

Sales

Sales

Cases and Problems

Wayne K. Lewis

VISITING PROFESSOR OF LAW,
NEW ENGLAND LAW | BOSTON
PROFESSOR OF LAW EMERITUS,
DEPAUL UNIVERSITY COLLEGE OF LAW

Gary L. Monserud

PROFESSOR OF LAW,
NEW ENGLAND LAW | BOSTON



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Dedications

This book is dedicated to my dad, Marvin Lewis, who passed away in 2000. He was a non-lawyer Contract Administrator, negotiating contracts first for the Navy and then ITT Industries. I know he would have been proud of my work on this book and bet he would have read every word of it.

— Professor Wayne Lewis

This book is dedicated to my mother, Jean Ardyce Monserud, who passed away December 1, 2015. Mother was a hard-working farm wife, a school teacher for more than forty years, and my teacher for the most formative years of life. She'd be pleased that I could be a co-author of this book.

— Professor Gary Monserud

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Preface

Few authors would put forth a new coursebook without justifications. We, the authors, created this book on Sales to achieve three main purposes. First, we aim to enhance students' skills in interpreting and applying statutes. Second, we want to assist students in their preparations for bar examinations. Third, we believe that this book can help to prepare students for entry level law practice in commercial and consumer law. We will elaborate slightly on each purpose.

Statutory law is pervasive. Whatever field of practice a lawyer chooses, it will be virtually impossible to avoid statutory law, state and federal, often implemented through regulations. We believe that competence in the arts of interpreting and applying statutes to fresh fact patterns is fundamental to any practice of law. First year courses in law school often focus on the art of reading case law, a worthwhile pursuit. But, given the vastness of statutory law in our current environment, we believe that particular stress should be placed on interpreting and applying statutes whenever statute-based law is the core of a course. This book features placement of the statutory language required for the solution of problems near to the text of the problems, thereby inducing every student to study the statutory text, often with accompanying comments, in the process of problem solving. Additionally, the entire texts of Articles 1 and 2 of the Uniform Commercial Code (Nevada version) are contained in an appendix. Therefore, the student who methodically works through this book should certainly gain strength in the arts of interpreting and applying statutory law for solving problems.

As to preparation for bar examinations, it is no secret that the law of Sales is heavily tested on the multi-state bar examination as part of Contract law. Additionally, many essay questions in various jurisdictions trigger the applicability of Article 2 on Sales. While this book is not intended to displace the high intensity bar preparation courses often taken in the weeks immediately preceding the examinations, the foundation laid by thoughtfully working through this book should make any further preparations more readily comprehensible and efficient. Any student who seriously works through this book should gain confidence in his or her ability to master the law of Sales. While this book does not cover every concept and rule embodied in Article 2, we believe

that we have covered everything that is reasonably required for bar preparation, assuming a reasonably solid grounding in Contracts.

Entering law practice in a firm or as a solo practitioner or as corporate counsel can land any young practitioner in a thicket of issues from which the right path out might seem difficult or impossible to discern. Depending on the nature of the practice, any number of law school courses might prove valuable; however, some knowledge of the law of Sales will be helpful in a variety of practice areas. Anyone entering into civil litigation will likely encounter issues arising from a sale of goods. Anyone taking on tort cases may soon discover issues arising from sales of defective goods. A transactional lawyer will find that asset sales may involve sales of goods as well as interests in real estate and intangibles. Trillions of dollars are annually spent on consumer goods. Advising consumers on their rights, when goods do not meet expectations, takes a lawyer immediately into the law of Sales.

As is no doubt apparent from the foregoing paragraphs, a pedagogical assumption underlies this course book. The assumption is that classroom time should be mainly devoted to dialogue—led by the professor—focusing on the best way to solve any given problem based on the pertinent text. This book is not intended as a basis for a lecture course. Since the assumption underlying this book is the value of dialogue in the classroom, self-discipline on the part of the student in preparation for class is vital. We suggest that in addition to any margin notes, a student should keep a notebook with his or her proposed solution to each problem (problems often have multiple parts) and hopefully the student can complete or enhance these notes during or after class. Without serious engagement in the task of problem solving based upon the statutory text and comments, the book will not prove very helpful to learning the law of Sales. Caution: many problems have definite text-based answers; however, some have been written to be open-ended so that the best answer will be “probably” or “maybe” or “let the fact finder decide.” As in many facets of life, certainty in proposing a solution is not always justified. In such cases, the statute simply draws the student or lawyer to the precise issues that may require resolution in court.

Case reports have been included, but have been heavily edited. The cases chosen tend to flesh out the meaning of statutory language where it is vague or open-ended or to illustrate the application of a text to challenging facts. We do not encourage any student to by-pass or brush off the cases, but we think case discussion in class—with rare exception—should not include lengthy case analysis as in first year classes. In most instances, the edited opinions we have included have one or two main points that can be extracted. We suggest that notes on the key points made by the cases, rather than traditional full-blown case briefs, should be adequate.

As you begin your journey through this book, for ease of use, we call your attention to certain features. The TABLE OF CONTENTS is quite detailed. It will help you discern the path of the course and also help you to re-orient yourself if

you feel lost. You should notice that we have a chapter (Chapter 7) devoted to the Magnuson Moss Warranty Act, a federal law designed to specially help consumers. We have also included a chapter (Chapter 12) that provides an introduction to the Convention on Contracts for the International Sale of Goods. The INDEX near the end of this volume will help you find relevant pages on any given topic and can be valuable for review. As you work through each chapter, the word PROBLEM, which will always be capitalized and in bold print, should naturally draw your attention to the main task at hand. NOTES and QUESTIONS following both PROBLEMS and cases have been inserted to draw attention to main points upon which you should concentrate. QUICK EXPLANATIONS provide information on statutory provisions that will be discussed fully later in the course but are pertinent to the rules or concepts under discussion at the time. UNDERSTAND or REMEMBER are inserted where we have found confusion in our Sales courses, so we use these signals to point out assumptions or distinctions that might otherwise be lost.

We have also included a Table of Cases and, more importantly, a Table of Statutes. The latter will be of immense use to you if you have an open book exam. If you look up any statutory section you desire (the sections are in numerical order), you can find the page where the text of that section is located by looking at the page number in **boldface print** that immediately follows the section identification. The pages that appear *in italics* after the **boldface** page number show you the pages on which the primary focus is a discussion of the section. Any page numbers that follow indicate where the statutory section has otherwise been mentioned or discussed in another context.

In Appendix 3 we have included the entire texts of Articles 1 and 2. We have used the version currently adopted in Nevada for our appendix, largely because Nevada's legislature has chosen gender-neutral language that seems appropriate in our era. Understand that, apart from gender neutrality, the *contents* of both Articles—including the phraseology of the rules and concepts—are likely to be exactly the same as in your state's version of the Uniform Commercial Code. Where your state's legislature has adopted any significant non-uniform section, your professor will probably make you aware of it. We have constructed a chart that shows significant non-uniform modifications state by state and section by section. This chart can be found at http://caplaw.com/sites/lewis_monserud.

No book is a perfect teaching and learning tool, as we are well aware. If you encounter any particular problems, advise your professor. We will be happy to communicate about any perceived difficulties with this book. We invite any professor using this coursebook to contact us anytime. Contact information is in our Teacher's Manual. However, with combined teaching experience of over sixty years, and having each given the text two trial runs with our students, we are confident that this book can enable serious and careful students to achieve the purposes we have articulated.

We also have sought to add a little levity along the way in the hope that learning the law of Sales will be fun at some points, and perhaps even amusing (depending on your sense of humor and all too often your age). We wish any user well on what will probably be a challenging but worthwhile journey into the law governing Sales of Goods.

Wayne K. Lewis
New England Law | Boston

Gary L. Monserud
New England Law | Boston

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We need to acknowledge our debt to Douglas Whaley, Professor Emeritus at the Ohio State University Moritz College of Law. Professor Whaley was a pioneer in the use of the problem method for teaching statute-based commercial law courses. We both used his books in our classrooms for many years and have a great deal of respect for his work. This book builds upon the pedagogy he developed, but introduces some important student-friendly innovations, most significantly the inclusion of the statutory provisions in close proximity to the problems exploring the law; we believe these innovations enhance the teaching and learning experience.

This book could not have been done without the support and resources provided by the New England Law | Boston community. It starts at the top with our Dean John O'Brien and Associate Dean Judi Greenberg. This book was used and honed for two years in the classroom and was provided to students at no cost, or minimum cost, due to the generosity of the administration, which in austere economic times for all law schools, absorbed printing and binding costs. The faculty support staff, Pat Gresham and Janet Chavez, always provided the help we needed in a competent, gracious and friendly manner. Caroline Young, of the IT staff, guided two technically challenged older men through the mysteries and complexities (for us) of a shared drive and word processing issues. Her efforts were invaluable. The library staff, headed by Anne Acton, is always knowledgeable and professional and we especially wish to

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There were several New England Law students who served as research assistants. Maria Enciso (class of 2017) and Justin Rostoff (class of 2017) provided valuable research on case law. Margaret Pratt (class of 2017), Sophia Rossi (class of 2017) and Cynthia Hahne (class of 2016) did research for several chapters but also proof-read and edited major parts of the text and the Teachers' Manual. We are much indebted to all of them for their labors and valuable insights.

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