## **Table of Contents**

## CHAPTER 1. INTRODUCTION

- § 1:1 Early times
- § 1:2 Early England, 14th to 16th centuries
- § 1:3 Middle years, 17th to 18th centuries
- § 1:4 Statute of Frauds
- § 1:5 The Uniform Commercial Code
- § 1:6 2001 and 2003 Amendments to Article 2 of the Uniform Commercial Code guide to reference within this work

## CHAPTER 2. BACKGROUND AND GENERAL PRINCIPLES OF SALES LAW UNDER UNIFORM COMMERCIAL CODE

- § 2:1 Sales as distinguished from contracts of agency
- § 2:2 —Sales as distinguished from consignments
- § 2:3 Sales as distinguished from bailments
- § 2:4 Sales as distinguished from leases
- § 2:5 Food served in restaurants distinguished from a
- § 2:6 Sale as distinguished from exchange or trade
- § 2:7 Sales as distinguished from services
- § 2:8 Sale as distinguished from a mortgage

## CHAPTER 3. GENERAL PRINCIPLES GOVERNING SALES TRANSACTION

- § 3:1 Initial checklist of likely issues
- § 3:2 Purpose and general means of application of the Code
- § 3:3 Applicability of the Code and other applicable laws
- § 3:4 Application of the Code—New provisions on scope of Revised Article 1
- § 3:5 Parties' ability to vary effect of the Code
- § 3:6 Waiving or renouncing claim or right after breach
- § 3:7 General definitions and principles of interpretation
- § 3:8 —Agreement and contract
- § 3:9 —Good faith

# **CHAPTER 4. CAPACITY OF PARTIES**

# I. INTRODUCTION

8	4:1	General	14
Q	4.1	. Generai	I١

§ 4:2 Parties of limited capacity to contract

#### II. INFANTS

§ 4:3	Age of majority
§ 4:4	Contracts voidable and not void
§ 4:5	—Voidable as valid until avoided
§ 4:6	Power of avoidance personal
§ 4:7	Validity of transfer to subsequent purchaser in good faith
§ 4:8	Disaffirmance—Manner of exercising power
§ 4:9	—When power may be exercised
§ 4:10	—Partial disaffirmance
§ 4:11	—Other consequences of disaffirmance
§ 4:12	Restoration of consideration
§ 4:13	—Injustice of not requiring restoration of consideration
§ 4:14	Ratification
§ 4:15	—Implied or partial ratification
§ 4:16	
§ 4:17	_
§ 4:18	—What are not necessaries
§ 4:19	-Money advanced for purchase of necessaries
§ 4:20	· -
§ 4:21	False representations—Age
§ 4:22	—Other false representations

# III. MENTALLY ILL OR INCOMPETENT PERSONS

§ 4:23 Agency to bind parents

§ 4:24	Early law
§ 4:25	Theory that transactions are void
§ 4:26	Theory that transactions are voidable
§ 4:27	—Voidable against bona fide purchaser
§ 4:28	Ratification and disaffirmance
§ 4:29	When contract cannot be avoided—Restoration of consideration
§ 4:30	Necessaries
§ 4:31	What constitutes mental illness or insanity

§ 4:32 Bargains made during guardianship

#### IV. INTOXICATED OR ADDICTED PERSONS

- § 4:33 When intoxication or addiction incapacitates
- § 4:34 Bargains voidable
- § 4:35 Ratification and disaffirmance
- § 4:36 Bona fide purchasers
- § 4:37 Necessaries
- § 4:38 Fraud or overreaching

#### V. CORPORATIONS, CONVICTS, SPENDTHRIFTS, AGED PERSONS AND NATIVE AMERICANS

- § 4:39 Corporations
- § 4:40 Convicts; Spendthrifts; Aged persons; Native Americans

# CHAPTER 5. TRANSACTIONS IN GOODS WITHIN THE SCOPE OF ARTICLE 2

- § 5:1 Introduction to the scope of Article 2: transactions in goods
- § 5:2 Contract and agreement
- § 5:3 Sale and contract for sale
- § 5:4 Buyer-seller relationship
- § 5:5 Consideration
- § 5:6 Title
- § 5:7 Scope of Article 2
- § 5:8 The generality of goods—Pre-Code law
- § 5:9 —Uniform Commercial Code
- § 5:10 —Fructus naturales, fructus industriales, and fixtures
- § 5:11 ——Under the Uniform Commercial Code
- § 5:12 Sales of a part interest
- § 5:13 Lots and commercial units
- § 5:14 Conforming goods and conduct
- § 5:15 Cancellation and termination—Historical perspective
- § 5:16 —Under the Code
- § 5:17 New references to electronic communications under Post-2003 Amended Article 2

# CHAPTER 6. TRANSACTIONS NOT WITHIN ARTICLE 2; TRANSACTIONS SUBJECT TO OUTSIDE LAW

§ 6:1 Introduction

§	6:2	Money
§	6:3	Investment securities
§	6:4	Things in action
§	6:5	Realty
-	6:6	Transactions subject to other laws; Pre- and Post- 2003 Amended Article 2
Ş	6:7	Security transactions—Generally
§	6:8	—Leases as security interests
-	6:9	Additional exclusions under Post-2003 Amended Article 2
(	CHA	PTER 7. CONTRACT OF SALE
	7:1	Generally
-	7:2	Formation in general; intention to form a contract
_	7:3	Intention to form a contract—Historical
3	1.0	development—Mutual promises as consideration
8	7:4	——Statute of Frauds
-	7:5	—Mutual assent
-	7:6	—Conduct establishing an agreement
-	7:7	Formation through electronic means under Post-
2	•••	2003 Amended Article 2
Ş	7:8	Intention to form a contract—Time of making
Ü		contract
§	7:9	—Omission or indefiniteness of contract terms
§	7:10	Offer and acceptance—Introduction
§	7:11	—Non-Code law
§	7:12	—Offers and ambiguous offers; manners of
		acceptance
§	7:13	—Unilateral contract ploy; acceptance by
		shipment
§	7:14	—Lapse of offer
§	7:15	—Acceptance through written record
§	7:16	—Contract formation and conflicts of law
§	7:17	Firm offer
§	7:18	—Option contracts
§	7:19	——Consideration requirement
§	7:20	——Promissory estoppel
§	7:21	—Requirements of U.C.C. § 2-205
Ş	7:22	— Offer made by merchant
_	7:23	——Express statement that offer will remain
Ü		open
Ş	7:24	——Evidenced by writing
	7:25	
-	7:26	9 1
-	7:27	—Impact of U.C.C. § 2-205
o	· · •	1 0 =

#### Table of Contents

§ 7:28	Effect of non-mirroring offer and acceptance under Non-Code and Pre-2003 Amended Article 2—Introduction
§ 7:29	—Non-Code law—Conditional acceptance
§ 7:30	——Battle of the forms
§ 7:31	—Pre-2003 Amended U.C.C. § 2-207
§ 7:32	——"Seasonable expression of acceptance"
§ 7:33	——"Written confirmation"
§ 7:34	——"Expressly made conditional"
§ 7:35	—Pre-2003 Amended U.C.C § 2-207—Introduction
	to treatment of "additional" and "different"
	terms; possible variance in treatment
§ 7:36	—Pre-2003 Amended U.C.C. § 2-207—Acceptance
	expressly limited to terms of offer
§ 7:37	——"Materially alter"
§ 7:38	——Notice of objection
§ 7:39	——Conduct recognizing the existence of a
	contract
§ 7:40	——Summary
8 7.41	Post-2003 Amended II C.C. & 2-207—Terms of

# CHAPTER 8. CONTRACT OF SALE—THE SEAL

- § 8:1 Seals inoperative
- § 8:2 What constitutes a seal
- § 8:3 The effect of a seal
- § 8:4 Alternatives to the seal

# CHAPTER 9. CONTRACT OF SALE—INDEFINITENESS OF TERMS

§ 9:1 Generally—Uniform Commercial Code § 2-204 § 9:2 Open price term—Introduction

Contract; Effect of Confirmation

- § 9:3 —Non-Code law
- § 9:4 —Uniform Commercial Code § 2-305
- § 9:5 Open delivery terms—Non-Code law
- § 9:6 —Time
- § 9:7 —Place
- § 9:8 —F.O.B. and F.A.S. terms
- § 9:9 —Manner
- § 9:10 —Uniform Commercial Code—Time (U.C.C. § 2-309)
- § 9:11 ——Place (U.C.C. § 2-308)
- § 9:12 F.O.B. and F.A.S. Terms (Pre-2003 Amended U.C.C. § 2-319(1), (2))

	Williston on
§ 9:13	——Manner (U.C.C. § 2-307)
§ 9:14	——Summary
§ 9:15	Open payment terms—Introduction
§ 9:16	—Non-Code law
§ 9:17	—Uniform Commercial Code (§ 2-310)
§ 9:18	Open duration of contract term—Non-Code law
§ 9:19	—Uniform Commercial Code
§ 9:20	Options—Generally
§ 9:21	—Uniform Commercial Code (§ 2-311)
CHA	PTER 10. RULES OF
CON	STRUCTION OF CONTRACTS OF
SAL	E
§ 10:1	Generally
§ 10:2	Express terms

§ 10:1	Generally
§ 10:2	Express terms
§ 10:3	Course of dealings, usage of trade, and course of performance—Introduction
§ 10:4	—Non-Code law
§ 10:5	—Uniform Commercial Code
§ 10:6	Output, requirements, contract, and exclusive dealing contracts—Introduction
§ 10:7	—Non-Code law
§ 10:8	—Uniform Commercial Code
§ 10:9	——Ability to reduce requirements; Duty to stay in business
§ 10:10	——Duty to start a new business
§ 10:11	Option at will to accelerate payment or performance—Generally
§ 10:12	—Uniform Commercial Code
§ 10:13	Assignment of contract, delegation of performance—Introduction
§ 10:14	—Common law
§ 10:15	—Limitations
§ 10:16	——Contracts personal and unassignable
§ 10:17	—Notice
§ 10:18	—Contract provisions
§ 10:19	—Future rights
§ 10:20	—Post-Assignment status of assignor
§ 10:21	—Restatement
§ 10:22	——Form of assignment
§ 10:23	—Pre-2001 Amended Article 2 and Former Article 9
§ 10:24	— —Waiver of defenses
§ 10:25	——Enforcement of warranties

#### Table of Contents

§ 11:25

§ 10:26 — Revised Article 9, conforming 2001 Amendments to U.C.C. § 2-210 § 10:27 —2003 Amended Article 2

## CHAPTER 11. RULES OF CONSTRUCTION OF CONTRACTS OF SALE—UNCONSCIONABILITY

§ 11:1 Introduction § 11:2 Aristotle § 11:3 Roman law § 11:4 Middle ages Sixteenth and seventeenth centuries § 11:5 § 11:6 Laesio enormis § 11:7 Comparison of French, German and United States law French and German application § 11:8 § 11:9 Anglo-American development § 11:10 Uniform Commercial Code (§ 2-302) -Procedural Unconscionability v. Substantive § 11:11 Unconscionability § 11:12 —Adhesion contracts § 11:13 —Civil procedure § 11:14 —Limitations provisions and disclaimers § 11:15 —Economic duress ——Excessive prices § 11:16 — Referral sales § 11:17 § 11:18 — — Wrongful inducement § 11:19 — —Inconspicuousness § 11:20 -Fraud -Lack of meaningful choice § 11:21 —Oppressiveness § 11:22 —Public policy § 11:23 -Reasonableness § 11:24

—Application outside Article 2