

**Sales and Leases (LAW 637)**  
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**Fall 2011**

**Reading List – Pts. I-IV.D**

**I. Introduction to Sales, Leases & Related Transactions**

**A. Foundations and UCC Article 1**

Rusch & Sepinuck, pp. 1-21

UCC §§ 1-102,\* 1-103, 1-201, 1-301 to 1-306 & 1-308

Rowley, *The Often Imitated, But (Still) Not Yet Duplicated, Revised UCC Article 1* (Aug. 2011)

*Scaffidi v. United Nissan*, 425 F. Supp. 2d 1172 (D. Nev. 2005)

Optional: Gillette & Walt, pp. 1-19\*\*

**B. Governing Law: Domestic Sales of Goods & Other Personal Property**

Rusch & Sepinuck, pp. 21-29

UCC §§ 2-102,\*\*\* 2-103, 2-105 & 2-106

**1. UCC Article 2's Scope: Generally**

*Helvey v. Wabash County REMC*, 278 N.E.2d 608 (Ind. Ct. App. 1972)

*Singer Co. v. Baltimore Gas & Electric Co.*, 558 A.2d 419 (Md. Ct. App. 1989)

*Adel v. Greensprings of Vt., Inc.*, 363 F. Supp. 2d 692 (D. Vt. 2005)

*Sanders v. Barton*, 670 So. 2d 880 (Ala. 1995)

Optional: Gillette & Walt, pp. 21-27

**2. Mixed Contracts: Goods & Services**

*In re Trailer & Plumbing Supplies*, 578 A.2d 343 (N.H. 1990)

*Care Display, Inc. v. Didde-Glaser, Inc.*, 589 P.2d 599 (Kan. 1979)

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\* The American Law Institute (ALI) and National Conference of Commissioners on Uniform State Law (NCCUSL) revised UCC Article 1 in 2001. As of August 1, 2011, forty states – including Nevada – had enacted their own versions of Revised Article 1. Unless I tell you otherwise, we will study Revised Article 1.

\*\* The page numbers I originally provided you for Gillette & Walt corresponded to the 2002 Revised Edition rather than the 2009 Second Edition. I have updated the page references.

\*\*\* ALI and NCCUSL extensively amended UCC Articles 2 and 2A in 2003. Because only Oklahoma has enacted *any* of the 2003 amendments, and every state except Louisiana has enacted its own versions of pre-amended Articles 2 and 2A, we will study pre-amended Articles 2 and 2A unless I tell you otherwise.

*Tivoli Enterprises, Inc. v. Brunswick Bowling & Billiards Corp.*, 646 N.E.2d 943 (Ill. App. Ct. 1995)  
*Anthony Pools v. Sheehan*, 455 A.2d 434 (Md. 1983)  
*H. Hirschfield Sons v. Colt Industries Operating Corp.*, 309 N.W.2d 714 (Mich. Ct. App. 1981)  
*Neibarger v. Universal Cooperatives, Inc.*, 450 N.W.2d 88 (Mich. Ct. App. 1989), *aff'd*, 486 N.W.2d 612 (Mich. 1992)  
*Westvaco Corp. v. International Chimney Corp.*, 672 N.Y.S.2d 330 (N.Y. App. Div. 1998)  
Optional: Gillette & Walt, pp. 30-32

**3. Mixed Contracts: Goods & Intangible Personal Property**

UCC § 9-102(a)(44)  
*Rosetti v. Busch Entertainment Corp.*, 87 F. Supp. 2d 415 (E.D. Pa. 2000)  
*Advent Systems v. Unisys*, 925 F.2d 670 (3d Cir. 1991)  
*Conwell v. Gray Loon Outdoor Marketing Group, Inc.*, 906 N.E.2d 805 (Ind. 2009)  
*Triple Point Technology, Inc. v. D.N.L. Risk Management, Inc.*, 41 UCC Rep. Serv. 2d 421 (D.N.J. 2000)  
*Midwest Manufacturing Holding, L.L.C. v. Donnelly Corp.*, 975 F. Supp. 1061 (N.D. Ill. 1997)  
Optional: Gillette & Walt, pp. 32-35

**4. Mixed Contracts: Goods & Real Property/Fixtures**

UCC §§ 2-107 & 9-102(a)(41)  
*D.R. Horton, Inc. v. Green*, 96 P.3d 1159 (Nev. 2004)  
*Melms v. Mitchell*, 512 P.2d 1336 (Or. 1973)  
*Feingold v. Win-Vent, Inc.*, 562 A.2d 830 (Pa. Super. Ct. 1989)

**C. Governing Law: Leases (and Licenses)**

Rusch & Sepinuck, pp. 439-443  
UCC §§ 1-203; 2A-103(1)(j)  
*C.F. Garcia Enters. v. Enterprise Ford Tractor*, 480 S.E.2d 497 (Va. 1997)  
*In re Paz*, 179 B.R. 743 (Bankr. S.D. Ga. 1995)  
*In re Copeland*, 238 B.R. 801 (Bankr. E.D. Ark. 1999)  
*Carlson v. Giachetti*, 616 N.E.2d 810 (Mass. App. Ct. 1993)  
*In re Nationwide Automotive, Inc.*, 250 B.R. 900 (Bankr. S.D. Ohio 2000)  
*In re DAK Industries, Inc.*, 66 F.3d 1091 (9th Cir. 1995)  
Optional: Gillette & Walt, pp. 35-40

**D. Governing Law: International Sales of Goods**

Rusch & Sepinuck, pp. 29-31

CISG arts. 1-3, 6 & 12

Rowley, "The Law Governing International Sales of Goods" (Aug. 2007)

*American Mint LLC v. GOSoftware, Inc.*, 2006 WL 42090 (M.D. Pa. 2006)

*Asante Technologies, Inc. v. PMC-Sierra, Inc.*, 164 F. Supp. 2d 1142 (N.D. Cal. 2001)

*Valero Mktg. & Supply Co. v. Greeni Oy*, 373 F. Supp. 2d 475 (D.N.J. 2005)

Optional: Gillette & Walt, pp. 40-58

**E. Governing Law: Electronic Transactions**

UETA §§ 2, 3 & 5

E-SIGN §§ 7001(b) & (h), 7002(a), 7003(a)(3), 7006 & 7031

UCC § 1-108

**II. Contract Formation**

**A. Basic Principles**

Rusch & Sepinuck, pp. 33-40 & 59-61

UCC §§ 2-104(1) & 2-204 to 2-206

CISG arts. 14-18 & 20-24

UETA §§ 14-15

*ProCD, Inc. v. Zeidenberg*, 86 F.3d 1447 (7th Cir. 1996)

*Hill v. Gateway 2000, Inc.*, 105 F.3d 1147 (7th Cir. 1997)

*Bio-Tech Pharmacal, Inc. v. International Business Connections, LLC*, 53 U.C.C. Rep. Serv. 2d 476 (Ark. Ct. App. 2004)

*Jim L. Shetakis Distributing Co. v. Centel Communications Co.*, 756 P.2d 1186 (Nev. 1988)

*Scoular Co. v. Denney*, 151 P.3d 615 (Colo. Ct. App. 2002)

*Norca Corp. v. Tokheim Corp.*, 643 N.Y.S.2d 139 (N.Y. App. Div. 1996)

*Specht v. Netscape Communications Corp.*, 306 F.3d 17 (2d Cir. 2002)

Optional: Gillette & Walt, pp. 59-76 & 93-98

**B. Battle of the Forms**

Rusch & Sepinuck, pp. 40-59 & 61-63

UCC § 2-207

CISG art. 19

*Ionics, Inc. v. Elmwood Sensors, Inc.*, 110 F.3d 184 (1st Cir. 1997)

*Klocek v. Gateway, Inc.*, 104 F. Supp. 2d 1332 (D. Kan. 2000)

*iLan Systems, Inc. v. Netscout Service Level Corp.*, 183 F. Supp. 2d 328 (D. Mass. 2002)

*Brown Machine v. Hercules, Inc.*, 770 S.W.2d 416 (Mo. Ct. App. 1989)

*Dale R. Horning Co. v. Falconer Glass Industries, Inc.*, 730 F. Supp. 962 (S.D. Ind. 1990)

*Cargill, Inc. v. Biodiesel of Las Vegas, Inc.*, 2010 WL 4121850 (D. Nev. 2010) [Pt. II]  
*Filanto v. Chilewich International Corp.*, 789 F. Supp. 1229 (S.D.N.Y. 1992)  
Optional: Gillette & Walt, pp. 76-93

### III. Contract Enforceability

#### A. Statutes of Frauds

Rusch & Sepinuck, pp. 63-76

UCC § 2-201

UETA §§ 7 & 8

E-SIGN § 7001(a)

CISG art. 11

*International Casings Group, Inc v. Premium Standard Farms, Inc.*, 358 F. Supp. 2d 863 (W.D. Mo. 2005)\*\*\*\*

*Bazak International Corp. v. Tarrant Apparel Corp.*, 378 F. Supp. 2d 377 (S.D.N.Y. 2005)

*Donovan v. RRL Corp.*, 27 P.3d 702 (Cal. 2001)

*Lohman v. Wagner*, 862 A.2d 1042 (Md. Ct. Spec. App. 2004)

*GPL Treatment, Ltd. v. Louisiana-Pacific Corp.*, 914 P.2d 682 (Or. 1996)

*Cargill, Inc. v. Biodiesel of Las Vegas, Inc.*, 2010 WL 4121850 (D. Nev. 2010) [Pt. I]

*DF Activities Corp. v. Brown*, 851 F.2d 920 (7th Cir. 1988)

Optional: Gillette & Walt, pp. 151-173

#### B. Unconscionability

Rusch & Sepinuck, pp. 76-87

UCC §§ 2-302 & 2-719(3)

CISG art. 4

*Brower v. Gateway 2000, Inc.*, 676 N.Y.S.2d 569 (N.Y. App. Div. 1998)

*Adams v. American Cyanamid Co.*, 498 N.W.2d 577 (Neb. Ct. App. 1992)

Optional: Gillette & Walt, pp. 189-201

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\*\*\*\* I relocated this case from Topic I.E; so you should only need to review it for Topic III.A.

## IV. Contract Terms

### A. Contract Terms and the Parol Evidence Rule

Rusch & Sepinuck, pp. 89-91 & 208-215 (skip Problems 5-1 & 5-12)  
UCC § 2-202  
CISG arts. 8, 9 & 11  
*Betaco, Inc. v. Cessna Aircraft Co.*, 103 F.3d 1281 (7th Cir. 1996)  
*Sierra Diesel Injection Service, Inc. v. Burroughs Corp.*, 656 F. Supp. 426 (D. Nev. 1987), *aff'd*, 890 F.2d 108 (9th Cir. 1989)  
*Morena v. Ingenieria e Maquinaria de Guadalupe, S.A.*, 56 S.W.3d 652 (Tex. App. 2001)  
*Raney v. Uvalde Producers Wool & Mohair Co.*, 571 S.W.2d 199 (Tex. Civ. App. 1978)  
*C-Thru Container Corp. v. Midland Mfg. Co.*, 533 N.W.2d 542 (Iowa 1995)  
*MCC-Marble Ceramic Center, Inc. v. Ceramica Nuova d'Agostino*, 144 F.3d 1384 (11th Cir. 1998)  
*Mitchell Aircraft Spares, Inc. v. European Aircraft Service AB*, 23 F. Supp. 2d 915 (N.D. Ill. 1998)  
Recommended: Rowley, *Contract Construction and Interpretation: ...*, 69 Miss. L.J. 73, 308-342 (1999)  
Optional: Gillette & Walt, pp. 113-125, 173-180 & 183-189

### B. Express Warranties

Rusch & Sepinuck, pp. 112-125  
UCC § 2-313  
*Sessa v. Riegle*, 427 F. Supp. 760 (E.D. Pa. 1977)  
*Keith v. Buchanan*, 220 Cal. Rptr. 392 (Cal. Ct. App. 1985)  
Optional: Gillette & Walt, pp. 317-331 & 180-183

### C. Implied Quality Warranties

Rusch & Sepinuck, pp. 130-139  
UCC §§ 2-314 & 2-315  
CISG art. 35(1)-(2)  
Bason, *Hoedad* (circa 1987)  
*Valley Iron & Steel Co. v. Thorin*, 562 P.2d 1212 (Or. 1977)  
*Cook v. Downing*, 891 P.2d 611 (Okla. Ct. App. 1994)  
*Leal v. Holtvogt*, 702 N.E.2d 1246 (Ohio Ct. App. 1998)  
*Van Wyk v. Norden Labs., Inc.*, 345 N.W.2d 81 (Iowa 1984)  
*Skelton v. Druid City Hospital Board*, 459 So. 2d 818 (Ala. 1984)  
*Medical Marketing International, Inc. v. Internazionale Medico Scientifica, S.r.l.*, 1999 WL 311945 (E.D. La. May 17, 1999)  
Optional: Gillette & Walt, pp. 331-342 & 361-368

**D. Implied Title Warranties**

Rusch & Sepinuck, pp. 139-145

UCC §§ 2-312(1) & (3) & 2-403

CISG arts. 4(b) & 41

*Alamo Rent-A-Car, Inc. v. Mendenhall*, 937 P.2d 69 (Nev. 1997)

*Cooper v. Pacific Automobile Insurance Co.*, 603 P.2d 281 (Nev. 1979)

*Kotis v. Nowlin Jewelry, Inc.*, 844 S.W.2d 920 (Tex. App. 1992)

*Rudiger Charolais Ranches v. Van De Graaf Ranches*, 994 F.2d 670 (9th Cir. 1993)

*Tempur-Pedic Int'l, Inc. v. Waste to Charity, Inc.*, 483 F. Supp. 2d 766 (W.D. Ark. 2007)

*Sumner v. Fel-Air*, 680 P.2d 1109 (Alaska 1984)

*Prenger v. Baker*, 542 N.W.2d 805 (Iowa 1995)

Optional: Gillette & Walt, pp. 358-361