

Sales

Sales

Cases and Problems

SECOND EDITION

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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

The second edition is dedicated to our wives, Judy Lewis and Ann Jones, whose love, support, and patience were essential to its completion. In addition, it is dedicated to our grandchildren, Rachel and Jonathan and Jack Francis, who make us smile, keep us young, and give us hope for the future.

—Professors Wayne Lewis and Gary Monserud

Contents

Preface to the First Edition	xix
Preface to the Second Edition	xxiii
Acknowledgments	xxv
Chapter 1 • What Law Applies	3
Relevant Statutory Provisions to Be Covered in Chapter 1	5
Scope of Article 2	7
Defining “Goods” and “Transactions”	7
Problem 1-1	7
<i>Helvey v. Wabash County REMC</i>	9
<i>Singer Co., Link Simulation Sys. Div. v. Baltimore Gas & Electric Co.</i>	10
Notes	12
A Note About Leases	13
Transactions Involving Goods and Services	14
Does It Really Make Any Difference What Law Is Applied?	14
<i>Epstein v. Giannattasio</i>	15
<i>Newmark v. Gimbel’s Inc.</i>	17
Questions	20
How Do the Courts Determine What Law to Apply in a Hybrid Transaction Case?	20
The Predominant Purpose Test	20
Problem 1-2	20
The Gravamen Test	21
<i>Anthony Pools, a Div. of Anthony Indus. v. Sheehan</i>	21
Problem 1-3	27
Problem 1-4	28

Chapter 2 • Forming the Contract and Determining Its Terms	31
Merchants	31
Problem 2-1	33
Firm Offers	34
Problem 2-2	36
Offer and Acceptance	37
Problem 2-3	39
Problem 2-4	39
Problem 2-5	40
Acceptance Varying Offer—The End of the Mirror Image Rule	40
<i>Dorton v. Collins & Aikman</i>	46
Notes and Questions	53
Problem 2-6	53
Problem 2-7	54
How to Treat Different Terms	54
<i>Northrop Corp v. Litronic Industries</i>	55
Questions	59
Problem 2-8	60
Problem 2-9	60
The Gap Fillers	61
Modifications	61
Problem 2-10	64
The Parol Evidence Rule	64
Problem 2-11	68
<i>Columbia Nitrogen Corp v. Royster Co.</i>	70
Questions	73
Chapter 3 • The Statute of Frauds and Its Exceptions	75
The Basic Requirements of the Statute of Frauds	78
Problem 3-1	78
Question	79
Problem 3-2	80
A Note about Electronic Signatures	80
Statutory Exceptions	81
The Written Confirmation Exception, Often Referred to as the Between Merchants Exception	81
Questions	82
<i>Bazak Int'l Corp. v. Mast Indus., Inc.</i>	83
Questions (continued)	91
Problem 3-3	92

Other Statutory Exceptions—UCC 2-201(3)	93
Section 2-201(3)(a): The Specially Manufactured Goods Exception	93
Problem 3-4	93
Section 2-201(3)(b): The Admission Exception	94
Section 2-201(3)(c): The Payment or Performance Exception	95
Problem 3-5	96
Problem 3-6	96
Promissory Estoppel as an Exception	97
Problem 3-7	99
Note on the \$ 500 Amount	99
The Statute of Frauds and Modifications Under UCC § 2-209	99
Problem 3-8	100
Chapter 4 • Contract Terms: Warranties	103
Warranty of Title	103
Problem 4-1	106
Problem 4-2	107
Problem 4-3	107
Express Warranties	108
Affirmation of Fact or a Promise	108
The Fact-Opinion Dichotomy	110
Problem 4-4	110
Problem 4-5	110
<i>Felley v. Singleton</i>	111
The “Part of the Basis of the Bargain” Requirement	116
Problem 4-6	117
Problem 4-7	118
Post-Sale Representations	119
Problem 4-8	119
Operating Instructions	120
Question	121
Descriptions	121
Problem 4-9	122
Problem 4-10	123
Problem 4-11	123
Samples or Models	124
Problem 4-12	125
The Implied Warranty of Merchantability	126
Who Is a Merchant under § 2-314?	129
<i>Ferragamo v. Massachusetts Bay Transportation Authority</i>	129

Question	132
Problem 4-13	132
What Counts as a Breach under § 2-314?	133
Question	137
Cases Arising from Sales of Food and Drink	137
<i>Jackson v. Nestle-Beich, Inc.</i>	138
<i>Shaffer v. Victoria Station, Inc.</i>	141
Problem 4-14	143
Other Merchantability Issues	145
Is an Otherwise Effective Product Unmerchantable If It Causes Collateral Economic Damage or Physical Injury?	145
Problem 4-15	145
Is an Otherwise Effective Product Unmerchantable Because of Aesthetic Concerns?	146
Problem 4-16	146
Is an Otherwise Effective Product Unmerchantable Due to a Design Feature That May Cause Safety Risks?	146
Problem 4-17	146
Is a Product That Causes an Allergic Reaction in a Limited Number of Persons Unmerchantable?	147
Problem 4-18	147
Note Concerning Allergic Reaction Cases	148
The Implied Warranty of Fitness for Particular Purpose	149
Comparing the Implied Warranty Provisions	151
The Nature of the Warranty	151
<i>Crysko Oilfield Servs., Inc. v. Hutchison-Hayes Int'l, Inc.</i>	151
Problem 4-19	154
Who Can Make the Warranty	155
Problem 4-20	155
Comparing the Implied Warranty of Fitness for Particular Purpose and Express Warranties	155
Problem 4-21	155
 Chapter 5 • Disclaimers and Limitations of Remedies	 157
Disclaiming Express Warranties	157
<i>Wenner v. Gulf Oil Corporation</i>	158
Questions	160
<i>U.S. Fibres, Inc. v. Proctor & Schwartz, Inc.</i>	161
Questions	162

Problem 5-1	163
Disclaimers and the Parol Evidence Rule	163
Problem 5-2	164
Disclaiming Implied Warranties	165
Specific Requirements § 2-316(2)	166
Content	166
Form	166
Problem 5-3	166
<i>Hartman v. Jensen's Inc.</i>	167
Effect of Actual Knowledge of Disclaimer Where Conspicuousness Requirement Is Not Met	168
Effect of Disclaimers Made after the Sale Is Completed (Post-Sale Disclaimers)	169
Question	169
Other Ways to Disclaim Implied Warranties—§ 2-316(3)	169
“As Is” or Other Similar Language	170
Problem 5-4	170
Problem 5-5	170
<i>Lumber Mutual Ins. Co. v. Clarklift of Detroit, Inc.</i>	171
Questions	174
Buyer’s Inspection of the Goods	174
Problem 5-6	175
Course of Dealing, Course of Performance, Usage of Trade	177
<i>U.S. Aprons, Inc. v. R-Five, Inc.</i>	177
Final Note Before Leaving Disclaimers of Implied Warranties	180
Limiting Available Remedies	180
Problem 5-7	183
Problem 5-8	184
Question	185
Excluding Consequential Damages	185
Problem 5-9	187
Problem 5-10	187
Problem 5-11	188
Problem 5-12	188
Problem 5-13	189
Reading the Provisions of § 2-719 Together—An Interesting Issue	190
<i>Pierce v. Catalina Yachts, Inc.</i>	190
Questions	194
Problem 5-14	195

Chapter 6 • Privity, Notice, Statute of Limitations, and the Emergence of Strict Tort Liability	197
Privity	197
Vertical Privity	197
Problem 6-1	198
Horizontal Privity	199
Problem 6-2	200
Notice	201
Notice as a Condition Precedent	202
Who Must Give Notice Under § 2-607(3)(a)?	203
The Buyer	203
Third Party Beneficiaries of Warranties	204
To Whom Must Notice Be Given?	205
<i>Ace American Ins. Co v. Fountain Powerboats, Inc.</i>	205
Question	207
Timeliness	208
<i>Hebron v. American Isuzu Motors, Inc.</i>	208
<i>Maybank v. S.S. Kresge Co.</i>	211
Question	214
Problem 6-3	214
Form of Notice	215
Question	216
Sufficiency of the Notice	216
<i>Peavey Electronics Corp. v. Baan U.S.A., Inc.</i>	216
<i>Delano Growers' Co-op. Winery v. Supreme Wine Co., Inc.</i>	220
Problem 6-4	223
Statute of Limitations	224
Problem 6-5	225
Problem 6-6	226
Problem 6-7	226
Warranties That Explicitly Extend to Future Performance	227
When Does the Exception in § 2-725(2) Apply?	227
<i>Selzer v. Brunsell Bros., Ltd.</i>	227
Problem 6-8	230
How Does It Work?	231
Problem 6-9	231
Warranties Explicitly Extending to Future Performance v.	
Promises to Repair	232
<i>Joswick v. Chesapeake Mobile Homes, Inc.</i>	232

Problem 6-10	237
A Note on Statutes of Limitations Mitigating Doctrines	237
The Emergence of Strict Tort Liability	241
<i>Suvada v. White Motor Company</i>	241
The Differences between Strict Tort Liability and Warranties	248
An Update on Privity	248
Damages: The Economic Loss Rule	248
A Research Outline	250
Comparison Chart	251
Chapter 7 • The Magnuson-Moss Warranty Act	253
Scope	254
“Consumer Product”	254
Problem 7-1	256
“Consumer”	256
Problem 7-2	256
“Warrantor”	257
“Written Warranty”	258
Problem 7-3	259
Problem 7-4	260
Disclosure Requirements	261
Must Designate Full or Limited	261
Federal Standards for a Full Warranty	261
Problem 7-5	263
Problem 7-6	264
Other Required Disclosures	264
Problem 7-7	265
Disclaimers of Implied Warranties Prohibited	265
Problem 7-8	267
Problem 7-9	268
The Cause of Action under the Act	268
<i>Troutman v. Pierce, Inc.</i>	270
Chapter 8 • Delivery Obligations and Risk of Loss	273
Problem 8-1	275
Risk of Loss	276
Where There Is No Breach	276
Problem 8-2	278
Extra Credit	279

Goods to Be Shipped	279
Problem 8-3	280
Problem 8-4	281
Problem 8-5	282
Where There Is a Breach	283
Problem 8-6	284
Problem 8-7	285
Problem 8-8	286
Question	286
Chapter 9 • Performance Obligations	287
The Obligation of Perfect Tender and Buyer's Right to Reject	288
<i>Moulton Cavity & Mold, Inc. v. Lyn-Flex Indus., Inc.</i>	290
Problem 9-1	293
Problem 9-2	294
Making a Rightful Rejection	298
Timeliness and Form of Notification	298
Question	299
<i>Miron v. Yonkers Raceway, Inc. & Saul Finkelstein</i>	299
Problem 9-3	302
Problem 9-4	304
The Seller's Right to Cure	305
Problem 9-5	306
<i>Wilson v. Scampoli</i>	306
Question	308
Problem 9-6	309
Obligations of Care and Disposition of Rejected Goods	310
Problem 9-7	311
Problem 9-8	312
Problem 9-9	312
Buyer's Acceptance and Its Consequences	313
Problem 9-10	315
Problem 9-11	315
Question	316
Problem 9-12	316
Buyer's Right to Revocation of Acceptance	318
<i>Robert J. Fortin v. Ox-Bow Marina, Inc.</i>	319
Problem 9-13	325
The Law Pertaining to Installment Sales	328

Problem 9-14	330
Problem 9-15	333
Insecurity, Requests for Assurance, and Repudiation	334
Problem 9-16	336
Problem 9-17	337
<hr/>	
REMEDIES	
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Chapter 10 • Seller's Remedies	341
Seller's Remedies Generally	341
Action for the Price	342
Problem 10-1	343
Problem 10-2	344
Problem 10-3	344
Problem 10-4	345
Problem 10-5	345
Resale and Market Price/Contract Price Differential	346
<i>Sprague v. Sumitomo Forestry Co.</i>	349
<i>Cole v. Melvin</i>	354
Problem 10-6	356
Problem 10-7	357
Problem 10-8	357
Problem 10-9	357
Damages for Lost Volume Sellers and Unfinished Goods	358
Problem 10-10	359
Problem 10-11	361
Problem 10-12	362
Seller's Remedies on Buyer's Insolvency	364
Problem 10-13	366
Problem 10-14	366
Problem 10-15	367
Chapter 11 • Buyer's Remedies	369
Specific Performance and Replevin	371
Problem 11-1	372
Problem 11-2	373
Cover and Market Price/Contract Price Differential	374
<i>Dangerfield v. Markel</i>	376
Problem 11-3	381

Problem 11-4	382
Problem 11-5	382
<i>TexPar Energy, Inc. v. Murphy Oil U.S.A., Inc.</i>	383
Problem 11-6	386
Problem 11-7	386
Problem 11-8	387
Buyer's Claims for Direct Damages When an Accepted Tender Is Non-Conforming	389
Buyer's Claims for Incidental and Consequential Damages	391
Problem 11-9	392
Problem 11-10	393
Problem 11-11	393
Problem 11-12	393
Liquidated Damage Clauses and the Breaching Buyer's Restitution Rights	394
<i>Neri v. Retail Marine Corp.</i>	395
Problem 11-13	397
Problem 11-14	398
Problem 11-15	398
The Rejecting/Revoking Buyer's Security Interest in Goods in His or Her Possession	399
Problem 11-16	400
Problem 11-17	400
 Chapter 12 • An Introduction to the United Nations Convention on Contracts for the International Sale of Goods	 403
Scope	405
Problem 12-1	407
Formation/The Terms of the Contract/Enforceability	408
Problem 12-2	409
The Parol Evidence Rule	411
Rules on Delivery/Risk of Loss or Damage	412
Problem 12-3	414
Seller's Performance Obligations	415
Breach/Avoidance/Restitution	417
Problem 12-4	419
Seller's Remedies/Buyer's Remedies	420
Problem 12-5	422
Problem 12-6	424

Appendix 1 • The Gapfillers	427
Appendix 2 • Magnuson-Moss Warranty Act and Regulations	431
<i>Magnuson-Moss Warranty Act</i>	431
<i>Federal Trade Commission Rules,</i> <i>Regulations, Statements, and Interpretations</i> <i>Under the Magnuson-Moss Warranty Act</i>	445
Appendix 3 • Nevada Revised Statutes Chapter 104, Uniform Commercial Code—Original Articles	471
Table of Statutory Materials and Related Authorities	525
Table of Cases	531
Index	539

Preface to the First Edition

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 prepara-

tions 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.

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March 2017

Preface to the Second Edition

The first edition of this coursebook was published in 2017. At that time, we justified our launch of a new coursebook on Sales of Goods by pointing to our three major purposes: (1) to enhance students' skills in interpreting and applying statutes, (2) to assist students in their preparations for bar examinations, and (3) to help prepare students for entry level practice in commercial and consumer law. In launching a second edition, we aim to serve the same purposes. We hold fast to the conviction that these purposes can best be served by focusing on solving problems in the classroom or online when online teaching is required by circumstances or allowed for convenience.

A student or professor might then reasonably ask: What justifies a second edition? The Official Text of Article 2 has not been changed in the intervening years. The Magnuson Moss Warranty Act covered in Chapter 7 has not been amended, nor has the text of the Convention on Contracts for the International Sale of Goods covered in Chapter 12 been altered. So far as we can discern, there have been no startling case law developments that have impacted the interpretation and application of UCC Article 2 or the other bodies of law covered in our coursebook. Moreover, feedback from users has been extremely positive.

The genesis of this second edition is our own experience in using the book in the classroom and for online teaching during the pandemic. In a few instances, the length of a PROBLEM proved to be an impediment to a reasonably paced dialogue on problem solving. With careful adjustments, we were able to shorten those PROBLEMS without losing anything essential. We deleted some cases and problems that we thought were unnecessary or unhelpful and substituted specific explanations containing discussions of the caselaw. In Chapter 11 on Buyer's Remedies, two PROBLEMS were rewritten for the sake of greater clarity. Given our impression that students and professors have appreciated a little levity injected into the PROBLEMS by cultural references, we have added new references where practical and have had

fun in doing so. By such references we certainly have not intended to diminish the seriousness of the issues raised.

A careful reader will note that a key feature of this coursebook is the placement of statutory quotations in the book near to the PROBLEMS that require reference to the statutes. The reader should note that we have used the Article 2 (and Article 1) statutes as adopted by Nevada with the permission of the Legislative Counsel Bureau of the State of Nevada. Where we have quoted these statutes throughout the book, we have sought to retain as much as practical the exact text of the statutes, including the use of numbers without parenthesis (used in the Official Text) to designate subsections. However, during our *textual discussions* of various sections, we have retained the (subsection) form used in the Official Text. We hope that does not prove to be confusing. Where we have quoted Official Code Comments, we have made them gender neutral by bracketed insertions of appropriate words and phrases.

We have also made some stylistic changes in this Second Edition. Whereas, previously the word PROBLEM was always capitalized and in bold print, it will now appear with only the initial letter capitalized, but still in bold print (**Problem**). QUICK EXPLANATIONS, UNDERSTAND and REMEMBER features, always in capital letters and bold print in the first edition, will in the second edition, be in bold italics with only the initial letters capitalized (*Quick Explanation, Understand, Remember*). NOTES will continue to be all capitalized letters and in bold and Questions will be in bold italics and underlined (*Questions*). For new users of this coursebook, please see the explanation of these and other features of the book in the preface to the first edition, above.

We know these are challenging times for professors and students. We hope and believe that this second edition of our coursebook can be of use to make your journeys through the law of Sales interesting, fruitful, and even enjoyable.

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Also, at Carolina Academic Press, we would like to thank Tim Colton, who was responsible for creating the design format for this work. We think it looks great, and that is largely due to Tim's skills and the experience he brought to this endeavor. In addition to his creative insights, we have a deep appreciation for his patience. We understand that Tim is working towards retirement and feel very fortunate to have had the opportunity to have worked with him. We wish him the best as he enters a world where he will no longer have to cope with members of academia.

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 thank Brian Flaherty for his fine work with the tables of cases and statutes. We especially want to thank those students who took the Sales classes we offered and were the guinea pigs who tried out our materials. They provided comments and suggestions, and their warm reception and praise for our work were extremely encouraging. The first class to use the book was also exceedingly patient. While they received the first three chapters in one package in a timely manner, the remaining chapters were handed out one at a time in various stages of readiness and typically hot off the copy machines. We had to constantly remind them that at least the price was right (free!). We would be remiss to fail to mention the ill-prepared pre-book class that convinced one of us that the inclusion of statutory materials in the book that was sure to be brought to class would provide an enhanced learning experience.

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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Addendum: Second Edition

Our gratitude continues to extend to those previously listed in the Acknowledgments section because the second edition would not have been possible without their contributions to the first. In addition, however, from Carolina Press we would like to add the name of Jennifer Hill. She is responsible for any new design and format changes that grace this second edition. Her technical expertise, creativity, and cooperative spirit were very much appreciated. The New England Law | Boston library,

now headed by Kristin McCarthy, continued to be supportive, and we would like to specially thank Beth Armstrong, who patiently shepherded us through the complexities and confusion of currently acceptable forms for citations.

Finally, we would like to add the names of Professor David Friedman (Willamette) and Professor David Levine (Elon). The “two Daves,” as we fondly call them, adopted our first edition for their courses and were enthusiastic supporters of our efforts. They often relayed their appreciation of our approach to the subject matter and reported the positive reactions of their students. We reached out to them when we determined to do a revision and they were very generous with their time and insights. They recommended that we not change very much at all, but at our request, they did make some valid and valuable suggestions. We greatly appreciate their continuing support.

