Navigating a Sea of Change

Most law changes constantly, though most of the change comes (with apologies to Neil Armstrong) in small steps, rather than giant leaps. In the field of commercial law – where lawyers, judges, legislators, and the like constantly strive to keep pace with ever-evolving technology, new forms of financial transactions and devices, and an increasingly global marketplace – we sometimes resort to giant leaps and efforts to provide a legal framework that facilitates, channels, and organizes change fail almost as often as they succeed.

In the realm of transactions we will explore in this course, the 1999 Uniform Electronic Transactions Act (UETA), which is now law in 47 states – including Nevada – and the District of Columbia, and the 2001 revision of Uniform Commercial Code (UCC) Article 1, which 37 states – including Nevada – have enacted, are notable successes. By contrast, no states have enacted the 2003 amendments to UCC Articles 2 and 2A and only Maryland and Virginia enacted the 1999 Uniform Computer Information Transactions Act (UCITA) before its sponsor, the National Conference of Commissioners on Uniform State Laws (NCCUSL), ceased its efforts to encourage additional adoptions.

Somewhere between UETA’s terrific success and the stark failure of the UCC Article 2 and 2A amendments lay the U.N. Convention on Contracts for the International Sale of Goods (CISG) and the U.N. Convention on the Use of Electronic Communications in International Contracts (CUECIC). Promulgated in 1980, the CISG first took effect in the U.S. and ten other

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3 As of July 1, 2009, Revised Article 1 is in effect in every state except Alaska, D.C., Georgia, Maine, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New York, Ohio, Oregon, South Carolina, Washington, Wisconsin, and Wyoming. Alaska, Maine, and Oregon enacted it earlier this year; but those enactments will not take effect until 2010.

4 UCITA not only failed to garner widespread support, it inspired prophylactic legislation. Four states – Iowa, North Carolina, West Virginia, and Vermont – enacted so-called “UCITA shield” or “bomb shelter” statutes designed to ensure that those states’ residents would not be subjected to UCITA without their express consent.
countries on January 1, 1988. On August 1, 2009, Japan became the seventy-first country in which the CISG is in effect.\textsuperscript{5} Promulgated in November 2005, the CUECIC is not yet in effect anywhere, although 18 countries have signed (but not ratified) it.

Not all efforts at making or influencing the law governing transactions in goods take the form of statutes or treaties, as three quick examples illustrate. At its May 2009 annual meeting, the American Law Institute (ALI) approved the Principles of the Law of Software Contracts, which aspire to weave the currently divergent threads of law governing software contracts into a coherent whole that will guide parties in drafting, performing, and enforcing software contracts, assist courts and other arbiters in resolving disputes involving software contracts, and, perhaps, inform future legislation addressing software contracts. Whether the Principles’ carrot will succeed where UCITA’s stick failed remains to be seen.

Parties to international sales transactions frequently expressly incorporate the International Chamber of Commerce’s Incoterms into their contracts to allocate the costs and risks associated with transporting goods. (Indeed, parties to wholly domestic sales contracts often incorporate one or more Incoterm(s), rather than rely on UCC Article 2’s default rules.) Even when parties to international sales transactions fail to expressly incorporate the Incoterms, courts and other arbiters may imply them when the parties were or should have been aware that their contract employed a transportation term that the Incoterms define.

The International Institute for the Unification of Private Law (UNIDROIT) has published its Principles of International Commercial Contracts in 1994 and 2004 and a third edition is in the works. These UNIDROIT Principles serve a dual function with respect to international sales transactions. Because the CISG lacks the official comments that accompany the UCC, courts and other arbiters may look to the UNIDROIT Principles for guidance in understanding and applying the CISG. More generally, the UNIDROIT Principles are a rough counterpart to the Restatement (Second) of the Law of Contracts (yet another ALI project), providing a framework against which parties may plan and conduct, and courts and other arbiters may enforce, international sales transactions – including sales transactions that fall outside the CISG’s scope.

**Course Coverage and Approach**

With such a rich reservoir of “hard” and “soft” law to tap, I have to make decisions about what to emphasize. As is typical in courses like this taught elsewhere, we will devote most of our attention to UCC Article 2 (without the 2003 amendments). We will also spend meaningful time discussing the CISG (with some help from the UNIDROIT Principles) and UCC Article 2A (also without the 2003 amendments), as well as the impact of UCC Article 1, UETA, and the Electronic Signatures in Global and National Commerce Act (“E-SIGN”) on sales and leases of goods. Time permitting, we will also take quick looks at the federal Magnuson-Moss Warranty Act, Federal Trade Commission consumer protection rules, some non-UCC state statutes that intersect Article 2 or 2A, and may discuss Incoterms, how one or both of UCC Articles 5 (Letters of Credit) and 7 (Documents of Title) come into play in sales transactions, and how pre-revised

\textsuperscript{5} \textit{See} \url{http://www.uncitral.org/uncitral/en/uncitral_texts/sale_goods/1980CISG_status.html}.
UCC Article 1 (still the law in 16 states and DC) applies to non-goods personal property transactions and steps some states that have enacted Revised UCC Article 1 have taken to salvage elements of pre-revised Article 1.

I will teach this course using both cases and problems – with emphasis on the latter. We will also, from time to time, turn to secondary sources to better inform our statutory and case law analysis, to fill in gaps where statutory and case law is lacking, to discuss changes in governing law, and to aid problem solving.

**Goals and Objectives**

I aspire, at a minimum, to teach you:

- the various bodies of law governing domestic and international sales of goods and domestic leases of goods;
- the fundamentals of the law of domestic and international sales and domestic leases of goods, as well as some of the economics, politics, and legal theory underlying that body of law and shaping its continuing development;
- how to (a) determine which body of substantive law applies to a particular situation, (b) carefully and thoughtfully read the relevant authorities, (c) formulate a defensible position regarding, if not a resolution of, the situation, and (d) communicate your position or resolution and the rationale underlying it; and
- to critically evaluate the applicable law, relevant authorities, and the conclusions you draw from reading and thinking about them.

**Class Meetings**

This class will meet **Mondays and Wednesdays** from **7:50 to 9:15 p.m.** August 24th through November 23rd – except for Monday, September 7th (Labor Day) and Wednesday, November 11th (Veterans Day) – as well as **Thursday, November 19th** from **7:50 to 9:15 p.m.** Our classroom is **Room 112**.

If I must miss a scheduled class meeting, I reserve the right to schedule a make-up class. I may hold an optional review session prior to the final exam. If so, I will announce the date, time, and location well in advance.

**Office Hours**

My office is **RAJ 428**. My office hours are **Tuesdays** from **2:00 to 5:00 p.m.** (If I have a conflict on a given Tuesday, I’ll hold office hours on Thursday of the same week). I will also be available **immediately after class** Monday nights (and Wednesday nights when there is no SELA bowling) and may be available some Mondays and Wednesdays between 5:00 and 6:00 p.m.
I am in my office (except for occasional forays to the library, committee meetings, faculty meetings, or to hear guest speakers) most afternoons and some mornings, too. Feel free to “drop in.” I will either see you then or arrange a time to meet with you. I will make every effort to accommodate you if you want to schedule an appointment during or outside of my posted office hours. You may also e-mail me at keith.rowley@unlv.edu. I check my e-mail frequently, usually beginning around 9:00 a.m. and often as late as 1:00 a.m., whether I am in town or not. I will respond to your e-mails as promptly as I can, and will generally “cc” the whole class if doing so is appropriate.

**Required Materials**

Our principal text will be **Linda J. Rusch & Stephen L. Sepinuck, Sales and Leases: A Problem-Solving Approach** (2009). You will also need UCC Articles 1, 2 & 2A (text and comments), the CISG, UETA, E-SIGN, and other federal and state laws. **Ronald J. Mann, Elizabeth Warren & Jay L. Westbrook, Comprehensive Commercial Law: 2009 Statutory Supplement** reproduces most of the relevant statutes, treaties, and regulations, as well as some non-UCC state law. Both titles are available at the UNLV Bookstore, from their publishers (West and Aspen, respectively), and various online booksellers.

I will also assign cases and other readings, as well as problems for class discussion, that are not included in the required texts. I will make these materials available in advance of the date we discuss them in class.

**Optional Materials**

For students looking for additional discussion of topics we will cover this semester, I highly recommend **Clayton P. Gillette & Steven D. Walt, Sales Law: Domestic and International** (2d ed. 2008), as a supplement to Rusch & Sepinuck. You may also want to look at the leading hornbook, **James J. White & Robert S. Summers, Uniform Commercial Code** (5th ed. 2000). Copies of Gillette & Walt and White & Summers should be available in the library reserve room and for purchase in the UNLV Bookstore. You should be cautious buying White & Summers for any purposes other than this course because of the many developments in the UCC, beyond the relatively stagnant Articles 2 and 2A, since 1999. The law library also has several useful ABA publications available: Fred H. Miller, **The ABC’s of the UCC – (Revised) Article 1: General Provisions** (2002), Henry D. Gabriel & Linda J. Rusch, **The ABC’s of the UCC – Article 2: Sales** (1997), and Amelia H. Boss & Stephen T. Whelan, **The ABC’s of the UCC – Article 2A: Leases** (1997).

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If you already own an earlier edition of **Comprehensive Commercial Law**, West’s **Selected Commercial Statutes** (Chomsky et al. eds.), or **Commercial and Debtor-Creditor Law: Selected Statutes** (Baird, Eisenberg & Jackson eds.), you need not purchase **Comprehensive Commercial Law: 2009** – provided that your book contains the official text of and comments to Revised UCC Article 1 (2001) and unamended UCC Articles 2 and 2A. However, you may need to borrow a classmate’s or the library’s **Comprehensive Commercial Law: 2009** for portions of one or two reading assignments.
For students looking to test your ability to apply the legal concepts about which you will read and we will discuss in class, the law library and UNLV Bookstore have copies of James Brook, *Sales and Leases: Examples & Explanations* (5th ed. 2009), and Scott J. Burnham, *The Glannon Guide to Sales: Learning Sales Through Multiple Choice Questions and Analysis* (2007). There are also some good Article 2 tutorials available on-line from http://www.cali.org.


Obviously, I do not expect any of you to read all of the foregoing this semester, this year, or even this lifetime. My aim is to offer you access to as much helpful information as you desire. I have my own copies of most of the above, as well as some other useful titles. If you find yourself pressed and unable to locate a resource that you want to review, come by my office. If I am in, and if the book you want is available, I will allow you to look at it in my office.

**Grades**

Grades do not reflect your value as a human being and may not reflect your potential as a lawyer. They can be important, everything else being equal, in securing a judicial clerkship or other post-law school employment. I will make every effort to fairly evaluate your written and in-class performance and to assign you a course grade that fairly reflects that performance.

**Exam**

The largest component of your grade will be your performance on the final exam scheduled for **Wednesday, December 2nd, at 6:00 p.m.** The final exam will include questions designed to test the breadth of your knowledge of the material we will have covered, the depth of your knowledge of particular topics, and your analytical skills. As the semester progresses, I will let you know the format of the exam and what materials you may use to assist you in taking the exam. I will also provide you with sample exam questions and answers from prior semesters.

**Written Assignments**

I anticipate making periodic written assignments and will factor your performance on those assignments into your course grade, provided that doing so improves your course grade. Each written assignment will be “optional” in the sense that you may choose whether to complete an assignment or not. If you do, I will grade it; if you do not (or if you do, but perform poorly), it will not count “against” you, but the weight of your final exam grade will be more.
Class Participation

Teaching you how to “think like a lawyer” about sales and leases and related matters is best served by regular class preparation, attendance, and participation. I reserve the right to raise or lower your course grade by up to one-half letter (e.g., from B to B+ or from A- to B+) based on your attendance and class participation. Furthermore, ABA Standard 304(e) dictates that “[r]egular and punctual class attendance is necessary [for a student] to satisfy residence credit and credit hour requirements.” Therefore, I reserve the right to drop any student who misses seven or more class meetings (with or without excuse) or to reduce his or her course grade by one-half letter grade for each class missed following his or her sixth absence.

Meaningful class participation will help your grade. Failure to meaningfully participate will hurt your grade. When I ask you a question, make your best effort to answer it. If you need additional information or clarification, ask for it. If you have something to add to the class discussion, raise your hand and I will try to call on you. If you feel that I am not calling on you often enough, please let me know.

Calculating Your Course Grade

Current BSL policy permits me (1) to consider work graded nonanonymously and your classroom performance (as discussed above), as well as your performance on the anonymously-graded final exam; and (2) to combine anonymous and nonanonymous grade components after obtaining exam number identities from the registrar, provided that I disclose that fact in writing before the end of the first week of the semester.

I plan to calculate your course grade in the following manner:

<table>
<thead>
<tr>
<th>Component</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>Final Exam</td>
<td>80-100%</td>
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<tr>
<td>Written Work</td>
<td>0-20%</td>
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<tr>
<td>Class Participation</td>
<td>-5% to +5%</td>
</tr>
</tbody>
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I hereby disclose to you that, as I have done for the entirety of my legal teaching career, I may decide whether to count your optional homework grades, if applicable, and will calculate your final course grade, including class participation, after I obtain your exam number identities from the registrar. Never fear. I take grades too seriously and value my reputation as a fair grader too much to play favorites.

Class Assignments

I will periodically distribute an updated Reading List. Required readings not included in the Rusch & Sepinuck text or your statutory supplement should be available using either Westlaw or Lexis and will be available on the LexisNexis course web page prior to the class meeting in which we discuss them. I reserve the right to modify assignments as circumstances dictate. We are using a brand new, first edition casebook that does not break the material into chunks that fit logically into 26 class meetings. I will always try to tell you before the end of a particular day’s class what I expect to cover in the next class or two.
“On Call” Students

Students who are “on call” for a particular reading assignment remain on call for that assignment, regardless of when we cover the material in class. On days when you are “on call,” I expect you to attend (barring an excused absence) and to participate as I request. On days when you are not “on call,” you should attend and be prepared to participate as appropriate.

LexisNexis Web Course/Law School Portal

I will create a LexisNexis Web Course page, which will include an interactive “discussion board” and e-mail list. **If you do not have a LexisNexis Custom ID or a Lexis password, please get one as soon as possible.** If the e-mail address associated with your current LexisNexis Custom ID or a Lexis password is not the e-mail address you normally use, please update your e-mail address.

You should check your e-mail and the web page for announcements and assignment changes, electronic versions of supplemental cases and handouts, sample questions and answers, etc. I may also post course materials, announcements, and assignments to the law school’s portal (with which I am not yet familiar). Unless I inform you otherwise, I will not post anything to the portal that I don’t post to the LexisNexis course web page.

Accommodating Disabilities

UNLV complies with the provisions set forth in Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, offering reasonable accommodations to qualified students with documented disabilities. If you have a documented disability that may require accommodations, you will need to contact the Disability Resource Center (DRC). The DRC coordinates all academic accommodations for students with documented disabilities. The DRC reviews and houses student disability documentation and provides students with an official Academic Accommodation Plan to present to their professors if an accommodation is warranted. UNLV strongly discourages faculty from accommodating students without an Academic Accommodation Plan.

The DRC is located in the Student Services Complex (SSC), Room 143. Its contact numbers are: Tel: (702) 895-0866; TTY: (702) 895-0652; Fax: (702) 895-0651. For additional information, visit: [http://studentlife.unlv.edu/disability/](http://studentlife.unlv.edu/disability/).