



# PROBLEMS AND MATERIALS \_\_\_\_\_ ON SALES

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**This book is dedicated**

**to**

**MARGARET K. MORRIS, BY RHONDA RIVERA**

**and to**

**BARBARA SHIPEK, TIM IHLE, AND MARY BUSH BY DOUGLAS WHALEY**

## PREFACE

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This book explores the law of sales primarily through focus on a series of problems designed to encourage the student to concentrate on the exact statutory language in the Uniform Commercial Code, though 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 the footnotes out of most 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. We have also taken the liberty to change all statutory citations in the cases to their simple Uniform Commercial Code form.

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*Rhonda R. Rivera*  
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## CHAPTER 1

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# INTRODUCTION TO SALES

One of the most common commercial transactions in our economy is the sale of goods. On the way to class, a student may purchase a newspaper from a street vendor. At the same moment, General Motors may be purchasing 200,000 spark plugs from a manufacturer. Both transactions are sales of goods, and both are governed by the same rules of law, rules primarily found in the Uniform Commercial Code (UCC).

The Uniform Commercial Code is a huge statute, divided into different segments called articles. The Code was written under the direction of the late Karl Llewellyn and was first enacted in Pennsylvania in 1953; it is now in force in all states and the District of Columbia (though Louisiana has adopted only parts of the UCC). It repealed a host of prior commercial statutes and established in their stead a consistent statutory scheme.

We shall be exploring the law of sales primarily by studying Article 2 of the Uniform Commercial Code, but we shall also look at Article 7 (Warehouse Receipts, Bills of Lading and Other Documents of Title) and Article 5 (Letters of Credit). In our study of the warranties given in sales transactions, we shall also examine the federal Magnuson-Moss Act.

Before we plunge into the details of Article 2, it is important to understand that the application of Article 2 is governed by the policy statements found in Article 1.

1. Read §1-102(1). A winning construction is one that promotes the purposes of the Code.

2. Read §1-102(2). The Code is the end result, hundreds of years later, of the Law Merchant (the “law” as merchants understand it). It was Karl Llewellyn’s goal to create a Code that changed as mercantile practices changed. As we go through the UCC, ask yourself how successfully this goal was met. This also means that the law of sales will in large part depend on business practices and understandings. Wise lawyers know the facts of the trade in question and illustrate to the court how their legal arguments facilitate commercial practice.

3. Read §1-102(3). The underlying philosophy of the Code is that persons are free to make their own contracts. The Code only steps in when they fail to do so or when their agreement breaks down. However, the limit on all persons is that they must act “in good faith, diligently, reasonably and with care.” Lest you believe good faith is an empty shibboleth, see *Baker v. Ratzlaff*, 1 Kan. App. 2d 285, 564 P.2d 153, 21 U.C.C. Rep. Serv. 1217 (1977).

4. Read the Comments to §1-102. Caveat: The Comments are useful aids in applying the Code. Remember they are *not* the enacted law. Remember also that each state that has enacted Article 2 has changed parts of the statute. Always check your own state’s code.

5. Read §1-103. The key to this section is the phrase “unless displaced.” Section 1-103 provides the doorway into the Code for many familiar and useful legal and equitable doctrines.

## I. SCOPE OF ARTICLE 2

### A. “TRANSACTIONS IN GOODS”

Article 2 of the Uniform Commercial Code applies to *transactions in goods*. Read §2-102. “Transaction” is not defined in the Code. Look at §2-106(1), does that help? *Goods* is defined in §2-105. Read it and work through the following problems.

#### PROBLEM 1

Does Article 2 control the following matters?

(a) The sale of an insurance policy?

(b) The rental of a passenger car by Dime-A-Minute Rent-A-Car to

No. Under "things" includes ex. <sup>action</sup>

an individual? See: *Hertz Commercial Leasing Corp. v. Transportation Credit Clearing House*, 59 Misc. 2d 226, 298 N.Y.S.2d 392, 6 U.C.C. Rep. Serv. 132 (Civ. Ct. 1969), *rev'd on other grounds*, 64 Misc. 2d 910, 316 N.Y.S.2d 585 (Sup. Ct. 1970) ("a transaction" clearly encompasses a far wider area of activity than a "sale"); *Glenn Dick Equipment Co. v. Galey Construction, Inc.*, 97 Idaho 216, 541 P.2d 1184, 18 U.C.C. Rep. Serv. 340 (1975) (Article 2 can be "extended by analogy to a lease under appropriate circumstances . . ."); *Industralease Automated & Scientific Equipment Corp. v. R.M.E. Enterprises, Inc.*, 58 A.D.2d, 396 N.Y.S.2d 427, 22 U.C.C. Rep. Serv. 4 (1977) ("although the transaction was cast in the form of a lease, it assumed the true model of a sale").

(c) A blood transfusion given a patient in a hospital operating room? The preparation of false teeth by a dentist? See *Carroll v. Grabavoy*, 77 Ill. App. 3d 895, 396 N.E.2d 836, 27 U.C.C. Rep. Serv. 940 (1979). The injection of a drug (for which the patient was separately billed) into a patient's eye as part of an operation? See *Providence Hospital v. Truly*, 611 S.W.2d 127, 30 U.C.C. Rep. Serv. 785 (Tex. Civ. App. 1980).   
*- sales only incidental to service*  
*- Yes if severed by self*

(d) The sale of standing timber? The sale of crops? See §2-107.

(e) The sale of a computer program for inventory control to a business? See *Garden State Food Distributors, Inc. v. Sperry Rand Corp.*, 512 F. Supp. 975, 31 U.C.C. Rep. Serv. 575 (D.N.J. 1981), and Note, 77 Mich. L. Rev. 1149 (1979).

(f) The sale of a membership in a health spa? *- No real goods*

(g) The sale of the entire assets of a clothing store? See Article 6, particularly §6-102. *bulk sale - Art. 2 applies - but business name & goodwill separable (DVA to)*

(h) A construction contract to build specially and install a 1 million gallon water tank? See *Pittsburgh-Des Moines Steel Co. v. Brookhaven Manor Water Co.*, 532 F.2d 572, 18 U.C.C. Rep. Serv. 931 (7th Cir. 1976) (" . . . while the finished tank was scarcely one to be taken off the shelf, we are unaware of any authority that specially manufactured small dies should be goods and a very large tank not so classified.").

(i) The sale of personal odds and ends by a family at a garage sale? *Yes*

## B. "MERCHANTS"

If you answered the last section of Problem 1 correctly, you know that Article 2 applies to private sales by persons who are not

merchants. However, the Code sometimes has special rules which only apply to merchants [e.g., §§2-207(2), 2-314, 2-603]. Moreover, under the UCC, merchants are held to a higher standard of behavior than other persons. All persons must operate in good faith (§1-203), but good faith for merchants is defined differently. Merchants must not only be "honest in fact," a subjective standard, but they must observe "reasonable standards of fair dealing in the trade," §2-103(1)(b). This latter standard is an objective one.

Now, who is a merchant? Read §2-104(1) and 2-104(3) and their Official Comments; there is an annotation on point in 91 A.L.R.3d 876 (1979).

## PROBLEM 2

Are the following persons *merchants*?

(a) Amanda, who quit her teaching job on Friday and on Monday opened a hat store? §2-104, Yes strictly, but cases do not apply strictly standards.

(b) Tom Tiller, a farmer selling his produce to a wholesaler? Compare *Loeb & Company v. Schreiner*, 294 Ala. 722, 321 So. 2d 199, 17 U.C.C. Rep. Serv. 897 (1975) ("Although a farmer might sell his cotton every year, we do not think that this should take him out of the category of a 'casual seller' and place him in the category with 'professionals.'"), with *Continental Grain Co. v. Brown*, 19 U.C.C. Rep. Serv. 52 (W.D. Wis. 1976) ("A sale of 75,000 bushels of corn for a total price in excess of \$212,000 is not a 'casual' sale."). See also: *Ohio Grain Co. v. Swisshelm*, 40 Ohio App. 2d 203, 318 N.E.2d 428, 15 U.C.C. Rep. Serv. 897 (1973) (the modern farmer is more than ". . . a simple tiller of the soil, unaccustomed to the affairs of business and the marketplace. . . . Only an agri-businessman may hope to survive.").

No. (c) Newman-Money Department store decided to repaint the store for the first time since it opened three years ago. As a paint buyer, is the store a merchant? Is the question easier if Newman-Money makes a similar purchase every October for a yearly repainting?

Does party deal w/ good of this kind, or hold itself out as having such skill or knowledge.

② At some point - after x years merchant applies.



## CHAPTER 2

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# CONTRACT FORMATION

The basics of contract formation should be reassuringly familiar to you from contracts class. Perhaps the UCC approach to offer and acceptance, the Statute of Frauds, and the Parol Evidence Rule were covered there. If not, as you learn these rules rather than review them, contrast the UCC approach with the common law approach.

### ***I. THE STATUTE OF FRAUDS***

Read §2-201, which is quite a change from the common law Statute of Frauds. At common law, when a contract fell within the statute, *all* its terms and conditions had to be in writing or the contract was not enforceable. Under §2-201, a contract can be enforced even if a main term is omitted or misstated. The only term necessary for a sufficient memorandum under §2-201(1) is *quantity*. Not only are the standards lessened by the Code, but four exceptions are provided: merchant confirmation letters, special manufacture, part performance, and admission in legal proceedings.

### **PROBLEM 3**

On December 10, James Ross, the president of Ross Ice Cream Shoppes, Inc., phoned Robert Scott, president of the Amundsen Ice