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Cases and Problems



Wolters Kluwer

Law & Business

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***UNITED STATES
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CASES AND PROBLEMS

Bryan D. Hull

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Wolters Kluwer

Law & Business

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*To my niece and nephew, Lisa and Ben Kellerman.
May they experience much happiness in their lives.
Love, Uncle Bryan*

PREFACE

My reason for writing this book stems from a decision made by the commercial law faculty at my school, Loyola Law School, Los Angeles, a number of years ago to offer a course comparing United States law governing sales of goods to international sales law, the Convention on Contracts for the International Sale of Goods (CISG). We had been teaching sales law in conjunction with other UCC subjects, such as negotiable instruments and secured transactions, or as a stand-alone course focusing only on U.S. law. We didn't like the way that sales fit with other UCC courses, yet we didn't wish to offer a course focused simply on U.S. sales law because we felt that much of that material had already been covered in the first-year Contracts course. So we decided to add the international aspect to expose students to an area they probably had not covered in their first year. This decision was also consistent with our overall desire to place more emphasis on international law in our curriculum, as commerce becomes increasingly international.

In teaching this (for us) new course, my colleagues and I had a hard time finding a book well suited to how we wished to present the material. There are outstanding books available, but we found either the coverage or the organization not entirely suitable for our course. I wanted a good mix of domestic law and international law; some books had too much domestic law with not enough international law, and vice versa. Some books did not have enough of the basics of Article 2, assuming that students had covered the material in their first-year Contracts course. I wanted to teach some basic material on contract formation as refresher on basic contracts principles, which is also helpful for third-year students before they take the bar exam. Finally, I wanted to teach the course through a combination of cases and the problem method, especially focusing on problems as an effective approach to a statutory course.

After teaching the course several times and with the encouragement of my colleagues, I decided to write a book tailored to our comparative sales law course. To make the book useful to others who may include licenses and leases in their curriculum, I have also provided materials on those subjects. I have organized the book in the order in which questions would be considered by a lawyer—focusing first on choice of law, then on contract formation, followed by determination of the terms, performance, and remedies. I have separated out the discussion of third parties involved in the sales transaction (i.e., banks and carriers of goods) and the treatment of leases and licenses to make it easier for instructors to pick and choose topics that they want to consider.

I do not claim that this book is better than others on the market, only somewhat different in terms of coverage and organization. I hope that it is user friendly to teachers and to students alike. I have tried to be straightforward in both the writing and the organization of the text. At the same time, I hope that the book stimulates students to look at some of the more difficult issues in the area.

My students get the most out of the book by trying to solve the problems by first looking at the statutes and comments cited. Most of the problems are based on actual decided cases, and citations to those cases are provided. Having worked to figure out the problem without reference to the case, the student may then look at how the court decided it. As the late Professor Jesse Dukeminier told our class, “Learning the law is like learning how to cook: you have to feel the chicken!” By working through the problems, a student does just that. And if the student comes to a different conclusion from the court, the student should understand that it may be the student who is “right” and the court who is “wrong.”

The cases are included in the book to help students see how courts apply the various rules. On most topics, a case is followed by problems designed to explore the topic further. I have edited the cases so as to literally lighten the students’ load in not having to carry a weighty casebook, as well as to focus consideration on the particular topic that is relevant, as rather than on other issues that the court discussed in the unedited case. Therefore, I have deleted many citations without necessarily indicating what is left out. The curious may look at the citations to find the unedited cases.

I have taught from prior versions of the manuscript that ultimately has become this book in a number of my comparative sales law classes over the past several years. I am grateful to my colleague Professor Lary Lawrence for also using it in his classes. The book works well for our purposes, and I hope it will work well for you too!

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January 2007

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I would first like to thank my employer, Loyola Law School, Los Angeles, for its financial support in helping me write this book. Second, thanks to my colleague Professor Lary Lawrence, for his encouragement and for his willingness to serve as a “guinea pig” in using the manuscript in his classes. Lary has also given me many useful comments that have assisted me in improving the product. Of course, any remaining errors are my own! Also, thanks to my colleague, Dean Emeritus Gerald T. McLaughlin, for sharing with me his materials on letters of credit. He has forgotten more on this subject than I will ever know.

I want to thank Professor Eric Bergsten for putting on the Willem C. Vis International Arbitration Moot Competition the last fourteen years in Vienna, Austria. It was our school’s involvement in that competition that motivated us to offer the comparative sales law class that gave rise to this book. Some of the problems in the book are inspired by issues that were considered in prior Vis competitions.

Thanks go to the editors and reviewers of Aspen Publishers. Their hard work and helpful comments have helped make this a better product.

Over the years I have been aided by a number of student research assistants and proofreaders and am grateful to all of them. In chronological order in which they worked on the book, they are: Samir Sheth, Mark Murad, Jason Rothman, Alexis Endsley, Michael Coker, and Mike Lavaee. I also want to thank all of the students who have taken my class during the time that I have been working on this book. My experience in using the manuscript with them has been invaluable.

Finally, anyone who writes a casebook in an established area owes a debt to those who have previously written casebooks in the area. I have learned a lot from those books, both from my days as a student and now as

a professor who has reviewed them and taught out of them. My first exposure to many of the problems and cases that are in this book were when I used or reviewed those books.

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January 2007

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