On May 1, 2003, All Things Greene (“ATG”), a professional landscaper doing business in Iowa, telephoned Jumping Junipers (“JJ”), a commercial tree farm in Colorado, and ordered 100 juniper saplings, at a price of $9 per sapling, with JJ to deliver the saplings to ATG no later than June 15th. Later that day, JJ faxed an acknowledgment to ATG, agreeing to deliver 100 juniper saplings to ATG no later than June 15th, with ATG paying $9 per sapling.

1. Absent a contrary agreement between the parties, what substantive body of law governs the contract between ATG and JJ?

   (A) UCC Article 2, because both ATG and JJ were merchants when they entered into the contract.

   (B) Article 2, because the juniper saplings were goods when ATG and JJ entered into the contract.

   (C) Article 2, because the juniper saplings were goods when ATG and JJ entered into the contract and the contract price is $500 or more (or $5,000 or more, if applying Revised Article 2).

   (D) Common law, because the juniper saplings were affixed to real property when ATG and JJ entered into the contract.

**Answer (B) is correct.** Absent a contrary agreement between the parties, UCC Article 2 governs the transaction between ATG and JJ, because the juniper saplings were goods when ATG and JJ entered into the contract.

While it is true that common law generally governs contracts involving real property, UCC § 2-105(1) defines “goods” to include “growing crops and other identified things attached to realty as described in the section on goods to be severed from realty (Section 2-107).” UCC § 2-107(2), in turn, provides that “[a] contract for the sale apart from the land of growing crops or other things attached to realty and capable of severance without material harm thereto … or of timber to be cut is a contract for the sale of goods within [Article 2].” Therefore, even if the saplings were growing on real property, Article 2 would govern this sale. If the saplings were growing in movable planters, then we would not even need to look at UCC § 2-107 to decide that the saplings were goods. Either way, **Answer (D) is incorrect.**

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1 Excerpted from KEITH A. ROWLEY, QUESTIONS & ANSWERS: CONTRACTS (LexisNexis 2003).
Two of the most common mistakes students make concerning the scope of Article 2 are believing that Article 2 applies only to goods for which the contract price is $500 or more (or $5,000 or more, if applying Revised Article 2) and believing that Article 2 applies only to merchants. Both beliefs are unfounded. Article 2 applies to all contracts for the sale of goods, regardless of their price. See UCC § 2-102. The $500 (or $5,000) threshold only dictates which contracts for the sale of goods require some writing in order to satisfy the statute of frauds. UCC § 2-201. Therefore, Answer (C) is incorrect.

Article 2 applies different, and typically less forgiving, standards for the behavior of merchants, as compared to non-merchants, see UCC § 2-104 cmt. 2 and sections cited therein, but Article 2 applies to all contracts for the sale of goods, regardless of whether the contracting parties are merchants or non-merchants, see UCC § 2-104 cmt. 1. Therefore, Answer (A) is incorrect.

Shortly after ATG confirmed receipt of JJ’s fax and its terms, ATG contracted with several landscaping clients who had expressed their desire to include juniper saplings in their landscaping. One client, Cindy Redleaf, had recently bought a home and wanted to completely re-landscape the backyard. She paid ATG $2,500 to prepare a comprehensive landscape plan for her backyard; and, after approving the plan, she paid ATG to remove most of the existing landscaping (such as it was), re-contour the soil, build several flower beds, install an irrigation system, install curbing and stepping stones, plant new grass, flowers, shrubs, and trees (including several of the juniper saplings ATG was purchasing from JJ), and pour the foundation for and construct a gazebo in her backyard. The cost of the backyard makeover, above and beyond the fee for preparing the plan, was $10,000, $2,500 of which was for materials and $7,500 of which was for labor.

2. If a dispute subsequently arose between Cindy and ATG over ATG’s workmanship in building Cindy’s gazebo (for which ATG charged Cindy $350 for materials and $650 for labor), what body of law would most likely govern their dispute?

(A) Article 2, because the materials for the gazebo were goods when Cindy and ATG entered into the contract.

(B) Article 2, because ATG’s re-landscaping of Cindy’s yard included installing new grass, numerous flowers, shrubs, and trees, the irrigation system, and the gazebo, all of which were goods when Cindy and ATG entered into the contract.

(C) Common law, because, despite the large number of goods installed by ATG, the predominant purpose of Cindy’s contract with ATG was to pay for ATG’s expertise in designing and installing new backyard landscaping.

(D) Common law, because, once installed, the gazebo and other goods became improvements to real property.
Answer (C) is the best answer. The mere fact that Cindy was purchasing goods as part of the contract is not, in and of itself, sufficient to invoke Article 2, provided that the contract also involved the purchase of non-goods. Thus, Answer (A) is incorrect.

The fact that the goods Cindy was purchasing would become sufficiently attached to real property to become “fixtures” does not keep them from being treated as goods for purposes of deciding whether Article 2 governs the transaction. See UCC § 2-105(1) (defining “goods” based on their function “at the time of identification to the contract for sale”). Thus, Answer (D) is incorrect.

The choice between Answer (B) and Answer (C) boils down to whether the contract was for the sale of goods or for services. Courts faced with this issue have recognized two distinct tests. The “majority” rule is the “predominant purpose” test, which asks whether the plaintiff’s predominant purpose in entering into the transaction as a whole was to purchase or sell goods or services. If the plaintiff’s predominant purpose was to purchase or sell goods, then Article 2 applies to the whole transaction (including the service part of it); if the plaintiff’s predominant purpose was to purchase or sell services, then Article 2 does not apply to any part of the transaction (not even the goods). See, e.g., Coakley & Williams v. Shatterproof Glass, 778 F.2d 196 (4th Cir. 1985). The “minority” rule is the “gravamen of the action” test, which focuses on what part of the transaction gave rise to the plaintiff’s claim. If the plaintiff’s claim arose from the goods component of the transaction, then Article 2 would apply to the complaint, even if the predominant purpose of the transaction was to sell or buy services. If the plaintiff’s claim arose from the service component of the transaction, then Article 2 would not apply, even if the predominant purpose of the transaction was to sell or buy goods. See, e.g., Anthony Pools v. Sheehan, 455 A.2d 434 (Md. 1983).

It appears that Cindy’s predominant purpose in this transaction (as evidenced by the fact that 80% of the total contract price, including the landscaping plan fee, was for labor and other services) was to purchase ATG’s landscaping services. While the relative cost of the goods and services is not outcome-determinative, Cindy probably could have purchased a similar gazebo at a local home improvement store and installed it herself or paid someone else to do so, whereas she specifically sought out ATG’s landscaping expertise to design and execute a landscaping plan for her backyard. Assuming that Iowa courts follow the majority rule, if Cindy’s predominant purpose was to purchase ATG’s services, then Article 2 would not apply to the transaction, despite the fact that ATG’s services included installing a number of goods (including the gazebo). Therefore, Answer (C) is better than Answer (B).

Using the same facts as Question 2, suppose that the Iowa courts apply the “gravamen of the action” test for determining whether a dispute arising out of a contract for both goods and services is governed by Article 2 or by common law.

3. If a dispute subsequently arose between Cindy and ATG over ATG’s workmanship in installing Cindy’s gazebo (for which ATG charged Cindy $350 for materials and $650 for labor), what body of law should govern?
(A) Article 2 would govern the entire contract, because the materials for the gazebo were goods when Cindy and ATG entered into the contract.

(B) Article 2 would govern the dispute over ATG’s workmanship in building Cindy’s gazebo, because the materials for the gazebo were goods when Cindy and ATG entered into the contract.

(C) Common law would govern the entire contract, because Cindy’s complaint is over the installation of the gazebo, not the materials used to build it.

(D) Common law would govern the dispute over ATG’s workmanship in building Cindy’s gazebo, because Cindy’s complaint is over the installation of the gazebo, not the materials used to build it.

Answer (D) is the best answer. If Iowa courts apply the “gravamen of the action” test (discussed in the answer to Question 2), Article 2 might appear to govern the transaction because the gazebo was a tangible, movable object “at the time of [its] identification to the contract for sale.” UCC § 2-105(1). However, a careful reading of Question 4 reveals that the issue is not the gazebo itself, but the quality of ATG’s workmanship in installing it. (Imagine that Cindy had contracted with Vincent to paint her house. Obviously, painting Cindy’s house requires paint, and paint is a good. Paint, however, does not apply itself. So, painting Cindy’s house also requires the services of one or more painter(s) – here, Vincent. Assuming that Vincent both purchased the paint and painted the house, if the gravamen of Cindy’s complaint was the quality of the paint, the complaint would be governed by Article 2; if the gravamen of Cindy’s complaint was the quality of Vincent’s painting, the complaint would be governed by common law.) Because installation is a service, and the gravamen of Cindy’s action is ATG’s performance of that service, her dispute with ATG over its installation of the gazebo would be governed by common law – even if the predominant purpose of the entire transaction was the purchase of goods.

Answers (A) and (C) are incorrect because the gravamen of the action test only addresses what law governs an action brought on a contract, not what law governs the entire contract. Answer (B) is incorrect not because it overstates the scope of the gravamen of the action test, but because it misstates the gravamen of Cindy’s action.

Suppose, instead, that the problem with the gazebo was that the wood ATG used to build it deteriorated and discolored much more rapidly than Cindy reasonably expected.

4. If Iowa courts apply the “gravamen of the action” test, what body of law would most likely govern?

(A) Article 2 would govern the entire contract, because the wood was goods when Cindy and ATG entered into the contract.
(B) Article 2 would govern the dispute over the quality of the wood ATG used to build Cindy’s gazebo, because the wood was goods when Cindy and ATG entered into the contract.

(C) Common law would govern the entire contract, because ATG would not have needed to use the wood but for Cindy’s desire that ATG install a gazebo.

(D) Common law would govern the dispute over the quality of the wood, because ATG would not have needed to use the wood but for Cindy’s desire that ATG install a gazebo.

Answer (B) is the best answer. Now, the gravamen of Cindy’s complaint is goods, not services. If Iowa courts apply the gravamen of the action test, and the problem with the gazebo is that the wood ATG used to build it was inferior, then Article 2 would govern Cindy’s complaint, and Answers (C) and (D) are incorrect because they conclude that common law applies. Answer (A) is incorrect because it overstates the scope of the gravamen of the action test (see the answer to Question 2).

Another of ATG’s clients, Reitz, Burton & Andersen, L.L.P. (“RBA”), a prominent Iowa City law firm, wanted to provide its best clients and its staff with the best Christmas trees money can buy. One of the partners, who had recently vacationed in and around Vancouver, British Columbia (Canada), convinced his colleagues that Canadian Spruce could not be beat. The partners authorized him to contract with ATG to purchase 100 6- to 7-foot tall Canadian Spruce trees for $75 each, to be delivered to various addresses during the first week of December 2003. ATG, in turn, contracted with McKenzie Brothers Trees and More (“McKenzie”), in Whiskey Springs, British Columbia, to purchase 125 6- to 7-foot tall Canadian Spruce trees for US$50 to US$55 (depending on height), to be delivered to ATG no later than November 30th, with ATG to pay all shipping expenses.

5. Absent a contrary agreement between the parties, what body of law governs ATG’s contract with McKenzie for the trees?

(A) The U.N. Convention on Contracts for the International Sale of Goods (“CISG”), because the trees were goods sold by a foreign seller to a U.S. buyer and the U.S. has ratified the CISG.

(B) The CISG, because the trees were goods sold by a Canadian seller to a U.S. buyer and both Canada and the U.S. have ratified or otherwise adopted the CISG.

(C) The CISG, because the trees were goods sold by a Canadian seller to a U.S. buyer, both Canada and the U.S. have ratified or otherwise adopted the CISG, and ATG did not purchase the trees for its own personal, family, or household use.
(D) Article 2, because ATG did not know or have reason to know that McKenzie’s principal place of business is in Canada.

**Answer (C) is the best answer.** Absent a contrary agreement between the parties, the CISG governs ATG’s contract with McKenzie for the trees because they were goods sold by a Canadian seller to a U.S. buyer, both Canada and the U.S. have ratified or otherwise adopted the CISG, and ATG did not buy the trees for its own personal, family, or household use.

Article 1(1)(a) provides that the CISG applies to contracts for the sale of goods between parties whose places of business are in different countries, each of which has ratified or otherwise adopted the CISG (called “Contracting States”). Unless the parties agree otherwise, the CISG will not govern a contract if one party’s place of business is in a Contracting State and the other party’s place of business is in a different country that is not a Contracting State. Therefore, Answer (A) is incomplete.

The U.S. and Canada are different countries, both of which are signatories to the CISG. Therefore, this transaction could be governed by the CISG. However, despite the fact that both the U.S. and Canada are Contracting States, certain contracts for the sale of goods between parties whose places of business are in different Contracting States are not governed by the CISG. Therefore, Answer (B) is also incomplete.

Articles 1(2), 2, 3(2), and 6 set forth several exceptions to the general rule of Article 1(1)(a). The two relevant exceptions in this case are Article 1(2), which provides that the CISG does not govern international sales of goods when “[t]he fact that the parties have their places of business in different States ... does not appear either from the contract or from any dealings between, or information disclosed by, the parties at any time before or at the conclusion of the contract,” and Article 2(a), which states that the CISG does not apply to international sales of goods for “personal, family or household use.” Here, ATG knew it was dealing with a Canadian seller and McKenzie knew it was dealing with a U.S. buyer. Therefore, Article 1(2) does not apply, and **Answer (D) is incorrect**. As for Article 2(a), while RBA may well have intended to give the trees it was purchasing from ATG to its clients and staff for their personal, family, or household use, RBA was not buying the trees for its personal, family or household use. And, more to the point, ATG – the party who had the contract with McKenzie – was not buying the trees for its personal, family or household use. Consequently, Answer (C) is the best answer.

At the same time it ordered the trees, ATG also ordered from McKenzie – at RBA’s request – 50 custom-made, blown-glass Christmas ornaments with the year and RBA’s firm logo to be hand-painted onto each ornament. RBA wanted the ornaments as mementos for each of the firm’s attorneys and employees. McKenzie agreed to make and sell the ornaments to ATG for US$40 each.

**6. Absent a contrary agreement between the parties, what body of law governs ATG’s contract with McKenzie for the ornaments?**
(A) The CISG, because the ornaments were goods sold by a Canadian seller to a
U.S. buyer, both Canada and the U.S. have ratified or otherwise adopted the
CISG, and ATG did not purchase the ornaments for its own personal, family,
or household use.

(B) Article 2, because, while the ornaments were goods sold by a Canadian seller
to a U.S. buyer, and both Canada and the U.S. have ratified or otherwise
adopted the CISG, ATG was merely acting as a proxy for RBA, which was
purchasing the ornaments for its own personal, family, or household use.

(C) Article 2, because each ornament had to be made by hand; and, therefore,
the service performed by the craftsperson was the predominant purpose of
the contract to buy the ornaments.

(D) Common law, because each ornament had to be made by hand; and,
therefore, the service performed by the craftsperson was the predominant
purpose of the contract to buy the ornaments.

Answer (A) is the best answer for the same reasons given in the answer to Question 5.

Article 3(2) provides that the CISG “does not apply to contracts in which the
preponderant part of the obligations of the party who furnishes the goods consists in the supply
of labour or other services.” One might think that this exception would exclude the custom-
made, blown-glass, hand-painted Christmas ornaments from the scope of the CISG. However,
Article 3(1) prefaces the Article 3(2) exception by stating: “Contracts for the supply of goods to
be manufactured or produced are to be considered sales unless the party who orders the goods
undertakes to supply a substantial part of the materials necessary for such manufacture or
production.” Reading the two provisions together, had ATG purchased the ornaments from
another source, and then sent them to McKenzie to have RBA’s logo hand-painted onto each
ornament, the contract would fall outside the scope of the CISG. However, the mere fact that
McKenzie was selling custom-made – rather than “ready-made” – goods is not enough to take a
contract that is otherwise within the scope of the CISG outside its scope. This is consistent with
the position taken by UCC § 2-105(1), which includes “specially-manufactured goods” in the
definition of “goods” for purposes of, inter alia, determining Article 2’s scope. Therefore,
Answer (D) is incorrect.

Answer (C) is incorrect because, as discussed in the answer to Question 2, Article 2
does not govern contracts for which the predominant purpose is the purchase of services.

Answer (B) is incorrect because the CISG makes no provision (nor does Article 2, for
that matter) for looking beyond the purpose of the actual purchaser to the purpose of the actual
purchaser’s customers – be they known or unknown.
ATG’s business had been flourishing, despite the minor setback involving Cindy Redleaf, and ATG’s owner, Tom Greene, wanted to expand. Tom contracted with Rita Estrich to locate the record owner of the lot immediately east of ATG’s existing location and to arrange ATG’s purchase of the property. Tom agreed to pay Rita four percent (4%) of the purchase price if she could successfully arrange ATG’s purchase of the property.

7. Absent a contrary agreement between the parties, what body of law governs ATG’s contract with Rita the realtor?

(A) Article 2, because ATG is a merchant dealing in goods.

(B) Article 2, because both ATG and Rita are merchants.

(C) Common law, because ATG’s contract with Rita was for the purchase of real property.

(D) Common law, because ATG’s contract with Rita was for Rita’s personal services.

Answer (D) is the best answer. Absent a contrary agreement between the parties, ATG’s contract with Rita will be governed by common law because ATG’s contract with Rita was for Rita’s personal services. While it is true that Rita, if successful, was to arrange for ATG to purchase real property from the owner of the lot in question, Rita was not selling the real property to ATG. Therefore, Answer (C) is incorrect.

Article 2 has nothing to do with ATG’s agreement with Rita, nor will it have anything to do with ATG’s purchase of the real property, if consummated. Article 2 does not apply to contracts for the purchase of real property. Nor could Rita or ATG be merchants, as Article 2 uses that term, in real property, because Article 2 defines a “merchant” only with respect to goods. See UCC § 2-104(1). Besides, as discussed in the answer to Question 1, Article 2 applies or not because goods are involved, not because one or both parties to the transaction are merchants. Therefore, Answers (A) and (B) are incorrect.

After searching the county real property records, Rita found that the Sixth National Bank of Iowa (“Sixth National”) was the record owner of the lot in question, which it obtained through foreclosure.

8. Assuming that ATG and Sixth National reached an agreement on the terms of ATG’s purchase of the lot in question, what body of law would most likely govern ATG’s contract with Sixth National? Please explain.

This contract for the purchase of real property is governed by common law or by jurisdiction-specific statutory law governing real property transfers. In any event, it is outside the scope of Article 2.
When ATG and Sixth National reached their agreement for ATG’s purchase of the subject lot from Sixth National, there were a couple of storage buildings and some other personal property on the lot, which Sixth National told ATG it was free to keep or dispose of as it wished.

9. Does their presence on the lot change your answer to Question 8? Please explain.

It should not. While the personal property situated on the realty might be goods, see UCC §§ 2-105(1) & 2-107, ATG’s predominant purpose was to purchase the real property, not the personal property. Common law, or jurisdiction-specific statutory law governing real property transfers, should govern this contract, rather than Article 2.