

Course Introduction and Syllabus

Introduction to Commercial Law (Law 517)

Spring Semester 2019

Room 102

Tuesday, Wednesday & Thursday

8:40 – 9:50 a.m.

Clinical Assistant Professor Mark Brittingham (Room 256)

mabritt@siu.edu

(618) 453-8744

Secretary: Cynthia Alexander (Room 243)

NOTICE: I first taught this class spring semester 2011, and then recently-retired Professor R.J. Robertson, who taught this course for many years, graciously helped me in my preparation and provided his syllabus. I relied heavily upon Professor Robertson's syllabus to prepare this syllabus. In fact, in some places I copied Professor Robertson's syllabus word-for-word. I want to thank Professor Robertson for his help and for sharing his syllabus.

1. Required Texts: You **MUST** acquire the following book:

LYNN M. LOPUCKI, ELIZABETH WARREN, DANIEL KEATING & RONALD MANN, *COMMERCIAL TRANSACTIONS: A SYSTEMS APPROACH (6th edition)* (Aspen Law & Business 2016). This is an excellent book for an introductory commercial law class. The book does a good job of explaining the “system” in which the rules of commercial law have developed. If you understand the “system,” the rules of commercial law should make more sense to you. In order to understand the system, the book places the rules of commercial law in the context of the commercial environment where the rules operate.

The focus of this book is not on cases. We will spend little, if any, class time on the cases, which are included merely as illustrations of the rules discussed in the narrative. Instead, your focus should be on the problems assigned for the day. The problems are of three types. Most are “statute-readers”—*i.e.*, they require you to consult the appropriate sections of the Uniform Commercial Code (“UCC”) and apply those statutory provisions to the facts in the problem to answer the questions asked. Others are “practical” or “lawyering” in nature—*i.e.*, they ask you to evaluate the legal position of the actors in the problem and give them advice about how to proceed. This advice requires not only understanding how the UCC rules apply, but also considerations of economic and relational issues about what would be the best “practical” course of action for the client. Because most of you will be doing this about a year from now, I hope these problems give you a feel for the lawyer’s craft of blending intellectual analysis and practical advice. Finally, some of the problems are “policy-based”—*i.e.*, they ask you to examine the rules of the UCC and determine what policy goals are advanced by those rules, who the

winners and losers are likely to be when those rules are applied, and what these results tell us about our commercial law system.

2. STRONGLY RECOMMENDED text:

Selected Commercial Statutes or some other version of statutes that contains the UCC (with comments) and the various statutes that we will discuss in class, including Regulation Z, etc.) I prefer the Foundation Press edition of Commercial & Debtor-Creditor Law, Selected Statutes (2018) because it contains most of the statutes & regulations (in addition to the UCC) that we will consider during the semester. ***DO NOT purchase the edition of Selected Commercial Statutes for Sales and Contracts Courses or the edition of Selected Commercial Statutes for Payment System Courses, because these abridged editions lack many of the federal statutes and regulations that we will study this semester.***

In order to understand commercial law, you must constantly refer to the sections of the UCC in question. As you read the assigned material in the LoPucki, Warren book, whenever the book cites to a section of the UCC, you should put down the LoPucki, Warren book and read the section cited, along with the relevant Official Comments.

There are other statutory supplements that contain some of the materials in *Selected Commercial Statutes*, but they will not contain some recent amendments to some of the federal laws we will study (including amendments to the regulations on debit and credit cards) and using other statutory supplements will make it virtually impossible for you to follow class discussions because the arrangements of statutes and the page numbers are significantly different.

Because all of the cited materials are probably available on line, I no longer require that you purchase this book. However, I still believe you will find it much more convenient to have the book at your fingertips. In any event, you must have the Code, including comments, at the ready in class.

2. Assignments. With rare exceptions, we will cover one assignment in the LoPucki, Warren book each day. You will often be expected to read 20 pages of material and prepare four to six problems based on that material for each class period. I will be ruthless with respect to ending class and moving on to the next assignment at the beginning of the next class. If we do not discuss all of the problems assigned for a day, you should still be certain that you understand the answer to those we don't discuss. If you have questions about those omitted problems, you may come by my office to talk about them or e-mail me with questions about them, but we will spend no further class time on them. **The fact that we do not cover an assigned problem in class does not relieve you from responsibility for the subject matter of that problem on the examinations.**

3. TWEN Access. You are required to have access to The West Educational Network ("TWEN") to enroll and participate in this class. I will post assignments, questions and other materials on the course TWEN page.

4. **Preparation.** I have few illusions about third-year law students and their level of preparation, but you should have no illusions about my expectations from you in this class. Because we will be dealing with a huge amount of material, my usual method of calling on students at random is not likely to work very well. We do not have the time to waste on some marginally-prepared student trying to think his or her way through a problem for the first time in class. PLEASE NOTE: much of the material we will cover is on the bar exam. It has been my experience that it is very difficult to learn this material adequately by relying solely on the bar review materials. If you pay attention and do the assignments in this class, you **WILL** find the related questions on the bar exam much easier than you would if you hadn't taken this class (just ask one of the students who recently took the bar exam).

PLEASE NOTE that ABA Standard 310 requires that I assign at least 2 hours of preparation for each 50 minute class. Since our classes meet 75 minutes per class, Standard 310 requires that I assign at least two & 2/3 hours of work to prepare for each class. I believe that the assignments in this class will meet the expectations of this ABA Standard, but I reserve the right to assign additional materials as I deem necessary.

5. **Attendance and Preparation/Scheduling of Make-Up Classes.** I do not have tenure and I really like this job. The Law School rules require that I take attendance. Therefore, attendance will be taken daily on an attendance sheet circulated during class. If you are unprepared for class, please advise me of that fact before class commences. I believe that you will learn valuable material even if you are unprepared for the class. Therefore, I prefer that you attend even if you are not prepared. By letting me know in advance that you are not prepared, I can avoid humiliating you by calling on you. However, do not let this happen very often (more than twice) or I will revoke your privilege. If you do not so inform me in advance of class, your genuine signature on the attendance sheet will constitute a representation that you have read the assigned material and are prepared to discuss the material in an intelligent fashion. The presence or absence of your genuine signature on the attendance sheet will also constitute a conclusive presumption of your presence or absence during that class period. Under the rules of the School of Law, you are normally entitled to a number of absences equaling three times the number of credit hours. However, in this class (in light of my rule conditionally allowing attendance if you are unprepared) **you may accumulate no more than six (6) absences in this class**. If you have more than six (6) absences, as reflected on the attendance sheets, you will be withdrawn from the class. I reserve the right to require greater evidence of preparation--e.g., written answers to problems, if the level of class preparation becomes unsatisfactory.

No whining!

Finally, we may need to make-up classes this semester for class sessions that do not meet (if that should occur). I will let you know if and when that is necessary.

6. **Recommended Reading.** There are a number of secondary sources in this area which you may wish to consult from time to time if you have problems with a topic or if you simply can't get enough of this stuff. Some of these are:

In general:

JAMES J. WHITE & ROBERT S. SUMMERS, UNIFORM COMMERCIAL CODE. This is an excellent hornbook; it is basic enough for student use, but also detailed enough to be a good reference source when you are in practice. I relied on it when I was a student.

JOHN F. DOLAN, COMMERCIAL LAW: ESSENTIAL TERMS AND TRANSACTIONS (Aspen Law & Business). Many students in commercial law classes have very little understanding of the commercial setting in which cases involving the Code arise. Although the LoPucki, Warren book does a generally good job of helping students cope with this problem, Professor Dolan's excellent book fills this gap by providing an overview of how and why commercial transactions are structured the way they are.

7. Scope of the Course. We will cover two principal aspects of commercial law under the UCC: sales of goods under Article 2 (I try to avoid material that you covered extensively in first year contracts), and secured transactions in personal property under Article 9. We will also spend some time discussing mortgages and other security interests not covered by Article 9. Finally, in conjunction with our study of Article 9 (secured transactions) we will spend some time on the effect of bankruptcy on secured and unsecured creditors.

Historically, I have also covered commercial paper, including negotiable instruments and check collections under Articles 3 and 4 of the UCC. However, the Uniform Bar Exam and many states (most, I believe) no longer test on commercial paper. Therefore, I may not cover topics on commercial paper, or if I do, it will only be very few.

We will not cover leases under Article 2A, letters of credit under Article 5, bulk sales under Article 6 (which has been repealed in Illinois & most other states), documents of title under Article 7, or investment securities under Article 8. We may cover federal and state laws on consumer electronic funds transfers (a/k/a debit cards) and credit cards.

8. THE KEY TO SUCCESS. For reasons that I have never understood, students approach a class involving the UCC with an attitude more appropriately reserved for a trip to the dentist. In essence, this class involves the understanding of a comprehensive statutory scheme governing certain types of commercial transactions. The answers to most all questions can be found by a careful reading of the UCC or other statutes & regulations (which the book conveniently identifies in each problem). Therefore, it is imperative to **READ THE RELEVANT PROVISIONS OF THE CODE, REGS & STATUTES** in conjunction with the readings assigned in the casebook. In addition to reading the relevant regs, statutes & Code sections, you should also read the Official Comments following those sections and be sure that you understand the definitions of each of the terms used in each section.

When I ask "tell me what section X says," the appropriate response is to look at section X in *Selected Commercial Statutes* and then read it aloud. Don't try to paraphrase it or provide your

interpretation of what it means. The principal legal skill involved in this class is statutory interpretation and statutory interpretation must start with the exact text of the statute.

Please understand that the volume of reading and preparation in this class is substantial. Like with a math class, as the semester progresses, the statutes become much more complicated and deal with commercial transactions with which some of you are unfamiliar. I know that most faculty members say this about most courses, but it is especially true for this course--do not fall behind in this class because each day's assignment is dependent on an understanding of the previous day's materials.

9. Electronic devices: I am very frustrated by the lack of attention many students pay in class. As a result, in my other classes I do not allow students to use their computers in class. Because you will need to have answers to Problems ready each day, you may use your computers. **HOWEVER, I WILL BAN THE USE OF A COMPUTER IN CLASS BY ANY STUDENT THAT USES HIS OR HER COMPUTER DURING CLASS TO ACCESS E-MAIL, THE INTERNET, ETC., AND I RESERVE THE RIGHT TO REMOVE FROM CLASS ALTOGETHER ANY STUDENT WHO VIOLATES THIS RULE MORE THAN ONE TIME.** Of course, I prohibit the use of a cell phone in class for any non-emergency purpose.

10. Recording of Class Sessions: I understand that the Law School will automatically record this class as a matter of routine. *Your attendance at class without objection (made to a Dean) will constitute your consent to this recording.* Presumably these recordings will be available to you. More on this during the semester as we learn more from the Associate Dean & IT folks. **HOWEVER, you may NOT record the class on your own (on your phone or other recording device).**

11. Grading: I will give a multiple-choice exam for Article 2 (30%), and an essay exam for Secured Transactions (70%). The grades of students who have elected to take this course with S/U grading will be converted by the Registrar according to the following scale: 2.1 or greater = Satisfactory; below 2.1 = Unsatisfactory. *Only students who receive a grade of Satisfactory will earn academic credit for the course.* **Final exam:** The final examination in this course is presently scheduled for Wednesday, May 1, 2019 at 1:15 p.m.

12. Office Hours: My office is Room 0256, on the second floor near the far end of the hall. My formal office hours are Tuesday & Thursday, 10:00 a.m. to 1:00 p.m. and Wednesday 10:00 a.m. to Noon. I am also here routinely at most other times, so feel free to drop in if you find me in my office.

TENTATIVE SCHEDULE:

Week 1:

January 15: Introduction

January 16: Assignment 3, *The Process of Contract Formation*, All Problems.

January 17: Assignment 5, *Statute of Frauds with Sales of Goods*, Problems 5.1-5.3.

Week 2:

January 22: Assignment 6, *Parol Evidence with Sales of Goods*, Problems 6.1 & 6.2.

January 23: Assignment 8, *Warranties with Sales of Goods*, Problems 8.1-8.7.

January 24: Assignment 10, Part A: Reducing or Eliminating Warranty Liability, (pp. 176-182) Problems 10.1-10.4; Assignment 11, Part A: Commercial Impracticability, (pp. 188-202) Problems 11.1-11.3; Assignment 12, Part A: Unconscionability, (pp. 212-216) Problem 12.1

Week 3:

January 29: Assignment 13: Closing the Sale, (pp. 223-239) Problems 13.1-13.5;

January 30: Assignment 15, Risk of Loss, (pp. 262-277) Problems 15.1-15.5.

January 31: Assignment 17, Seller's Remedies, (pp. 303-317) Problems 17.1-17.5.

February 5: Assignment 19, Buyer's Remedies (pp. 330-343) Problems 19.1-19.5.

February 6: **EXAMINATION ON ARTICLE II.**

On February 7, we will begin our discussion of Secured Transactions.

OTHER IMPORTANT STUFF:

PLAGIRISM: Plagiarizing another's work, in whole or in part, is a violation of the Honor Code and can lead to serious penalties, including expulsion. An Honor Code investigation must also be reported to the Bar Examiners, even if you are cleared of any violation. The Honor Code defines plagiarism as: *passing off another's ideas, words, or work as one's own, including written, oral, multimedia, or other work, either word for word or in substance, unless the student author credits the original author and identifies the original author's work with quotation marks, footnotes, or other appropriate designation in such a way as to make clear the true author of the work.*

EMERGENCY PROCEDURES: *Southern Illinois University Carbondale is committed to providing a safe and healthy environment for study and work. Because some health and safety circumstances are beyond our control, we ask that you become familiar with the SIUC emergency Response Plan and Building Emergency Response Team (BERT) program. Emergency response information is available on posters in buildings on campus, available on BERT's website at www.bert.siu.edu, Department of Safety's website www.dps.siu.edu (disaster*

drop down) and in Emergency Response Guideline pamphlet. Know how to respond to each type of emergency.

Instructors will provide guidance and direction to students in the classroom in the event of an emergency affecting your location. **It is important that you follow these instructions and stay with your instructor during an evacuation or sheltering emergency.** The Building Emergency Response Team will provide assistance to your instructor in evacuating the building or sheltering within the facility.

DISABILITY ACCOMMODATION POLICY: Disability Support Services provides the required academic and programmatic support services to students with permanent and temporary disabilities. DSS provides centralized coordination and referral services. To utilize DSS services, students must come to the DSS to open cases. The process involves interviews, reviews of student-supplied documentation, and completion of Disability Accommodation Agreements. <http://disabilityservices.siu.edu/>. Upon completion of a Disability Accommodation Agreement with DSS, students should bring the agreement to the School of Law Registrar's Office to ensure the School of Law provides the proper classroom and examination accommodations.

SALUKI CARES: The purpose of Saluki Cares is to develop, facilitate and coordinate a university-wide program of care and support for students in any type of distress—physical, emotional, financial, or personal. By working closely with faculty, staff, students and their families, SIU will continue to display a culture of care and demonstrate to our students and their families that they are an important part of the community. For Information on Saluki Cares: (618) 453-5714, or siucares@siu.edu, <http://salukicare.siu.edu/index.html>. At the School of Law, Assistant Dean Judi Ray is also available to help students access university resources. Her email is judiray@siu.edu, and her phone number is 618-453-3135.