



**SALES AND SECURED TRANSACTIONS  
Spring 2015  
PROFESSOR ROBERT D'AGOSTINO**

**Syllabus and Assignments  
Classes: Monday and Wednesday**

***Office hours:***

Monday: 3:00 pm to 5:30 pm  
Tuesday: 2:00 pm to 4:00 pm  
Wednesday: 2:00 pm to 6:00 pm  
Thursday: 2:00 pm to 3:00 pm  
Friday: By Appointment

**REQUIRED TEXTS:**

Edith R. Warkentine, Sales: A Context and Practice Casebook, Carolina Academic Press  
2011 (ISBN: 978-1-59460-950-3).

Robert J. D'Agostino, Problems and Materials on Secured Transactions, Carolina Academic  
Press 2013 (ISBN: 978-1-61163-363-362-7)

Students will need a copy of Articles 1, 2, and 9 of the Uniform Commercial Code. Any Commercial Law Statutory Supplement (2005 or newer). Georgia has not enacted the revised official text of Articles 1 and 2; Georgia enacted the 1972 Official Text of Articles 1 and 2 of the UCC. Georgia did enact the 1991 Revised Official text of Article 9 and the 2012 amendments thereto. Georgia also enacted some non-uniform amendments to the official texts to reflect local or agricultural interests.

There has been much recent research that excessive use of technology is affecting the ability of people to focus and analyze information. In fact, there is evidence that in certain individuals, brain wiring is changing as a result of the constant flow of information from technology sources with the result that students are easily distracted and have problems remembering and processing information. Fortunately, the brain is more plastic than previously thought and the deleterious effects of this new "addiction" to constant random stimulation can be reversed. A study of some law school classes showed that students who used computers or other forms of technology while in class were distracted an average of every 10 minutes. Some students were unable to recall a discussion entered into at the beginning of class by the end of class, hence

COMPUTERS ARE BANNED AS WELL AS ALL OTHER TECHNOLOGY IN THIS CLASS AND THAT INCLUDES I PADS AND CELL PHONES. USE OF ANY TECHNOLOGICAL DEVICE WILL BE PRIMA FACIE EVIDENCE THAT YOUR BRAIN IS ABSENT MEANING YOU WILL BE MARKED ABSENT EVEN IF YOU ARE PHYSICALLY PRESENT. YOU WILL BE ABLE TO REBUT THIS PRESUMPTION ONLY BY MAKING AN APPOINTMENT WITH ME WHEREIN I WILL GIVE YOU AN ORAL EXAMINATION BASED ON THE CLASS.

You must bring the casebook and your statutory supplement to each class.

**RECOMMENDED TEXTS:**

White & Summers, Principles of Sales Law (Thomas Reuters, 2009) (ISBN: 978-0-314-90802-5). This work is a modified and much reduced version of the relevant parts of the 5<sup>th</sup> Edition of J. White and R. Summers, The Uniform Commercial Code, Volume 1. Our library also has the four or five volumes of the formal treatise, but that full blown treatise presents a far denser treatment of the subject than you will have to know for this class, although if you have to prepare a memorandum of law when you are in practice, this is the authoritative reference work.

Burnham, The Glannon Guide to Sales (Aspen Publishers/Wolters Kluwer, 2009) (ISBN 978-0-7355-7358-1). This is a surprisingly good speaking outline on Articles 2 and 2A, with a heavy emphasis on multiple choice questions with short explanations for why three of the four answers are either “false” or not as on point as the “true” answer.

Brook, Sales and Leases: Examples and Explanations, (Aspen Publishers/Wolters Kluwer, 3d ed. 2003) (ISBN: 0-7355-2721-0).

Lawrence, Henning, and Freyermuth, Understanding Secured Transactions (Matthew Bender & Co. /LexisNexis, 2d ed. 2008) (ISBN: 978-1442241750-8).

Markell and Zinnecker, Questions and Answers: Secured Transactions (Matthew Bender & Co. /LexisNexis, 2003) (ISBN: 0-82055666-1). This is a sound exercise book, with multiple choice exercises and extended comments explaining which are the false or less satisfactory answers and which are the correct or more satisfactory answers; it also includes short answer questions. (To date there is no Q and A exercise book for sales.)

Brook, Secured Transactions: Examples and Explanations, (Aspen Publishers/Wolters Kluwer, 3d ed. 2003) (ISBN: 9780735567979).

**COURSE POLICIES**

**LAP TOPS:**

**NO RECORDING OF CLASS SESSIONS WITHOUT PERMISSION.**

**GRADING:**

The final examination grade will be the course grade except students may earn a plus based on assigned problems and class participation. Problems in both the Sales and the Secured Transactions Casebooks MAY be assigned for class presentation. In addition, FOCUS NOTES will be circulated prior to each class.

Their function will be explained during the first class session. Failure to turn in your Focus Notes at the end of each part of the course (Sales and then Secured Transactions) will result in a grade reduction.

## ASSIGNMENTS

**Please note very well that this schedule of assignments is subject to modification, and that the modifications control over the provisional syllabus. Any modification will be posted to the TWEN site on a timely basis.**

This course involves an examination of Articles 2, Sale of Goods, and 9, Secured Transactions of the UCC. This is a survey course with multiple objectives. It is a Code course meaning that it is a comprehensive treatment an area of law that is pre-emptive of conflicting common law rules and particularly with regard to Article 9 develops new approaches to the use of personal property as security for a financial obligation. In order to analyze a factual situation or answer a question, students initially must apply the appropriate code sections; hence, the ability to navigate the Code is important. Upon completion of the course you should be able to:

1. Demonstrate a basic understanding of Articles 2 and 9 of the UCC.
2. Distinguish the common law contract rules from the rules governing Article 2.
3. When given a hypothetical sales transaction, accurately identify the risks and obligations created as well as the remedies for breach.
4. When given a hypothetical secured transaction, identify the documents necessary to create a security interest and to establish a secure party's rights against competing claimants to collateral (the personal property used to secure payment of the monetary obligation).
5. Master the jargon of commercial transactions so that fellow attorneys and the court can understand the issues being addressed.
6. Deal successfully with the assigned case book questions and those additional questions from the instructor.

### Week One

Warkentine, xvii-xix, Chapters 1 and 2. Everyone is required to brief *BMC Industries, Inc. v. Barth Industries*, 160 F.3d 1322 (11<sup>th</sup> Cir. 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.

Week Two	Warkentine, Chapters 3, 4 and 5. How does contract formation under Article 2 differ from contract formation under the common law? What is “good faith?”
Week Three	Warkentine, Chapter 6. May contract and tort remedies both apply? Do those remedies have any similarities? How important are the pleadings?
Week Four	Warkentine, Chapters 7 and 8. When is the use of a “gap filler” appropriate? What about the basis of the bargain?
Week Five	Warkentine, Chapters 9 and 10.
Week Six	Warkentine, Chapters 11 and 12.
Week Seven	Warkentine, Chapters 13 and 14. We will discuss problem 14-7 in class. Students wishing to attempt to earn a positive grade adjustment should turn in answer to any two problems from 14-1 through 14-6. You are encouraged to work with co-counsel and turn in your jointly completed answers. Active learning is important in law school.
Week Eight	Introduction to Secured Transactions. Students need to distinguish from among personal property, real property, and fixtures. In common parlance the word “lien” refers to the interest of a party asserting, whether pursuant to contract or otherwise by operation of law, an interest in a debtor’s or alleged debtor’s property. UCC Article 9 limits the definition of lien to an involuntary transfer of such interest. Security interest is defined as arising from a voluntary transfer of an interest in a party’s property (the debtor) to another party (the secured party) as collateral for a financial obligation. D’Agostino, Chapters 1 and 2.
Week Nine	D’Agostino, Chapter 3
Weeks Ten and Eleven	D’Agostino, Chapter 4, A through H. Perfection of a security interest deals the right of a secured party to assert his property interest against third parties who claim a competing interest in a debtor’s property. Perfection must be distinguished from Attachment.
Week Twelve	D’Agostino, Chapter 4, I to end
Weeks Thirteen and Fourteen	D’Agostino, Chapter 5, Review and issues related to bankruptcy.