

SALES AND SECURED TRANSACTIONS

**FALL 2012**

# Professor Robert D’Agostino

FIRST ASSIGNMENT

Since this is a Code course, one major objective is for students to understand how to “navigate” between and among Code sections. A second major objective, particularly with reference to the study of Article 9, is the mastering of the legal jargon.

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| Week One |  | Warkentine, xvii-xix, Chapters 1 and 2. Everyone is required to brief BMC Industries, Inc. v. Barth Industries, 160 F.3d 1322 (11th Cit. 1998), cert. den. 526 U.S. 1132 (1999), a very important case in this circuit. Focus questions: What is the “morality of the market place” under Articles 1 and 2? Hint: consider the definition of “good faith.”Is “honesty in fact” a sufficiently broad moral standard? How is that standard applied? Why should there be a different standard of good faith (i) between a merchant and a non-merchant and (ii) “between merchants?” (It is important to understand and apply the three basic conceptions of a merchant under its definition). What are “reasonable commercial expectations,” and where does one find them adequately identified?If the scope of Article 2 is “transactions in goods,” we obviously need to have a fairly precise definition of “goods.” If one looks further to the classifications of “goods” in Article 9, important typological distinctions are drawn between inventory, consumer goods, farm products, and equipment. Are there any goods under Article 2 that are not covered by the classifications of goods in Article 9? Do we need in the Article 2 definition of goods to refer to the unborn young of animals and growing crops” if we import farm products within the Article 2 definition. And why would one refer in parentheses to “specially manufactured goods” in defining “goods? What is the point of this parenthetical? And what is the purpose of defining goods, in part, based upon the “movability of goods at the time of identification?” This reference to goods “at the time of identification” is our first illustration that in order to understand the meaning of a particular provision, one often has to read and integrate other provisions. Where do you find a provision defining “identification” of goods? In every day English we frequently draw the distinction between “goods and services.” Those tend in our minds to be two different things or phenomena. But if a supply contract covers both goods and services, and Article 2 limits its scope to transactions in goods, there are going to be a huge number of ordinary business transactions that will not provide rules for interpreting these contracts or for enforcing defaults if the service part of the contract is excluded from Article 2 and we are left to common law or other state law to determine the disputes relating to the services component of the contract or agreement. So it should not be surprising that, assuming there is a clear distinction between the goods and services components of the contract or agreement, the courts have struggled with so-called “hybrid contracts” and have sought to encompass the services components when they are alleged incidental to the contract or agreement. It is usually the case that the issue of scope is really a proxy for the real dispute over which statute of limitations applies, whether the implied warranty of merchantability or the implied warranty of fitness for use applies, and whether the remedies for buyer or seller under Article 2 apply. This course will emphasize the very careful reading of the facts in each edited opinion and in each problem, for often the doctrines are wholly dependent upon a precise statement and understanding of the facts. Students tend to be obsessed about learning the black letter rules of law, but those rules are far more open-ended than bright-line tests allow, and it is the totality of the facts and circumstances that increasingly courts rely upon in order to drive their selection of the relevant rules of law and their application to the facts as they have reconstructed them.   |