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# Sales

## *A Context and Practice Casebook*

SECOND EDITION

**Edith R. Warkentine**

PROFESSOR EMERITA,  
WESTERN STATE UNIVERSITY COLLEGE OF LAW



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# Series Editor's Preface

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Welcome to a new type of casebook. Designed by leading experts in law school teaching and learning, Context and Practice casebooks assist law professors and their students to work together to learn, minimize stress, and prepare for the rigors and joys of practicing law. **Student learning and preparation for law practice are the guiding ethics of these books.**

Why would we depart from the tried and true? Why have we abandoned the legal education model by which we were trained? Because legal education can and must improve.

In Spring 2007, the Carnegie Foundation published *Educating Lawyers: Preparation for the Practice of Law* and the Clinical Legal Education Association published *Best Practices for Legal Education*. Both works reflect in-depth efforts to assess the effectiveness of modern legal education, and both conclude that legal education, as presently practiced, falls quite short of what it can and should be. Both works criticize law professors' rigid adherence to a single teaching technique, the inadequacies of law school assessment mechanisms, and the dearth of law school instruction aimed at teaching law practice skills and inculcating professional values. Finally, the authors of both books express concern that legal education may be harming law students. Recent studies show that law students, in comparison to all other graduate students, have the highest levels of depression, anxiety and substance abuse.

**The problems with traditional law school instruction begin with the textbooks law teachers use.** Law professors cannot implement *Educating Lawyers* and *Best Practices* using texts designed for the traditional model of legal education. Moreover, even though our understanding of how people learn has grown exponentially in the past 100 years, no law school text to date even purports to have been designed with educational research in mind.

The Context and Practice Series is an effort to offer a genuine alternative. Grounded in learning theory and instructional design and written with *Educating Lawyers* and *Best Practices* in mind, Context and Practice casebooks make it easy for law professors to change.

I welcome reactions, criticisms, and suggestions; my e-mail address is mhschwartz@ualr.edu. Knowing the author(s) of these books, I know they, too, would appreciate your input; we share a common commitment to student learning. In fact, students, if your professor cares enough about your learning to have adopted this book, I bet s/he would welcome your input, too!

Michael Hunter Schwartz, Series Designer and Editor  
Consultant, Institute for Law Teaching and Learning  
Dean and Professor of Law, William H. Bowen School of Law,  
University of Arkansas at Little Rock



# Preface

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This student-centered book draws on a wide variety of teaching materials that I developed over a twenty-year teaching career. I am indebted to generations of law students who challenged me to find effective ways to introduce difficult and often obtuse material. My two primary objectives are:

- To help law students further develop analytical skills, with a particular emphasis on statutory interpretation; and
- To provide students with an opportunity to master the substantive law of Article 2 of the Uniform Commercial Code.

## Book Organization and Coverage

This book begins with a quick overview of the entire UCC. Because statutory analysis is at the core of the course, the book then discusses how to read and apply a statute. Thereafter, Sales doctrine is introduced in the order that students should follow when analyzing a sales problem. The material on contract formation is found in Chapter 4, but more advanced formation issues are reserved for special treatment at the end of the book. Your professor may wish to address all of that material at the same time. After all of the doctrinal material has been covered, the final book chapter presents a series of comprehensive problems that will help students to review and “put it all together.”

After two important introductory chapters, each chapter follows the same organizational approach. Beginning in Chapter 3, each chapter begins with a Sales Graphic Organizer, depicting the overall coverage of Article 2, followed by a Chapter Problem. The organizer is highlighted to identify the subject studied in that chapter, and to help you remember where that subject fits in the “big picture.” The Chapter Problem provides the context within which you can understand the material to be covered in that chapter. Next, a table summarizes the code sections to be studied in that chapter, and highlights key phrases, terms or concepts whose definitions must be learned. Each chapter includes descriptive text, one or two cases or excerpts from cases, and several smaller exercises that draw on the material studied in that chapter and require students to select and apply the applicable code sections to solve the problems. At the end of the chapter is a list of additional resources, including ALR annotations, law review articles, and cases.

Professor Douglas Whaley, a renowned professor and himself the author of seven textbooks on contracts and commercial law, suggested that when writing a textbook, the author follow this basic guideline: “Give the students enough understanding that they know the basics and can avoid malpractice by looking up the subtleties when they arise later in life. If you teach too many details, the students end up overloaded and top-heavy,

so that the basics elude them.”<sup>1</sup> I have followed that guideline in this book; as a result, not every section of Article 2 is discussed, nor is there an exercise or problem illustrating all of the legal issues raised in Article 2. However, the book teaches you all of the tools you will need successfully to attack an Article 2 problem.

## How to Use This Book

This book is **deceptively** short. The “star” of the book is the text of the Uniform Commercial Code, and its Official Comments. You must purchase and use a complete version of the text of the Code and the Comments. You will need to spend a significant amount of time reading the statute and the official comments. For emphasis, I have included excerpts of text and Comments in the book.<sup>2</sup>

The book does include cases, but only a limited number of cases, and the cases have not been heavily edited. I have, however, omitted many footnotes. When footnotes are included, I have placed them in brackets [ ] within the text. The purpose of including cases in this format is to prepare you to read cases as lawyers read cases—unedited—and to prepare you to use the cases as lawyers use cases—to solve problems.

To get the most out of this book, read the Chapter Problem as you begin each new chapter. You will not be prepared to analyze the problem fully until you have completed the entire chapter, but reviewing the Chapter Problem initially will help to provide context for the material you will be studying. Next, read each of the code sections indicated in the table of code sections for that chapter, along with the Official Comments. Read difficult sections *aloud*. Deconstruct each section. **Do not skip this step!** Students who have been successful in my Sales classes all emphasize that they spent a lot of time reading the statute and the Official Comments. In addition, be sure that you have your Code open and that you refer to it frequently, as you read the text that explains each code section.

After you complete the assigned reading, including the Code and the Official Comments, you are ready to read and prepare your answers to the chapter exercises. I purposely do not indicate what code sections you will have to consult to work through the exercises—learning how to find the appropriate code sections is an essential part of what this course is about. In class, be prepared to discuss how you selected the applicable code sections, and how you applied them to reach a conclusion. Work on the shorter exercises first. When you think you have mastered the material in the chapter, return to the Chapter Problem and try to **write** out a complete analysis.

The book uses visual aids extensively, to help students picture how the individual code sections fit together to reach a conclusion. It has been my experience that students who do not customarily use visual aids such as those contained in this book find them to be extremely helpful. Students who customarily prepare their own flowcharts continue to prepare their own material, but they tell me that they nevertheless use the figures in the

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1. Douglas J. Whaley, Commentary: Teaching Law: Thoughts on Retirement, 68 OHIO ST. L.J. 1387, 1400 (2007).

2. Uniform Commercial Code, copyright by The American Law Institute and the National Conference of Commissioners on Uniform State Laws. Reproduced with the permission of the Permanent Editorial Board for the Uniform Commercial Code. All rights reserved.

book to help them refine their own work. **All students should always keep in mind that the original sources, the statute and the Official Comments, are the primary authority on which they should rely for analysis.** Everything else can be used, if helpful, but never to the exclusion of the statute itself.

Finally, I have included “Additional Resources” at the end of each chapter, for the students who always come up after class and request some additional reading. If you are not one of those students, you can easily be successful in this course without ever consulting any of the cited material.



# Preface to Second Edition

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The second edition of this book retains the general approach and organization of the text. In response to some requests for more cases, I have incorporated additional cases, particularly in the earlier chapters of the book, until case-oriented students have been “weaned” from heavy reliance on cases. As in the original text, I selected cases that do a particularly good job of explaining or applying doctrine, or illustrate a representative set of facts to provide context for the legal concepts being studied. In addition to incorporating more cases within the text, I have added some citations to recent cases in the “Additional Resources” section of each chapter. As always, I encourage students to look at the many resources available to practicing attorneys. For example, WestlawNext offers a “Practice” section that incorporates good illustrations of sales of goods contracts, and case citations for many of the topics covered in this course.





# Acknowledgments

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My goal was to produce a very student-friendly book that would help students learn how to do statutory analysis while learning the law of Sales under UCC Article 2. If I have succeeded, it is only because of the support and encouragement of all of these folks. Any defects and flaws that remain in the book are my own.

I lost my dad in January 2011, just as I began the task of finalizing the next version of this book for publication. He was to have helped me on this project as well. With a heavy heart, I am completing it in his honor.

Edith R. Warkentine  
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