | <b>11</b> |
| A. Learning the Code (or Any Statute) .....   | 11        |
| B. Understanding and Applying the Purposes of the Code .....  | 15        |
| Reading the Code: §§ 1–103(a), 1–107 .....  | 15        |
| C. Definitions and Guidance on Interpretation .....   | 18        |
| Reading the Code: §§ 1–106 and 1–107.....   | 18        |
| Reading the Code: §§ 1–201 and 2–103.....   | 18        |
| D. Notice, Knowledge, and Receipt.....  | 20        |
| Reading the Code: §§ 1–202 and 1–205.....   | 20        |
| <b>Applying the Code (Problem 1-1).....</b>   | <b>20</b> |
| <b>Chapter 2: Scope of Article 2 and Special Obligations for Merchants.....</b>                     | <b>23</b> |
| <b>Assignment 2: Article 2 Definition of Scope</b>  |           |
| <b>§§ 2–102, 2–105, 2–106, 2–107.....</b>   | <b>25</b> |
| A. Article 2 Scope: “Transactions in Goods” .....   | 25        |
| B. Scope and “Sale” of Goods.....   | 26        |
| Reading the Code: §§ 2–102 and 2–106(1) .....   | 26        |
| <b>Applying the Code (Problems 2-1 to 2-5).....</b>   | <b>27</b> |
| C. Scope and Sale of “Goods” .....  | 28        |
| Reading the Code: § 2–105 .....   | 28        |
| <b>Applying the Code (Problems 2-6 to 2-7).....</b>   | <b>30</b> |
| Reading the Code: Goods to be Severed from Realty § 2–107 .....                                     | 31        |
| <b>Applying the Code (Problem 2-8).....</b>   | <b>31</b> |

|   |    |
|---|----|
| <b>Assignment 3: Mixed Transactions and Article 2</b> .....   | 33 |
| A. Preliminary Question: Is the Contract Divisible? .....   | 33 |
| B. Predominant Purpose Analysis of a Non-Divisible Mixed Contract.....  | 34 |
| Reading the Code: § 1–103(b) .....  | 42 |
| C. The Gravamen Test: Alternative or Aberration?.....   | 42 |
| D. Applying Article 2 by Analogy .....  | 43 |
| <b>Applying the Code (Problems 3-1 to 3-5)</b> .....  | 43 |
| <br><b>Assignment 4: Definition of Merchant</b>   |    |
| <b>§ 2–104</b> .....  | 45 |
| Reading the Code: §§ 2–102 and 2–104.....   | 46 |
| <b>Applying the Code (Problems 4-1 to 4-7)</b> .....  | 56 |
| <br><b>Chapter 3: Contract Formation and Content of the Contract</b> .....  | 61 |
| <br><b>Assignment 5: Contract Formation Under Article 2</b>   |    |
| <b>UCC §§ 1–201(b)(31), (37), &amp; (43), 1–202(d), 1–205, 2–204, 2–205, 2–206, 2–207(1); first sentence of § 2–207(3); UETA &amp; E-SIGN</b> ..... | 63 |
| A. Primer on Electronic Communications: Part 1.....   | 64 |
| Reading the Code and UETA/E-SIGN .....  | 65 |
| B. Firm Offer .....   | 67 |
| Reading the Code: § 2–205 .....   | 68 |
| <b>Applying the Code (Problem 5-1)</b> .....  | 69 |
| C. General Rules Governing Mutual Assent.....   | 69 |
| Reading the Code: § 2–204 .....   | 70 |
| D. Primer on Electronic Communications: Part 2.....   | 72 |
| Reading UETA: § 15(a), (b), (e).....  | 73 |
| E. Contract Formation by Offer and Acceptance.....  | 73 |
| Reading the Code: § 2–206(1)(a) .....   | 74 |
| <b>Applying the Code (Problem 5-2)</b> .....  | 75 |
| Reading the Code: §§ 2–206(1)(b), 1–202(d), 1–205.....  | 76 |
| Reading the Code: § 2–206(2) .....  | 78 |
| F. Contract Formation in a “Battle of the Forms”: § 2–207(1) & (3).....   | 78 |
| 1. The Basics of § 2–207(1) .....   | 79 |
| Reading the Code: § 2–207(1) .....  | 79 |
| <b>Applying the Code (Problem 5-3)</b> .....  | 79 |
| Reading the Code: § 2–207(1) .....  | 80 |
| Reading the Code: § 2–207(1) .....  | 82 |
| 2. The Basics of § 2–207(3) .....   | 83 |
| Reading the Code: § 2–207(3), first sentence .....  | 83 |
| 3. Court Interpretations of Tricky Language in § 2–207(1) .....   | 85 |

|    |  |    |
|----|--|----|
| a. | What Is a “Definite and Seasonable Expression of Acceptance”?  |    |
|    | Why Does It Matter? .....  | 85 |
|    | <b>Applying the Code (Problem 5-4)</b> .....   | 87 |
| b. | What Is an Acceptance “Expressly Made Conditional on Assent to the Additional or Different Terms”? Why Does It Matter? ..... | 88 |
|    | Non-Uniformity Alert: <i>Construction Aggregates</i> and <i>Dorton</i> .....   | 89 |
|    | <b>Applying the Code (Problem 5-5)</b> .....   | 92 |
| G. | Pulling It All Together.....   | 92 |
|    | <i>Mantline Corp. v. PPG Industries, Inc.</i> .....  | 93 |
|    | <b>Applying the Code (Problems 5-6 to 5-9)</b> .....   | 98 |

**Assignment 6: Determining Contract Content: Express and Implied Terms, Mandatory and Default Provisions**

|   |     |
|---|-----|
| §§ 1–103(a), (b); 1–201(b)(3), (12), (20), (40); 1–302; 1–303; 1–304; 2–302; 2–305; 2–306; 2–307; 2–308; 2–309; 2–725(1)..... | 101 |
|---|-----|

|    |  |     |
|----|--|-----|
| A. | Implied-in-Fact Terms: The Importance of Context (Course of Dealing, Course of Performance, and Usage of Trade)..... | 102 |
|    | Reading the Code: § 1–303 .....  | 103 |
|    | Reading the Code: § 1–303 .....  | 106 |
|    | <i>Nanakuli Paving &amp; Rock Co. v. Shell Oil Co.</i> .....   | 107 |
|    | <b>Applying the Code (Problems 6-1 to 6-2)</b> .....   | 122 |
| B. | Implied-in-Law Provisions .....  | 125 |
| 1. | Distinguishing Between Mandatory and Default Provisions.....   | 125 |
|    | Reading the Code: Mandatory vs. Default Provisions § 1–302 .....   | 125 |
| 2. | Open Price and Quantity Provisions .....   | 126 |
|    | Reading the Code: Open Price Terms § 2–305 .....   | 127 |
|    | Reading the Code: Output and Requirements Contracts § 2–306(1) .....   | 128 |
|    | Reading the Code: Exclusive Dealing Contracts § 2–306(2).....  | 128 |
| 3. | Good Faith.....  | 129 |
|    | Reading the Code: § 1–304 .....  | 129 |
|    | Non-Uniformity Alert: Definitions of “Good Faith” .....  | 131 |
|    | Reading the Code: § 1–201(b)(20) .....   | 132 |
|    | <b>Applying the Code (Problems 6-3 to 6-5)</b> .....   | 134 |
| C. | Components of a Contract: Definitions and Relationships .....  | 135 |
|    | Reading the Code: § 1–201(b)(3), (12), (40) .....  | 136 |
|    | <b>Applying the Code (Problem 6-6)</b> .....   | 137 |

**Assignment 7: Determining Contract Content When the Exchanged Communications Differ (Battle of Forms)**

|                       |     |
|-----------------------|-----|
| § 2–207(2), (3) ..... | 139 |
|-----------------------|-----|

|    |   |     |
|----|---|-----|
| A. | Determining the Content of Contracts Created by Conduct |     |
|    | Under § 2–207(3).....                                   | 140 |

|  |     |
|--|-----|
| Reading the Code: § 2–207(3) .....   | 140 |
| <b>Applying the Code (Problem 7-1)</b> .....   | 141 |
| B. Determining the Content of Contracts Created Under § 2–207(1).....  | 142 |
| 1. Distinguishing Between Different and Additional Terms .....   | 142 |
| Reading the Code: § 2–207(1) & (2).....  | 142 |
| 2. Applying § 2–207(2) When an Acceptance Contains <i>Additional</i> Terms .....                                       | 143 |
| Reading the Code: § 2–207(2) .....   | 143 |
| a. Examples of Language Invoking § 2–207(2)(a) and (c) .....   | 143 |
| <b>Applying the Code (Problem 7-2)</b> .....   | 145 |
| b. What Constitutes a “Material Alteration” Under § 2–207(2)(b)? .....   | 146 |
| Reading the Code: § 2–207(2), Comments 4 and 5 .....   | 146 |
| 3. Applying § 2–207(2) When an Acceptance Contains <i>Different</i> Terms.....   | 151 |
| a. Distinguishing Between Different and Additional Terms (Reprise) .....   | 152 |
| Reading the Code: § 2–207(2) Applied to Different Terms.....   | 152 |
| b. Three Approaches to Different Terms in Purported Acceptances .....  | 152 |
| <i>Daitom, Inc. v. Pennwalt Corp.</i> .....  | 154 |
| 4. Putting It All Together: Surveying All the Possibilities for Additional<br>and Different Terms in Acceptances ..... | 163 |
| <b>Applying the Code (Problems 7-3)</b> .....  | 163 |
| Reading the Code: The Effect of § 2–207 on the Common Law<br>“Last Shot” Rule .....                                    | 163 |
| <b>Applying the Code (Problems 7-4)</b> .....  | 164 |
| C. Applying § 2–207(2) to Written Confirmations.....   | 165 |
| Reading the Code: § 2–207(2) Applied to Written Confirmations.....   | 165 |
| <b>Applying the Code (Problems 7-5 to 7-7)</b> .....   | 166 |
| <b>Integrating Assignments 5, 6, and 7 (Problems 7-8 to 7-9)</b> .....   | 169 |
| D. Postscript: The Thorny Problem of Late-Arriving Terms .....   | 171 |
| Non-Uniformity Alert: .....  | 173 |
| Reading the Code: Approaches for Dealing with Late-Arriving Terms .....  | 176 |
| <b>Applying the Code (Problem 7-10)</b> .....  | 177 |
| <b>Chapter 4: Enforcing the Contract</b> .....   | 179 |
| <b>Assignment 8: Parol Evidence Rule</b>   |     |
| § 2–202.....   | 181 |
| A. Why Is It Called the Parol Evidence Rule? .....   | 181 |
| B. The Policy Underlying § 2–202 .....   | 182 |
| C. What Kind of Document(s) Memorialize the Contract?.....   | 184 |
| 1. The Three Kinds of Writing Identified in § 2–202.....   | 184 |
| Reading the Code: Identifying the Three Types of Writings in § 2–202.....  | 185 |
| 2. How Does a Court Decide What Kind of Document the “Contract” Is? .....  | 185 |

|  |     |
|--|-----|
| 3. Application of § 2–202 to the Three Kinds of Documents .....              | 187 |
| a. Application to Final Expressions.....                                     | 187 |
| Reading the Code: How § 2–202 Applies to Final Expressions .....             | 188 |
| b. Application to Confirmatory Memoranda.....                                | 192 |
| Reading the Code: How § 2–202 Applies to Confirmatory                        |     |
| Memoranda.....   | 192 |
| c. Application to Complete and Exclusive Statements .....                    | 193 |
| Reading the Code: How § 2–202 Applies to Complete and Exclusive              |     |
| Statements.....  | 193 |
| D. What Is the Source of the Extrinsic Evidence?.....                        | 194 |
| Reading the Code: § 2–202 and the Source of Extrinsic Evidence.....          | 195 |
| E. For What Purpose Is the Extrinsic Evidence Being Offered?.....            | 195 |
| Reading the Code: § 2–202 and the Purpose of the Evidence .....              | 196 |
| F. Charting § 2–202 .....  | 196 |
| Reading the Code: § 2–202 and the Purpose of the Evidence .....              | 197 |
| G. Explaining/Supplementing/Contradicting the Terms .....                    | 199 |
| 1. Does the Extrinsic Evidence “Explain,” “Supplement,” or “Contradict”      |     |
| the Writing? .....   | 199 |
| <b>Applying the Code (Problem 8-1)</b> .....                                 | 202 |
| 2. The Effect of Comment 3 .....   | 203 |
| Reading the Code: § 2–202 Comment 3.....                                     | 203 |
| <b>Applying the Code (Problem 8-2)</b> .....                                 | 208 |
| 3. Is Ambiguity Required before Admitting Evidence to Explain a Term? .....  | 208 |
| <b>Applying the Code (Problems 8-3 to 8-5)</b> .....                         | 209 |
| <br><b>Assignment 9: Statute of Frauds</b>                                   |     |
| § 2–201 .....  | 213 |
| A. Structuring the Statute of Frauds Inquiry.....                            | 214 |
| B. What Category of Agreements Does § 2–201 Require to Be in Writing?.....   | 215 |
| Reading the Code: § 2–201(1), first sentence .....                           | 215 |
| C. What Are the Three Exceptions to the Writing Requirement in § 2–201?..... | 215 |
| Reading the Code: § 2–201(3) .....   | 215 |
| <b>Applying the Code (Problem 9-1)</b> .....                                 | 219 |
| D. What Kind of a Writing Does § 2–201 Require?.....                         | 219 |
| 1. What Counts as a “Writing”?.....  | 219 |
| Reading the Code: § 1–102(b)(43) .....                                       | 220 |
| 2. What Constitutes a “Sufficient” Writing? .....                            | 221 |
| Reading the Code: § 2–201(1) .....   | 221 |

|  |     |
|--|-----|
| a. “Sufficient to indicate that a contract for sale has been made between the parties” ..... | 221 |
| <b>Applying the Code (Problem 9-2)</b> .....   | 225 |
| b. “Signed by the party against whom enforcement is sought” .....                            | 227 |
| Reading the Code and UETA: UCC § 1–201(b)(37); UETA § 2(8).....                              | 228 |
| c. Quantity Term .....   | 231 |
| <b>Applying the Code (Problem 9-3 to 9-4)</b> .....  | 232 |
| 3. Using Multiple Writings.....  | 233 |
| 4. When a Signature Is Not Required: The “Merchant Confirmation”                             |     |
| Under § 2–201(2) .....   | 235 |
| Reading the Code: § 2–201(2) .....   | 236 |
| <i>Brooks Peanut Co. v. Great Southern Peanut, LLC</i> .....                                 | 237 |
| <b>Applying the Code (Problem 9-5)</b> .....   | 240 |
| E. Promissory Estoppel and the Statute of Frauds.....  | 241 |
| Reading the Code: Promissory Estoppel and the Statute of Frauds.....                         | 242 |
| F. Tips on Solving Statute of Frauds Problems .....  | 245 |
| <b>Applying the Code (Problems 9-6 to 9-7)</b> .....   | 246 |
| <b>Chapter 5: Warranties</b> .....   | 249 |
| <br>   |     |
| <b>Assignment 10: Creation of Implied Warranties</b>   |     |
| <b>§§ 2–312, 2–314, 2–315</b> .....  | 251 |
| A. Implied Warranties of Quality.....  | 251 |
| 1. Implied Warranty of Merchantability .....   | 252 |
| Reading the Code: § 2–314 .....  | 252 |
| <b>Applying the Code (Problems 10-1 to 10-2)</b> .....                                       | 260 |
| 2. Implied Warranty of Fitness for Particular Purpose.....                                   | 261 |
| Reading the Code: § 2–315 .....  | 262 |
| <i>Gared Holdings, LLC v. Best Bolt Products, Inc.</i> .....                                 | 267 |
| <b>Applying the Code (Problems 10-3 to 10-4)</b> .....                                       | 273 |
| B. Warranties of Title and Non-Infringement.....   | 275 |
| 1. Warranty of Title .....   | 275 |
| Reading the Code: § 2–312(1) .....   | 275 |
| 2. Warranty Against Infringement .....   | 277 |
| Reading the Code: § 2–312(3) .....   | 277 |
| <b>Applying the Code (Problem 10-5)</b> .....  | 280 |
| <br>   |     |
| <b>Assignment 11: Creation of Express Warranties</b>   |     |
| <b>§ 2–313</b> .....   | 281 |
| A. Creating an Express Warranty .....  | 282 |
| Reading the Code: § 2–313(1) .....   | 283 |

|   |     |
|---|-----|
| Reading the Code: § 2–314 Comment 4 .....                                   | 283 |
| <b>Applying the Code (Problem 11-1)</b> .....                               | 286 |
| 1. “Part of the Basis of the Bargain” and Its Relationship to Reliance..... | 286 |
| Reading the Code: § 2–313 .....   | 289 |
| 2. Representations in Advertising.....                                      | 290 |
| 3. Representations Using Samples or Models.....                             | 291 |
| Reading the Code: § 2–313 .....   | 292 |
| <b>Applying the Code (Problems 11-2 to 11-3)</b> .....                      | 292 |
| B. The Defense of “Puffing” .....   | 293 |
| Reading the Code: § 2–313(2) .....  | 294 |
| <b>Applying the Code (Problem 11-4)</b> .....                               | 298 |
| C. Representations Made After Contract Formation.....                       | 299 |
| D. Representations by Remote Sellers .....                                  | 302 |
| E. Putting It All Together .....  | 304 |
| <i>Avola v. Louisiana-Pacific Corp.</i> .....                               | 305 |
| <b>Applying the Code (Problems 11-5 to 11-6)</b> .....                      | 313 |
| <br><b>Assignment 12: Warranty Disclaimers and Conflicts</b>                |     |
| <b>UCC §§ 2–312, 2–316, 2–317; Magnuson-Moss Warranty Act</b> .....         | 315 |
| A. Disclaiming Warranties .....   | 315 |
| 1. Disclaiming Express Warranties .....                                     | 316 |
| Reading the Code: § 2–316(1) .....  | 316 |
| 2. Disclaiming the Implied Warranties of Quality .....                      | 319 |
| a. How to Disclaim .....  | 321 |
| Reading the Code: § 2–316(2) and (3).....                                   | 321 |
| b. Is the Disclaimer Conspicuous Under § 2–316(2)? .....                    | 323 |
| Reading the Code: “Conspicuous”.....  | 323 |
| 3. Disclaiming the Warranties of Title and Against Infringement .....       | 326 |
| Reading the Code: § 2–312 (2), (3) .....                                    | 326 |
| B. Cumulation and Conflict of Warranties .....                              | 327 |
| Reading the Code: § 2–317 .....   | 327 |
| <b>Applying the Code (Problems 12-1 to 12-6)</b> .....                      | 329 |
| C. Magnuson-Moss Warranty Act.....  | 332 |
| 1. Definitions and Scope.....   | 333 |
| 2. Full and Conspicuous Disclosure of Warranty Terms.....                   | 336 |
| 3. Mandatory Two-Tier System of Warranty Labeling .....                     | 336 |
| Reading the Code: Magnuson-Moss Warranty Act §§ 101–104, & 108 .....        | 337 |
| <i>Fleisher v. Fiber Composites, LLC</i> .....                              | 339 |
| <b>Applying the Code (Problems 12-7 to 12-8)</b> .....                      | 347 |

**Assignment 13: Extending Warranties to Third-Party Beneficiaries**

§ 2-318..... 349

A. The Historical Requirement of Privity ..... 349

B. Relaxation of Privity Requirements ..... 351

    Reading the Code: § 2-318 ..... 353

    Reading the Code: § 2-318 ..... 356

**Applying the Code (Problems 13-1 to 13-3)**..... 357

C. Non-Uniform Versions of § 2-318 ..... 361

    Reading the Code: Non-uniform Versions of § 2-318 ..... 361

D. Judicial Rules Affecting Privity Requirements ..... 362

E. Putting It All Together ..... 367

*Babb v. Regal Marine Industries, Inc.* ..... 368

**Applying the Code (Problems 13-4 to 13-6)**..... 372

**Chapter 6: Performance Issues: Living in (or Escaping from) the Contract**..... 375

**Assignment 14: Seller’s Actions and Their Consequences, Part I: Identification and Tender of Delivery**

**UCC §§ 2-319, 2-320, 2-501, 2-503, 2-504; Incoterms**..... 379

A. Identification of Goods..... 379

    1. Requirements for Identification ..... 379

        Reading the Code: § 2-501 ..... 380

        Reading the Code: § 2-501 ..... 381

**Applying the Code (Problems 14-1 to 14-2)** ..... 382

    2. Consequences of Identification ..... 384

        Reading the Code: Consequences of Identification ..... 384

B. Tender of Delivery ..... 385

    1. General Requirements for Tender of Delivery: § 2-503(1) ..... 386

        Reading the Code: § 2-503(1) ..... 386

    2. Tender of Delivery at Seller’s Location..... 388

    3. Tender of Delivery via Warehouse and Documents ..... 389

        Reading the Code: § 2-503(4) ..... 389

        Reading the Code: § 2-503(4) ..... 392

    4. Tender of Delivery by Shipping and Documents..... 393

        a. Tender of Delivery if Seller Transports the Goods: § 2-503(3)..... 395

            Reading the Code: § 2-503(3) ..... 395

        b. Tender of Delivery if Seller Uses a Carrier: §§ 2-503(2)-(3) and 2-504 ..... 395

            Reading the Code: Shipping via a “Destination” Contract § 2-503(3) to (5) ..... 396



|   |     |
|---|-----|
| Reading the Code: Shipping via a “Shipment” Contract §§ 2–503(2) & 2–504..... | 397 |
| 5. Putting It Together .....  | 399 |
| Reading the Code: §§ 2–503 & 2–504 .....                                      | 399 |
| C. Determining Contract Requirements for Delivery .....                       | 401 |
| Reading the Code: § 2–319 .....   | 401 |
| Reading the Code: § 2–320 .....   | 402 |
| D. Shipping Terms from Sources Other than the UCC.....                        | 404 |

**Assignment 15: Seller’s Actions and Their Consequences, Part II: Transfer of Risk of Loss and Title**

|  |     |
|--|-----|
| <b>§§ 2–401, 2–403, 2–509</b> .....                                | 407 |
| A. Tender of Delivery at Seller’s Location .....                   | 408 |
| 1. Passing of Risk of Loss: § 2–509(3).....                        | 408 |
| Reading the Code: § 2–509(3) .....                                 | 409 |
| 2. Passing of Title: § 2–401(1) and (2).....                       | 409 |
| Reading the Code: § 2–401(1) and (2) .....                         | 409 |
| <b>Applying the Code (Problem 15-1)</b> .....                      | 410 |
| B. Tender of Delivery via Warehouse and Documents .....            | 410 |
| 1. Passing of Risk of Loss: § 2–509(2).....                        | 410 |
| Reading the Code: § 2–509(2) .....                                 | 411 |
| 2. Passing of Title: § 2–401(3).....                               | 412 |
| Reading the Code: § 2–401(2) and (3) .....                         | 412 |
| C. Tender of Delivery by Shipping and Documents.....               | 413 |
| 1. Passing of Risk of Loss: § 2–509(1) and (3) .....               | 413 |
| Reading the Code: § 2–509 .....                                    | 413 |
| 2. Passing of Title: § 2–401(2) and (3).....                       | 414 |
| Reading the Code: § 2–401 .....                                    | 414 |
| D. Putting It Together.....  | 415 |
| Reading the Code: §§ 2–401, 2–509 .....                            | 415 |
| <b>Applying the Code (Problems 15-2 to 15-3)</b> .....             | 416 |
| E. Resolving Disputes About Title to Goods .....                   | 418 |
| 1. The Derivative Title Rule.....                                  | 418 |
| Reading the Code: § 2–403(1) .....                                 | 419 |
| 2. Stolen Goods: “Void Title” .....                                | 419 |
| 3. Buyer in the Ordinary Course of Business .....                  | 422 |
| Reading the Code: § 2–403(2) and (3) .....                         | 422 |
| 4. Good Faith Purchaser for Value .....                            | 425 |
| Reading the Code: § 2–403(1) .....                                 | 426 |
| Reading the Code: § 2–403(1) .....                                 | 428 |
| 5. Interaction Between Certificate-of-Title Acts and § 2–403 ..... | 431 |

|   |     |
|---|-----|
| 6. Beyond UCC Article 2.....  | 431 |
| <b>Applying the Code (Problems 15-4 to 15-5)</b> .....  | 431 |
| <br>  |     |
| <b>Assignment 16: Buyer’s Responses to Tender, Part I: Inspection, Rejection, and Seller’s Opportunity to Cure</b>                                  |     |
| <b>§§ 2–105(6), 2–508, 2–513, 2–601, 2–602, 2–603, 2–604, 2–605, 2–612, 2–711(3)</b> .....  | 435 |
| A. Buyer’s Right to Inspect the Goods .....   | 437 |
| Reading the Code: § 2–513 .....   | 437 |
| B. Rejection of Goods by Buyer .....  | 439 |
| 1. When Is a Rejection Rightful? .....  | 440 |
| a. The Perfect Tender Rule.....   | 440 |
| Reading the Code: § 2–601.....  | 441 |
| b. Rejection of a Portion of Goods Tendered: The Concept of “Commercial Units” .....  | 444 |
| Reading the Code: § 2–601.....  | 444 |
| 2. When Is a Rejection Effective?.....  | 447 |
| a. The Process and Content of Rejection.....  | 447 |
| Reading the Code: § 2–602 .....   | 447 |
| Reading the Code: § 2–605 .....   | 449 |
| b. Time for Rejection and Buyer’s Reasonable Opportunity to Inspect .....   | 449 |
| c. Handling Goods After Rightful Rejection .....  | 454 |
| Reading the Code: §§ 2–602, 2–603, 2–604, 2–711 .....   | 454 |
| C. Cure of Nonconformity by Seller.....   | 457 |
| 1. Seller’s Right to Cure .....   | 457 |
| Reading the Code: § 2–508 .....   | 457 |
| 2. Understanding the Meaning of Cure.....   | 457 |
| <i>Wilson v. Scampoli</i> .....   | 458 |
| 3. Cure After Performance Is Due.....   | 460 |
| <i>Bartus v. Riccardi</i> .....   | 461 |
| D. Rejection in Installment Contracts.....  | 464 |
| Reading the Code: § 2–612 .....   | 464 |
| <b>Applying the Code (Problems 16-1 to 16-5)</b> .....  | 466 |
| <br>  |     |
| <b>Assignment 17: Buyer’s Responses to Tender, Part II: Acceptance of Goods, Revocation of Acceptance of Goods, and Risk of Loss After a Breach</b> |     |
| <b>§§ 2–508, 2–510, 2–513, 2–601, 2–602, 2–603, 2–605, 2–606, 2–607, 2–608, 2–711(3)</b> .....  | 469 |
| A. Acceptance of Goods .....  | 470 |
| 1. Three Paths to Acceptance.....   | 470 |
| Reading the Code: §§ 2–513, 2–606 .....   | 470 |
| 2. Communicating Acceptance to Seller.....  | 471 |

|  |     |
|--|-----|
| 3. Acceptance After a “Reasonable Opportunity to Inspect” .....  | 474 |
| <b>Applying the Code (Problem 17-1)</b> .....  | 479 |
| 4. Acceptance Based on “Acts Inconsistent with Seller’s Ownership” .....                                 | 480 |
| Reading the Code: §§ 2–602, 2–606 .....  | 481 |
| <b>Applying the Code (Problems 17-2 to 17-3)</b> .....   | 484 |
| 5. Effect of Acceptance.....   | 485 |
| Reading the Code: § 2–607 .....  | 485 |
| B. Notifying Seller of Breach .....  | 485 |
| Reading the Code: § 2–607(3) .....   | 486 |
| C. Revocation of Acceptance of the Goods .....   | 487 |
| 1. Under What Circumstances May Buyer Revoke Acceptance, and How? .....                                  | 487 |
| Reading the Code: § 2–608 .....  | 487 |
| 2. Cure After Revocation .....   | 491 |
| <b>Applying the Code (Problem 17-4)</b> .....  | 492 |
| <i>Yates v. Clifford Motors, Inc.</i> .....  | 494 |
| D. Effect of Breach on Risk of Loss.....   | 500 |
| 1. Effect of Seller’s Breach on Risk of Loss.....  | 500 |
| Reading the Code: § 2–510 .....  | 500 |
| 2. Effect of Buyer’s Breach on Risk of Loss .....  | 503 |
| Reading the Code: § 2–510 .....  | 503 |
| E. Varying by Agreement the Default Rules on Rejection, Acceptance, and<br>Revocation.....               | 504 |
| Reading the Code: § 2–513 & 2–606.....   | 505 |
| <b>Applying the Code (Problems 17-5 to 17-7)</b> .....   | 507 |
| <br><b>Assignment 18: Repudiation and Adequate Assurance of Performance;<br/>Excuse from Performance</b> |     |
| §§ 2–609, 2–610, 2–611, 2–613, 2–614, 2–615, 2–616.....  | 509 |
| A. Reasonable Insecurity About Future Performance .....  | 510 |
| Reading the Code: § 2–609 .....  | 511 |
| <b>Applying the Code (Problem 18-1)</b> .....  | 517 |
| B. Anticipatory Repudiation.....   | 518 |
| 1. Making a Repudiation .....  | 518 |
| Reading the Code: § 2–610 .....  | 518 |
| 2. Retracting a Repudiation.....   | 521 |
| Reading the Code: § 2–611 .....  | 521 |
| C. Excuse from Performance.....  | 523 |
| 1. Casualty to Identified Goods.....   | 523 |
| Reading the Code: § 2–613 .....  | 523 |
| 2. Substituted Performance for Delivery or Payment.....  | 526 |
| Reading the Code: § 2–614 .....  | 526 |

|  |     |
|--|-----|
| 3. Excuse by Failure of Presupposed Conditions .....   | 529 |
| Reading the Code: §§ 2–615 and 2–616.....              | 529 |
| Reading the Code: § 2–615 .....                        | 530 |
| <b>Applying the Code (Problems 18-2 to 18-5)</b> ..... | 535 |
| 4. Force Majeure Clauses .....                         | 537 |
| <b>Applying the Code (Problems 18-6 to 18-7)</b> ..... | 538 |

**Chapter 7: Remedies**

|                                 |     |
|---------------------------------|-----|
| <b>§ 1–305</b> .....            | 541 |
| Reading the Code: § 1–305 ..... | 542 |

**Assignment 19: Buyer’s Remedies for Seller’s Breach**

|  |     |
|--|-----|
| <b>§§ 2–502, 2–711 through 2–718, 2–723</b> .....      | 543 |
| A. Buyer’s Remedies for Unaccepted Goods.....          | 544 |
| Reading the Code: § 2–711 .....                        | 545 |
| 1. Buyer’s Recovery of the Goods from the Seller ..... | 546 |
| Reading the Code: §§ 2–502, 2–716 .....                | 547 |
| 2. Buyer’s Cover and Market Damages.....               | 548 |
| Reading the Code: §§ 2–712 and 2–713.....              | 548 |
| Reading the Code: § 2–723(1) .....                     | 550 |
| Reading the Code: §§ 2–712, 2–713, and 2–715 .....     | 550 |
| 3. Expenses Saved as a Result of Breach.....           | 553 |
| <b>Applying the Code (Problem 19-1)</b> .....          | 554 |
| B. Buyer’s Remedies for Accepted Goods.....            | 555 |
| Reading the Code: § 2–714 .....                        | 555 |
| 1. Measuring the Recovery for Breach of Warranty ..... | 556 |
| 2. Amounts Owed to Seller .....                        | 558 |
| Reading the Code: § 2–717 .....                        | 558 |
| C. Incidental and Consequential Damages .....          | 559 |
| Reading the Code: § 2–715 .....                        | 559 |
| <b>Applying the Code (Problem 19-2)</b> .....          | 562 |
| D. Liquidated Damages .....                            | 563 |
| Reading the Code: § 2–718(1) .....                     | 563 |
| <b>Applying the Code (Problem 19-3)</b> .....          | 565 |
| E. Economic Loss Doctrine.....                         | 565 |
| <b>Applying the Code (Problems 19-4 to 19-8)</b> ..... | 568 |

**Assignment 20: Seller’s Remedies for Buyer’s Breach**

|   |     |
|---|-----|
| <b>§§ 2–702 through 2–710, 2–718, 2–723</b> ..... | 575 |
| A. Overview of Seller’s Remedies .....            | 576 |
| Reading the Code: § 2–703 .....                   | 576 |

|  |     |
|--|-----|
| B. Seller’s Resale and Market Damages .....                      | 578 |
| 1. Comparing Resale and Market Damages .....                     | 578 |
| Reading the Code: §§ 2–704, 2–706(1), 2–708(1), 2–723(1) .....   | 578 |
| 2. Requirements for Resale.....                                  | 579 |
| Reading the Code: § 2–706 .....                                  | 579 |
| 3. Choosing Between Resale and Market Damages .....              | 581 |
| Reading the Code: §§ 2–703, 2–706 .....                          | 582 |
| 4. Expenses Saved as a Result of Breach.....                     | 583 |
| <b>Applying the Code (Problem 20-1)</b> .....                    | 584 |
| 5. Incidental and Consequential Damages.....                     | 584 |
| Reading the Code: § 2–710 .....                                  | 584 |
| <b>Applying the Code (Problem 20-2)</b> .....                    | 585 |
| C. Recovery of Prepayment by a Breaching Buyer.....              | 585 |
| Reading the Code: § 2–718 .....                                  | 586 |
| D. Action for the Price.....                                     | 587 |
| Reading the Code: § 2–709 .....                                  | 587 |
| 1. Goods Accepted or Lost or Damaged.....                        | 588 |
| 2. Goods Identified to the Contract but Unsellable.....          | 589 |
| E. Seller’s Alternative to Market and Resale Damages .....       | 590 |
| Reading the Code: § 2–708(2) .....                               | 591 |
| 1. Lost-Volume Sellers .....                                     | 591 |
| 2. Goods Without Scrap or Salvage Value .....                    | 593 |
| Reading the Code: § 2–708(2) .....                               | 594 |
| 3. Reasonable Overhead.....                                      | 595 |
| Reading the Code: § 2–708(2) .....                               | 596 |
| F. Seller’s Right to Stop Delivery.....                          | 596 |
| Reading the Code: § 2–705 .....                                  | 597 |
| G. Seller’s Limited Right to Reclaim the Goods .....             | 598 |
| Reading the Code: § 2–702(2), (3).....                           | 598 |
| H. Comparing Buyer’s and Seller’s Remedies.....                  | 599 |
| <b>Applying the Code (Problems 20-3 to 20-7)</b> .....           | 601 |
| <br><b>Assignment 21: Modification or Limitation of Remedies</b> |     |
| <b>§§ 2–302, 2–718, 2–719; Magnuson-Moss Warranty Act</b> .....  | 605 |
| A. Remedy Limitations in General .....                           | 606 |
| Reading the Code: § 2–719 .....                                  | 606 |
| 1. Making Limited Remedies Exclusive.....                        | 606 |
| <b>Applying the Code (Problem 21-1)</b> .....                    | 609 |
| 2. Minimum Adequate Remedy and Unconscionable Limitations.....   | 609 |
| <b>Applying the Code (Problem 21-2)</b> .....                    | 613 |

|  |     |
|--|-----|
| 3. Failure of Essential Purpose .....                        | 613 |
| Reading the Code: § 2–719(2) .....                           | 614 |
| B. Remedy Provisions of the Magnuson-Moss Warranty Act ..... | 619 |
| <b>Applying the Code (Problem 21-3)</b> .....                | 623 |
| <i>Sheehan v. Monaco Coach Corp.</i> .....                   | 624 |
| C. The Relationship Between §§ 2–718 and 2–719.....          | 632 |
| Reading the Code: §§ 2–718 and 2–719.....                    | 633 |
| <b>Applying the Code (Problems 21-4 to 21-6)</b> .....       | 633 |

**Assignment 22: Statute of Limitations**

|  |     |
|--|-----|
| <b>§ 2–725</b> .....   | 637 |
| A. Triggering the Statute of Limitations.....                  | 637 |
| Reading the Code: § 2–725 .....                                | 638 |
| B. Application to Mixed Transactions.....                      | 641 |
| Reading the Code: Mixed Transactions .....                     | 641 |
| C. Extension of the Limitations Period .....                   | 642 |
| Reading the Code: § 2–725(3) .....                             | 643 |
| D. Suit Against a Remote Seller .....                          | 643 |
| E. Suit for Indemnification.....                               | 644 |
| F. Remedial Promises and Warranties of Future Performance..... | 647 |
| <b>Applying the Code (Problem 22-1)</b> .....                  | 647 |
| <b>Applying the Code (Problem 22-2)</b> .....                  | 649 |
| G. Tolling of the Statute of Limitations .....                 | 650 |
| <i>Highway Sales, Inc. v. Blue Bird Corp.</i> .....            | 653 |
| <b>Applying the Code (Problems 22-3 to 22-7)</b> .....         | 662 |

**Chapter 8: Comparing UCC Article 2 to Article 2A and to the United Nations**

|   |     |
|---|-----|
| <b>Convention on Contracts for the International Sale of Goods (CISG)</b> ..... | 665 |
|---|-----|

**Assignment 23: UCC Article 2A: Contracts for Leases of Goods**

|   |     |
|---|-----|
| <b>§§ 1–201(b)(35), 1–203; Article 2A</b> .....                   | 667 |
| A. Introduction .....   | 667 |
| 1. Drafting History.....  | 668 |
| 2. Organization of Article 2A .....                               | 669 |
| 3. Consumer Leases .....  | 670 |
| B. Scope.....   | 670 |
| 1. Comparing Leases and Sales .....                               | 670 |
| Reading the Code: Scope of Article 2A .....                       | 673 |
| 2. Comparing “True Leases” and Disguised Security Interests ..... | 673 |

|    |   |     |
|----|---|-----|
| a. | A Brief Primer on Secured Transactions and UCC Article 9 .....  | 673 |
| b. | Distinguishing True Leases from “Disguised Sales with Security<br>Interests” .....                                | 675 |
|    | <b>Applying the Code (Problems 23-1 to 23-2)</b> .....  | 682 |
| C. | Contract Formation and Content of the Contract .....  | 682 |
|    | Reading the Code: § 2A–108 .....  | 683 |
|    | Reading the Code: Effect of Absence of Analog to § 2–207 .....  | 684 |
|    | Reading the Code: § 2A–106 .....  | 685 |
| D. | Enforcing the Contract .....  | 686 |
|    | Reading the Code: § 2A–201 .....  | 686 |
| E. | Warranties.....   | 686 |
| 1. | General Warranty Provisions .....   | 687 |
| 2. | Finance Leases and Their Warranty Rules .....   | 688 |
|    | Reading the Code: § 2A–103(1)(g).....   | 689 |
|    | <b>Applying the Code (Problem 23-3)</b> .....   | 691 |
| F. | Performance.....  | 692 |
|    | <b>Applying the Code (Problem 23-4)</b> .....   | 694 |
| G. | Title and Priority Disputes with Third Parties in Complex Sales Transactions.....                                 | 695 |
|    | <b>Applying the Code (Problem 23-5)</b> .....   | 697 |
| H. | Default (Breach and Remedies).....  | 697 |
| 1. | Comparison of Article 2 and Article 2A Remedies .....   | 697 |
| 2. | General Remedy Provisions .....   | 698 |
|    | Reading the Code: § 2A–504 .....  | 700 |
| 3. | Lessee’s Remedies.....  | 703 |
|    | Reading the Code: §§ 2A–518(2) and 2A–519(1), (2) .....   | 706 |
|    | <b>Applying the Code (Problems 23-6 to 23-7)</b> .....  | 707 |
| 4. | Lessor’s Remedies.....  | 708 |
|    | Reading the Code: § 2A–532 .....  | 709 |
|    | Reading the Code: §§ 2A–527(2), 2A–528(1), and 2A–529(1)(a), (b) .....  | 710 |
|    | <b>Applying the Code (Problem 23-8)</b> .....   | 711 |
|    | <b>Assignment 24: United Nations Convention on Contracts for the International<br/>Sale of Goods (CISG)</b> ..... | 713 |
| A. | Introduction .....  | 713 |
| B. | Scope.....  | 717 |
|    | Reading the CISG: Articles 1, 2, and 3 .....  | 717 |
|    | <b>Applying the CISG (Problems 24-1 to 24-3)</b> .....  | 719 |
|    | Reading the CISG: Articles 1, 10, and 95 .....  | 720 |
|    | Reading the CISG: Using the Status Table .....  | 722 |
|    | <b>Applying the CISG (Problems 24-4 to 24-5)</b> .....  | 725 |
|    | Reading the CISG: Article 6 .....   | 725 |

|  |     |
|--|-----|
| <b>Applying the CISG (Problems 24-6 to 24-7)</b> .....                 | 726 |
| C. Contract Formation and Content .....                                | 726 |
| 1. Contract Formation .....  | 726 |
| Reading the CISG: Articles 14 to 19, and 24.....                       | 726 |
| <i>UNCITRAL CLOUT Case 139</i> .....                                   | 730 |
| <i>UNCITRAL CLOUT Case 445</i> .....                                   | 731 |
| <i>UNCITRAL CLOUT Case 827</i> .....                                   | 732 |
| <b>Applying the CISG (Problems 24-8 to 24-9)</b> .....                 | 734 |
| 2. Contract Interpretation and Implied Terms .....                     | 735 |
| Reading the CISG: Articles 7, 8, and 9 .....                           | 735 |
| 3. Topics Excluded from the CISG .....                                 | 736 |
| Reading the CISG: Articles 4 and 5 .....                               | 737 |
| <b>Applying the CISG (Problem 24-10)</b> .....                         | 737 |
| D. Enforcing the Contract .....  | 737 |
| Reading the CISG: Articles 11, 12, 29, and 96.....                     | 738 |
| <b>Applying the CISG (Problem 24-11)</b> .....                         | 738 |
| E. Warranties (“Conformity of the Goods”) .....                        | 738 |
| Reading the CISG: Articles 35, 41, and 42 .....                        | 738 |
| <i>UNCITRAL CLOUT Case 720</i> .....                                   | 740 |
| <b>Applying the CISG (Problems 24-12 to 24-13)</b> .....               | 742 |
| F. Performance.....  | 743 |
| 1. Risk of Loss.....   | 743 |
| Reading the CISG: Articles 67 to 70.....                               | 744 |
| 2. Inspection (“Examination”), Notice of Non-Conformity, and Cure..... | 747 |
| <b>Applying the CISG (Problem 24-14)</b> .....                         | 748 |
| 3. Excuse from Breach (“Exemption”) .....                              | 748 |
| Reading the CISG: Article 79.....                                      | 749 |
| G. Remedies for Breach .....   | 749 |
| Reading the CISG: Articles 45 and 61 .....                             | 750 |
| <i>UNCITRAL CLOUT Case 480</i> .....                                   | 753 |
| Reading the CISG: Article 25.....                                      | 755 |
| <i>UNCITRAL CLOUT Case 282</i> .....                                   | 756 |
| <i>UNCITRAL CLOUT Case 905</i> .....                                   | 758 |
| <i>UNCITRAL CLOUT Case 747</i> .....                                   | 759 |
| <b>Applying the CISG (Problems 24-15 to 24-17)</b> .....               | 759 |
| Index .....  | 761 |