

TABLE OF CONTENTS

	Page
PREFACE TO THE THIRD EDITION	v
TABLE OF CASES	xxiii
TABLE OF STATUTES AND U.C.C. SECTIONS	xxix
Chapter 1. Introduction	1
PART 1: OVERVIEW	
A. The Study of Commercial Law	1
B. The Uniform Commercial Code—History	2
C. Summary of UCC Articles	3
D. “Official” Comments	6
E. Related Statutes	6
PART 2: SCOPE OF ARTICLE 2 AND RELATED STATUTES	
A. Questions of Scope—Transactions in Goods	9
<i>Loughridge v. Goodyear Tire & Rubber Co.</i>	10
<i>Note</i>	11
<i>Princess Cruises v. General Electric Company</i>	11
<i>Questions</i>	16
<i>Dealer Mgt. Systems v. Design Automotive Group, Inc.</i>	17
<i>Problem 1</i>	19
<i>Problem 2</i>	20
<i>Problem 3</i>	20
B. “Sale” and “Contract for Sale”—“Title”	21
<i>Concord General Mutual Insurance Company v. Sumner</i>	22
<i>Problem 4</i>	24
C. Secured Transactions	24
D. Leases and Secured Transactions—Article 2A	25
<i>Problem 5</i>	27
E. Scope and Structure of the United Nations Convention on International Sales of Goods (CISG)	28
<i>Problem 6</i>	28
<i>Questions</i>	29
<i>Zhejiang Shaoxing Yongli Printing & Dyeing Co., Ltd. v. Microflock Tex. Group Corp.</i>	29
<i>Problem 7</i>	31
<i>Note</i>	31
Chapter 2. The Contract Law of the UCC—Electronic Contracts	33
A. Radical Changes in Traditional Contract Law	33

	Page
B. Contract Formation—2-204, 2-205 & 2-206	34
<i>Scoular Company v. Denney</i>	34
<i>Notes & Questions</i>	39
<i>Problem 8</i>	40
C. The “Battle of the Forms”—2-207	41
<i>Dorton v. Collins & Aikman Corp.</i>	41
<i>Problem 9</i>	42
<i>Bayway Refining Co. v. Oxygenated Marketing & Trading, A.G.</i>	45
<i>Southern Illinois Riverboat Casino Cruises, Inc. v. Triangle Insula-</i> <i>tion & Sheet Metal Co.</i>	50
<i>Note: Other Decisions Dealing With the Materiality Issue</i>	53
<i>Problem 9A</i>	54
<i>Problem 9B</i>	54
<i>Coastal & Native Plant Specialties, Inc. v. Engineered Textile Prod-</i> <i>ucts, Inc.</i>	54
<i>Problem 9C</i>	58
<i>Reilly Foam Corp. v. Rubbermaid Corp.</i>	59
<i>Problem 9D</i>	62
D. Confirmations (2-207(1))	62
<i>Problem 10</i>	62
<i>Note</i>	62
E. The New (Amended) Section 2-207 (2003)	63
F. Contract Formation and Battle of the Forms—International Sales— CISG	64
<i>Problem 11</i>	64
<i>Problem 11A</i>	65
G. The Battle of the Leases	65
<i>Problem 12</i>	65
H. The Operative Effect of Post-Purchase Terms—“Rolling” or “Lay- ered” Contracts	65
<i>Hill v. Gateway 2000, Inc.</i>	66
<i>Notes</i>	69
<i>Questions</i>	71
I. Electronic Contracts	72
<i>International Casings Group, Inc. v. Premium Standard Farms, Inc.</i>	74
<i>Note</i>	76
J. The Statute of Frauds—Scope—2-201, 8-113, 9-203, and Pre- Amendment 1-206	78
<i>Problem 13</i>	78
K. Statute of Frauds—Sufficient Writing	78
<i>American Iron & Metal Co. v. U.S. Ferrous Trad. Div. Tube City Div.</i>	78
<i>Problem 14</i>	83
L. Statute of Frauds—Confirmations—§ 2-201(2)	84
<i>Problem 15</i>	84
M. Statute of Frauds—“Signed”—Exceptions	85
<i>R. M. Schultz & Assocs., Inc. v. Nynex Computer Servs. Co.</i>	85
<i>Questions</i>	89
<i>Problem 16</i>	90
<i>Problem 16A</i>	90
<i>Saga Solutions, LLC v. Sherwin-Williams Co.</i>	90
<i>Notes</i>	93
N. Reliance—Promissory Estoppel	93

	Page
O. Statute of Frauds—Leases	94
<i>Problem 17</i>	94
P. Statute of Frauds—CISG	94
Q. Requirement and Output Contracts—2-306	94
<i>Wiseco, Inc. v. Johnson Controls, Inc.</i>	94
<i>Notes</i>	99
R. Contract Modifications and Waivers—2-209	99
<i>Problem 18</i>	99
<i>Zemco Manufacturing, Inc. v. Navistar International Transportation Corp.</i>	100
<i>Problem 19</i>	102
<i>BMC Industries, Inc. v. Barth Industries, Inc.</i>	103
<i>Note</i>	107
S. Contract Modifications—CISG & Leases	107
<i>Problem 20</i>	107
<i>Problem 21</i>	108
T. Parol Evidence—Trade Usage, Course of Dealing, Course of Performance	108
<i>C-Thru Container Corporation v. Midland Manufacturing Company</i>	108
<i>Note</i>	111
<i>Problem 22</i>	111
<i>Questions</i>	112
U. Parol Evidence and Interpretation—CISG	112
<i>MCC-Marble Ceramic Center, Inc. v. Ceramica Nuova d'Agostino, S.p.A.</i>	112
V. Leases and the Parol Evidence Rule	120
W. "Open" and Implied Terms—the "Anti-Technical" Environment	120
<i>Problem 23</i>	122
X. Assignment and Delegation	123
Chapter 3. Warranties	125
A. Introduction: The Warranty Concept	125
B. Express Warranty Under UCC Article 2—Facts vs. Commendations, Value or "Puff"	126
<i>In re Ford Motor Co. E-350 Van Products Liability Litigation (No. II)</i>	126
<i>Problem 24</i>	129
<i>Note</i>	129
<i>Problem 25</i>	130
C. Express Warranty—"Basis of the Bargain"	130
<i>Cipollone v. Liggett Group, Inc.</i>	130
<i>Fire Insurance Exchange v. Electrolux Home Products</i>	134
<i>Note</i>	136
<i>Problem 26</i>	136
<i>Problem 27</i>	136
D. Express Warranties—Samples & Models	137
<i>Problem 28</i>	137
E. Express Warranties—Leases & CISG	137
F. The Implied Warranty of Merchantability—Scope—2-314	138
<i>Problem 29</i>	138
G. "Merchantability" Defined	139
<i>Problem 30</i>	139

	Page
G. “Merchantability” Defined—Continued	
<i>Phillips v. Town of West Springfield</i>	140
<i>Note</i>	142
H. Merchantability—Leases, CISG	142
1. The Implied Warranty of Merchantability in Article 2A	142
2. The Implied Obligation to Deliver Goods Fit for Ordinary Purposes Under the CISG	143
3. Implied Warranties of Merchantability and on Informational Content	143
I. Implied Warranty of Fitness for a Particular Purpose Under UCC Article 2—2-315	144
<i>Outlook Windows Partnership v. York International Corporation</i>	144
<i>Problem 31</i>	146
J. Particular Purpose—Leases, CISG	147
1. The Implied Warranty of Fitness for Particular Purpose Under Article 2A	147
<i>Problem 32</i>	147
2. The Implied Obligation to Deliver Goods Fit for a Particular Purpose Under CISG Article 35(2)(b)	147
<i>Schmitz-Werke Gmbh & Co. v. Rockland Industries, Inc.</i>	147
<i>Question</i>	150
K. Cumulation and Conflict of Warranties	151
1. Cumulation and Conflict of Warranties Under UCC Article 2	151
<i>The Singer Company v. E.I. du Pont de Nemours Company</i>	151
<i>Problem 33</i>	155
<i>Problem 34</i>	156
2. Cumulation and Conflict of Warranties Under UCC Article 2A	156
<i>Problem 34A</i>	156
3. Cumulation and Conflict of Quality Obligations Under the CISG	156
<i>Problem 34B</i>	156
L. Finance Leases	157
<i>Dudley v. Business Express, Inc.</i>	157
<i>Note</i>	162
<i>Problem 35</i>	163
M. Warranty Disclaimers	163
1. Disclaimers Under UCC Article 2	163
<i>Problem 36</i>	163
<i>Problem 37</i>	164
<i>James River Equip. Co. v. Beadle County Equip., Inc.</i>	165
<i>Notes</i>	167
2. Warranty Disclaimers Under UCC Article 2A	169
3. Precluding Obligations of Quality Under the CISG	169
<i>Supermicro Computer Inc. v. Digitechnic, S.A.</i>	169
<i>Questions</i>	171
N. Consumer Protection—Magnuson Moss et al.	171
<i>Crickenberger v. Hyundai Motor America</i>	173
<i>Problem 38</i>	180
O. Contract and Tort: Products Liability—Privity	180
P. UCC 2-318 “Third Party Beneficiaries”	182
<i>Hyundai Motor America, Inc. v. Sandra Goodin</i>	182
<i>Note</i>	190
<i>Problem 39</i>	194

	Page
Q. Proof and Causation in Products Liability Actions	195
<i>International Motors Inc. v. Ford Motor Company, Inc.</i>	195
Note	197
<i>Castro v. QVC Network, Inc.</i>	198
Note	201
R. Products Liability—Article 2A, the CISG	202
Note: Statute of Limitations Applicable Under Article 2A and The CISG	202
S. Ownership and Variations on the Theme	203
Problem 40	204
<i>Inmi-Etti v. Aluisi</i>	205
T. Warranties of Title and Against Infringement Under UCC Article 2—Disclaimers	210
Problem 41	210
Note	211
<i>Yttro Corp. v. X-Ray Marketing Assn., Inc.</i>	212
Note	217
U. Transferee's Right to Undisturbed Possession/Use Under UCC Arti- cle 2A and CISG	218
1. Protection of Lessee's Rights to Leased Goods	218
Problem 42	219
2. Buyer's Protections Against Third-Party Claims Under the CISG	219
Problem 42A	220
V. Unconscionability	220
<i>Brower v. Gateway 2000, Inc.</i>	224
Note	228
W. Limitation of Remedy; Failure of Essential Purpose of Limited Remedies	229
1. Limited Remedies Under UCC Article 2	229
<i>Rheem Manufacturing Company v. Phelps Heating & Air Condi- tioning, Inc.</i>	229
Problem 43	237
2. Limited Remedies Under UCC Article 2A, the CISG	238
Problem 43A	238

Chapter 4. Nonconforming Tender and Prospective Nonper- formance

239

PART 1: THE RESPONSE TO TENDER

A. The Buyer's Courses of Action Upon Receipt of Goods Under UCC Article 2	239
1. Rejection, Acceptance, and Revocation of Acceptance Under Arti- cle 2: An Overview	239
<i>Campbell v. AG Finder Iowa Nebraska</i>	240
2. Rejection	244
Problem 44	244
Questions	245
Problem 45	245
Problem 46	245

	Page
A. The Buyer's Courses of Action Upon Receipt of Goods Under UCC	
Article 2—Continued	
<i>Note: Limitations on the Perfect Tender Rule</i>	246
<i>Problem 47</i>	247
<i>Neumiller Farms, Inc. v. Cornett</i>	247
<i>Notes on Neumiller</i>	249
<i>Problem 48</i>	250
<i>Problem 49</i>	250
<i>Question</i>	251
3. Cure	251
<i>Problem 50</i>	251
<i>Problem 51</i>	252
<i>Note on the Requirements for Cure After the Date for Delivery and</i> <i>Methods of Cure</i>	252
<i>Problem 52</i>	254
<i>Note on Cure by Price Adjustment</i>	254
<i>Knic Knac Agencies v. Masterpiece Apparel, Ltd.</i>	255
<i>Note: Cure and Good Faith</i>	258
<i>Problem 53</i>	259
4. Acceptance and Revocation	259
<i>Problem 54</i>	259
<i>Haight v. Dales Used Cars, Inc.</i>	260
<i>Questions</i>	262
<i>Problem 55</i>	262
<i>Champion Ford Sales, Inc. v. Levine</i>	263
<i>Notes and Questions</i>	267
<i>Note: Subjective vs. Objective Non-Conformity</i>	268
<i>Problem 56</i>	270
<i>Note: Consequences of Acceptance</i>	270
<i>Note: Revocation and the Circumstances of Acceptance</i>	270
<i>Problem 57</i>	271
<i>Basselen v. General Motors Corp.</i>	272
<i>Notes</i>	277
5. Revocation for Breach of Manufacturers' Warranties	278
<i>Seekings v. Jimmy GMC of Tucson, Inc.</i>	278
<i>Notes</i>	286
6. Retaining Non-Conforming Goods	288
<i>Kingston Pipe Industries, Inc. v. Champlain Sprinkler, Inc.</i>	288
<i>Problem 58</i>	291
<i>Note on the Purpose and Content of Buyer's Notice of Breach</i>	292
<i>Problem 59</i>	293
B. The Lessee's Courses of Action Upon Receipt of Goods Under UCC	
Article 2A	293
1. Rejection, Acceptance and Revocation of Acceptance Under Arti- cle 2A—in General	293
<i>In re Rafter Seven Ranches LP</i>	293
2. Rejection and Revocation in Finance Leases	296
<i>Problem 60</i>	297
<i>GreatAmerica Leasing Corp. v. Star Photo Lab, Inc.</i>	297
<i>Problem 61</i>	301
<i>Questions</i>	302
<i>Note—Finance Lessee's Notice of Revocation</i>	302

	Page
C. Refusing Goods Under the CISG—Avoidance of Contract.....	303
1. Avoidance in General	303
2. Avoidance for Fundamental Breach	304
<i>Problem 62</i>	304
<i>Decision of April 3, 1996, Bundesgerichtshof (Supreme Court),</i>	
<i>Germany</i>	304
<i>Notes and Questions on Buyer's Course of Action Following</i>	
<i>Fundamental Breach</i>	305
<i>Note on Retaining the Goods After Avoidance</i>	306
<i>Problem 63</i>	307
<i>Questions</i>	307
<i>Note: Compensation for Benefits From Goods</i>	307
<i>Problem 64</i>	308
3. "Nachfrist" Avoidance	308
<i>Problem 65</i>	308
<i>Notes and Questions</i>	309
<i>Problem 66</i>	309
<i>Questions</i>	309
<i>Note</i>	310
4. Nonavoidance	310
<i>Problem 67</i>	310
<i>Note on Nonavoidance Remedies</i>	310

PART 2: PROSPECTIVE NONPERFORMANCE

A. Adequate Assurances and Anticipatory Repudiation Under Article 2 of the UCC	311
<i>Neptune Research & Development, Inc. v. Teknics Industrial Sys-</i>	
<i>tems, Inc.</i>	312
<i>Notes and Questions</i>	320
<i>Problem 68</i>	321
<i>Questions</i>	322
<i>Problem 69</i>	323
<i>Problem 70</i>	323
<i>Koch Materials Co. v. Shore Slurry Seal, Inc.</i>	323
<i>Problem 71</i>	329
<i>Notes and Questions</i>	330
<i>Problem 72</i>	331
<i>Problem 73</i>	332
<i>Questions</i>	332
B. Adequate Assurances and Anticipatory Repudiation Under UCC Article 2A and the CISG	333
<i>Note on Prospective Nonperformance Under Article 2A</i>	333
<i>Problem 74</i>	333
<i>Problem 75</i>	333
<i>Questions</i>	334
<i>Decision of September 30, 1992, Landgericht Berlin, Germany</i>	334
<i>Decision of February 12, 1998, Oberster Gerichtshof (Supreme Court),</i>	
<i>Austria</i>	335
<i>Note: Risks in Using Articles 71 and 72</i>	336
<i>Problem 76</i>	337
<i>Questions</i>	337

	Page
Chapter 5. Risk Allocation	338
A. Basic Obligations: A Survey	338
<i>Problem 77</i>	338
B. Delivery Terms and Risk of Loss Under UCC Article 2: Basic Concepts	339
<i>Windows, Inc. v. Jordan Panel Systems Corp.</i>	339
<i>Problem 78</i>	342
<i>Problem 79</i>	342
C. Other Delivery Terms Under UCC Article 2: F.O.B. Vessel—F.A.S.—C.I.F.	343
<i>Problem 80</i>	343
<i>Problem 81</i>	343
D. Delivery Terms Under Proposed Amended UCC Article 2; INCOTERMS	344
<i>St. Paul Guardian Insurance Company v. Neuromed Medical Systems & Support</i>	345
<i>Note</i>	350
<i>O.C.T. Equipment, Inc. v. Shepherd Machinery Co.</i>	350
<i>Problem 82</i>	354
<i>Problem 83</i>	354
E. Breach of Contract and Risk of Loss (2-510)	355
<i>Problem 84</i>	355
<i>Multiplastics, Inc. v. Arch Industries, Inc.</i>	355
<i>Note</i>	358
<i>Question</i>	358
<i>Problem 84A</i>	358
F. Risk of Loss Under the CISG (Articles 66-70)	359
<i>Problem 85</i>	359
G. Risk of Loss Under UCC Article 2A	359
<i>Problem 86</i>	359
<i>Problem 86A</i>	360
H. Identification and Casualty to Identified Goods	361
<i>Emery v. Weed</i>	361
<i>Problem 87</i>	363
I. Commercial Impracticability	364
<i>Specialty Tires of America, Inc. v. The CIT Group/Equipment Financing, Inc.</i>	367
<i>Problem 88</i>	373
<i>Note</i>	373
<i>Cliffstar Corporation v. Riverbend Products, Inc.</i>	374
<i>Problem 89</i>	379
<i>Note</i>	380
J. Exemption Under CISG Article 79	380
<i>Problem 90</i>	380
K. Excuse for Non-Performance Under Article 2A	381
<i>Problem 90A</i>	381
L. The Documentary Transaction	381
<i>The Shaw Group, Inc. v. Next Factors, Inc.</i>	384
<i>Notes</i>	387
M. Negotiable or Non-Negotiable	387
<i>Problem 91</i>	389
<i>Problem 92</i>	390

	Page
N. Letters of Credit	391
1. What Is a "Letter of Credit"?	391
2. "Commercial" and "Standby" Letters of Credit	392
3. Law Governing Letters of Credit	393
<i>Benetton Services Corporation v. Benedot, Inc.</i>	393
<i>Note</i>	397
<i>Courtaulds North America, Inc. v. North Carolina Nat. Bank</i>	399
<i>Note</i>	404
Chapter 6. Remedies	405
A. Remedies Under UCC Article 2—in General	405
B. UCC Article 2 Remedies When the Buyer Does Not Retain the Goods	405
1. Buyers' Damages Measured by Substitute Transactions or Market Prices	406
<i>Dangerfield v. Markel</i>	406
<i>Notes on Dangerfield</i>	411
<i>Problem 93</i>	411
<i>Robert Egerer v. CSR West, L.L.C.</i>	412
<i>Problem 94</i>	415
<i>Problem 95</i>	416
<i>Hess Energy, Inc. v. Lightning Oil Co.</i>	416
<i>Note</i>	421
2. Buyers' Recovery of the Goods	421
<i>Introductory Note on Buyers' Right to Reach the Goods Under the UCC</i>	421
<i>Sedmak v. Charlie's Chevrolet, Inc.</i>	422
<i>Question</i>	425
<i>Sherwin Alumina L.P. v. Aluchem, Inc.</i>	425
<i>Problem 96</i>	427
<i>Note: Proof Problems and Specific Performance</i>	428
3. Seller's Damages Measured by Substitute Transactions or Market Prices	428
<i>Problem 97</i>	428
<i>Note: Types of Resales and Notice of Resale</i>	429
<i>Problem 98</i>	429
4. Sellers' Lost Profit Recovery	430
<i>Problem 99</i>	430
<i>Kenco Homes, Inc. v. Williams</i>	430
<i>Note: The "Lost Volume Seller"</i>	434
<i>Note on Accounting for the Proceeds of Resale in a Lost Profits Recovery</i>	435
5. Sellers' Right to Specific Performance	435
<i>Precision Mirror & Glass v. Nelms</i>	435
<i>Questions</i>	438
C. UCC Article 2 Remedies When the Buyer Retains the Goods	438
1. Aggrieved Buyers' Damages When Goods Are Accepted and Retained	438
<i>Note: Buyer's Damages for Non-Conforming Goods That Are Accepted</i>	438
<i>Problem 100</i>	439

	Page
C. UCC Article 2 Remedies When the Buyer Retains the Goods—	
Continued	
<i>Holden Machinery v. Sundance Tractor & Mower</i>	440
<i>Note on Using Repair Costs to Measure Damages for Breach of</i>	
<i>Warranty</i>	442
<i>Problem 101</i>	443
2. Sellers' Right to the Price for Accepted Goods	443
<i>Siemens Energy & Automation, Inc. v. Coleman Electrical Supply</i>	
<i>Co.</i>	443
<i>Problem 102</i>	445
<i>Problem 103</i>	445
<i>Note on Ineffective vs. Wrongful Rejection</i>	445
<i>Problem 104</i>	446
<i>Problem 105</i>	446
3. Reclamation by Sellers	447
<i>Problem 106</i>	447
<i>Note on Sellers' Right to Recover Delivered Goods</i>	447
<i>Nanjing Textiles Imp/Exp Corp., Ltd. v. NCC Sportswear Corp.</i>	447
<i>Problem 107</i>	450
<i>Questions</i>	451
<i>Problem 108</i>	451
<i>Questions</i>	451
<i>Note: Sellers' Reclamation Rights and Bankruptcy</i>	451
D. Other Remedies Under UCC Article 2	452
1. Buyer's Incidental and Consequential Damages	452
<i>Introductory Note</i>	452
<i>City National Bank of Charleston v. Wells</i>	452
<i>Problem 109</i>	455
<i>Problem 110</i>	456
<i>Indiana Glass Company v. Indiana Michigan Power Company</i>	456
<i>Problem 111</i>	460
2. Sellers' Incidental Damages	460
<i>Nina Industries, Ltd. v. Target Corp.</i>	460
<i>Florida Recycling Services, Inc. v. Petersen Industries, Inc.</i>	462
<i>Problem 112</i>	463
3. Liquidated Damages	464
<i>Kvassay v. Murray</i>	464
<i>Notes and Questions on Kvassay</i>	467
<i>Note on "Take-or-Pay" Contracts</i>	468
4. Restitution for Breaching Buyers	469
<i>Problem 113</i>	469
E. Remedies Under UCC Article 2A	469
1. Overview of Article 2A Remedies	469
2. Lessees' Remedies Under Article 2A	470
<i>Problem 114</i>	470
<i>Note: Equivalency of Substitute Lease for Purposes of Cover</i>	
<i>Damages</i>	470
<i>Problem 115</i>	471
<i>Note: Present Value Damages Under UCC Article 2A</i>	471
3. Lessors' Remedies Under Article 2A	474
<i>Problem 116</i>	474
<i>Questions</i>	475
<i>Problem 117</i>	475

	Page
E. Remedies Under UCC Article 2A—Continued	
<i>Note on Lessors' Right to Repossess</i>	475
<i>Note on Lessor's Recovery of the Full Rent</i>	476
4. Liquidated Damages Under Article 2A	476
F. Remedies Under the CISG	477
1. Overview of CISG Remedies	477
2. Sellers' Remedies Under the CISG	477
<i>Decision of September 22, 1992, Oberlandesgericht Hamm, Ger-</i>	
<i>many</i>	477
<i>Downs Investments v. Perwaja Steel</i>	478
<i>Problem 118</i>	481
<i>Question</i>	482
<i>Note: Avoidance of Contract Under the CISG Compared to Cancel-</i>	
<i>lation Under the UCC</i>	482
<i>Problem 119</i>	483
<i>Note on a Seller's Right to the Price Under the CISG</i>	483
<i>Problem 120</i>	484
<i>Problem 121</i>	484
<i>Note: Sellers' Right to Recover Delivered Goods Under the CISG</i> ..	484
3. Buyers' Remedies Under the CISG	485
<i>Problem 122</i>	485
<i>Decision of May 23, 2005, Oberster Gerichtshof, Austria</i>	486
<i>Note on Calculating Price Reduction Under CISG Article 50</i>	487
<i>Problem 123</i>	487
4. Incidental, Consequential and Liquidated Damages Under the	
CISG	488
<i>Delchi Carrier Spa v. Rotorex Corp.</i>	488
<i>Zapata Hermanos Sucesores, S.A. v. Hearthside Baking Company,</i>	
<i>Inc.</i>	493
<i>Notes</i>	495
5. Liquidated Damages Under the CISG	496
INDEX	497