

Introduction to Commercial Law Syllabus

Fall 2023
T/Th. 4:30 p.m–6:10 p.m.
Room 102
Law 517A-4

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Office Hours: Mondays and Wednesdays, 3:15 pm-4:15 pm; or by appointment

Required Materials Sales: Cases and Problems, by Wayne K. Lewis and Gary L. Monserud (2017) (published by Carolina Academic Press, LLC) [Note: Recently, Carolina Academic Press published a 2nd edition (date 2022). Nevertheless, we will be using the 2017 edition.]

Secured Transactions: A Context and Practice Casebook, by Edith R. Warkentine and Jerome A. Grossman (2015) (published by Carolina Academic Press, LLC)

Selected Commercial Statutes for Secured Transactions Courses: 2021 Edition, by Carol L. Chomsky, Christina L. Kunz, Elizabeth R. Schiltz, and Charles J. Tabb (West Academic Publishing)

Course Description

After a brief introduction to the Uniform Commercial Code (“UCC”), surveying its history and mentioning certain rules of interpretation, we will explore two major areas this semester - **(1) sales and (2) secured transactions.**

Sales

The first-year Contracts classes considered the general common law rules governing real estate contracts, service contracts, and various other deals, and those rules provide a background for the law of sales. But the law of sales (from Article 2 of the UCC) creates a separate, detailed, and systematic legal framework governing the purchase and sale of movable personal property, called “goods.” In many areas, we will start by briefly revisiting the common law rules you learned in your Contracts classes, and then study the corresponding rules in Article 2 of the UCC which apply to the purchase and sale of goods.

Topics that were considered in the first-year Contracts classes, which will be contrasted with their counterpart rules (in UCC Article 2) as applicable to the sales of goods, will include offer and acceptance, modifications, the Statute of Frauds, and contract performance (specifically, breach).

In some of these areas, the law of sales will differ significantly from the general common law of contracts.

Topics in the law of sales that we will study, and which may not have received much (or any) attention in your first-year Contracts classes, will include express and implied warranties, disclaimers of warranties and other agreed limits on remedies for contract violations, the statute of limitations for bringing a lawsuit under Article 2 of the UCC, and determining when the “risk of loss” shifts from seller to buyer (which is important when the goods are damaged or destroyed in transit).

Secured Transactions

According to the projected reading schedule, after about five weeks on the law of sales, we will shift our focus to secured transactions, which are governed by Article 9 of the UCC. The law of secured transactions generally involves a debtor borrowing money and granting a security interest in personal property such as inventory, accounts receivables, or machinery (borrowing and mortgaging real estate is considered part of Property Law and is beyond the scope of this course). It can also involve the purchase of goods on credit in which the seller retains a security interest in the goods sold. The terminology and structure of the law of secured transactions may be unfamiliar to you.

Time permitting, at the end of the semester, we will come back to the law of sales to study contract performance and remedies. Although damages were likely covered in some detail in your first-year Contracts classes, both buyers and sellers of goods may have a variety of remedies when the other party breaches a contract for the sale of goods.

Attendance Policy

Attendance will be taken at the beginning of each class. Our class time is vitally important for you to understand the material needed to be successful in this course and in legal practice. Accordingly, you should not miss any classes. However, I understand uncontrollable circumstances may come up and will allow a maximum of two (2) absences, no questions asked. If you miss more than two classes, I will lower your course grade one half a letter grade (i.e., B+ to B) for each additional class missed.

Writing Assignment

The writing assignment will be a Bar exam-type exercise. Satisfactory completion of the writing assignment is required to be eligible to take the exam and complete the course.

Final Exam & Grading

There will be one three-hour exam at the end of the semester. Your grade for the course will be based on the final exam during the time scheduled by the law school. The exam will include multiple-choice and short-answer questions. More details will be forthcoming.

Class Participation (Important)

Numerous studies have demonstrated that active learning and participation are critically important for success in law school and as a lawyer. Further, I value all of you as individuals and believe it is important for the class to hear your perspectives. Therefore, I take the following approach to class participation:

- I will typically randomly “cold call” a few students in each class to discuss issues related to the course readings, lectures, and practice questions. Of course, everyone in this course is valued and is free to contribute, not just those that are called on.
- I do not call on students to demonstrate superiority or pick on people but rather to help the class learn the material and demonstrate learning in a way that will lead to more successful outcomes on law school examinations and legal practice.
- Speaking in class is an opportunity, not a burden. The types of thinking we do in class together are what is valuable for your success.
- If you are unprepared for a particular class, please advise me of that fact by noon on the day of class. By letting me know in advance that you are not prepared, I will not call on you during that class period. However, do not let this happen often or I will revoke your privilege.
- If a student is not prepared to discuss the assigned materials when called upon, the student will be marked as absent for that class and the student’s grade may be lowered.
- ***Please remember – You do not have to be perfect. You do need to be prepared and put in the effort required to succeed in law school – doing the readings, actively listening to lectures, and coming to me if you have questions or concerns. I am here to help - thanks for your hard work!***

Citizenship

Citizenship has to do with attendance as well as how you treat others. I am a big fan of respect – and will do my best to show it to you. Respect builds a safe learning community, even if we disagree. Please show respect to your classmates.

Laptops

I permit the responsible use of computers in class. By this, I mean using your laptops to take notes. I expect you to listen, participate, remain engaged with the material, and avoid the distractions caused by misusing computers and electronic devices in a professional environment.

Recording of Classes

Classes may be recorded by the instructor for ADA compliance purposes. No recordings should be used or disseminated without the professor's permission.

Workload Expectation

The American Bar Association standards for accrediting law schools contain a formula for calculating the amount of work that constitutes one credit hour. According to ABA Standard 310(b)(1), "a 'credit hour' is an amount of work that reasonably approximates: (1) not less than one hour of classroom or direct faculty instruction and two hours of out-of-class student work per week for fifteen weeks, or the equivalent amount of work over a different amount of time." This is a 4-credit hour class, meaning that we will spend two 100-minute blocks of time together each week (on Tuesdays and Thursdays). ABA Interpretation 310-1 states that 50 minutes suffices for an hour of classroom instruction, but an "hour" for out-of-class work is 60 minutes. The amount of assigned reading and out-of-class preparation should take you a minimum of 4 hours for each class session. All told, applying the ABA standard to the number of credits offered for this class, you should plan on spending a minimum of 12 hours per week (4 in class and 8 preparing for class) on course-related work.

Plagiarism

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 designations in such a way as to make clear the true author of the work.

Ban on Collaboration/AI in Writing Assignment

You are not allowed to obtain help from any other person (including any other student) or from generative artificial intelligence (including, but not limited to, ChatGPT) on the writing assignment in this course. This ban on collaboration includes obtaining written materials from any other person or generative artificial intelligence and communicating with any other person about the assignment. If you violate the ban on collaboration policy, you will fail to successfully complete the assignment and will not be entitled to take the final exam in the course. You also may be found in violation of the

Honor Code, which 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. When in doubt about how to proceed, ask me.

Ban on Collaboration/AI on Exams

The final exam for this course is closed book. You may NOT consult materials of any kind, with any person other than the proctor, nor access any other resource, including, but not limited to generative artificial intelligence. Failure to comply with this rule will result in a failing grade on the exam. You also may be found in violation of the Honor Code, which 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.

Student Learning Outcomes

At the end of this course, students will be able to: Law of Sales:

- Determine whether UCC Article 2 applies to various sales transactions, including when a single transaction involves both a sale of goods and the rendering of services.
- Determine whether a sale of computer software is subject to UCC Article 2.
- Understand the role of usage of trade, course of dealing, and course of performance in interpreting a contract for the sale of goods.
- Apply the special UCC “battle of the forms” rules and decide which terms govern a transaction when each side submitted a boiler-plate form, the terms disagreed, and neither side signed the other party’s form (but they went ahead with the transaction).
- Advise clients on when an agreement to sell goods must be in writing (and signed by the other party) to be enforceable. [This is the UCC Article 2 Statute of Frauds issue.]
- Advise clients on whether a seller has made warranties about the goods, and how a seller can disclaim express and implied warranties or otherwise limit damage recoveries.
- Know when other parties who are damaged by the goods (such as family members, friends, and invitees of the buyer) can sue the seller if the goods are defective and cause damage.
- Advise clients who are purchasing goods about whether they have a right to inspect the goods before paying, the buyer’s obligations regarding delivered goods that the buyer has rejected, and a seller’s right to cure defects and complete the sale.
- Determine who had the risk of loss when goods were damaged or destroyed while being transported from seller to buyer by common carrier.
- Analyze whether various commercial law doctrines and systems, such as warranty law, risk of loss rules, and the perfect tender requirement provide consumers with appropriate access to justice when they are aggrieved.

Secured Transactions

- Know how to structure a valid security interest that attaches to the collateral as soon as possible.
- Know when a debtor has defaulted on a debt, and the remedies available to the creditor.
- Know, in regards to repossessions, the actions a creditor's agent can take to recover the collateral without "breaching the peace" (for example, hot-wiring the car if it is in the driveway), and the procedures the creditor will need to follow in selling the repossessed collateral.
- Advise a client on how to perfect a security interest, for example, by filing a notice with the Secretary of State's Office, noting the lien on the back of a car title, taking control of a bank account, or taking possession of jewelry, gem stones or other collectibles.
- Advise clients in "priority" disputes over a debtor's collateral. These disputes may arise when multiple secured creditors (or a bankruptcy trustee) claim an interest in the debtor's collateral.
- Analyze whether various doctrines and systems governing secured transactions, particularly those dealing with repossession and resale, and related remedies, provide debtors with appropriate access to justice.

Introduction to Commercial Law—Projected Reading Schedule—Fall 2023 (subject to change)

Initial “Sales” Portion of the Course (Classes #1 to #10)

General Notes:

- In SALES: CASES AND PROBLEMS (the “Casebook”), by Wayne K. Lewis & Gary L. Monserud, you are NOT expected to read the Problems except as otherwise noted below, even though I have not excluded those pages from the list of pages to read provided below. For example, although the reading for the 3rd class listed below includes Casebook pages 29 to 56, you are not expected to read Problem 2-1 which appears on page 31. We will work through some of these problems together in class.
- I will sometimes assign “Bonus Materials” to read, which I will let you know about in class and on the D2L course page.

Class #1 - Tuesday, August 22 - What Law Applies?

- Casebook pages 3 to 9 (including *Helvey v. Wabash County REMC*)

Class #2 – Thursday, August 24 - What Law Applies? continued

- Casebook pages 12 middle to 28

Class #3 - Tuesday August 29 - Forming the Contract and Determining Its Terms (including the “battle-of-the-forms”)

- Casebook pages 29 to 56

Class #4 – Thursday, August 31 - Forming the Contract and Determining Its Terms continued (including Gap Filers, Modifications, and the Parol Evidence Rule); The Statute of Frauds and Its Exceptions

- Casebook pages 57 middle to 94 middle

Class #5 – Tuesday, September 5 - Contract Terms: Warranties (including the Warranty of Title, Express Warranties, and the Implied Warranty of Merchantability)

- Casebook pages 97 to 137 top

Class #6 - Thursday, September 7 - Warranties continued (including the Implied Warranty of Fitness for a Particular Purpose); Disclaimers and Limitations of Remedies

- Casebook pages 141 to 171 top [BUT SKIP pages 152 bottom to 155 middle including *U.S. Fibres, Inc. v. Proctor & Schwartz, Inc.*] [ALSO SKIP pages 158 middle to 159 middle which is *Hartman v. Jensen's Inc.*] [AND MERELY SKIM pages 165 bottom to 166 (on waiver based on examination of the goods)—this will not be tested on the Final Exam for this course] (cases to read include *Crysko Oilfield Servs., Inc. v. Hutchinson-Hayes Int'l., Inc.* plus *Wenner v. Gulf Oil Corp.* plus *Lumber Mutual Ins. Co. v. Clarklift of Detroit, Inc.* plus *U.S. Aprons, Inc. v. R-Five, Inc.*)

Class #7 - Tuesday, September 12 - Disclaimers and Limitations of Remedies continued; Privity, Notice, Statute of Limitations

- Casebook pages 171 to 192 top (including Problems 5-7, 5-8, 5-9, 5-11, 5-12, and 5-13 plus Problems 6-1 and 6-2; and *Pierce v. Catalina Yachts, Inc.*)

Class #8 – Thursday, September 14 - Privity, Notice, Statute of Limitations continued

Casebook pages 192-217 top (including *Ace American Ins. Co. v. Fountain Powerboats, Inc.* plus *Hebron v. American Isuzu Motors, Inc.*, plus *Maybank v. S.S. Kresge Co.* and *Peavey Electronics Corp. v. Baan U.S.A., Inc.* and *Delano Growers' Co-Op Winery v. Supreme Wine Co., Inc.* and Problems 6-5 & 6-6 and *Selzer v. Brunzell Bros., Ltd.* and Problem 6-8)

Class #9 – Tuesday, September 19 - Privity, Notice, Statute of Limitations continued (including “Emergence of Strict Liability”)

- Casebook pages 223 to 242 (including *City of Bedford v. James Leffel & Co.* and *Electric Insurance Co. v. Freudenberg-NOK, Gen. Partnership* and *Suvada v. White Motor Company*)

Class #10 – Thursday, September 21 - Delivery Obligations and Risk of Loss

- Casebook pages 265 to 276 (including Problems 8-1, 8-3, 8-4, 8-5, and 8-6)

Secured Transactions Portion of the Course (Classes #11 to #21)

General Notes:

- Except as otherwise stated below or in class, in SECURED TRANSACTIONS: A CONTEXT AND PRACTICE CASEBOOK, by Edith R. Warkentine and Jerome A. Grossman (2005) (herein “STC” for “Secured Transactions Casebook”), you are not expected to read the “Chapter Problem” at the beginning of each Chapter (those start with Chapter 4).
- Except as otherwise stated below or in class, you are not expected to read the UCC “Code

Sections” listed at the beginning of several Chapters in the STC (see for example, page 63, listing thirty-three separate UCC Code sections), but you will be expected to be familiar with the substance of the UCC Sections we discuss in class.

- As indicated below, we will go through many of the “Exercises” in the STC in class, and the ones you should read/review before class are listed below (in many instances, I have also listed relevant UCC sections that you may choose to read/review in connection with the related exercise, but understanding/answering the questions in the Exercises also will usually involve material discussed in the text and UCC sections we have previously considered).

Class #11- Tuesday, September 26 - Introduction to UCC & Statutory Analysis

- Secured Transactions Casebook (“STC”) pages xix to xxi (preface) and STC pages 3 to 19 middle

Class #12 – Thursday, September 28 - Introduction to Personal Property Secured Transactions; The Scope of Article 9

- STC pages 21 to 37, including Exercise 4-2 (UCC 9-102(20) and UCC 2-401(1) & (2) may help)

Class #13 – Tuesday, October 3 - Scope of Article 9; Creation of Security Interest

- STC pages 37 bottom to 54 middle (including *In the Matter of Marhoefer Packing Co., Inc. [Bankrupt]*), and including
- Exercise 5-1 (UCC 1-204(1)-(4) and UCC 9-109) may help)
- Exercise 5-2 (UCC 2-501 may help)

Class #14 – Thursday, October 5 - Creation of Security Interest; Default & Secured Party Remedies

- STC pages 55 bottom to 74, but SKIP page 58 bottom-to-page 59 (on “Rights of Third Parties”) (including *Giles v. First Virginia Credit Services, Inc.*), and including:
- Exercise 5-5 (Problem #1, UCC 9-108(c), UCC 9-203(a) & (b), UCC 9-204(c) may help)
- Exercise 5-5 (Problem #2, UCC 2-501, UCC 9-313(a) may help)
- BUT SKIP Exercise 5-5, Problem #3
- Exercise 5-6 (UCC 9-203(f), 9-102(a)(64), 9-230 may help) [BUT SKIP Problem 3.2]
- Exercise 5-7 (UCC 9-203(e)(2) may help) [BUT SKIP Question #3]
- Exercise 6-4 (UCC 9-609 Comment #3 may help)

Class #15 – Tuesday, October 10 - Default & Secured Party Remedies

- STC pages 74 bottom to 85 top (including *Hicklin v. Onyx Acceptance Corp.*), and including

- Exercise 6-5 (UCC 9-610(b), UCC 9-627(b)(3), UCC 9-625(b), UCC 9-626(b), 9625(c)(2) may help)
Exercise 6-6 (UCC 9-627 Comment #2 may help)
- Exercise 6-7 (UCC 9-627(b)(3) & (c), UCC 9-613, 9-614, 9-611 Comment #2, 9-612(b) may help)
- Exercise 6-8 (UCC 9-611, 9-612, 9-617(a)(1) & (b) may help)
- Exercise 6-9

Class #16 – Thursday, October 12 - Default & Secured Party Remedies; Perfection of Security Interest (Filing)

- STC pages 85 to 116 top (including *In re Schwalb*—The Pawnbroker case)

Class #17 – Tuesday, October 17 - Perfection of Security Interest (Filing)

- STC pages 116 middle to 123, and including
- Exercise 7-2 (UCC 9-504 may help) [BUT SKIP Problem #3]
- Exercise 7-3
- Exercise 7-6 (UCC 9-506(a), UCC 9-502(a), UCC 9-516(b) may help [BUT SKIP Problem #4 of Exercise 7-6])

Class #18 – Thursday, October 19 - Perfection of Security Interest (Other Methods)

- STC pages 126 bottom to 135, and including
- Exercise 8-1 (we will briefly summarize Questions #1 to #5)
- Exercise 8-2 (UCC 9-309(14) and the last paragraph of related Comment #4; UCC 9309(5) may help)
- Exercise 8-3 (UCC 9-204(b)(1), 9-103(a)(2), 9-102(a)(78), 9-203(f), 9-308(f), 9-312(e), 9-315(c), 9-313(a), 9-312(g)(2), 9-308(a) may help) [BUT SKIP Question 1.2 and all of Question #5]
- Exercise 8-4 (UCC 1-201(24), 9-313(a) + (c) + (d) + (h)); UCC 9-312(f) may help) [BUT SKIP all of Question 3 of Exercise 8-4]
- Exercise 8-6 (9-109(d)(13), 9-102(a)(23), 9-312(b)(1) may help) [But SKIP Question #2 of Exercise 8-6]

Class #19 – Tuesday, October 24 - Perfection of Security Interests (Other Methods); Priority Disputes (Secured Creditors)

- STC pages 135 bottom to 154 top (including *In re Sports Pub., Inc.*), and including

Exercise 8-8 (UCC 9-315(c) + (d), UCC 9-102(a)(9) may help)

- Exercise 9-1 (UCC 9-502 Comment #2, UCC 1-201(b)(35) & 9-109(a)(1), 9-324(a) may help)
- Exercise 9-2 (UCC 9-322(a)(1) (and Comment #4), 9-301(1) may help)
- Exercise 9-3
- Exercise 9-5 (UCC 9-311, 9-322(a)(1) + (2), 9-315(a) + (b), 9-322 Comment #4, Ex.1), 9-303(c), 9-337 & 9-320 may help) [BUT SKIP Problem #3]

Class #20 – Thursday, October 26 - Priority Disputes (Secured Creditors and Others)

- STC pages 158 to 164 top, including
- Exercise 10-1
- Exercise 10-2 (UCC 9-333 may help)
- Exercise 10-3 (UCC 9-317(a)(2), 9-323(a), 9-204 may help)
- Exercise 10-6 (UCC 9-309(a), 9-334(a) + (b) + (d)(3) + (h), 9-502(c), 9-334(e)(1) may help)
- Exercise 10-7 (UCC 9-109(d)(11), 9-334(c) + (e)(2)(B) may help)

Class #21 – Tuesday, October 31 - Priority Disputes (Secured Creditors and Others); Bankruptcy

- STC pages 164 middle to 174, including
- Exercise 10-8 (UCC 9-325 and Comment #3 Ex. 1, 9-515(a), 9-508(b) may help)
- Exercise 10-10 (UCC 9-303(b) + (c), 9-337) may help)
- Exercise 11-1 (UCC 9-317(a) may help)
- Exercise 11-2 (UCC 9-506(e), 9-317(a) may help)

Back to “Sales” Materials (Class #22 to Class #27)

“Casebook” refers to Wayne K. Lewis & Gary L. Monserud, Sales: Cases and Problems (2017)

Class #22 – Thursday, November 2 - Performance Obligations

- Casebook pages 279 to 303, including:
 - *Moulton Cavity & Mold, Inc. v. Lyn-Flex Indus., Inc.*
 - Problem 9-1
 - *Miron v. Yonkers Raceway, Inc. & Saul Finkelstein*
 - Problem 9-3 (but skip questions #5 & #6)
 - Problem 9-4 (skip question #1, but read question #2)
 - *Wilson v. Scampoli*
- Problems 9-6 [BUT SKIP numbered paragraphs 3 & 4] and 9-8

Class #23 – Tuesday, November 7 - Performance Obligations continued

- Casebook pages 304 to 328, including:
- Problems 9-10, and 9-11
- *Robert J. Fortin v. Ox-Bow Marina, Inc.*
- *Graulich Caterer, Inc. v. Hans Holterbosch*

Class #24 – Thursday, November 9 - Remedies; Seller's Remedies

- Casebook pages 331 to 349 top, including
- Problems #10-1, #10-2, #10-3, #10-4 & 10-5
- *Sprague v. Sumitomo Forestry Co; Cole v. Melvin*
- Problems 10-6 and 10-7

Class #25—Tuesday, November 14 - Seller's Remedies continued

- Casebook pages 349 to 355, including:
- Problem 10-10 (but SKIP question #2 of Problem 10-10)
- Problem 10-11
- Problem 10-13, and
- Problem 10-14

Class #26 – Thursday, November 16 - Buyer's Remedies

- Casebook pages 357 to 379 bottom, including:
- Problem 11-1
- Problem 11-2
- *Dangerfield v. Markel*
- Problems 11-3 & 11-4
[SKIP pages 370 to 375 bottom; so we SKIP *TexPar Energy, Inc. v. Murphy Oil U.S.A. Inc.*]
- Problems 11-9, 11-10, and 11-11

THANKSGIVING BREAK - NO CLASS Saturday, November 18 – Sunday, November 26

Class #27—Tuesday, November 28 - Buyer's Remedies continued

- Casebook pages 379 bottom to 385 bottom (including *Neri v. Retail Marine Corp.* and Problem 11-15)

FINAL CLASS—BACK TO SECURED TRANSACTIONS BOOK

Class #28 – Thursday, November 30 - Bankruptcy

- STC pages 174 bottom to 184 (including *In re McConnell*), including

- Exercise 11-3
- Exercise 11-4
- Exercise 11-6