

COMMERCIAL
TRANSACTIONS UNDER
THE UNIFORM
COMMERCIAL CODE AND
OTHER LAWS

LexisNexis Law School Publishing Advisory Board

William Araiza

Professor of Law
Brooklyn Law School

Lenni B. Benson

Professor of Law & Associate Dean for Professional Development
New York Law School

Raj Bhala

Rice Distinguished Professor
University of Kansas, School of Law

Ruth Colker

Distinguished University Professor & Heck-Faust Memorial Chair in Constitutional Law
Ohio State University, Moritz College of Law

David Gamage

Assistant Professor of Law
UC Berkeley School of Law

Joan Heminway

College of Law Distinguished Professor of Law
University of Tennessee College of Law

Edward Imwinkelried

Edward L. Barrett, Jr. Professor of Law
UC Davis School of Law

David I. C. Thomson

LP Professor & Director, Lawyering Process Program
University of Denver, Sturm College of Law

Melissa Weresh

Director of Legal Writing and Professor of Law
Drake University Law School

COMMERCIAL TRANSACTIONS UNDER THE UNIFORM COMMERCIAL CODE AND OTHER LAWS

Donald B. King

Sixth Edition

Daniel D. Barnhizer

*Bradford Stone Faculty Scholar
Professor of Law
Michigan State University College of Law*

W.H. Knight, Jr.

*Professor of Law
Seattle University School of Law*

Kathleen E. Payne

*Associate Dean for Academic Affairs
Professor of Law
Michigan State University College of Law*

Cynthia Lee Starnes

*Lizzie J. McSweeney Professor of Family Law
Michigan State University College of Law*

Bradford Stone

*Charles A. Dana Professor of Law Emeritus
Stetson University College of Law*

ISBN: 978-1-4224-8063-2

This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

LexisNexis and the Knowledge Burst logo are registered trademarks and Michie is a trademark of Reed Elsevier Properties Inc., used under license. Matthew Bender and the Matthew Bender Flame Design are registered trademarks of Matthew Bender Properties Inc.

Copyright © 2011 Matthew Bender & Company, Inc., a member of the LexisNexis Group.
All Rights Reserved.

No copyright is claimed in the text of statutes, regulations, and excerpts from court opinions quoted within this work. Permission to copy material exceeding fair use, 17 U.S.C. § 107, may be licensed for a fee of 25¢ per page per copy from the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, telephone (978) 750-8400.

NOTE TO USERS

To ensure that you are using the latest materials available in this area, please be sure to periodically check the LexisNexis Law School web site for downloadable updates and supplements at www.lexisnexis.com/lawschool.

Editorial Offices
121 Chanlon Rd., New Providence, NJ 07974 (908) 464-6800
201 Mission St., San Francisco, CA 94105-1831 (415) 908-3200
www.lexisnexis.com

MATTHEW  BENDER

DEDICATION

To our families and everyone else who has endured this effort.

Daniel D. Barnhizer
W.H. Knight, Jr.
Kathleen E. Payne
Cynthia Lee Starnes
Bradford Stone

PREFACE

In 1968, Donald B. King, along with Calvin A. Kuenzel, Theodore E. Lauer, Neil O. Littlefield, and Bradford Stone, edited one of the first Uniform Commercial Code casebooks. They were later joined by W.H. Knight, Jr. This text was also one of the first casebooks published by Matthew Bender. Subsequent editions were published in 1974, 1981, 1987, and 1997. As this current group of authors edits this sixth edition, our goal has remained constant: “We have designed this casebook to be the best possible teaching tool for commercial law.”

This edition, centering primarily around recent developments in caselaw and code revisions, carries forward several precepts developed over the years:

1. Ample material is given to permit each professor who uses the book to cover not only basics, but to have the option to go beyond if he or she wishes.

2. In the “**Read**” notations heading each new section or topic, the most recent code section cites are given that relate to each topic and each subtopic. Older cites contained in cases are noted as well within the cases. In addition, the “**Read**” notations include cites to the convention on the International Sale of Goods as well for those who wish to use it. It is the opinion of the authors that the “**Read**” notations are critical to learning, understanding, and applying the Uniform Commercial Code and related statutes and treaties.

3. There is not only a look at individual code sections, but the “to read” cites reference sections that are related to, substantiate, or seem contrary to, the major section under discussion. The student is encouraged to integrate the code into a single fluid body of law, rather than learning random legal principles.

4. The professor is given an opportunity to concentrate teaching on either the code itself or the caselaw, or both, to whatever degree seems best. The book also furnishes a comprehensive framework of commercial law which allows the professor to incorporate his or her own problems and other handouts.

5. Faculty may use individualized teaching techniques concentrating in either a caselaw or a problem approach, or both.

6. Modern and up-to-date cases are stressed, but some historical landmarks are mentioned in text or notes. Almost all of the principal cases have been decided within the last decade.

7. An effort has been made to include “cutting edge” cases. Not only can one see conflicting trends which have emerged in regard to some sections of the code, but one can also explore the direction the law is taking. We have tried to select cases that have interesting fact patterns, that involve interesting personalities of our times, or that include other factors that promote easier understanding of the subject matter

8. Illustrations of some of the major commercial documents in each area of the law are included, as well as some diagrams. These inclusions should give students a better appreciation of the documents used in practice and discussed in the cases.

9. Introductory and historical text is used throughout the text so as to form an easy bridge to learning the particular subject.

PREFACE

The editors recognize that many professors will use only parts of the casebook in accordance with the scope of their course and time and number of credits allotted them. Some may want to use a few of the chapters later as a basis for an advanced commercial law seminar as well.

Again, our emphasis is one of material flexibility and user-friendliness.

Daniel D. Barnhizer
W.H. Knight, Jr.
Kathleen E. Payne
Cynthia Lee Starnes
Bradford Stone

ADVANTAGES OF THIS CASEBOOK

1. The more use of current cases with appropriate representation of historical development. Cases are more recent than most other casebooks.
2. Provides rich base of materials for professor to develop his/her own questions and problems, if desired.
3. Does not lock professor into extrinsic problems or an alien methodology.
4. Commercial law is founded upon the Uniform Commercial Code; our book gives the user the pertinent Code cites preceding each chapter.
5. Encourages students to read the statute and then the cases.
6. Lists more relevant Code cites than other casebooks.
7. Method affords the reality that the casebook is a supplement to the Code or statute, not that the Code is the supplement to the caselaw.
8. Thus, our materials most appropriately meld the relationship between statutes and cases.
9. Our casebook permits the professor to develop individual teaching techniques from a wide range of cases and code sections and does not lock the professor into any author's style.

NOTE ON UNIFORM COMMERCIAL CODE REVISIONS

Since publication of the fifth edition of this casebook, the Uniform Commercial Code has undergone complete revisions of Article 1 (2001), Article 2 (2003), Article 2A (2003), Article 3 (2002), Article 4 (2002), Article 7 (2003), and Article 9 (1999).

Professor Keith Rowley has provided the commercial law community an invaluable service in monitoring, collecting, and digesting major developments in state legislatures. His reports on the adoption process may be found at “UCC Updates”, http://www.law.unlv.edu/faculty/rowley/ucc_updates.htm [hereinafter Rowley, UCC Updates]. As Professor Rowley’s commentary indicates, the updates (either as “Amendments” or major “Revisions”) to Articles 1, 3, 4, 7 and 9 have received varying receptions among state legislatures. As of this writing, Article 1 (2001) has been adopted in 39 states, Articles 3 and 4 (2002) have been adopted in ten states, Article 7 (2003) in 36 states. Article 9 (1999) has been universally adopted in all 50 states as well as the District of Columbia and the U.S. Virgin Islands. *See id.* In consequence, citations to these Articles in the text refer to the current revisions or amendments.

Amended Articles 2 and 2A (2003) are more problematic. In May 2011, the American Law Institute officially withdrew the proposed amendments to these articles because no states have adopted those amendments in full, and only one state—Oklahoma—has adopted any portion of the proposed revisions. *See* Rowley, UCC Updates. The proposed amendments may, however, have some usefulness from a comparative perspective. Consequently, while some of the more important revisions to these articles are discussed in the text, including proposed changes to the statute of frauds under U.C.C. § 2-201 (2003) and the battle of the forms in U.C.C. § 2-207 (2003), all citations to Articles 2 and 2A are to the pre-2003 versions unless otherwise noted. Additionally, in recognition of both the survey nature of this text and the unlikelihood of significant legislative action on these Articles in the near future, we have kept explorations of the revisions to a minimum. Finally, we have retained citations to the amendments in the “Read Also” headings at the beginning of each section.

TABLE OF CONTENTS

Chapter 1	THE UNIFORM COMMERCIAL CODE: AN INTRODUCTION	1
§ 1.01	OVERVIEW	1
§ 1.02	A BRIEF JOURNEY THROUGH HISTORY	2
§ 1.03	ECONOMIC VALUE, CREDIT, AND DEBT	4
§ 1.04	BEGINNING YOUR STUDY	6
	PROBLEM 1-1	8
§ 1.05	MODERN COMMERCIAL LAW	9
Chapter 2	SCOPE: SUBJECT MATTER OF THE CONTRACT FOR SALE	11
§ 2.01	APPLICABILITY OF U.C.C. ARTICLE 2 — TRANSACTIONS INCLUDED AND EXCLUDED	11
[A]	Goods or Services	11
	PROBLEM 2.1	11
	<i>Anthony Pools v. Sheehan</i>	12
	PROBLEM 2.2	15
	<i>Conwell v. Gray Loon Outdoor Marketing Group, Inc.</i>	16
	<i>Lohman v. Wagner</i>	21
	NOTES ON OTHER AREAS	25
[B]	Goods or Real Property	28
	PROBLEM 2.3	28
	PROBLEM 2.4	28
	NOTES	28
§ 2.02	TERRITORIAL APPLICATION OF U.C.C. ARTICLE 2	29
	PROBLEM 2.5	29
	PROBLEM 2.6 (Optional — CISG)	29
Chapter 3	THE CONTRACT FOR SALE	31
§ 3.01	INTRODUCTION	31
	PROBLEM 3.1	31
§ 3.02	FORMATION OF THE CONTRACT FOR SALE	32
[A]	Formation in General	32
[B]	Form Contracts Generally	33
[C]	Firm Offers	34
[D]	Construing the Offer: Bilateral or Unilateral Contract?	34
[E]	Additional Terms in Acceptance or Confirmation	35
	PROBLEM 3.2	35

TABLE OF CONTENTS

	<i>Ohio Grain Co. v. Swisshelm</i>	36
	<i>White Consolidated Indus., Inc. v. McGill Mfg. Co.</i>	38
	NOTE	41
[F]	Sale by Auction	43
[G]	Home Solicitation Sale	43
§ 3.03	CONSIDERATION	43
§ 3.04	STATUTE OF FRAUDS	44
	PROBLEM 3.4	44
	NOTES AND QUESTIONS	45
	PROBLEM 3.5	53
§ 3.05	PAROL EVIDENCE RULE	53
	<i>Telcom Int'l America, Ltd. v. AT&T Corp.</i>	53
	<i>Maritime-Ontario Freight Lines, Ltd. v. STI Holdings, Inc.</i>	58
	<i>Anthony Industries, Inc. v. Ragsdale</i>	62
	PROBLEM 3.6	68
	NOTES	68
§ 3.06	TERMS, CONSTRUCTION AND INTERPRETATION OF THE CONTRACT FOR SALE	70
Chapter 4	PROPERTY INTERESTS	77
§ 4.01	INTRODUCTION	77
§ 4.02	TITLE	77
	<i>Zurich American Insurance Co. v. Felipe Grimberg Fine Art</i>	78
	NOTES AND QUESTIONS	79
§ 4.03	SPECIAL PROPERTY	81
§ 4.04	INSURABLE INTEREST	82
	PROBLEM 4.1	82
	<i>St. Paul Fire and Marine Insurance Co. v. Toman</i>	83
	NOTES	85
§ 4.05	SECURITY INTEREST	86
§ 4.06	RISK OF LOSS	86
	PROBLEM 4.2	86
	<i>Pestana v. Karinol Corp.</i>	87
	NOTES	89
	PROBLEM 4.3	90
	<i>O.C.T. Equip., Inc. v. Shepherd Mach. Co.</i>	90
	NOTES	94
§ 4.07	RISK OF LOSS: BREACH SETTINGS	96
	PROBLEM 4.4	96
	NOTE	97
§ 4.08	WARRANTY OF TITLE	97

TABLE OF CONTENTS

PROBLEM 4.5	97
Chapter 5	WARRANTY/PRODUCTS LIABILITY 99
§ 5.01	INTRODUCTION 99
§ 5.02	HISTORICAL DEVELOPMENT 99
§ 5.03	EXPRESS WARRANTIES 101
	<i>Keith v. Buchanan</i> 102
	NOTES 107
§ 5.04	IMPLIED WARRANTIES 110
[A]	Merchantability 110
	PROBLEM 5.1 110
	<i>Hodges v. Johnson</i> 111
	NOTES 117
[B]	Fitness for a Particular Purpose 118
	<i>Keith v. Buchanan</i> 118
	PROBLEM 5.2 120
§ 5.05	PRIVITY 121
	PROBLEM 5.3 122
	PROBLEM 5.4 122
	<i>Blanco v. Baxter Healthcare Corp.</i> 123
§ 5.06	DISCLAIMER 124
	<i>Providence & Worcester RR Co. v. Sargent & Greenleaf, Inc.</i> 125
	NOTES 128
§ 5.07	INTERACTION OF WARRANTY AND PRODUCTS LIABILITY IN TORT 133
	PROBLEM 5.5 133
	PROBLEM 5.6 134
	<i>Westfield Ins. Co. v. Birkey's Farm Store, Inc.</i> 134
	NOTES 139
Chapter 6	PERFORMANCE 141
§ 6.01	RIGHTS AND OBLIGATIONS OF THE PARTIES 141
[A]	In General 141
[B]	Good Faith 141
	PROBLEM 6.1 141
[C]	Right to Unimpaired Expectation of Proper Performance 142
	<i>Shields Pork Plus, Inc. v. Swiss Valley Ag Service</i> 143
§ 6.02	SELLER'S OBLIGATION TO DELIVER 148
	PROBLEM 6.2 149
	PROBLEM 6.3 149
	PROBLEM 6.4 150

TABLE OF CONTENTS

	<i>Wilson v. Brawn of California, Inc.</i>	150
	PROBLEM 6.5	153
	NOTES	154
§ 6.03	BUYER'S RIGHT TO INSPECT AND OBLIGATION TO ACCEPT AND PAY	156
	PROBLEM 6.6	157
	PROBLEM 6.7	157
	NOTES	158
§ 6.04	BUYER'S RIGHTS ON IMPROPER DELIVERY: REJECT OR ACCEPT	159
[A]	Rejection or Acceptance	159
	<i>Borges v. Magic Valley Foods, Inc.</i>	160
	NOTES	163
[B]	Notice of Breach	168
	<i>Hobbs v. General Motors Corp.</i>	168
	NOTES AND QUESTIONS	171
[C]	Revocation of Acceptance	175
	<i>Colonial Dodge, Inc. v. Miller</i>	175
	NOTES AND QUESTIONS	179
[D]	Installment Contracts	183
	<i>Bayer Corp. v. DX Terminals, Ltd.</i>	183
§ 6.05	SELLER'S RIGHT TO CURE	188
	<i>T.W. Oil, Inc. v. Consolidated Edison Co. of New York, Inc.</i>	188
	PROBLEM 6.8	193
	NOTES	194
§ 6.06	PRESERVING EVIDENCE OF GOODS IN DISPUTE	195
	NOTE	195
§ 6.07	EXCUSE OF PERFORMANCE	195
	<i>Alimenta (U.S.A.), Inc. v. Cargill Incorporated</i>	197
	PROBLEM 6.9	201
	NOTES	201
Chapter 7	REMEDIES	205
§ 7.01	REMEDIES GENERALLY	205
§ 7.02	SELLER'S REMEDIES FOR BREACH BY BUYER	206
[A]	Cancellation	206
[B]	Take Action as to the Goods	207
[1]	Withhold or Stop Delivery	208
	<i>In Re Trico Steel Co.</i>	208
	NOTES	211
	PROBLEM 7.1	211

TABLE OF CONTENTS

	PROBLEM 7.2	212
[2]	Identify Goods to the Contract or Salvage Unfinished Goods	212
	<i>Modern Machinery v. Flathead County</i>	212
	NOTE	215
[C]	Recover Monies	216
[1]	Resell and Recover Damages	216
	<i>Firwood Manufacturing Co. v. General Tire, Inc.</i>	216
	NOTES	220
[2]	Recover Damages for Non-Acceptance or Repudiation	221
	<i>Kenco Homes, Inc. v. Williams</i>	222
	PROBLEM 7.2	226
	<i>R. E. Davis Chemical Corp. v. Disonics, Inc.</i>	226
	NOTES	230
[3]	Recover the Price	230
	<i>Siemens Energy & Automation, Inc. v. Coleman Elec.</i> <i>Supply Co.</i>	231
	NOTES	233
[4]	Incidental Damages	235
	<i>Jelen & Son, Inc. v. Bandimere</i>	236
	NOTE	240
§ 7.03	SELLER'S REMEDIES ON DISCOVERY OF BUYER'S INSOLVENCY	240
	PROBLEM 7.3	241
	NOTE	241
§ 7.04	BUYER'S REMEDIES FOR BREACH WHERE GOODS NOT ACCEPTED OR ACCEPTANCE JUSTIFIABLY REVOKED	242
[A]	Cancellation	243
	<i>Royco, Inc. v. Cottengim</i>	243
[B]	Recover Price Paid; Security Interest in Rejected Goods	244
	<i>In Re Adams Plywood, Inc.</i>	244
[C]	Recover Money Damages	245
[1]	Cover and Have Damages	245
	<i>Martella v. Woods</i>	245
	NOTES	248
[2]	Recover Damages for Non-Delivery or Repudiation	250
	<i>Chronister Oil Co. v. Unocal Refining and Marketing</i>	251
	NOTES	254
[D]	Reach the Goods Themselves	257
[1]	Recover Identified Goods on Seller's Insolvency	257
	<i>In Re CSY Yacht Corp.</i>	257
	NOTE	260
[2]	Obtain Specific Performance or Replevy the Goods	261

TABLE OF CONTENTS

	<i>Sedmak v. Charlie's Chevrolet, Inc.</i>	261
	NOTES	265
§ 7.05	BUYER'S REMEDIES WHERE GOODS FINALLY ACCEPTED	266
[A]	Buyer's Damages for Breach	267
	<i>Winchester v. McCulloch Brothers Garage, Inc.</i>	267
	NOTES	270
	<i>Hill v. BASF Wyandotte Corp.</i>	271
	NOTES	273
[B]	Deduction of Damages From Price	275
	PROBLEM 7.4	275
§ 7.06	BUYER'S INCIDENTAL AND CONSEQUENTIAL DAMAGES	276
	<i>Horizons, Inc. v. Avco Corp</i>	277
	NOTES	280
	<i>Irmscher Suppliers, Inc. v. Schuler</i>	281
	NOTES AND QUESTIONS	285
	PROBLEM 7.5	287
§ 7.07	REMEDIES APPLICABLE TO SELLERS AND BUYERS	288
[A]	Liquidated Damages	289
	<i>In Re Exemplar Manufacturing Company</i>	289
	NOTES	300
	PROBLEM 7.6	304
	<i>Lewin Chevrolet-Geo-Oldsmobile v. Bender</i>	305
[B]	Contractual Modification or Limitation of Remedy	306
	<i>Bishop Logging Co. v. John Deere Indus. Equip. Co.</i>	307
	NOTES AND QUESTIONS	312
[C]	Remedies for Fraud	315
	PROBLEM 7.7	315
[D]	Who Can Sue Third Parties for Injury to Goods?	316
	<i>International Harvester Credit Corp v. Valdez</i>	316
	NOTES	319
[E]	Statute of Limitations	320
	NOTES AND QUESTIONS	320
§ 7.08	PUNITIVE DAMAGES	324
Chapter 8	RIGHTS OF THIRD PARTIES: GOOD FAITH PURCHASE OF GOODS	325
§ 8.01	INTRODUCTION	325
	<i>Graham v. Notti</i>	326
	NOTE	328
	PROBLEM 8.1	328
§ 8.02	ENTRUSTING	329

TABLE OF CONTENTS

	PROBLEM 8.2	329
	PROBLEM 8.3	329
	<i>Thorn v. Adams</i>	330
	PROBLEM 8.4	332
	PROBLEM 8.5	333
	NOTES AND QUESTIONS	333
§ 8.03	VOIDABLE TITLE	334
	NOTES AND QUESTIONS	335
	<i>Empire Fire and Marine Ins. Co. v. Banc Auto, Inc.</i>	336
	NOTES AND QUESTIONS	339
§ 8.04	A NOTE ON BULK TRANSFERS	341
Chapter 9	LEASES OF GOODS	343
§ 9.01	INTRODUCTION	343
§ 9.02	WARRANTIES IN FINANCE LEASES	343
	<i>In Re O.P.M. Leasing Services</i>	343
	NOTES AND QUESTIONS	354
Chapter 10	THE DOCUMENTARY TRANSACTION: DOCUMENTS OF TITLE AND LETTERS OF CREDIT	357
§ 10.01	THE PROBLEM: EXCHANGE OF DOCUMENTS FOR PRICE	357
	NOTES	357
§ 10.02	THE DOCUMENTARY SALE	358
[A]	Introduction to Documents of Title	358
[B]	Bailee's Delivery Obligation	365
	NOTES	366
[C]	Documentary Sale: Payment Against Documents	367
	PROBLEM 10.1	369
	PROBLEM 10.2	370
[D]	Rights Acquired by "Due Negotiation"	371
	PROBLEM 10.3	371
	NOTES	371
[E]	Non-Receipt or Misdescription of Goods or Alteration of Document	372
§ 10.03	THE LETTER OF CREDIT	372
[A]	Introduction	372
[1]	Letter of Credit Defined	373
[2]	Applicable Law	373
[3]	Requirements	375
[B]	Overview of Letter of Credit Transaction	377
[C]	Rights and Obligations of Issuer	382
	<i>Voest-Alpine Trading Co. v. Bank of China</i>	384

TABLE OF CONTENTS

	NOTES AND QUESTIONS	391
[D]	Fraud in the Letter of Credit Transaction	391
	<i>United Bank, Ltd. v. Cambridge Sporting Goods Corp.</i>	392
	NOTES AND QUESTIONS	395
[E]	Commercial vs. Standby or Guaranty Letters of Credit	396
	PROBLEM 10.4	398
[F]	Secured Transactions/Bankruptcy	399
Chapter 11	NEGOTIABLE INSTRUMENTS: INTRODUCTION AND SCOPE, CONSEQUENCES OF NEGOTIABILITY	401
§ 11.01	INTRODUCTION AND SCOPE	401
§ 11.02	CONSEQUENCES OF NEGOTIABILITY	402
	<i>Hunt v. Nationscredit Financial Services Corp.</i>	403
	NOTES AND QUESTIONS	405
Chapter 12	OBTAINING RIGHTS GREATER THAN THOSE OF AN ASSIGNEE	407
§ 12.01	INTRODUCTION	407
§ 12.02	IDENTIFYING A NEGOTIABLE INSTRUMENT	407
[A]	Signed Writing	408
[B]	Payable to Bearer or to Order	408
	NOTES AND QUESTIONS	408
[C]	Unconditional Promise or Order	409
	<i>Telerecovery of Louisiana, Inc. v. Gaulon</i>	410
	PROBLEM 12.1	412
	NOTES AND QUESTIONS	413
[D]	Fixed Amount of Money	414
	PROBLEM 12.2	414
	PROBLEM 12.3	414
[E]	No Other Promise	415
	<i>Woodworth v. The Richmond Indiana Venture</i>	415
[F]	Payable On Demand or At a Definite Time	416
	<i>Smith v. Vaughn</i>	416
	NOTES AND QUESTIONS	418
	PROBLEM 12.4	418
§ 12.03	HOLDERS IN DUE COURSE	419
[A]	Introduction	419
[B]	Holder	419
[1]	Issuance, Transfer and Negotiation	419
	<i>In Re Sheskey</i>	420
	NOTE AND QUESTIONS	422

TABLE OF CONTENTS

	<i>In Re Kang Jin Hwang</i>	422
	NOTE	427
[2]	Special and Restrictive Indorsements	427
	<i>Town of Freeport v. Ring</i>	428
	NOTES AND QUESTIONS	432
[C]	An Instrument Complete and Regular On Its Face	433
	PROBLEM 12.5	433
[D]	In Due Course	434
[1]	For Value	434
	<i>Cadle Co. v. Ginsburg</i>	434
	NOTE AND QUESTIONS	436
	<i>Carter & Grimsley v. Omni Trading, Inc.</i>	436
	NOTES AND QUESTIONS	438
	PROBLEM 12.6	439
	PROBLEM 12.7	439
[2]	In Good Faith	440
	NOTE AND QUESTIONS	440
	<i>Maine Family Federal Credit Union v. Sun Life Assur. Co.</i> <i>of Canada</i>	440
	NOTES AND QUESTIONS	447
	<i>Any Kind Checks Cashied, Inc. v. Talcott</i>	448
[3]	Without Notice	454
	<i>Cadle Co. v. Ginsburg</i>	455
	NOTES AND QUESTIONS	456
§ 12.04	PAYEE AS HOLDER IN DUE COURSE	456
§ 12.05	SHELTER DOCTRINE	456
	<i>Triffin v. Cigna Ins. Co.</i>	456
§ 12.06	RIGHTS OF A HOLDER IN DUE COURSE	458
	<i>Cadle Co. v. Ginsburg</i>	459
	<i>First Nat. Bank of Odessa v. Fazzari</i>	460
	NOTES AND QUESTIONS	462
	PROBLEM 12.8	462
	PROBLEM 12.9	462
§ 12.07	THIRD PARTY CLAIMS AS DEFENSES	463
§ 12.08	CONSUMER PAPER	463
	NOTES AND QUESTIONS	464
Chapter 13		
	LIABILITY OF THE PARTIES	465
§ 13.01	INTRODUCTION	465
§ 13.02	SIGNATURES	465
[A]	Signatures by Representatives	465

TABLE OF CONTENTS

	<i>Triffin v. Ameripay, Llc</i>	465
	NOTE AND QUESTIONS	471
[B]	Unauthorized Signatures	472
	PROBLEM 13.1	472
	NOTES AND QUESTIONS	472
	PROBLEM 13.2	473
§ 13.03	LIABILITY OF MAKERS	473
§ 13.04	LIABILITY OF DRAWERS AND ACCEPTORS	473
[A]	Presentment and Dishonor	474
[B]	Acceptance	474
	PROBLEM 13.3	475
	PROBLEM 13.4	475
	NOTE	475
	PROBLEM 13.5	476
§ 13.05	LIABILITY OF INDORSERS	476
§ 13.06	LIABILITY OF TRANSFERORS	476
	<i>Talbert v. U.S. Bank, N.A.</i>	476
	NOTES AND QUESTIONS	480
	PROBLEM 13.6	480
§ 13.07	LIABILITY OF GUARANTORS AND ACCOMMODATION PARTIES	480
	<i>Belden v. Thorkildsen</i>	481
	NOTE	486
	PROBLEM 13.7	487
	PROBLEM 13.8	487
§ 13.08	DISCHARGE	487
[A]	Discharge by Payment	488
	QUESTIONS	488
[B]	Discharge for Delay	488
[C]	Cancellation and Renunciation	489
[D]	Accord and Satisfaction	489
	PROBLEM 13.9	489
	PROBLEM 13.10	490
	NOTES AND QUESTIONS	490
	<i>Holley v. Holley</i>	490
	NOTE AND QUESTIONS	497
§ 13.09	LIABILITY FOR CONVERSION	498
	PROBLEM 13.11	498
	PROBLEM 13.12	498
	PROBLEM 13.13	498
	NOTE AND QUESTIONS	499
§ 13.10	CASHIER'S AND TELLER'S CHECKS	499

TABLE OF CONTENTS

	<i>South Central Bank of Daviess County v. Lynville Nat. Bank</i>	499
	PROBLEM 13.14	503
§ 13.11	LOST, DESTROYED OR STOLEN INSTRUMENTS	503
	<i>Fales v. Norine</i>	503
	NOTES AND QUESTIONS	509
	<i>Fifth Third Bank v. Jones</i>	510
Chapter 14	BANKS AND THE CHECK COLLECTION PROCESS .	515
§ 14.01	THE BANK CUSTOMER RELATIONSHIP	515
[A]	Introduction	515
[1]	The Role of Banks	515
[2]	Checks and Check Collections	515
[B]	When A Bank May Charge Its Customer's Account	516
	PROBLEM 14.1	517
	NOTES AND QUESTIONS	517
[C]	Events Terminating the Bank's Authority to Pay	518
[1]	Stop Payment Orders	518
	<i>Seigel v. Merrill Lynch, Pierce, Fenner & Smith, Inc.</i>	519
	NOTES AND QUESTIONS	522
	PROBLEM 14.2	522
[2]	Stale Checks	522
[3]	Death or Incompetence of Customer	523
	QUESTION	524
[4]	Bankruptcy of Customer	524
[D]	Wrongful Dishonor	524
	<i>Maryott v. First Nat. Bank of Eden</i>	525
	NOTES AND QUESTIONS	533
	PROBLEM 14.3	534
[E]	Duties of the Customer to the Bank — Unauthorized Signatures and Alterations	534
	<i>Clean World Engineering, Ltd. v. Midamerica Bank, FSB</i>	536
	<i>Mercantile Bank of Arkansas v. Vowell</i>	539
	NOTES AND QUESTIONS	546
§ 14.02	THE BANK COLLECTION PROCESS	548
[A]	The Collection Process Described	548
[B]	Agency Status and Responsibility of Collecting Banks	552
[C]	Final Payment	553
	<i>U.S. Bank Nat. Ass'n v. Hma, L.C.</i>	556
	NOTES AND QUESTIONS	563
[D]	Warranties	564
[1]	Transfer Warranties	564

TABLE OF CONTENTS

[2]	Presentment Warranties	565
	<i>J. Walter Thompson, U.S.A., Inc. v. First BankAmericano</i>	566
	NOTES	573
	<i>Clean World Engineering, Ltd. v. MidAmerica Bank, FSB</i>	573
	NOTE AND QUESTIONS	575
[3]	Warranties on Remotely-Created Consumer Items	575
[4]	Encoding and Retention Warranties	575
	PROBLEM 14.4	575
	NOTE	576
	<i>France v. Ford Motor Credit Company</i>	576
	NOTE	579
[E]	Finality of Payment-Mistake and Restitution	579
	<i>First National Bank v. Colonial Bank</i>	580
	NOTE	585
Chapter 15 ELECTRONIC PAYMENTS		587
§ 15.01	INTRODUCTION	587
§ 15.02	CREDIT CARDS	587
[A]	The Mechanics	587
[B]	Unauthorized Use	588
	<i>DBI Architects, P.C. v. American Express Travel-Related</i> <i>Services, Co., Inc.</i>	589
	PROBLEM 15.1	595
	PROBLEM 15.2	595
	PROBLEM 15.3	596
[C]	Cardholder Defenses	596
	<i>Citibank (South Dakota) v. Mincks</i>	597
	PROBLEM 15.4	608
	PROBLEM 15.5	608
	PROBLEM 15.6	608
[D]	Billing Errors	608
§ 15.03	DEBIT CARDS	609
[A]	The Electronic Fund Transfers Act (EFTA)	609
[B]	The Mechanics	610
	[1] ATM Transactions	610
	[2] POS Transactions	610
[C]	EFTA Disclosure Requirements	611
[D]	Liability for Unauthorized Use	611
	<i>Rusthoven v. TCF National Bank</i>	612
	PROBLEM 15.7	615
	PROBLEM 15.8	615

TABLE OF CONTENTS

	PROBLEM 15.9	616
	NOTES AND QUESTIONS	616
§ 15.04	WIRE TRANSFERS — ARTICLE 4A	616
[A]	The Parties	619
[B]	The Funds Transfer	620
[C]	Scope	621
	<i>Sheerbonnet, Ltd. v. American Express Bank, Ltd.</i>	622
	NOTES AND QUESTIONS	632
[D]	Payment Order, Obligation, Process	633
	<i>Grain Traders, Inc. v. Citibank, N.A.</i>	633
	NOTE AND QUESTIONS	640
[E]	Acceptance, Rejection, Cancellation or Amendment	640
	<i>Aleo International, Ltd. v. Citibank, N.A.</i>	640
[F]	Mistaken or Erroneous Payments	642
	<i>In Re Calumet Farm, Inc.</i>	642
[G]	Liability for Failure to Effect a Funds Transfer	648
	PROBLEM 15.10	648
	<i>Impulse Trading, Inc. v. Norwest Bank Minnesota, N.A.</i>	649
[H]	Fraud in a Funds Transfer	654
	<i>General Electric Capital Corporation v. Central Bank</i>	654
[I]	Bank-Customer Agreement	660
	<i>ReAmerica, S.A. v. Wells Fargo Bank International</i>	660
§ 15.05	MISCELLANEOUS ELECTRONIC PAYMENT SYSTEMS	667
[A]	ACH Transactions	667
[B]	Electronic Check Conversion (E-Checks)	667
[C]	Stored Value Cards	668
[D]	Internet Payments	669
[E]	Mobile Payments	669

Chapter 16 AN INTRODUCTION TO SECURED TRANSACTIONS 671

§ 16.01	INTRODUCTION	671
[A]	Importance	671
[B]	General Use	671
[C]	History and Scope	672
[D]	Types of Collateral	674
[1]	Goods	674
[2]	Indispensable Paper	675
[3]	Intangibles	676
[4]	Proceeds	678
[E]	Types of Transactions	679

TABLE OF CONTENTS

[1]	Purchase Money Security Interests	679
	<i>In Re Short</i>	680
	<i>In Re Sanders</i>	682
[2]	Non-Purchase Money Security Interests	687
[F]	Settings for Secured Transactions Issues	687
[1]	General Setting (Non-Bankruptcy)	687
	<i>Peerless Packing Co., Inc. v. Mallone & Hyde, Inc.</i>	688
[2]	Bankruptcy Setting	691
	<i>In Re Lewis</i>	692
	QUESTION	694
§ 16.02	THE SECURITY AGREEMENT: CREATING A SECURITY INTEREST	694
[A]	General Form	694
[B]	Sufficiency of Writing	699
	<i>In Re Sabol</i>	700
[C]	Sufficiency of Security Agreement’s Collateral Description	704
	<i>In Re Lull</i>	704
[D]	Rights in Collateral	707
	<i>Trust Company Bank v. The Gloucester Corporation</i>	707
[E]	Possession of Collateral as a Security Agreement Alternative	710
§ 16.03	AFTER-ACQUIRED PROPERTY	710
	<i>In Re Gary Stevens</i>	711
§ 16.04	FUTURE ADVANCES	714
	<i>In Re Howard v. Whitesville Credit Union</i>	715
	<i>Pride Hyundai, Inc. v. Chrysler Financial Company, L.L.C.</i>	717
§ 16.05	SCOPE OF ARTICLE 9 WITH RESPECT TO SALES TRANSACTIONS	721
	<i>In Re Cripps</i>	722
	QUESTIONS	724
	<i>In Re Fort Dodge Roofing Co.</i>	724
§ 16.06	OTHER EXPANDED SCOPE COVERAGE	727
[A]	Agricultural Liens	727
	<i>In Re James</i>	727
	NOTE	729
[B]	Consignments	729
	QUESTIONS	730
	<i>In Re Georgetown Steel Co., LLC</i>	730
§ 16.07	TRANSACTIONS EXCLUDED FROM ARTICLE 9	734
	PROBLEMS	735
	<i>In Re JLL Liquidating, Inc.</i>	736
§ 16.08	LEASES OF GOODS	738
	<i>Carlson v. Giacchetti</i>	739

TABLE OF CONTENTS

	<i>Ford Motor Credit v. Racwell Construction, Inc.</i>	742
Chapter 17	PERFECTION	745
§ 17.01	INTRODUCTION	745
§ 17.02	METHODS OF PERFECTION	745
§ 17.03	PERFECTION BY FILING	747
[A]	Basic Filing Systems	747
	<i>In Re Curtis</i>	748
	NOTE	750
[B]	Contents of a Financing Statement	751
[C]	Debtor's Name	752
	<i>Corona Fruits & Vegies, Inc. v. Frozsun Foods, Inc.</i>	752
	NOTE	754
[D]	Debtor's Location	755
	<i>In Re Aura Systems, Inc.</i>	755
[E]	Indication of Collateral	757
§ 17.04	FILING ERRORS GENERALLY	757
§ 17.05	ERRORS IN THE INSTRUMENT	758
[A]	Generally	758
[B]	Name and Spelling Errors	759
	<i>In Re Jim Ross Tires, Inc.</i>	759
§ 17.06	IMPROPER PLACE	763
	<i>Yeadon Fabric Domes v. Maine Sports Complex, LLC</i>	763
§ 17.07	ERRORS BY THE FILING OFFICER	767
	<i>Peoples National Bank of Rockland County v. Weiner</i>	767
§ 17.08	ERRORS AS TO CLASSIFICATION	769
	<i>In Re Corey A. Lynch</i>	769
§ 17.09	CONTINUATION AND TERMINATION STATEMENTS, AND AMENDING THE FINANCING STATEMENT	771
§ 17.10	NOTATION ON THE CERTIFICATE OF TITLE	772
	<i>In Re Johnson</i>	772
	NOTE	774
	PROBLEM BASED UPON MCL § 257.216	775
	<i>In Re Hurst</i>	776
	NOTE	779
§ 17.11	AUTOMATIC PERFECTION — PERFECTION UPON ATTACHMENT	779
	<i>In Re Lockovich</i>	780
[A]	Assignments of Accounts and Payment Intangibles	784
	<i>In Re Lewis Irving Cohen</i>	784
[B]	Sales Transactions and Automatic Perfection	787

TABLE OF CONTENTS

	<i>In Re Commercial Money Center, Inc.</i>	788
§ 17.12	TEMPORARY AUTOMATIC PERFECTION	792
	<i>In Re Schwinn Cycling and Fitness, Inc.</i>	793
§ 17.13	PERFECTION BY POSSESSION	797
	<i>In Re Phillips-Camper</i>	798
	<i>In Re Coldwave Systems, LLC</i>	800
§ 17.14	CONTROL	805
	<i>Joseph Stephens & Company, Inc. v. Cikanek</i>	805
	PROBLEMS	809
 Chapter 18		
	PRIORITIES	811
§ 18.01	INTRODUCTION	811
§ 18.02	SECURED PARTY VERSUS LIEN CREDITOR INCLUDING THE TRUSTEE IN BANKRUPTCY	811
	<i>In Re Decora</i>	812
	NOTE	816
§ 18.03	FIRST IN TIME RULE	817
	PROBLEM	818
	<i>Interbusiness Bank, N.A v. First National Bank of Mifflintown</i>	818
§ 18.04	PURCHASE MONEY SECURITY INTERESTS	823
[A]	Generally	823
[B]	Non-Inventory	823
	<i>In Re Piknik Products Co., Inc.</i>	823
	NOTE	826
	<i>In Re Mcalmont</i>	826
[C]	Inventory	828
	<i>In Re Daniels</i>	829
	QUESTIONS	834
	<i>National City Bank v. Specialty Tires Of America, Inc.</i>	834
[D]	Fixtures	837
	<i>Maplewood Bank and Trust v. Sears, Roebuck and Co.</i>	839
	QUESTIONS	841
	NOTE	841
	<i>In Re Ryan</i>	842
	NOTE	844
	<i>Yeadon Fabric Domes, Inc. v. Maine Sports Complex, LLC</i>	844
[E]	Manufactured Homes	844
	<i>Bank America Housing Services v. P.D.N. & Associates, Inc.</i>	845
[F]	Simultaneous Purchase Money Security Interests	847
§ 18.05	ACCESSIONS	848
	<i>In Re Tacoma Aviation Ctr., Inc.</i>	849

TABLE OF CONTENTS

§ 18.06	LIENS ARISING BY OPERATION OF LAW	850
	<i>In Re Michael R. Borden</i>	850
§ 18.07	PURCHASERS OF COLLATERAL	853
[A]	Buyers of Goods	854
	<i>Snow Machines, Inc. v. South Slope Development Corporation</i>	854
	NOTE	856
	<i>Valley Bank and Trust Company v. Holyoke Community Federal</i> <i>Credit Union</i>	857
[B]	Entrusting Goods to a Merchant	860
	<i>In Re Aquamarine USA</i>	861
[C]	Buyers of Goods Covered by Certificates of Title	864
	<i>Metzger v. Americredit Financial Services, Inc.</i>	864
[D]	Buyers of Instruments, Documents, and Securities	868
	<i>In Re Webber</i>	868
[E]	Buyers of Chattel Paper	870
§ 18.08	PROCEEDS	871
	<i>In Re Springfield Casket Co., Inc.</i>	872
	<i>In Re S & J Holding Corp</i>	874
	NOTE	876
§ 18.09	COLLECTING A JUDGMENT WHEN ALL ASSETS ARE ENCUMBERED	876
	<i>Shedoudy v. Beverly Surgical Supply Co.</i>	876
Chapter 19	DEFAULT	881
§ 19.01	INTRODUCTION	881
§ 19.02	DEFAULT	881
	<i>In Re Elmer Eugene Rose</i>	882
§ 19.03	TAKING POSSESSION	885
	<i>Wade v. Ford Motor Credit Company</i>	886
	NOTE	892
	<i>Carlos Chapa v. Traciers & Associates</i>	892
§ 19.04	CONSTITUTIONAL CONSIDERATIONS	897
	<i>Marcus v. McCollum</i>	897
§ 19.05	THE SECURED PARTY'S CHOICES-RETENTION OR RESALE?	902
[A]	Generally	902
[B]	Notice Requirements	903
[1]	Retention of Collateral	903
	<i>In Re Coldwave Systems</i>	903
[2]	Notice of Disposition	903
	<i>Jason Coxall v. Clover Commercial Corp.</i>	904
[C]	Disposition: Commercially Reasonable Sale	910

TABLE OF CONTENTS

	<i>Whitney National Bank v. Air Ambulance by B & C Flight Management, Inc.</i>	910
[1]	Public or Private Proceeding?	915
	<i>Lister v. Lee-Swofford Investments, L.L.P.</i>	916
[2]	Secured Party as Buyer of Collateral	920
§ 19.06	DEBTOR’S REMEDIES	920
[A]	Generally	920
	<i>McDaniel v. 162 Columbia Heights Housing Corporations</i>	921
[B]	Denial of Deficiency Judgments	923
	<i>Missouri State Credit Union v. Wilson</i>	924
	<i>American General Financial Services, Inc. v. Woods-Witcher</i>	927
[C]	Debtor’s Right to Redeem	929
	<i>In Re Johnson</i>	930
	<i>Ford Motor Credit Company v. Welch</i>	931
Chapter 20	SECURITY INTERESTS IN BANKRUPTCY	935
§ 20.01	INTRODUCTION	935
	NOTES	936
§ 20.02	TRUSTEE AS SUCCESSOR TO DEBTOR	936
	<i>In Re Sabol</i>	937
§ 20.03	TRUSTEE’S AVOIDANCE POWER: AS FEDERAL COUNTERPART OF THE LIEN CREDITOR	937
	<i>In Re JLL Liquidating, Inc.</i>	938
	PROBLEM 20.1	938
	PROBLEM 20.2	938
	QUESTION	938
§ 20.04	TRUSTEE’S POWER TO AVOID PREFERENTIAL TRANSFERS	938
[A]	Introduction	938
[B]	Five Elements of a Voidable Preference	939
	PROBLEM 20.3	940
	PROBLEM 20.4	940
	PROBLEM 20.5	941
	PROBLEM 20.6	941
	NOTE	942
[C]	Nine Exceptions to Trustee’s Avoiding Power	942
	<i>Matter of Tolona Pizza Products Corp.</i>	943
	NOTES	946
[D]	The 547(c)(5) Exception to Trustee’s Avoiding Power: “The Floating Lien”	947
[1]	Background	947
[2]	“Floating Liens” Under Bankr. Code § 547	948

TABLE OF CONTENTS

PROBLEM 20.7 949
§ 20.05 TRUSTEE’S POWER TO AVOID FRAUDULENT TRANSFERS 949
NOTE 950

Table of Cases TC-1

Table of Statutes TS-1

Index I-1
