

Course Introduction and Syllabus Introduction to Commercial Law (Law 517)

Spring Semester 2022

Tuesday, Wednesday & Thursday

8:40 – 9:50 a.m.

VIA ZOOM

Clinical Assistant Professor Mark Brittingham

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Room 256

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NOTICE: I first taught this class spring semester 2011. At that time, 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.

NOTE: This course is presently scheduled to be held in Room 251. However, I expect that to change. Also, due to COVID, this course ultimately may only be offered remotely via Zoom. PLEASE REMAIN ALERT FOR UPDATES ON THE TIME, PLACE AND MANNER THAT WE CHOOSE TO DELIVER THIS COURSE. Also, note that in the event this course goes remote, it is your responsibility to obtain access to the classes. If that is a problem for you, please contact Associate Dean Macias or Assistant Dean Ray.

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

LYNN M. LOPUCKI, ELIZABETH WARREN, DANIEL KEATING & RONALD MANN, *COMMERCIAL TRANSACTIONS: A SYSTEMS APPROACH (7th edition)* (Wolters Kluwer 2020). 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 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”) or other statutes 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 (2021) 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 UCC, the Bankruptcy Code, and other cited statutes, 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 15-20 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 email me to talk 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 upper-level 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). IN ADDITION, I know from experience that the material we cover in this class, especially secured transactions, is basic law that clients expect every practicing lawyer to know.

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 70 minutes per class, Standard 310 requires that I assign at least two & 1/2 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. I will do this by calling roll at the beginning of class. If you are unprepared for class, please advise me of that fact **the night before class**. 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 attendance will constitute a representation that you have read the assigned material and are prepared to discuss the material in an intelligent fashion.

Typically, between 6:00-6:30 a.m. before class I will send out an email assigning problems to students. Once I make the assignments, I will not have time to check my email and reassign problems because you suddenly decide you are inadequately prepared. THEREFORE, IF YOU WILL NOT BE PREPARED OR IN ATTENDANCE, PLEASE INFORM ME BEFORE 5:00 a.m. (or risk the wrath of my ire).

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 five (5) absences in this class.** If you have more than five (5) absences, unless other provisions are made, you will be withdrawn from the class or receive a semester-grade penalty, at my sole discretion. 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 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. In addition, 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 (probably only laws on consumer electronic funds transfers (a/k/a debit cards) and credit cards.

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.

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 & STATUTES** in conjunction with the readings assigned in the casebook. In addition to reading the relevant 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 many 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: Please stay off of your cell phone during class unless a REAL emergency requires otherwise.

10. Recording of Class Sessions: I will try to record each class. YOU MUST REMIND ME TO HIT THE “RECORD” BUTTON AT THE BEGINNING OF CLASS. *Also, 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 has NOT yet been formally scheduled. Finals are April 26 - May 6, 2022. We will discuss this further as more information becomes available.

NOTE: I will also likely make a writing assignment later in the semester that will be graded S/U.

12. Office Hours: My office is Room 0256, on the second floor near the far end of the hall. However, thanks to COVID 19 and my own personal health issues (I'm high risk), I will not likely keep formal office hours. However, I am happy to meet any time that's convenient via Zoom, so feel free to let me know if you wish to meet. Also, if I am in my office, please knock and we can discuss matters from a safe distance if appropriate.

13. Problems and Issues. Despite the best efforts of professors and students, class is not always perfect. Sometimes a lecture or concept is unclear. Sometimes a fellow student will do or say something insensitive or inappropriate that is not fully resolved by the professor in the classroom. You may experience personal frustration with something I do or say in the classroom. If you experience a problem or identify an issue in the class, please see me so we can discuss it and resolve it. Some of my best growth and development as a teacher have come from students taking the time to alert me to issues or problems I had not previously been aware of.

TENTATIVE SCHEDULE: The following is my best current estimate of how we will proceed. *I reserve absolutely the right to change any aspect of the following.*

Week 1:

January 11: Introduction & Assignment 1: *Role & Scope of Codes in Sales Systems*

January 12: Assignment 3: *Process of Sales Contract Formation*, Problems 3.1-3.8.

January 13: Complete Assignment 3 & do Assignment 5, *Statute of Frauds with Sales of Goods*. Problems 5.1-5.6 (skip 5.3).

Week 2:

January 18: Assignment 6, *Parol Evidence with Sales of Goods*. Problems 6.1-6.5.

January 19: Assignment 8, *Warranties with Sales of Goods*, Problems 8.1-8.9. (8.4-8.6 require thought only).

January 20: Assignment 10, Part A: *Reducing or Eliminating Warranty Liability*, (pp. 188-199) Problems 10.1-10.4 & 10.6-10.8 (skip 10.5).

Week 3:

January 25: Assignment 11, Part A: *Commercial Impracticability*, (pp. 207-216) Problems 11.1-11.5; Assignment 12, Part A: *Unconscionability*, (pp. 228-235) Problem 12.1-12.3.

January 26: Assignment 13: *Closing the Sale*, (pp. 223-239) Problems 13.1-13.8;

January 27: NO CLASS

Week 4:

February 1: Assignment 15, *Risk of Loss*, (pp. 262-277) Problems 15.1-15.7.

February 2: Assignment 17, *Seller's Remedies*, (pp. 303-317) Problems 17.1-17.7.

February 3: Assignment 19, *Buyer's Remedies* (pp. 330-343) Problems 19.1-19.7

TUESDAY, FEBRUARY 8, 8:30 a.m.: EXAMINATION ON ARTICLE II.

Week 5:

February 9: **We will do Assignment 42 in Book 3 on Secured Credit, and thereafter we will do the remainder of the Assignments, one Assignment per class period, through Assignment 68. This will take the remainder of the semester.**

OTHER IMPORTANT STUFF:

WORKLOAD EXPECTATIONS: *NOTE that the amount of time you must spend preparing for each class is substantial. 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: 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 that meets only 3 times per week. Thus, the amount of assigned reading and outside of class preparation should take you about 2.75 hours for each class session and 8 hours for the week. All told, applying the ABA standard to the number of credits offered for this class, you should plan to spend a total 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 designation in such a way as to make clear the true author of the work.*

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. You may request accommodations at any time, but timely requests help to insure 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. Upon completion of a Disability Accommodation Agreement with DSS, students should bring the agreements for each course to the School of Law Registrar's Office to ensure the School of Law provides the*

proper classroom and examination accommodations. Accommodation [request](#) and [renewal](#) forms can be found here: <https://law.siu.edu/academics/>.

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) 453-2461, 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.*

COVID-19. *As a condition of on-campus enrollment, all SIUC students are required to engage in safe behaviors to avoid the spread of COVID-19, including the requirement that all students wear a mask in campus buildings, including classrooms, laboratories, and studios when others are present, regardless of social distancing. Students are expected to follow physical or social distancing guidelines by keeping at least 6 feet from others, and practicing good hand hygiene. Failure to comply with this policy may result in dismissal from the current class session. If the student refuses to leave the classroom after being dismissed, the student may be referred to the Office of Student Rights and Responsibilities. SIUC will follow federal, state and county public health recommendations and mandates in all decisions relating to university operation. Students should regularly review the link for the [SIUC COVID-19 response](#).*