

Outline Overview of Sales

Fall 2016
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I. FORMATION, APPLICABLE LAW, AND OTHER BASICS

Topic 1: The Role and Scope of Codes in Sales Systems

Key code sections:

- 1-201(b)(3)
 - definition of agreement
- 1-302
 - variation of UCC rules by agreement
- 1-303(a)(b)(c) & (d)
 - course of performance, course of dealing, and usage of trade
- 2-102
 - general scope of Article 2
- 2-105(1)
 - definition of goods
- 2-104
 - definition of merchant
- 2-308(a)
 - gap-filler for place of delivery

Key learning objectives:

- be able to compare and contrast the code system vs. the common-law
 - understand the importance of looking to the statute for answers
- for a sales contract, understand the hierarchy of importance among contractual provisions, the UCC code provisions, and the common law
 - in general, as far as the rules that control the deal and any dispute about it, from highest to lowest what controls is:
 - contractual provisions
 - the UCC
 - but note that some UCC rules cannot be contracted around
 - the common law
 - but note that some common-law rules, like fraud, can't be contracted around
- for a sales contract, understand the hierarchy of importance among express terms, course of performance, course of dealing, and usage of trade

- as far as the content of the contract, from highest to lowest what controls is:
 - express terms
 - course of performance
 - course of dealing
 - usage of trade
- understand when gap-fillers are used and when they are superseded
 - gap-fillers are superseded when terms are supplied by
 - express term of the contract
 - course of performance
 - course of dealing
 - usage of trade
- understand the scope of a “good” under the UCC
- be able to apply the gravamen test and predominant purpose test to mixed contracts (H 12-14)
 - predominant-purpose test looks at the deal
 - gravamen test looks at the dispute
- be able to apply the UCC definitions rather than the common-sense definitions of terms in interpreting UCC provisions

Topic 2: Scope Issues with Leases, CISG, and Real Estate

Key code sections:

- 2A-103(1)(j)
 - definition of lease
- 1-203
 - lease vs. security interest
- 2-107
 - goods vs. real property
- CISG Articles 1, 2, 3, 10
 - when CISG applies

Key learning objectives:

- understand something of the business interests and real-world stakes in leases and sales with security interests
 - appreciate, at a very general level, the business concerns relevant to categorizing transactions as leases or sales with a disguised security interest
 - appreciate how the need for financing drives transactional forms
 - appreciate why parties might want a security interest
 - appreciate the relative benefit, from the seller’s perspective of wanting to get paid or to get back the goods, of categorizing a transaction as a lease, a secured transaction, or an unsecured sale
 - appreciate the relative benefit, from the perspective of a third party seeking to claim the goods, of categorizing a transaction as an unsecured sale, a secured transaction, or a lease
- be able to analyze whether a transaction is a true lease

- be able to analyze whether a sales transaction is governed by CISG
 - apply CISG provisions regarding scope
 - understand the application of choice-of-law provisions of contracts and the applicability of CISG
 - understand what is necessary to prevent application of CISG in a contract and have UCC govern instead
 - must not only choose a certain UCC jurisdiction (e.g., New York) but also expressly state CISG does not apply (since New York is part of USA, a CISG signatory)
- be able to analyze whether a transaction involving sales of things on or taken from land are governed by UCC Article 2 or the common law

Topic 3: The Process of Sales Contract Formation

Key code sections:

- 2-204
 - contract formation, indefiniteness
- 2-205
 - firm offers
- 2-206
 - offer and acceptance in contract formation
- 2-207
 - additional terms in acceptance or confirmation
 - a/k/a “battle of the forms”

Key learning objectives:

- understand the key aspects of contract formation under 2-204
 - contracts can be formed by express communications or purely by conduct
 - it’s not necessary to be able to determine the exact moment a contract is formed
 - open (un-agreed-upon) terms do not prevent the formation of a valid, enforceable contract, so long as there is some basis upon which a court could provide a remedy
- understand how firm offers can be binding under 2-205
 - firm offers can be binding if they have consideration (same as the common law)
 - firm offers without consideration are binding if:
 - by a merchant
 - in a signed writing
 - assurance given it will be held open (not revoked)
 - but the irrevocability period for a without-consideration firm offer cannot exceed three months
- understand how offers can be made and validly accepted under 2-206
 - an offer can invite acceptance in any reasonable manner
 - an offer can be accepted by shipping goods
 - shipping conforming goods counts as acceptance
 - even shipping non-conforming goods can count as an acceptance

- but understand that a shipment of non-conforming goods will be construed as a counter-offer if it's offered as an "accommodation," which the seller can do by seasonably notifying the buyer that the shipment is intended as an accommodation
- understand what happens where the offer and acceptance are not the same
 - understand the common-law background
 - under the common law, the offer and acceptance must be the same for a contract to be formed by them (the "mirror-image rule")
 - under the common law, a purported acceptance that doesn't match the offer will be construed as a counter-offer
 - if conduct by the recipient subsequently establishes that there is a contract, then the party receiving the purported acceptance (the counter-offer) will be construed to have accepted that counter-offer by conduct, and the terms of the counter-offer will control (a situation giving rise to what's called the "last-shot" rule)
 - understand in general about 2-207 (the "battle of the forms"):
 - 2-207 was intended to change the common-law rules where the offer and acceptance are not the same
 - 2-207 permits contract formation even where offer and acceptance are not the same, abrogating the mirror-image rule
 - 2-207 is intended to avoid the harsh results of the last-shot rule
 - understand when 2-207 is not an issue, including
 - when the offer and acceptance match
 - when there is an acceptance by conduct prior to any differing writing
 - where the purported acceptance comes too late to count as a valid acceptance
 - understand that inconsistent expressions in offer and acceptance can create a contract (2-207(1))
 - but recognize acceptances expressly made conditional on assent to additional or different terms will not operate as an acceptance (2-207(1))
 - understand that in such a situation, if the parties' conduct indicates a contract was nonetheless formed, 2-207(3) applies
 - be able to distinguish between different terms and additional terms and understand the consequences that follow from that distinction
 - for additional terms, where there is a valid contract, be able to apply 2-207(2)
 - for different terms, where there is a valid contract, be able to apply the majority "knock-out rule" where the conflicting terms drop out of the contract and gap-fillers are used to fill-out the contract
 - understand that when there are writings that don't establish a contract, but conduct that does, 2-207(3) provides that the terms of the contract are those terms that the parties' writings agree on, together with gap-fillers

Topic 4: Formation with Leases, International Sales, and Real Estate

Key code sections:

- 2A-204
 - lease contract formation, indefiniteness
 - *mirrors 2-204*
- 2A-205
 - firm offers
 - *mirrors 2-205*
- 2A-206
 - offer and acceptance in lease contract formation
 - *very similar to 2-206, missing the part about inviting shipment and acceptance by shipping conforming or non-conforming goods*
- CISG Article 16, 17
 - firm offers
- CISG Articles 18, 19
 - offer and acceptance

Key learning objectives:

- understand the key aspects of contract formation under 2A-204 *(the following mirrors 2-204:)*
 - contracts can be formed by express communications or purely by conduct
 - it's not necessary to be able to determine the exact moment a contract is formed
 - open (un-agreed-upon) terms do not prevent the formation of a valid, enforceable contract, so long as there is some basis upon which a court could provide a remedy
- understand how firm offers can be binding under 2A-205 *(the following is virtually the same as for 2-205:)*
 - firm offers can be binding if they have consideration (same as the common law)
 - firm offers without consideration are binding if:
 - by a merchant
 - in a signed writing
 - assurance given it will be held open (not revoked)
 - but the irrevocability period for a without-consideration firm offer cannot exceed three months
- understand how offers can be made and validly accepted under 2A-206 *(close to 2-206:)*
 - an offer can invite acceptance in any reasonable manner
- understand the CISG provides for the enforceability of irrevocable offers without consideration and without being capped by law as to duration
- understand the general contours of the CISG with regard to offer and acceptance, in particular that it is similar to the UCC in rejecting the mirror-image rule, but that it does not clearly reject the last-shot rule
- with regard to real estate, have a general understanding of how residential real estate deals come together in terms of offer, acceptance, and contingencies

Topic 5: Statute of Frauds with Sales of Goods

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
- 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 5A: Basic Contract Interpretation

Key code sections:

- None

Key learning objectives:

- understand the basics of contract interpretation

Topic 6: Parol Evidence with Sales of Goods and Modifications

Key code sections:

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

Key learning objectives:

- understand when the parol evidence rule is relevant and how to apply it
- understand the difference between contract-interpretation questions and issues involving the parol evidence rule
- 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

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
 - 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

Topic 7A: Licensing

Key code sections:

- None

Key learning objectives:

- understand the basics of licenses
 - a license is a legally binding consent
 - a license has legal effect as an affirmative defense
 - a license is not a contract, but might be part of a contract
- understand the relationship of licenses to contracts and consequences for available claims and remedies
 - a license is not a contract, but a license can be a term of a contract; that is, a license can be a thing bargained for
 - be able to recognize when a contract containing a license will not preclude non-contractual causes of action based on extracontractually existing rights (such as causes of action for trespass or copyright infringement)
 - when the license is made conditional upon some condition not met
 - be able to recognize when a contract containing a license will preclude non-contractual causes of action based on extracontractually existing rights (such as causes of action for trespass or copyright infringement)
 - when the license is given as part of the bargain (i.e., not made conditional)

II. TERMS

Topic 8: Warranties with Sales of Goods

Key code sections:

- 2-313
 - express warranties
- 2-314
 - implied warranty of merchantability; other implied warranties from usage of trade
- 2-315

- implied warranty of fitness for a particular purpose

Additional relevant code sections:

- 1-201(b)(20)
 - definition of good faith
- 1-303
 - course of performance, course of dealing, usage of trade
- 1-304
 - general obligation of good faith
- 2-104(1)
 - definition of “merchant”

Key learning objectives:

- express warranties
 - be able to apply 2-313
 - understand how express warranties are formed
 - be able to distinguish puffery from an express warranty
- implied warranty of merchantability
 - be able to apply 2-314
 - understand what is warranted, 2-314(2)
 - understand in what contexts the warranty exists, 2-314(1)
- implied warranties from usage of trade
 - understand that other implied warranties may arise from usage of trade, 2-314(3)
- implied warranty of fitness for a particular purpose
 - understand when the warranty exists
 - when seller has reason to know of a particular purpose for the goods, and
 - the buyer is relying on seller’s skill or judgment to select or furnish goods
 - understand what is warranted
 - fitness for that purpose

Topic 9: Notice and Privity

Key code sections:

- 2-607(3)(a)
 - requirement of notification within a reasonable time
- 2-607(5)(a)
 - with notice, upstream seller bound to factual determinations in the litigation that upstream seller chose not to defend
- 2-318
 - third-party beneficiaries of express or implied warranties

Key learning objectives:

- understand the importance of notice in breach of warranty disputes

- understand how persons without privity to the sales contract can sue for breach of warranty

Topic 10: Magnuson-Moss

Key code sections:

- 15 U.S.C. §2301
 - definitions of key terms
 - particularly note “consumer,” §2301(3)
- 15 U.S.C. §2302
 - requirements of written warranties
 - other rules governing contents of warranties
- 15 U.S.C. §2303
 - designation of written warranties as “full” or “limited”
- 15 U.S.C. §2304
 - minimum standards
- 15 U.S.C. §2308
 - ineffectiveness and prohibition of disclaimers of implied warranties
 - allowance of limitation of duration of implied warranties
- 15 U.S.C. §2310
 - remedies
 - in particular
 - §2310(a)
 - informal dispute resolution
 - §2310(b)
 - prohibited acts
 - §2310(c)
 - FTC and DOJ actions, federal jurisdiction
 - §2310(d)
 - recovery of costs and attorneys fees

Key learning objectives:

- recognize when Magnuson-Moss applies – to “consumer products”
- recognize that Magnuson-Moss does not require sellers to issue warranties
- understand the most important places where Magnuson-Moss gets its power
 - making written consumer warranties meaningful, by requiring
 - that “full warranties” meet minimum standards
 - that implied warranties not be disclaimed where a written warranty is issued
 - making enforcement possible through attorneys fees
- understand how the definition of consumer overcomes a lack of privity, allowing suits by parties who are not a party to the sale
- be able to apply the statute to determine whether a seller has violated Magnuson-Moss
- be able to explain what an aggrieved consumer can do under Magnuson-Moss to enforce a warranty in a given situation

Topic 11: Lease, International, and Real Estate Warranties

Key code sections:

- 2A-209
- CISG Article 35

Key learning objectives:

- understand certain enumerated, key aspects of lease warranties
- understand certain enumerated, key aspects of international sales warranties
- understand certain enumerated, key aspects of real estate warranties

Topic 12: Reducing or Eliminating Warranty Liability: Basics

Key code sections:

- 1-201(b)(10)
 - definition of “conspicuous”
- 2-302
 - unconscionability
- 2-316
 - exclusion or modification of warranties
- 2-719
 - modification or limitation of remedy

Key learning objectives:

- understand the incentives in seller-buyer relationships and how that affects warranties and informal making things right
 - long-term relationships, importance of repeat business versus
 - large transactions where potential for repeat business in volume is low
- appreciate that in enforcing warranty limitations with consumers, courts often tend to be very tough on the seller
- appreciate the tension in the UCC between pro-freedom-of-contract and anti-oppression
- be able to apply 2-316 to determine the enforceability of limitations on warranties
 - 2-316(2) requirements of, for a written disclaimer:
 - mentioning “merchantability” to exclude warranty of merchantability
 - being “conspicuous” to exclude IWoM and IWoFfaPP
 - 2-316(3) allowance of “as is” or “with all faults” language that in common understanding makes it plain there are no implied warranties
 - unless circumstances indicate otherwise
- be able to apply 2-719 to determine the enforceability of limitations on warranties
 - allowability of limitation of remedy to return for price, or for repair and replacement
 - allowability of exclusion of consequential damages, unless unconscionable

- exclusion of consequential damages for personal injury from consumer good being prima facie unconscionable

Topic 13: Reducing or Eliminating Warranty Liability: Advanced

Key code sections (already listed under preceding topic):

- 15 U.S.C. §2304
 - minimum standards
- 15 U.S.C. §2308
 - ineffectiveness and prohibition of disclaimers of implied warranties
 - allowance of limitation of duration of implied warranties
- 2-719
 - modification or limitation of remedy

Key learning objectives:

- understand that express written warranties, once made, cannot be disclaimed 15 U.S.C. §2-316(1)
- understand that, theoretically, express oral warranties that are made cannot then be disclaimed
 - but understand that the parol evidence rule can effectively allow a written contract with a warranty disclaimer to disclaim oral warranties
 - while this may prevent a breach of warranty action, it will not bar a fraud action
- understand that a disclaimer that is valid under the UCC may not be valid under Magnuson-Moss
- understand that for exclusive remedy provisions to be valid:
 - it is not enough to specify a certain remedy
 - it must be made clear that the specified remedy is the sole remedy, or that other remedies are excluded
 - the remedy specified must not “fail of its essential purpose,” 2-719(2)
- understand the limits Magnuson-Moss sets on limitations of remedies
 - for full warranties, an exclusion of consequential damages must be conspicuous and on the face of the warranty
 - for limited warranties, an exclusion of consequential damages must be conspicuous but need not be on the face of the warranty
 - if seller cannot remedy a warranty problem after a reasonable number of attempts, the seller must give the buyer a replacement product or a full refund

Topic 14: Commercial Impracticability

Key code sections:

- 2-615
 - excuse by failure of presupposed conditions
 - i.e., commercial impracticability (more general provision)
- 2-613

- casualty to identified goods
- i.e., commercial impracticability (more specific provision)

Key learning objectives:

- understand that the general rule is that parties made worse off by a bargain – even much worse off – are generally stuck with their bad deal
 - commercial impracticability is meant to be rare
- be able to apply the general commercial impracticability provision of 2-615
 - as a general matter there must be an unforeseen contingency
 - understand that 2-615 is the default analog to force majeure clauses
 - note that increased cost – without more – is not a basis for excuse
 - note that failure of supply can be a basis for excuse, but failure of a particular supplier source usually is not
 - note that a change in regulations is recognized as a situation where commercial impracticability may apply
- be able to apply the specific commercial impracticability provision of 2-613
 - applies when particular goods identified to the contract are damaged before risk of loss passes to buyer
 - if total, seller avoids the contract
 - if partial, buyer has the option to taking the goods at a discount to account for the damage
 - understand that this does not award a windfall to the seller, who still absorbs the loss
 - but the seller avoids some harsher possible remedies, such as consequential damages

Topic 15: Unconscionability

Key code sections:

- 2-302
 - unconscionability

Key learning objectives:

- understand that unconscionability is meant to be rare
 - nonetheless, it forms an important outer bound to oppressive behavior – particularly by merchants toward consumers
- parties to a contract who have made a bad bargain are, as a general matter, bound regardless
- understand that the appropriate point in time for deciding whether a contract is unconscionable is the time when the bargain is made – not some time later when circumstances change that end up making the deal a bad one
- understand that a determination of unconscionability is highly context dependent
 - in this vein, note that 2-302(2) specifically requires a court to give parties “a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.”

- understand that a finding of unconscionability sufficient to avoid a contract generally requires both
 - procedural unconscionability
 - unfairness or oppression in the making of the deal
 - “an absence of meaningful choice”
 - substantive unconscionability
 - oppressive, harsh terms in the substance of the deal
 - “unreasonably favorable terms” (i.e., to the party wanting to enforce the deal)
- understand the three remedial paths (three options) a court can take subsequent to a finding of unconscionability:
 - refusal to enforce the contract
 - excise the unconscionable provision and enforce the rest of the contract
 - limit the application of the unconscionable provision so as to avoid an unconscionable result

Topic 16: Title with Sales of Goods

Key code sections:

- 2-312
 - warranty of title
 - concerns seller liability with regard to title
- 2-403
 - power to transfer, entrusting, good-faith purchasing
 - concerns buyer liability with regard to title
- 1-201(b)(20)
 - definition of “good faith”
- 1-204
 - what constitutes “value”

Key learning objectives:

- understand the basics of warranty of title, what is warranted and when the warranty arises, 2-312(1)
- be able to determine whether warranty of title has been validly disclaimed, 2-312(2)
- understand the indemnification liability provisions of 2-312(3)
 - of sellers for claims against buyer from third parties
 - of buyer for claims against seller where the seller was acting according to buyer specifications
- be able to determine when a buyer will gain title to a good despite the owner of that good not selling it under 2-403
- be able to apply 2-403, 1-201(b)(20), and 1-204

Topic 17: Title with Leases, International Sales, and Real Estate

Key code sections:

- CISG Article 4
- CISG Article 41

Key learning objectives:

- understand certain enumerated, key aspects of title with leases
- understand certain enumerated, key aspects of title with international sales
- understand certain enumerated, key aspects of real-estate title

Topic 18: Closing the Sale with Sales of Goods

Key code sections:

- 2-508
 - cure by seller after buyer's rejection
- 2-606
 - what constitutes acceptance of goods
- 2-607
 - effect of acceptance
 - preclusion of rejection
 - preclusion of revocation if acceptance is with knowledge of non-conformity
 - unless on reasonable assumption of seasonable curing
 - requirement of making notice of breach within reasonable time after it was or should have been discovered
 - without which any remedy is barred
- 2-608
 - revocation of acceptance
 - available if
 - buyer reasonably assumed non-conformity would be cured
 - non-conformity was undiscovered and acceptance was reasonably induced by
 - difficulty of discovery or
 - seller's assurances
 - requires under 2-608(2)
 - occurrence within a reasonable time after buyer should have discovered
 - notice to seller
- 2-612
 - breach of installment contract

Key learning objectives:

- understand under what circumstances a buyer can reject (refuse to accept goods)
 - any time they don't conform (a/k/a not perfect)
 - this is known as the perfect-tender rule

- understand under what circumstances a buyer can revoke (after acceptance)
 - non-conformity must substantially impair the value of the contract
 - there must be some good reason for the buyer waiting
 - the buyer reasonably believed acceptance would be cured, or
 - the buyer was strung along by the seller's assurances, or
 - the problem was too difficult to discover before acceptance
 - revocation must be timely
- understand that the perfect-tender rule does not apply to installment contracts

Topic 19: Closing the Sale with Leases, International Sales, and Real Estate

Key code sections:

- None

Key learning objectives:

- understand certain enumerated, key aspects of closing-the-sale issues with leases
- understand certain enumerated, key aspects of closing-the-sale issues with international sales
- understand certain enumerated, key aspects of closing-the-sale issues with real estate

Topic 20: Risk of Loss with Sales of Goods

Key learning objectives:

- understand certain enumerated, key aspects of risk of loss with sales of goods

Topic 21: Risk of Loss with Leases, International Sales, and Real Estate

Key code sections:

- 2A-219

Key learning objectives:

- understand certain enumerated, key aspects of risk of loss with leases
- understand certain enumerated, key aspects of risk of loss with international sales
- understand certain enumerated, key aspects of risk of loss with real estate

IV. REMEDIES

Topic 22: Seller's Remedies

Key code sections:

- 2-703
 - sellers' remedies in general

- 2-704(1)(a)
 - right to identify goods to the contract
- 2-706
 - resale
 - resale damages
- 2-708(1)
 - contract-price/market-price-differential damages
- 2-708(2)
 - lost-profits damages
- 2-709
 - action for the price

Other code sections used:

- 1-201(b)(18)
 - definition of “fungible goods”
- 2-105(4)
 - identification of fungible goods in bulk
- 2-501
 - identification of goods
- 2-510
 - effect of breach on risk of loss

Key learning objectives:

- understand the basic idea theme of remedies for sellers: the benefit of the bargain
- understand that sellers under the UCC cannot get consequential damages
- be able to analyze which remedies or combination of remedies will be more beneficial to a particular seller given a particular set of facts
- recognize 2-703's four ways that buyers can breach:
 - wrongfully rejecting goods (refusing to accept)
 - wrongfully revoking acceptance
 - failing to make payment when due
 - anticipatorily repudiating the contract
- recognize seven categories of remedies (not necessarily mutually exclusive) listed under 2-703:
 - withhold delivery of goods
 - stop delivery of goods by a bailee
 - identify goods to the contract in the case of anticipatory repudiation
 - resell and recover resale damages under 2-706
 - recover 2-708 damages for non-acceptance
 - contract-price/market-price differential under 2-708(1)
 - recover lost profits under 2-708(2)
 - action for price under 2-709
 - cancel the contract
- action for the price under 2-709:
 - recognize this as specific performance, an unfavored remedy under the UCC
 - be able to apply 2-709 to determine when this remedy is appropriate
 - be able to figure out what happens when this remedy is ordered

- seller gets paid the contract price (KP) while buyer gets the goods and keeps them
 - action on price = KP
 - with buyer keeping the goods
- resale and resale damages under 2-706
 - be able to figure out resale damages:
 - resale damages are contract price (KP) less resale price (RP) plus incidental damages (ID) less expenses saved (ES)
 - resale damages = $KP - RP + ID - ES$
 - recognize that for resale damages to be recoverable under 2-706, proper notice usually must be given
 - recognize that resale damages do not give the benefit of the bargain to lost-volume sellers, who, without the buyer's breach, would have been able to sell additional units
- contract-price/market-price-differential damages under 2-708(1)
 - be able to figure out contract/market-differential damages:
 - contract/market-differential damages are contract price less market price (MP) plus incidental damages less expenses saved
 - contract/market-differential damages = $KP - MP + ID - ES$
 - recognize that the market price is measured by reference to the time and place of tender
- lost-profits damages under 2-708(2)
 - be able to figure out lost-profits damages:
 - lost-profits damages are, roughly, the contract price less costs plus incidental damages
 - lost-profits damages = $KP - \text{costs} + ID$
 - recognize that lost-profits damages allow lost-volume sellers to get the benefit of the bargain

Topic 23: Buyer's Remedies

Key code sections:

- 1-305(a)
 - liberal provision of remedies
 - benefit of the bargain
 - consequential, special, and penal damages prohibited except where specifically provided for
- 2-609
 - demand for assurances
- 2-610
 - anticipatory repudiation
- 2-711(3)
 - self-help remedy of holding goods as security for refunding of price for rightfully rejected or rightfully revoked goods
- 2-712
 - cover
 - cover damages

- 2-713
 - contract-price/market-price differential damages
- 2-714
 - damages for breach where goods were accepted
 - cost-of-defect damages
- 2-715
 - incidental and consequential damages

Key learning objectives:

- understand the basic idea theme of remedies for buyers: the benefit of the bargain
- understand that buyers under the UCC can get consequential damages
- be able to analyze which remedies or combination of remedies will be more beneficial to a particular buyer given a particular set of facts
- recognize that as a real-world matter, large buyers with ongoing seller relationships often use “setoff” on the account as a remedy
- recognize that generally sellers want to disclaim consequential damages as part of the sales contract, and they often are able to do so
- recognize the role for demands for assurances under 2-609 & 2-610
- recognize the role for the self-help remedy of holding goods as security for refunding of price for rightfully rejected or rightfully revoked goods under 2-711(3)
- cover and cover damages under 2-712:
 - understand when cover is applicable and what must be done under 2-712 for a buyer to avail itself of this remedy
 - be able to figure out cover damages:
 - cover damages are return of any payments made by buyer (PYMT) plus cost of cover (CC) less contract price (KP) plus incidental damages (ID) plus consequential damages (CD) less expenses saved (ES)
 - $\text{cover damages} = \text{PYMT} + \text{CC} - \text{KP} + \text{ID} + \text{CD} - \text{ES}$
- contract-price/market-price differential damages under 2-713:
 - understand when contract/market difference is applicable
 - damages for non-delivery or repudiation
 - be able to figure out contract-price/market-price differential damages:
 - contract-price/market-price differential damages are return of any payments made by buyer plus market price (MP) less contract price plus incidental damages plus consequential damages less expenses saved
 - $\text{cover damages} = \text{PYMT} + \text{MP} - \text{KP} + \text{ID} + \text{CD} - \text{ES}$
- cost-of-defect damages under 2-714:
 - understand when cost-of-defect damages are applicable
 - accepted goods
 - note reasonable-time-of-discovery bar of 2-607(3)
 - be able to figure out cost-of-defect damages:
 - cost-of-defect damages are the value of the conforming goods under the contract (VCG) less the value of the non-conforming

- goods received (VNCG) plus incidental damages plus consequential damages
 - cost-of-defect damages = $VCG - VNCG + ID + CD$
- understand the role of foreseeability in the recoverability of consequential damages under 2-715(2)
 - under 2-715(2)(a):
 - consequential damages are available for any loss resulting from buyer's requirements that seller had reason to know about (and which couldn't have been prevented by cover or otherwise)
 - in other words, under 2-715(2)(a):
 - any category of consequential loss is recoverable,
 - but it is *Hadley*-foreseeability limited
 - under 2-715(2)(b):
 - consequential damages are available for any injury to person or property ("dent or bruise") proximately caused by breach of warranty
 - in other words, under 2-715(2)(b):
 - recovery is limited to categories of injury to person or property ("dent or bruise"),
 - but it is *Hadley*-foreseeability unlimited

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