

# ***Introduction to Commercial Law Syllabus***

*(subject to change)*

**Fall 2024**  
**Tues & Thur 1:30 p.m–3:10 p.m.**  
**Room 102**  
**Law 517A-4, § 001**

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*“The music or the lyrics? What usually comes first is the contract.” -- Ira Gershwin*  
*“The duty of government is to prevent crime and preserve contracts.” William Lamb*  
*“A verbal contract isn’t worth the paper it’s written on.” – Sam Goldwyn*  
*“What the big print giveth, the small print taketh away.”*

*“No one tells a better story than someone wanting to borrow money.”*  
*“The best way to make someone remember you is to borrow money from them.”*  
*“Always borrow money from a pessimist; they won’t expect it back.”*

**Materials:** Sales: Cases and Problems, by Wayne K. Lewis and Gary L. Monserud (2017) (published by Carolina Academic Press, LLC) [Note: Carolina Academic Press has published a 2<sup>nd</sup> edition, but 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) [Note: Carolina Academic Press published a 2<sup>nd</sup> edition earlier this year, but we will be using the 2015 edition.]

Selected Commercial Statutes for Secured Transactions Courses, by Carol L. Chomsky, Christina L. Kunz, Elizabeth R. Schiltz, and Charles J. Tabb [or Anne Lawton] (West Academic Publishing) (over 2,300 pages) [Note: You can use any recent edition of this statutory supplement, including but not limited to the 2021, 2022 or 2023 editions. We likely will not use this book until the 11<sup>th</sup> class of the semester, when we begin Secured Transactions. The Sales casebook (by Lewis and Monserud) contains a version of Article 1 and Article 2 of the UCC, which is relevant for the law of sales, so we will not need a statutory supplement for the first part of the course, or for the final two-and-half weeks.]

As indicated in the Projected Reading Schedule, we also will cover a significant amount of “Bonus Material” for the course.

**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.

**Attendance Policy:** Attendance will be taken at the beginning of each class. Under the Rules of the School of Law, a student may not accumulate absences in a course numbering in excess of three times the credit hours for the course during the semester. Thus, because we meet twice a week, the maximum number of absences in this course is six (6) classes. The Rules provide for three options if a student accumulates absences in excess of the allowable number. The professor may recommend that: (a) the student be given the lowest possible grade; (b) the student be given a “W”; or (c) the student be allowed to continue in the course with a grade reduction. A professor may not excuse an absence; if the absences allowed for student in the course have been exhausted, the Associate Dean for Academic Affairs may grant leave and relief from the regular attendance requirement in extraordinary circumstances.

**Final Exam & Grading:** There will be one exam at the end of the semester. It will be a **closed book exam**. The exam will be during the regular period devoted to final exams (scheduled from Tuesday, Dec. 3 to Friday, Dec. 13). Your grade for the course will be based on the final exam. The final exam has not been scheduled at the time this Syllabus was prepared.

**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—sales and secured transactions. 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. As a result, this course should take your understanding “to **the next level.**”

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. For example, under the common law, an aggrieved party is not discharged from a contract if the other party “substantially” performed its contractual obligations; in contrast, under Article 2 of the UCC, a buyer generally can reject goods (and refuse to pay) unless the seller made a “perfect tender” (although the seller will then have a “right to cure”).

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).

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; thus, this portion of the course may seem like a *journey to a new planet*. Topics we will study include the making of a loan (or other extension of credit), the granting of a security interest in personal property as collateral in connection with making the loan, the determination of when a borrower is considered in default, and when a creditor can repossess the collateral or seek other remedies. In regards to repossessions, we will study when a repo would be considered wrongful for “breaching the peace.” Additional significant topics will include how various creditors can “perfect” their security interest (for example, by filing a notice with the Secretary of State’s Office, entering their lien on the back of a car title, or otherwise), and determining which secured creditor will receive the collateral when there is a dispute among multiple secured creditors or a bankruptcy trustee. This final topic is generally referred to as determining “priority.”

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. For example, if after placing an order and entering into a contract, if a buyer refuses to buy, one option available to the seller is to “re-sell” the goods to a “second” buyer, and then attempt to recover any shortfall from the first buyer who breached. On the other hand, if the seller breached and failed to deliver the goods, one remedy available to the buyer is to purchase similar goods elsewhere (sometimes called a “cover”) and then sue for any excess price the buyer had to pay. We may conclude with a final class focusing on more bankruptcy law rules (from the Secured Transactions book).

**Office Hours:** Wednesdays from 3:30 pm to 5:30 pm, and by appointment (may be by phone or zoom).

**EMERGENCY PROCEDURES:** We ask that you become familiar with **Emergency Preparedness @ SIU**. Emergency response information is available on posters in buildings on campus, on the Emergency Preparedness @ SIU website, and through text and email alerts. To register for alerts, visit: <http://emergency.siu.edu/>.

**DISABILITY POLICY:** SIU Carbondale is committed to providing an inclusive and accessible experience for all students with disabilities. Disability Support Services coordinates the implementation of accommodations. If you think you may be eligible for accommodations but have not yet obtained approval, please contact DSS immediately at 618-453-5738 or [disabilityservices.siu.edu](http://disabilityservices.siu.edu). You may request accommodations at any time, but timely requests help to ensure accommodations are in place when needed. Accommodations and services are determined through an interactive process with students and may involve consideration of specific course design and learning objectives in consultation with faculty. Please send approved accommodations to your faculty through the DSS online portal.

**SALUKI CARES and COUNSELING & PSYCHOLOGICAL SERVICES (CAPS).** 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) 453-2461, or [siucares@siu.edu](mailto:siucares@siu.edu), <http://salukicare.siu.edu/>. Associate Dean Sheila Simon [ssimon@siu.edu](mailto:ssimon@siu.edu) or (618) 536-8321 is available at the Simmons Law School to help students access university resources. Additionally, counseling services are available through CAPS (Counseling and Psychological Services (CAPS) / Student Health Services / SIU). A counselor is at the law school every Wednesday from noon until 4:30 pm in Room 268 for drop-in appointments.

**SAFETY AWARENESS FACTS AND EDUCATION:** Title IX makes it clear that violence and harassment based on sex and gender is a Civil Rights offense subject to the same kinds of accountability and the same kinds of support applied to offenses against other protected categories such as race, national origin, etc. if you or someone you know has been harassed or assaulted, you can find the appropriate resources here: <http://safe.siu.edu>

**Recording of Classes:** Students and the professor may record classes from their regular location in the classroom, unless the professor announces in class that this policy has changed. Recordings of the class may not be shared with persons who are not enrolled in this class without the professor's prior consent. The professor may use the zoom platform to record classes and may share recordings with members of the Law School's IT department or as otherwise necessary. Classes may also be recorded (and shared with others as required) for ADA compliance purposes. The law school administration may also record classes.

**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.

**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.

**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 required 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:** Both the midterm exam and the final exam for this course are 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 on 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 2024 (subject to change)***

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

General Note: 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 3<sup>rd</sup> class listed below includes Casebook pages 29 to 56, you are not expected to read Problem 2-1 which appears on page 31.

Class #1 Tues., Aug. 20, 2024 What Law Applies?

- Casebook pages 3 to 9 (including *Helvey v. Wabash County REMC*)
- Bonus Material for Class #1 (including “The Amazing Spider-Man: Mascot of Both Marvel Comics and Contract Law”)

Class #2 Thur., Aug. 22, 2024 What Law Applies? continued

- Casebook pages 12 middle to 16 (including *Epstein v. Giannattasio*); SKIP pages 16 bottom to 19, which is *Newmark v. Gimbel’s Inc.*; Read pages 19 bottom to 20 middle;

SKIP pages 20 bottom to 28, which includes *Anthony Pools v. Sheehan* [Note: I plan to briefly discuss the *Newmark* and *Anthony Pools* cases in class.]

- Bonus Material for Class #2 (including *Connie Beale, Inc. v. Kathleen Plimpton* plus *Bonebrake v. Cox, d/b/a Tamarack Bowl* plus *Simulados Software Ltd. v. Photon Infotech Private, Ltd.*)

Class #3 Tues., Aug. 27, 2024 Forming the Contract and Determining Its Terms (including the “battle-of-the-forms”)

- Casebook pages 29 to 56, including *Dorton v. Collins & Aikman* plus *Northrop Corp. v. Litronic Indus.*)
- Bonus Material for Class #3 (the UCC’s “flexible definition of a ‘merchant’”)

Class #4 Thur., Aug. 29, 2024 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 78 middle (including *Columbia Nitrogen Corp. v. Royster Co.*); SKIP pages 78 middle to 86 (which includes *Bazak Int’l. Corp. Mast Indus. Inc.*—but we will discuss the shortened version of the *Bazak* case from the Bonus Material); pages 87 middle to 94 middle
- Bonus Material for Class #4 (including *St. Ansgar Mills Inc. v. Duane Streit* and the shortened version of *Bazak Intl. v. Mast Indus. Inc.*)

Class #5 Tues, Sept. 3, 2024 Contract Terms: Warranties (including the Warranty of Title, Express Warranties, and the Implied Warranty of Merchantability)

- Casebook pages 97 to 137 top (including *Felley v. Singleton* plus *Ferragamo v. Massachusetts Bay Transp. Authority* plus *Jackson v. Nestle-Beich, Inc.* plus *Shaffer v. Victoria Station, Inc.*); [SKIM pages 139 to 140]
- Bonus Material for Class #5 (including the Great Art Heist case –based on *Erna Manzel v. Albert List and Perls Galleries*, plus the Grand Theft Auto case—*City Car Sales, Inc. v. McAlpin*)

Class #6 Thur., Sept. 5, 2024 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 *Cryscos 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.*)
- No Bonus Material for Class #6

Class #7 Tues., Sept. 10, 2024 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.*)
- No Bonus Material for Class #7

Class #8 Thur., Sept. 12, 2024 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. Brunsell Bros., Ltd.* and Problem 6-8) [Note: We are SKIPPING pages 217 top to 223 top, including *Joswick v. Chesapeake Mobile Homes, Inc.*]
- No Bonus Material for Class #8

Class #9 Tues., Sept. 17, 2024 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*) [SKIP pages 243 to 263, primarily on the Magnuson-Moss Warranty Act]
- Bonus Material for Class #9 (including *Salvador Dali* case, which is based on *Balog v. Center Art Gallery-Hawaii, Inc.*—you may merely SKIM the *Salvador Dali* case)

Class #10 Thur., Sept. 19, 2024 Delivery Obligations and Risk of Loss

- Casebook pages 265 to 276 (including Problems 8-1, 8-3, 8-4, 8-5, and 8-6)
- Bonus Material for Class #10 (including *Mark La Casse v. Stan Blaustein . . . Global Marketing Co.* and *Eberhard Mfg. Co. v. Stan Brown* and *Rheinberg-Kellerei GMBH v. Vineyard Wine Company* (the *M.S. Munchen* case))

## ***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).

[To Be Continued]

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