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Examples and Explanations: Sales and Leases 7th Ed.

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Sales and Leases
Seventh Edition
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For Isabelle
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I start with a simple assumption. You come to this book because for one reason or another you want to learn the basic law relating to sales and leases of goods as such transactions are governed by Articles 2 and 2A of the Uniform Commercial Code. You may be trying to pick this up on your own, but more likely you are in a course — either a course devoted distinctly to these topics or a more expansive survey course in Commercial Law that will necessarily devote a great deal of time to them. The book may have been assigned or recommended as additional reading by the professor teaching the course, or you may have come upon it on your own as a means of review. Whatever the circumstances, I hope this book is of help. If it is, it will not be simply because you bought it or even because of the considerable energy I put into writing it, but because of the time, energy, and the thought you put into using it. Here are a few basic points you should understand from the outset if you are to make the best use of what I have written and what you have bought.

• This is not a review text. You may find it helpful to think of it as a kind of workbook, giving you an organized way of working through the various sections, definitions, concepts, and controversies that make up the modern law of sale and lease of goods as rendered in Articles 2 and 2A of the Uniform Commercial Code.

• This volume is not a substitute for your own copy of the Uniform Commercial Code (including Official Comments). I will be quoting snippets of the Code from time to time. At other points I may simply suggest that you “recall the rule of §2-607(1)” or “look to §2-103(1)(c).” What you have here should not distract you, however, from the fundamental proposition that the law you are learning is found in, not merely suggested by or illustrated through, the exact language of the Code as it has been enacted into law in the several states. I assume throughout that as you work through the material you will always have at your side and at the ready the primary text for the study of sale and lease of goods, the Code itself.

• The general organization and sequence of chapters follows what is a fairly standard order in which the various topics are taken up in courses on Sales. You should certainly start with Chapter 1 and move on from there. If this book has been assigned or recommended by your professor, you will of course follow his or her instructions as to which chapters to look to when and even as to which examples to do and which to leave for another day. If you are working through the book on your own and
trying to coordinate it with your course, you should be able to determine fairly easily which chapters to take up just by the chapter headings, but if you are having any trouble finding where to turn, there is help available by subject matter in the index and also a table showing which U.C.C. sections are dealt with and where, both at the back of the book.

- Each chapter is structured in the same way: an introductory text, a set of examples for you to ponder, followed finally by my own explanations of the questions asked and issues raised by the examples. It is very important that you appreciate that the introductory text does not purport to outline or give a full account of the chapter's topic. This is not the type of book where you are given all the law up front and then asked to apply the rules and principles to the questions that follow. The law you are going to have to apply is to be found in the Uniform Commercial Code that you have right there with you. In some chapters the introductory text can be very brief. In others it goes on for a while. But in any event the introductory text is meant only to set the stage; its purpose is to put you on the best possible course for learning through the examples. In other words, if you aren't prepared to go through the examples thoroughly on your own—if not writing down a carefully constructed answer to each one, then at least jotting down an idea or two on how you see the situation and how you expect the Code would deal with it—then there's really not much point in your starting the chapter to begin with.

One final note on the examples: It will not surprise you if, when you get to my analysis in the explanations, you find I cannot always offer a simple yes or no in many cases. I am, after all, a law professor, and this subject, like any other you have already studied, has its unresolvable questions, places where the statute seems to be of little or no help, and "subtle" difficulties. On the other hand, don't think just because this is the study of law that the answer to even the most simple question must necessarily be open to argument or subject to competing analyses. Sometimes, perhaps most of the time, a question can and should be answered in a word or two, directly and without any hedging. If the answer is "Yes," you should say "Yes." If "No," say "No." Beyond that, of course, you should go on to say why—citing the Code, chapter and verse—you respond as you do. I always give my students in Commercial Transactions courses some rules of thumb to follow, which are in general good advice when dealing with this material, in writing their examination answers:

- Where an answer is given or suggested by a specific section of the Code, make reference to that section.
- Where a particular subsection is relevant, cite the subsection.
- Where a particular word or phrase in the section or subsection is of importance to your answer, identify exactly what that word or phrase is.
- Where an Official Comment answers—or seems to answer—the
Preface

question, refer to it, reporting as you do whether you have any qualms or questions about the position taken in the Comment.

• Where the answer appears to be dictated by a single fact or a set of facts, make clear what facts those are.

If, as will sometimes be the case, the answer has to be “that depends,” say on what you see the outcome depending. If you need to know other facts to better analyze the situation, say whom you would ask and what you would want to know. If the answer seems to depend on how a court would interpret a particular provision or how it would settle a seeming conflict between two provisions, what are the various possible interpretations or resolutions? What argues for one resolution over the other?

As I have said, I hope and expect this book will be helpful. If at the same time you find it stimulating and even mildly entertaining, then so much the better.

October 2014

James Brook
I would like to thank Dean Anthony Crowell and former Dean Rick Matasar as well as Associate Deans Deborah Archer, Jethro Lieberman, and Carol Bucker, who have shown their support for this project in a variety of ways. I would also like to acknowledge the continuing contribution of my staff assistant, Silvy Singh, without whom my workdays would be far more difficult and a lot less pleasant. Thanks as well to my colleagues on the faculty at New York Law School and to the vast numbers of students at that school who have given me the opportunity to practice my teaching methods (and madness) on them over the years. The feedback that I’ve been given on my classroom work as well as on various parts of these materials, in ways subtle and not so subtle, has been of enormous help even if I have not always recognized it at the time.

There is no question that this book would never have been brought to any kind of conclusion without the enthusiastic support and encouragement of a number of good people at Wolters Kluwer Publishers. I would particularly like to thank Carol McGeehan and Susan McClung. I also have to single out for special mention Joe Glannon, who was a friend long before either of us even dreamt of going to law school much less making a career out of teaching law. His initial work on the Examples and Explanations series was the genesis for all that followed, including this effort.

Portions of the Official Text and Comments of the Uniform Commercial Code reproduced and quoted herein are copyrighted by The American Law Institute and the National Conference of Commissioners on Uniform State Laws and are reprinted with permission of the Permanent Editorial Board for the Uniform Commercial Code.
People have been buying and selling stuff for a long time, and so it should come as no surprise that the law governing such activity has a long and varied history. In this book we will be concerned with the rules governing buying, selling, and leasing of goods as they now stand with each of the states' adoption of Articles 2 and 2A of the Uniform Commercial Code (with the notable exception of Louisiana, whose legal system, derived from the French civil law and not the British common law tradition, has not enacted Article 2). A bit of history, however, will help to put our studies into perspective.

For our purposes, we pick up the story of the sale of goods in medieval England. By the 1300s and 1400s, the system of common law courts acting in the name of the King had already taken shape and their far-reaching powers had been recognized. Disputes involving sales of goods, however, would for the most part not have found their way into this national court system. Such disputes were the province of a separate set, or really a set of sets, of more narrowly focused courts operating at the local level. Such courts were usually to be found in one of the principal market towns or occurring in conjunction with the regional trading fairs that were held on a regular basis at various places in England. Such courts became the specialists in dealing with disagreements between merchants, applying a set of rules that came to be thought of as, to some degree, a coherent body of rules and principles comprising the law merchant or mercantile law.

It was only later, during the seventeenth century, that the national system of common law courts began to expand its competence and jurisdiction to include commercial disputes. Eventually, the common law of sales, which often but not always adopted the reasoning and results of the mercantile law, replaced the older system. Eventually, the distinct set of mercantile courts died out.

So what we characterize as the modern common law of sales is a relatively recent phenomenon. It was only in the middle of the 1800s that there appeared the first general treatises attempting to set out a systematic view of the common law as it related to the purchase and sale of goods. At the very same time, however, one of the grandest features of the common law—its very commonality, the supposed uniformity and predictability that it offered to the country as a whole—was being sorely tested in the United States of America, which is after all one big patchwork quilt of common law jurisdictions. No doubt each of the states (again, with the exception of Louisiana) applied what it saw as the principles of the common
law of sales to purchase-and-sale transactions. Similarly, each state applied
common law principles to other areas of commercial life. The problem,
however, was that as each state's common law jurisprudence in a given field
of commercial endeavor was advanced, refined, and further explicated by a
steady stream of decisions, it was perhaps inevitable that there would
develop a growing disparity among the common law renderings of the
several states. So, in the United States, lawyers (and, not incidentally, or-
dinary folks going about their daily business) had to become acquainted
with, or at least acknowledge that they were subject to, different variants of
the same common law principles in each of the states.

In many fields of law the steadily increasing divergence, both stylistic
and substantive, in the common law renderings of the states was troubling,
and not just in a theoretical sense; it made life more difficult. It was perhaps
in the arena of commercial endeavor that this lack of uniformity and
predictability was felt most keenly. As more and more individuals and firms
reached out to enter into contracts and do business in places farther and
farther from their home base, it became increasingly apparent that the lack
of uniformity of basic commercial law was more than a minor nuisance.

Throughout the nineteenth century pressure was building for a change
and some way out of this predicament. One response was the advancement
of what is referred to as the "uniform law movement," which also tapped
into the growing sentiment in favor of a codification or statutory treatment
of difficult areas of the law. At the end of the nineteenth century a group
was formed by the name of the National Conference of Commissioners on
Uniform State Laws (NCCUSL, or as it has chosen to refer to itself in more
recent years, the "Uniform Law Commission," or ULC). The Uniform Law
Commission, a kind of quasi-government group, is made up of repre-
sentatives of each of the states. These representatives are chosen by different
methods in different states, usually by the governor acting alone or in
conjunction with the state legislature. The Commission itself can make no law. Its
role is to investigate, argue over, and eventually formulate and adopt
recommended legislation—the "Official Versions" of its recommended
Uniform Acts are then forwarded to each of the states for consideration. The
fate of any of the recommended Uniform Acts is up to the legislative pro-
cesses in each of the states. The idea—and it's a wonderful one when it
works—is that if each and every one of the states adopts the suggested
legislation, and adopts it in exactly the Official Version form, then blessed
uniformity and predictability has been achieved. You, I, and everyone else
for that matter will have no trouble knowing the applicable rules in each of
the many jurisdictions, since we will have the benefit of knowing we are
working with the identical statutory law no matter where the problem arises
or which state's law is to be applied.

Among the earliest of the Uniform Acts was the Uniform Sales Act,
drafted for the Uniform Law Commission by the eminent Professor Samuel
Introduction

Williston of Harvard. Promulgated in 1906 and later amended in 1922, the Uniform Sales Act was eventually adopted in more than 30 states. By the late 1930s and into the 1940s the feeling began to grow, however, that this Uniform Sales Act, along with several other uniform acts covering other aspects of commercial law, were in need of revision and updating. Teamed up by this time with the American Law Institute (whose work you are no doubt familiar with in connection with the various Restatements of common law topics), the Uniform Law Commission determined that the various pieces of recommended uniform commercial legislation would be reconfigured into a single Uniform Commercial Code. The Uniform Commercial Code (U.C.C.) would bring together, in substantially revised form, a number of previous uniform acts as well as some topics not previously subjected to the uniform law approach. The noted Professor Karl Llewellyn of Columbia University was appointed Chief Reporter (a kind of editor-in-chief) of the project.

The history of the drafting and redrafting, politicking, name-calling, and eventual set of compromises that led up to the adoption of the Uniform Commercial Code in its 1962 Official Version is a story unto itself. Suffice it to say that by 1968, this Official Version of the Code had been adopted essentially intact by 49 states, the District of Columbia, and the Virgin Islands. Guam came aboard in 1977. Article 2 of this Uniform Commercial Code was the successor of the Uniform Sales Act, dealing with the purchase and sale of goods. The one significant change in the Code that we will have to deal with in this volume (beginning in Chapter 2) was the creation of a new and distinct Article 2A, dealing with the lease of goods, which made its way into the Official Version of the U.C.C. in 1990 and was quickly adopted by the states.