

ASPEN CASEBOOK SERIES

WHALEY
McJOHN

Problems and Materials on the
SALE AND LEASE OF GOODS

*Seventh
Edition*



Wolters Kluwer

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**PROBLEMS AND MATERIALS
ON THE SALE AND
LEASE OF GOODS**

SEVENTH EDITION

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For Mary Bush, Tim Ihle, and Pamela Maggied

DJW

To Lorie and Ian

SMM

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This book explores the law of the sale and lease of goods and licenses primarily by focusing on a series of Problems designed to encourage the student to concentrate on the exact statutory language of the Uniform Commercial Code and related statutes. Representative cases and textual notes are also included.

Unfortunately, students reared on the case method sometimes have trouble concentrating on Problem after Problem. Such an attitude here can be academically fatal. As a guide to the degree of concentration required, we have used a hierarchy of signals. When the Problem states "Read §2-302," we mean "Put down this book, pick up the Uniform Commercial Code, and study §2-302 carefully." When the instruction is "See §2-302," the reader need look at the cited section only if unsure of the answer. "Cf. §2-302" or simply "§2-302" are lesser references, included as a guide for the curious.

We have edited many of the footnotes out of the cases; the ones that remain have been stripped of their original numbering and have been consecutively numbered with our other textual footnotes. Unless clearly indicated otherwise, all footnotes in the cases are the court's own.

Whaley co-authored the first edition of this book with Professor Rhonda Rivera, then his colleague at The Ohio State University College of Law. Due to other commitments she declined to participate in subsequent editions, so he reluctantly went on alone. Nonetheless, much of her work on the first edition is still reflected in this one, and he is, as always, in her debt.

The photograph of Karl Llewellyn is courtesy of Yale Law School.

Finally, we would like to thank all the good people at Aspen Publishers for the assistance they have given us through the years in the production of this and other books. It is a pleasure to work with true professionals. We would also like to express gratitude to our students who suffered through these materials in earlier forms, spotted errors, made suggestions, and helped shape the final version. Our students have always taught us as much about commercial law as we have taught them, and we thank them for it.

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December 2015

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INTRODUCTION TO THE UNIFORM COMMERCIAL CODE AND SALES LAW

I. A BIT OF HISTORY

During medieval times, commercial law varied widely from place to place throughout the trading world, and the statutes of the various countries either didn't address the relevant issues that traders cared about or reached results that were at odds with what those traders thought either realistic or fair. During much of English history, for example, the common law courts were lumbered by such arcane rules of procedure that justice was either unavailable or so slow as to come far too late.

To solve this dilemma the traders developed their own legal system, the so-called law merchant (or *lexmercatoria* in Latin). By agreement they created their own courts, chose their own judges, and developed those mercantile understandings that made trade efficient and fair (in their own eyes). At some point the real courts became aware that they were being bypassed and began to incorporate the law merchant into their own rules. During the time of the American Revolution, the English court system had as its Chief Justice the great jurist Lord Mansfield. He believed in pragmatism in his courtroom, and during his tenure the law merchant was given much

influence in English decisions. Lord Mansfield would call merchants into court to testify as to what mercantile understandings were about in the matter before the court, and was not above putting merchants on the jury and then asking them questions as cases proceeded.



II. THE CREATION OF THE UNIFORM COMMERCIAL CODE

Starting in the 1940s, two private bodies, the American Law Institute (ALI) and the National Conference of Commissioners on Uniform State Law (NCCUSL), decided it was time to modernize the state laws on commercial matters. Over the coming years, they gathered together the greatest commercial experts in the country to draft a new giant statute that would supersede existing ones for the areas that were covered. Chief draftsman was Professor Karl N. Llewellyn, the leading voice for the “legal realism” school

of jurisprudence (very much in Lord Mansfield's tradition), and he led a drafting team that by 1952 produced the first version of what was called the "Uniform Commercial Code."



Karl Llewellyn

The Uniform Commercial Code went through various versions from that day to this (though Article 2 on "Sales" has remained largely unchanged). The UCC (or, in this course, simply "the Code") is divided into "Articles" covering different aspects of commercial law. The chief Articles we will study are those in Article 2 (Sales), Article 2A (Leases), Article 5 (Letters of Credit), and Article 7 (Documents of Title), though references will be made to other parts of the Code, particularly Article 1, which deals with general provisions applicable throughout the rest of the giant statute.

It is important to appreciate that the UCC is not federal law. Instead, the two drafting bodies submitted it for adoption to the states, and it had to be individually enacted into law state by state. The idea was that if commercial law were uniform throughout the country, commerce would be more certain and efficient (the same goals animating the law merchant centuries before). Most states did adopt the Code with few changes (though some have sneaked in through the years, and you, budding lawyer, should always check your own state's enactment to make sure some evil alteration hasn't muddled what you've learned in this course). By the end of the last quarter of the twentieth century, all states and most U.S. territories had adopted the UCC completely, though most importantly for this course, Louisiana, with its French law, Napoleonic Code, tradition did not enact Article 2 on the Sale of Goods, but has its own civil law version thereof.