Dated: November 10, 2015

**Memorandum to Students**

**Study Guide for Sales**

**Topics 5–7**

**Fall 2015**

**University of North Dakota School of Law**

**Prof. Eric E. Johnson**

**I. Formation (continued)**

**Topic 5: Statute of Frauds with Sales of Goods**

Reading:

* Keating, Assignment No. 5, pp. 95-110
* Hull: no reading, but you may wish to review relevant material in Ch. 4 that was previously assigned

Class sessions:

* No. 6
* Sept 10

Problems we did in class:

* 5.1
* 5.2
* 5.3 (🡨 not particularly useful for studying for the exam)

Key code sections:

* 2-201
  + statute of frauds, requirement of writing
* 1-201(b)(37)
  + definition of signed
* 1-201(b)(43)
  + definition of writing
* 1-103
  + general construction of UCC for purposes and policies, applicability of other law

Key learning objectives:

* understand when a contract for the sale of goods must be evidenced by a signed writing
  + when the price is $500 or more
* understand the threshold of what is necessary for a signed writing
  + the signed writing need not be the contract itself
  + mostly you just need:
    - the quantity of goods to be specified
      * note that the contract cannot be enforced for beyond the quantity specified
    - that the writing is “signed” by the party against whom enforcement is sought
  + understand that the requirements for a signature are quite liberal (1-201(37))
    - could be a typed name, a printed name, an X, the fact that something was sent on letterhead – just as long there is evidence of intent to authenticate the document
* be able to apply the between-merchant exception to the requirement of a signed writing under 2-201(2)
  + even where the party against whom enforcement is sought never created a signed writing, the statute of frauds can be satisfied with a written confirmation under specified circumstances:
    - both parties are merchants
    - the writing is sufficient against the sender (that is, the sender has bound herself or himself under 2-201(1)),
    - the recipient has reason to know of the contents of the confirmation, and
    - the recipient fails to object within 10 days after receipt
* recognize the various exceptions to the statute of frauds listed in 2-201(3), of which any one will do to make a contract enforceable:
  + specially manufactured goods where there’s a reliance interest (see 2-201(3)(a))
  + admission in court testimony or pleading (2-201(3)(b))
    - in some jurisdictions, you might be able to advance a lawsuit just to see if you can get this admission in discovery (this was debated in the *DF Activities v. Brown* case about the Frank Lloyd Wright chair, K 98-103)
  + payment was made and accepted (2-201(3)(c))
  + goods were received and accepted (2-201(3)(c))
* promissory estoppel and outright fraud, in many courts (via general principles of law and equity incorporated through 1-103)

**Topic 6: Parol Evidence with Sales of Goods**

***(also covered under this topic: basic contract interpretation)***

Reading:

* Keating, Assignment No. 6, pp. 111-128
* Hull, Ch. 5.D, pp. 89-97

Class sessions:

* No. 7, 8
* Sept 15, 17

Problems we did in class:

* 6.1 (a-d)
* 6.2

Key code sections:

* 2-202
  + parol evidence rule
* 2-209(1)
  + modification

Key learning objectives:

* understand the basics of contract interpretation
  + see the slideshow for details on this
* understand when the parol evidence rule is relevant and how to apply it
  + see the slideshow for key issues and pitfalls
* understand that a modification to a contract for the sale of goods can be binding without independent consideration (2-209(1))

**Topic 7: Requisites to Formalization in Leases, International Sales, and Real Estate Sales**

Reading:

* Keating, Assignment No. 7, pp. 130-144
* Hull: review Ch.3.E.4., p. 46; review that part of Ch. 5.D. regarding CISG, pp. 89-97

Class sessions:

* No. 8, 9
* Sept 17, 22

Problems we did in class:

* 7.1 (a-c)
* 7.2 (a-b)
* 7.3 (a-b)

Key code sections:

* 2A-201
  + statute of frauds for leases
  + *has substantial differences vs. 2-201*
* 2A-202
  + parol evidence rule for leases
  + *mirrors 2-202*
* CISG Article 1(1)
  + applicability of CISG
* CISG Article 6
  + parties can choose to exclude CISG or vary its provisions
* CISG Article 8(3)
  + relevance of negotiations and post-agreement conduct to interpreting a contract
* CISG Article 11
  + no requirement of writing or formalities

Key learning objectives:

* understand that the parol evidence rule (2A-202) is the same for leases as it is for sales of goods
* understand the key differences in the statute of frauds for leases (2A-201) as compared to the statute of frauds for sales of goods
  + the dollar amount threshold for requiring a signed writing is $1,000 in total lease payments
  + the signed writing, if required, must include a description of the goods leased and the lease term
  + understand that a lease for which a signed writing is required is not enforceable beyond the term stated in the signed writing
  + know that the signature requirement is the same as for sales of goods (and that requirement is quite loose)
  + know that there is no between-merchants exception for leases that is analogous to 2-201(2)
  + there are exceptions to the signed-writing requirement in 2A-201(4) that are largely the same as 2-201(3):
    - the exceptions are:
      * specially manufactured goods where there’s a reliance interest (see 2A-201(4)(a))
      * admission in court testimony or pleading (2A-201(4)(b))
      * leased goods were received and accepted (2A-201(4)(c))
        + but note there is no equivalent exception for payment was made and accepted (*cf.* 2-201(3)(c))
    - the lease term for a lease excepted from the signed-writing requirement under 2A-201(4) is determined by 2A-201(5)
  + promissory estoppel and outright fraud, in many courts (via general principles of law and equity incorporated through 1-103) will allow enforcement of a lease despite the lack of a signed writing
* understand that there is no parol evidence rule under the CISG
* understand that there is no statute of frauds under the CISG
* understand what parties must do to exclude parol evidence that would add to or vary the terms of a written contract governed by the CISG. They must:
  + select a jurisdiction with a body of law that has the parol evidence rule (e.g., a UCC jurisdiction)
  + de-select CISG (since UCC states are part of the United States, which is a CISG signatory)
  + include a merger clause
* for real estate, understand that the common-law statute of frauds requires a signed writing for the sale of real property
  + understand that the common-law statute of frauds for real estate is stricter than the UCC statute of frauds
    - for real estate, the signed writing must generally include all “material terms”
  + exceptions are
    - equitable estoppel (detrimental reliance)
    - part performance (*Richard v. Richard* case is an example (K 138-144))
      * understand the potential difficulty, exemplified by *Richard*, of proving that conduct is part performance of a real-estate sales contract rather than just consistent with a lease of the real property