

Volume 5-2020 Revision Highlights

Major Substantive Additions

- Updated text to take into account statutory modifications relevant to:
 - U.C.C. § 2A-517
 - U.C.C. § 2A-518
 - U.C.C. § 2A-519
 - U.C.C. § 2A-527
 - U.C.C. § 2A-528
- Commentary and reorganization addressing the withdrawal of the 2003 Amendments to Article 2A.

Notable Case Law Updates

- In light of the fact that the actual harm to the plaintiff exceeded the amount of damages as calculated by the liquidated damages provision, a liquidated damages provision was reasonable and enforceable in light of the then-anticipated harm caused by the default. *VFS Leasing Co. v. S.T.I., Inc.*, 80 U.C.C. Rep. Serv. 2d 358 (N.D. Ala. 2013).
- A rescission claim failed because the lessee continued to use the equipment after discovering the alleged misrepresentations. *CIT Finance LLC v. Treon, Aguirre, Newman & Norris PA*, 91 U.C.C. Rep. Serv. 2d 106 (D. Ariz. 2016) (applying Arizona law).
- A cause of action for breach of warranty was time-barred when the plaintiff filed the action less than four years after it accrued, but the contract had validly limited the statute of limitations to one year. *Infectious Disease Solutions, P.C. v. Synamed, LLC*, 2012 WL 1106847 (E.D. N.Y. 2012) (applying New York law).
- An ice cream manufacturer was entitled to rescission of an equipment lease and damages due to a financing company's fraud. *House of Flavors, Inc. v. TFG-Michigan, L.P.*, 719 F. Supp. 2d 100, 72 U.C.C. Rep. Serv. 2d 212 (D. Me. 2010) (applying Utah law).
- A lessee's promises under a lease became irrevocable because the lessee accepted the goods under the terms of the lease. *Leaf Financial Corp. v. ACS Services, Inc.*, 71 U.C.C. Rep. Serv. 2d 698 (Del. Super. Ct. 2010) (applying Delaware law).

- A lessee was permitted to maintain a common law claim for rescission based on the lessor's misrepresentations while simultaneously seeking damages for breach of contract. CIT Finance LLC v. Treon, Aguirre, Newman & Norris PA, 91 U.C.C. Rep. Serv. 2d 106 (D. Ariz. 2016) (applying Arizona law).

Volume 2-2020 Revision Highlights

Major Substantive Additions

- Additional commentary evaluating the interplay of certificate-of-title statutes, such as the Federal Aviation Act, and Article 2. *See* § 2-101:36, *et seq.*
- Analysis and commentary addressing the ability to opt into or out of the United Nations Convention on Contracts for the International Sale of Goods. *See* § 2-102:21, *et seq.*
- Additional commentary identifying the use of parol evidence to demonstrate the existence or nonexistence of a contract. *See* § 2-202:116, *et seq.*

Notable Case Law Updates

- Article 2 governed a yacht purchase and the subsequent deficiency action even though the purchase was financed by an agreement with a credit corporation and included the grant of a purchase-money security interest. *Complete Credit Solutions, Inc. v. Cianciolo*, 79 U.C.C. Rep. Serv. 2d 66 (D. Mass. 2012) (applying Massachusetts law).
- While the court acknowledged that there are situations in which one can be a seller without actually having and transferring title, Amazon was not one of them, even with regard to products that it stored and shipped. *Milo & Gabby LLC v. Amazon.com, Inc.*, 693 Fed. Appx. 879, 92 U.C.C. Rep. Serv. 2d 895 (Fed. Cir. 2017), *cert. denied*, 138 S. Ct. 335, 199 L. Ed. 2d 214 (2017) (applying federal law).
- In one case the electronic commerce and cloud computing company, Amazon.com, did not qualify as a merchant or seller by providing a “platform” for the sale of batteries. *McDonald v. LG Electronics USA, Inc.*, 219 F. Supp. 3d 533, Prod. Liab. Rep. (CCH) P 19950, 91 U.C.C. Rep. Serv. 2d 146 (D. Md. 2016) (applying Maryland law).
- A trademark license is not a good. Intellectual property is intangible and therefore not movable. *Cases Eureka Water Co. v. Nestle Waters North America, Inc.*, 690 F.3d 1139, 78 U.C.C. Rep. Serv. 2d 363 (10th Cir. 2012) (applying Oklahoma law).
- Although the precise quantity need not be stated, there still must be a writing to enforce a requirements contract for the sale of goods. *Auburn Sales, Inc. v. Cypros Trading & Shipping, Inc.*, 898 F.3d 710, 96 U.C.C. Rep. Serv. 2d 586 (6th Cir. 2018) (applying Michigan law).

- In a repudiation case the Seventh Circuit, after first observing that the reasonableness of buyer's insecurity and the adequacy of a seller's assurances are "very fact-specific" and "very context-specific" inquiries, concluded that the buyer's allegations did not fail as a matter of law. *BRC Rubber & Plastics, Incorporated v. Continental Carbon Company*, 900 F.3d 529, 96 U.C.C. Rep. Serv. 2d 614 (7th Cir. 2018) (applying Indiana law).

Volume 2A-2021 Revision Highlights

Major Substantive Additions

- Commentary addressing the application of course of performance for purposes of resolving ambiguity and, in some instances, creating new terms. *See* § 2-208:37, *et seq.*
- Additional analysis and commentary addressing the interplay of U.C.C. § 2-210 and Revised Article 9. *See* § 2-210:4, *et seq.*
- Additional commentary addressing the impact of Federal Trade Commission Rule 433 on waiver-of-defense clauses. *See* § 2-210:119, *et seq.*
- Additional analysis and commentary addressing the “Perfect Tender” rule under U.C.C. § 2-301. *See* § 2-301:130, *et seq.*
- Analysis addressing the application of U.C.C. § 2-310 to electronic documents of title. *See* § 2-310:14.

Notable Case Law Updates

- In a suit by a metals broker against a buyer with whom it contracted to resell scrap metal, buyer argued it was not in breach because the parties had modified their original contract by agreeing to a reduced price per gross ton. *W. Silver Recycling, Inc. v. ProTrade Steel Company, Ltd.*, 99 U.C.C. Rep. Serv. 2d 932 (M.D. Tenn. 2019) (applying Ohio and Tennessee law).
- In one case involving a contract dispute between buyer and seller of sweet potato fries, the jury concluded after a second trial that the contract was an enforceable requirements contract and that buyer breached the contract when it reduced or terminated its orders. *Bright Harvest Sweet Potato Company, Inc. v. H.J. Heinz Company, L.P.*, 760 Fed. Appx. 537, 97 U.C.C. Rep. Serv. 2d 1009 (9th Cir. 2019) (applying Idaho law).
- In one case the electronic commerce and cloud computing company, Amazon.com, did not qualify as a merchant or seller by providing a “platform” for the sale of batteries. *McDonald v. LG Electronics USA, Inc.*, 219 F. Supp. 3d 533, Prod. Liab. Rep. (CCH) P 19950, 91 U.C.C. Rep. Serv. 2d 146 (D. Md. 2016) (applying Maryland law).
- Disclaimers contained in bills of sale and auction brochures were not sufficiently specific to disclaim implied warranties

of title, as no reference was actually made to such particular warranties in the disclaimer. *Ulbrich v. Groth*, 310 Conn. 375, 78 A.3d 76, 82 U.C.C. Rep. Serv. 2d 77 (2013) (applying Connecticut law).

- Notwithstanding the fact that the purchase price can be used as evidence of the automobile's value as warranted, buyer's failure to present any evidence whatsoever of how the alleged title problems affected the value of the automobile meant that there was no basis for determining diminution in value damages. *McCoolidge v. Oyvetsky*, 292 Neb. 955, 874 N.W.2d 892, 89 U.C.C. Rep. Serv. 2d 67 (2016) (applying Nebraska law).

Volume 7B—2021 Revision Highlights

New features and recent developments in this 2021 revised volume 7B of Lawrence’s Anderson on the Uniform Commercial Code, Third Edition include:

Major Substantive Additions

- Additional analysis and commentary addressing the definitions of “good faith,” “record,” and “sign.” See § 7-102:10, *et seq.*
- Additional commentary addressing the interplay of E-Sign and UETA and Revised Article 7. See § 7-103:6 [Rev].
- Additional analysis and commentary addressing the requirement of a writing under Revised Article 7. See § 7-202:3 [Rev].
- Additional analysis addressing the liability for freight charges under Revised Article 7. See § 7-504:10 [Rev].

Major Case Law Updates

- Sale of more than half of seller’s inventory was in the ordinary course of business and, thus, did not qualify as a bulk sale. *In re Black Diamond Min. Co., LLC*, 2011 WL 6202905 (Bankr. E.D. Ky. 2011), *aff’d in part, rev’d in part*, 78 U.C.C. Rep. Serv. 2d 674 (E.D. Ky. 2012) (applying federal law).
- Because the plaintiff did not expressly consent to the terms and conditions of the warehouse receipt, genuine issues of material fact existed with regard to the plaintiff’s receipt of and assent to the limitations of liability. *Turfgrass Group, Inc. v. Georgia Cold Storage Co.*, 346 Ga. App. 659, 816 S.E.2d 716, 96 U.C.C. Rep. Serv. 2d 148 (2018) (applying Georgia law).
- Defendant Easom Peanut Company did not have a warehouse lien on Plaintiff Farm Credit of Northwest Florida, ACA because Defendant did not present evidence of warehouse receipts. *Farm Credit of Northwest Florida, ACA v. Easom Peanut Co.*, 312 Ga. App. 374, 377, 718 S.E.2d 590 (2011), *cert. denied*, (Mar. 19, 2012) (applying Georgia law).
- One court was satisfied that if given the opportunity, the Illinois Supreme Court would not require assent in accordance with traditional contract principles, but would hold

that the mere receipt of a warehouse receipt is enforceable, provided the recipient has notice of the provision and the opportunity to request an increases liability limitation. *Fujifilm North America Corporation v. D/C Export & Domestic Packing, Inc.*, 339 F. Supp. 3d 790, 96 U.C.C. Rep. Serv. 2d 861 (N.D. Ill. 2018) (applying Illinois law).

- Prior to enforcing its carrier's lien, the shipping company was required under U.C.C. § 7-308 [Rev] to notify its customer of the time and place of the proposed sale. *OEC Freight (NY) v. KT Superwin Corp.*, 84 U.C.C. Rep. Serv. 2d 292 (S.D. N.Y. 2014) (applying New York law).

Volume 12—2022 Revision Highlights

New features and recent developments in this 2022 revised volume 12 of Lawrence’s Anderson on the Uniform Commercial Code, Third Edition include:

Major Substantive Additions

- Significant substantive adjustments throughout text to account for the 2002 amendment of UCITA.
- Commentary and analysis addressing the purpose and adoption of UCITA by specific jurisdictions. *See* § 101:1UC, *et seq.*
- Additional commentary addressing the requirement of a writing or signature for electronic transactions under UCITA. *See* § 104:6UC.
- Additional analysis and commentary addressing the ability of a licensee to disclaim or modify its hold harmless obligation to the licensor. *See* § 401:7UC.
- Additional commentary discussing the regulatory process related to implementation of E-SIGN. *See* § 105:4ES.

Major Case Law Updates

- Without any evidence that sender intended to sign the email, no electronic signature could be found where sender did not type his name at end of email as he customarily did. *In re Rhee*, 481 B.R. 880 (Bankr. S.D. Tex. 2012).
- Court, relying on UETA, held that where a qualifying contribution to a judicial campaign is made in the form of an electronic payment, an electronic receipt containing a unique transaction identifier is a sufficient signature under state law. *Benjamin v. Walker*, 237 W. Va. 181, 786 S.E.2d 200 (2016).
- Language that not all errors could be corrected was not voided through contradiction by an express warranty to correct documented program errors because the two provisions could operate simultaneously without contradicting each other. *Baney Corp. v. Agilysys NV, LLC*, 773 F. Supp. 2d 593 (D. Md. 2011).
- A question of fact arises as to whether a user is bound by a browse wrap license where the license provides that the user is deemed to have accepted the license by visiting the web site. *Pollstar v. Gigmania, Ltd.*, 170 F. Supp. 2d 974, 45 U.C.C. Rep. Serv. 2d 46 (E.D. Cal. 2000).

- Although licensee asserted that licensor's post-contract promise of a refund was not an oral modification of the software license and services agreement, but rather a separate, oral contract, such an oral modification was precluded by the non-oral modification clause found in the software license and services agreement. *ePresence, Inc. v. Evolve Software, Inc.*, 190 F. Supp. 2d 159, 47 U.C.C. Rep. Serv. 2d 132 (D. Mass. 2002).

Volume 3A—2023 Revision Highlights

New features and recent developments in this 2023 revised volume 3A of Lawrence’s Anderson on the Uniform Commercial Code, Third Edition include:

Notable Case Law Updates

- Where a contract included 18 single-space pages of buyer’s specifications and confirmed the buyer’s ultimate responsibility for the design of the compressors, the Fifth Circuit relied on Official Comment 9 to U.C.C. § 9-316 to hold that the warranty for a particular purpose did not arise. *Baker Hughes Process and Pipeline Services, L.L.C. v. UE Compression, L.L.C.*, 938 F.3d 661, 100 U.C.C. Rep. Serv. 2d 57 (5th Cir. 2019) (applying Texas law).
- Buyers of a hair product were permitted to bring suit for breach of express warranty because the product’s labelling was inconsistent with how a reasonable person would expect the product to perform and the statements made by the manufacturer formed the basis of the bargain. *Naiser v. Unilever U.S., Inc.*, 975 F. Supp. 2d 727, 81 U.C.C. Rep. Serv. 2d 864 (W.D. Ky. 2013).
- Because a complaint failed to mention the words “auction” or “bid,” one court raised the possibility that seller’s request for offers did not even constitute an auction. *Restaurant Supply, LLC v. Giardi Limited Partnership*, 330 Conn. 642, 200 A.3d 182, 97 U.C.C. Rep. Serv. 2d 1144 (2019) (applying Connecticut law).
- Contract language attempting to control how title passed did not prevent title from passing where the buyer had possession of the goods. *In re Panthera Enterprises, LLC*, 622 B.R. 201, 103 U.C.C. Rep. Serv. 2d 300 (Bankr. N.D. W. Va. 2020) (applying Virginia law).
- Where a seller engaged in fraudulent “puffing” to inflate the price of a horse at auction, one court held that the seller’s conduct justified the equitable remedy of rescission. *In re Rose*, 100 U.C.C. Rep. Serv. 2d 243 (Bankr. E.D. Tex. 2019) (applying Texas law).
- The Second Circuit affirmed a trial court’s rejection of a claim based on application of the “entruster provision,” which precluded a claim based on the plaintiff’s friend’s sale of a painting to an art gallery due to the lack of “red flags” in the transaction. *The Galin v. Hamada*, 283 F.

Supp. 3d 189, 93 U.C.C. Rep. Serv. 2d 1087 (S.D. N.Y. 2017),
aff'd, 753 Fed. Appx. 3, 96 U.C.C. Rep. Serv. 2d 1179 (2d
Cir. 2018) (applying New York law).

- The defense of impracticability was not applicable to operator's refusal to accept the corn, based on the threat of flooding, as there was a commercially viable alternate site for delivery, which the operator refused. *Hansen-Mueller Co. v. Gau*, 838 N.W.2d 138, 81 U.C.C. Rep. Serv. 2d 466 (Iowa Ct. App. 2013) (applying Iowa law).
- A New Mexico court denied buyers' motion for summary judgment because a genuine issue of material fact existed over whether the parties had agreed to modify the default rule that risk of loss passes from a merchant seller to the buyer only upon receipt of the goods. *Philmar Dairy, LLC v. Armstrong Farms*, 97 U.C.C. Rep. Serv. 2d 1033 (D.N.M. 2019) (applying New Mexico law).
- Where buyer rightfully rejected shipment of goods, the risk of loss remained with the seller until the defect was cured. *3L Communications L.L.C. v. Merola*, 81 U.C.C. Rep. Serv. 2d 661 (Tenn. Ct. App. 2013).
- The court rejected the buyer's argument that he and the other members of the putative class were intended third-party beneficiaries of BMW's implied warranties because the buyer did not allege specific provisions in the contracts between BMW and its dealers that would evidence such intent. *Catalano v. BMW of North America, LLC*, 167 F. Supp. 3d 540, 89 U.C.C. Rep. Serv. 2d 8 (S.D. N.Y. 2016) (applying New York law).
- The Sixth Circuit affirmed the district court's dismissal of the express warranty claim on the basis that plaintiff was not in privity with the manufacturer. *Montgomery v. Kraft Foods Global, Inc.*, 822 F.3d 304, 94 Fed. R. Serv. 3d 1123, 89 U.C.C. Rep. Serv. 2d 809 (6th Cir. 2016) (applying Michigan law).