

**SALES - LAW 924  
PROFESSOR BEARD  
FALL SEMESTER, 2013  
T-Th 11:00-12:15, Room 104**

**This Syllabus and Assignment List can be found through the  
Library E-Reserve System**

**SYLLABUS AND ASSIGNMENT LIST**

**I. MATERIALS:**

1. Chomsky and Kunz, *Sale of Goods: Reading and Applying the Code* (West 2004 2d Ed.) (The “Casebook”)
  
2. *Selected Commercial Statutes*, 2013 Edition (Thomson-West) (the “Supplement”) -

IDAHO, WASHINGTON, MONTANA, OREGON AND UTAH have adopted the 2001 Revision of UCC Article 1 (in the case of Idaho there are non-uniform amendments to Rev. Art. 1 about which you will be advised during the semester). WYOMING has NOT yet adopted, Rev Art. 1.

In the 2013 or 2012 editions of the Supplement, **READ CAREFULLY** The Student Guide on pages v-vi in the front of the Supplement. In using the Supplement we will use the front of the Supplement for **Revised Article 1**, and the current version of **Article 2**. You should also note the Article 1 Concordance provided in the Supplement to correlate the provisions of Revised Article 1 and unrevised Article 1, that appears at the beginning of Revised Article 1 in the front of the Supplement. Please also note Appendix A setting forth Unrevised Article 1.

To summarize, this course will cover **Revised** Article 1, and the current version of Article 2.

**YOU SHOULD BECOME FAMILIAR WITH THE TABLE OF CONTENTS IN THE SUPPLEMENT YOU HAVE. YOU MUST BE SURE TO LOCATE THE CORRECT VERSION OF THE UCC IN THE SUPPLEMENT YOU HAVE SO THAT YOU CAN FIND MATERIALS YOU NEED. AGAIN OUR FOCUS WILL BE ON REVISED ARTICLE 1 (SUBJECT TO NON-UNIFORM IDAHO AMENDMENTS ABOUT WHICH I WILL TELL YOU) AND THE CURRENT VERSION OF ARTICLE 2, UNLESS INDICATED OTHERWISE BY ME OR THE CASEBOOK.**

**A NOTE ABOUT THE AMENDMENTS TO ARTICLE 2: Throughout the Casebook you will see references to the 2003 Amendments to Article 2.**

During the 1990's the ALI and NCCUSL (the sponsoring organizations that promulgated the UCC) drafted new, revised Articles 2 and 2A. These revisions were never adopted. Between 1999-2003 the project was scaled back and in 2003 a series of amendments to Article 2 were promulgated by the ALI and NCCUSL. These amendments largely reflected the evolution of the Code under judicial precedents. However, these amendments languished, were never adopted in any state, and finally were withdrawn in May 2011 by the sponsoring organizations, the ALI and NCCUSL. You will continue to find references in the Casebook to the 2003 amendments. The 2013 and 2012 Statutory Supplements removed the 2003 amendments so you will not be responsible for those portions of the casebook EXCEPT to the extent that I advise you otherwise and we discuss the amendments in class.

**Since the Amendments have been withdrawn from consideration for enactment they are not generally available. As you will see I have instructed you generally to disregard the 2003 Amendments. If necessary, I will provide you with the relevant provisions for consideration in advance of that assignment - e.g., the material for Assignment 2 is attached to this Syllabus as Appendix A.**

**Responsibility:** You are responsible for:

1. All materials in this Syllabus;
2. All definitions in Revised Article 1, all Code sections and comments thereto and other materials referenced in this syllabus, the Casebook, and class. As noted, unless indicated otherwise by me or the Casebook, references are to Revised Article 1 and the unamended Article 2. References to the 2003 amendments of Article 2, if any, will be denoted as A2-XXX.

**The authors of the Casebook also focus on the revised Article 1 and unamended Article 2 - the Preface to the Casebook will alert you to their signals, but as noted above I have generally instructed you to disregard the 2003 amendments.**

## II. **PROFESSIONALISM:**

- A. **Attendance Policy:** Regular attendance is necessary in this course. Under Law School and American Bar Association rules, excessive absence from class sessions may result in a reduction of your grade in this course or, in extreme cases, dismissal from this course with a grade of F. If your cumulative absences (for any reason) exceed three (3) class sessions, please see me to discuss the

problem. Failure to so advise me will be considered a breach of professional standards and responsibility and treated accordingly.

*More importantly, I want you to come to every class.* You should be prepared for class as noted below. However, even if you are not prepared I want you to come to class. If you are not prepared for that day, simply advise me before class, and I will not call on you. This ability to take a “pass” is intended to encourage students to come to class even if there are times when you are not prepared. There is no penalty for taking advantage of this ability to “pass,” UNLESS THE PRIVILEGE IS ABUSED. In the event a student abuses the privilege, the privilege will be revoked, for that student.

- B. **Preparation and Participation**: **This course will be conducted using a problem method.** The assignments in the Casebook contain problems which require you to **read and dissect the Code as a statute**. The assignments ALSO include application problems which require you to apply your reading and understanding of the statute to particular facts. Our focus will be **increasingly** on the application problems. You are expected to have worked through ALL of the assigned problems (both the “Reading” and “Application” Problems) PRIOR to the first class for which they have been assigned in the Syllabus below AND to have **WRITTEN OUT your answer** to the assigned problems PRIOR to such class. In working through and answering the problems you should perform the tasks as directed in the “Reading the Code” Problems. In the “Applying the Code” Problems you must **note the relevant Code sections and comments which support your conclusion**. There are only 9 principal cases in the Casebook. They are provided as a guide to the manner in which certain courts have interpreted the Code where no clear answer can be derived from reading the statute alone. **READ THE CASES CRITICALLY**, but remember your PRIMARY SOURCE in working through the problems should be the Code itself.

**You should expect to spend a minimum of 3 hours preparing for each class!** In the beginning you may well need to spend more time preparing for class. Of critical importance is making sure you work through the “reading” problems. This preparation will pay off with huge dividends when you then get to the “application” problems, and more importantly when you work in other statutory classes. **REMEMBER a principal focus of this class how to read statutes** - our statutory model is the UCC.

I WILL NOT ACCEPT AS AN EXCUSE FOR BEING UNPREPARED A CLAIM THAT YOU PREPARED THE ASSIGNMENT IN ADVANCE AND READ IT TOO LONG AGO. **REVIEW PROBLEMS PRIOR TO CLASS AND**

BE PREPARED TO DISCUSS. IF YOU HAVE WRITTEN OUT YOUR ANSWERS THIS WILL NOT BE A PROBLEM.

Participation in class CAN *ONLY HELP YOUR GRADE*, **although repeated failure to be prepared** may be taken into account, and may result in a possible lowering of your final grade. In the absence of volunteers, I will call on people at random (with emphasis on those who have not volunteered or those who can facilitate the discussion). If, with respect to any given problem, I call on three consecutive people who are unprepared, I WILL ASSUME THAT THE CLASS HAS MASTERED THAT PROBLEM, and I will move on to the next problem.

- C. **Office Hours:** My office is Room 128, which is on the 1st floor of the law school. I do not post office hours because I am in the building and available to meet with you between 6:30 am and 5:00 pm almost everyday (excepting, of course, times when I am in class or in meetings). **I encourage you to come by any time** you like to discuss class, jobs, family or anything else that is on your mind. I like to talk with students, and try to keep my door “unlatched,” though the door is usually not open wide because of hall noise. You may also call me at 885-6747 or email me at [beardb@uidaho.edu](mailto:beardb@uidaho.edu).

D. **POLICY REGARDING LAPTOP USE IN CLASS:**

Unless you have a documented disability accommodation or have seen me and gotten express permission, I do not permit the use of laptops or any other device in class. I have chosen to implement this “**No Laptops Policy**” for the following reasons:

1. Laptops in class are a significant distraction that detracts from student participation and engagement in class discussion. The very process of class discussion and engagement is critical to learning the skills needed to be a good lawyer.
2. Prohibiting laptop use also strengthens the review process following class, as students must consider the material and class discussion in order to incorporate the material into outlines for future study.
3. The post-class review will also help students memorize the applicable rules we have discussed. This memorization aspect will be essential come exam time. See III. B. below.

III. **ACADEMIC MATTERS**

- A. **Subject Matter and Objectives of this Course:**  
*In this course we will focus on reading and applying a comprehensive statute.*  
We will use the statutory material in the Uniform Commercial Code and related

statutes to see how statutes *as a whole* are to be read carefully, and interpreted in light of inevitable gaps and ambiguities. As you can see from the Casebook, there are very few cases for you to read in this course. **YOUR PRINCIPAL SOURCE OF LAW WILL BE THE STATUTE!** We will learn how to read, interpret, and construe the words **PROMULGATED BY THE STATE LEGISLATURE** in Article 2 **and related statutes both state and federal.**

**Subject Matter:** This course covers the law of Sales as embodied in Article 2 of the Uniform Commercial Code (the UCC). The principles and general concepts in the law of contracts will be familiar to you, and if not, this will be a good opportunity for some review. However, **Article 2 is NOT simply a reiteration of the law of contracts you learned first year.** There are differences in the rules, therefore you must pay attention to the rules as reflected in Article 2. There are also matters that remain governed by the common law of contracts that must be considered in interpreting Article 2, e.g., the rules related to offer and acceptance.

**Objectives:** The objectives of this course are for you to (1) learn the rules in Article 2 and related statutes; (2) acquire some facility in working with the UCC. (In my humble opinion, there is no more finely drafted statute in existence today. The level of attention to detail and sophistication that went into the drafting of the UCC is unparalleled. The Code is organized in a remarkably coherent fashion. Although the interrelationships between its sections can be very complicated, this is more a function of the nature of commercial transactions than a result of poor drafting. While commercial transactions can be very complicated, the UCC has set forth the governing rules in the most logical and coherent fashion possible. **HAVING PRAISED THE CODE, WE WILL NOW PROCEED TO LARGELY RIP APART THE UCC AND DISCUSS ITS WEAKNESSES.**); and (3) further hone your skills of critical reading, interpretation, and application of statutory material.

We will not cover all of the provisions of Article 2. For example, as you will see in the Syllabus, there are a number of areas relating to performance that we will only touch upon. If you learn how to read and apply statutory material, you will be able to find the applicable statute and read it and apply it to a given problem. **You will need to be able to find, read, and apply unfamiliar or new statutory material in practice and you will be expected, by the end of the semester, to be able to do that in this class on the exam with**

regard to provisions we may not have covered in any depth or even at all.

B. **Grades, Course Requirements, and Class Participation:** Your grade will be based on 1) two or three quizzes during the semester, 2) a final examination during the finals period, and 3) class participation (to the extent applicable - see paragraph B3 below).

**1) THE QUIZZES** - The quizzes will be administered during class time, will be 30 minutes in length, and will be comprised of objective questions (multiple choice, true/false, fill in the blank) worth a total of ten(10) to fifteen(15) points each. The objective questions will focus on the big sections and concepts we discuss during the semester. You will receive “quiz numbers” for use in taking the quizzes. Further information on the logistics of quiz administration will be provided before the first quiz. In lieu of a third quiz, I may include an objective portion covering the last block of material as part of the Final Examination - see Syllabus below. The total points for the quizzes and/or objective questions on the final exam will be between 30 and 45 points.

**2) THE FINAL EXAMINATION** - The final examination will be a “three-hour” exam (an exam designed to be completed in three hours). The exam will be given during the scheduled final examination time and you will be given 4 hours to complete the exam. The total points on the final examination, other than any objective questions, will be 90-110 points. Depending on time during the semester, in lieu of a third quiz, I may include an objective portion covering the last block of material as part of the Final Examination - see Syllabus below. In any case, the quizzes and the final examination will be closed book except that you may bring into, and use during, the quizzes and exam, the Supplement. You may **NOT** bring into, or use during, the quizzes or the exam *any* other materials.

**3) CLASS PARTICIPATION** - I reserve the right to adjust your final grade upward (but not downward) by one-third of a letter grade for class participation (e.g., from “B” to “B+”). Although I will not lower any grades based on the quality of class participation (but see Section II. B. above where I note that “repeated failure to be prepared may be taken into account, and may result in a possible lowering of your final grade”), I may raise a grade when, in my judgment, a grade based upon the performance on the quizzes and final examination does not accurately reflect the understanding of the material demonstrated by that student through class participation. In short, **CLASS PARTICIPATION CANNOT HURT YOU AND MAY HELP YOU.** “Class participation” includes not only the number of times you participate but principally the **quality** of your contributions to class discussion (**including your willingness to ask what may seem to you to be “stupid” or “obvious” questions**) and, **equally important**, your willingness to give time and respectful attention to the questions and comments of your classmates (including your

willingness to listen carefully to what may seem to you to be “stupid” or “obvious” questions). The importance of your ability to listen carefully, and respond meaningfully and **respectfully** to the questions and comments of your classmates is a critical part of your professional development and cannot be emphasized enough.

C. **Disability Support Services Reasonable Accommodations Statement:**

Reasonable accommodations are available for students who have documented temporary or permanent disabilities. Students should meet with Disability Support Services (DSS) **by the end of the first week of class** to assess if any accommodations are needed for courses, quizzes, and/or examinations. All accommodation requests are then submitted by DSS to Dean Dodge for final approval. DSS serves as the sole evaluator of medical documentation and determines reasonable accommodations on a per semester basis. The College of Law does not have the authority to evaluate or grant disability accommodations without DSS first submitting a recommendation. You may contact DSS by:

- Visiting the Idaho Commons Building, Room 306
- Calling 208-885-6307
- Emailing [dss@uidaho.edu](mailto:dss@uidaho.edu)

**It is ultimately the student’s responsibility** to seek a disability accommodation, and **until an accommodation is approved by DSS and Dean Dodge, no student will be entitled to receive any accommodations.** To learn more about DSS, visit its website at <http://www.uidaho.edu/studentaffairs/taap/dss>. Please review the College of Law Catalog and Student Handbook for more information on the disability accommodation process.

IV. **ASSIGNMENTS:**

**Missed Classes:** I currently do not anticipate that we will miss any classes. However, should class cancellations be necessary, I will give as much notice as I can, and **WE WILL MAKE UP ANY MISSED CLASSES.**

**Syllabus:** The following is a List of Detailed Assignments for the semester. We will cover the material in the following order and in approximately the time-frame set forth. Except as noted below, you **will be expected** to have prepared ALL Problems for discussion in class. We will NOT cover all problems in class, but I WILL answer any questions on ANY of the Problems in each assignment. For EACH ASSIGNMENT “Prepare” means to read **all** material and to work through each of the

designated problems **reducing your answer TO WRITING**. YOU ARE RESPONSIBLE FOR ALL SECTIONS REFERENCED IN THE **CASEBOOK, as well as this syllabus, and in class**. Section references to the UCC are to Revised Article 1 and the Unamended Article 2. References to Amended Article 2, if any, will be denoted A2-XXX.

**READING AND CONSTRUING THE CODE AS A STATUTE; SCOPE OF ARTICLE 2; CONTRACT FORMATION AND ENFORCEABILITY; AND DETERMINING THE TERMS OF THE CONTRACT.**

**Day 1** Administrative Introduction - The Syllabus; READ THIS SYLLABUS CAREFULLY AND COME TO CLASS PREPARED WITH ANY QUESTIONS. **Assignment 1 - Scope of Article 2: Problem 1-1(A); Problem 1-2(A) and (C); ALL of Problem 1-3; and ALL of Problem 1-4.** The material preceding the Problems is critical in helping you establish a good approach to reading and understanding statutory material. **Read it with care.** These problems require that you read and apply the statute carefully - focusing on the specific words that establish the applicability/inapplicability of the statute.

**Day 2** **Assignment 2 - Scope of Article 2 and Mixed Transactions:**  
**ALL of Problem 2-1; ALL of Problem 2-2; ALL of Problem 2-3.** These problems require you to read the *Pass* case and apply its “common law” analysis in an area not directly covered by the statute. Of course, there must be rules for these kinds of mixed transactions, why doesn’t the Code address this common occurrence - consider in particular the material on the 2003 Amendments (which you must read) and Problem 2-3 (A2-103(1)(k) and the relevant portion of Comment 7 are attached to this Syllabus as Appendix A.)

- Day 3**            **Assignment 3 - Interpretive Guidelines for Construing the Code. ALL Problems except 3-7.** These problems are critical to your understanding of how to CONSTRUE the language found in Article 2. **In addition, many of these rules of construction are applicable in other statutory contexts.** Disregard references to the 2003 amendments.
- Day 4-5**            **Assignment 4 - Contract Formation by Offer and Acceptance (Battle of the Forms I) or By Conduct. Problem 4-1 (A, B, and E)** - these problems require you to find specific information in the statute, and discern the subtle differences under the statute of the different phraseology used in (E); **ALL of Problem 4-3** - these problems require you to dissect the language in 2-206 seeing the interrelationships among the clauses, and seeing that the consequences of certain fact scenarios may be found outside the Code. **ALL of Problem 4-4** - problem 4-4(E) is particularly important. **ALL of Problems 4-6 and 4-7** - the beginning of understanding. These are critical problems in order to gain understanding of the intricacies of 2-207 as a **contract formation** provision. Disregard references to the 2003 amendments.
- Day 5-6**            **Assignment 4 (cont.) - ALL of Problems 4-8 and 4-9** - electronic contracting the impact of the UETA and E-Sign (**disregard the amended Article 2 changes**). Disregard references to the 2003 amendments.
- Day 6-7**            **Assignment 5 - Determining the Content When Offer and Acceptance Differ: Battle of the Forms II. Problem 5-1** If applicable, 2-207(3) is critical in determining the terms. **Problem 5-2(A and B)** read carefully. **Problem 5-3** Be prepared to articulate the general standard to your client when asking your questions to determine materiality. **Problem 5-4** Note in reading 2-207 the lack of guidance on how to deal with *different* terms. Disregard references to the 2003 amendments.
- Day 7-8**            **Assignment 5 (cont.) - Problems 5-5 and 5-6**, review problems on your own and complete the tables in 5-5(A) and 5-6(C). I encourage you to do Problem 5-7 but we will **not** cover 5-7 in class. **ALL of Problem 5-8**, critical point is to make sure you first understand how the contract was formed, and **THEN** determine the terms. **ALL of Problem 5-9**. **ALL of Problem 5-10** - Is it possible

to “win” the “Battle of the Forms?.” Disregard references to the 2003 amendments.

**Day 9**            **Assignment 6 - Contract Enforceability (Statute of Frauds) - Problems 6-1(A), 6-2(A) and 6-3(A)** - read the section carefully taking note of the information being asked of you. **Problem 6-3 (B&C)** - be prepared to explain your answers with specific references to the Code language. **Problem 6-4** - this is a critical exception to 2-201(1). **ALL of Problem 6-5 (A-G)** - In each case walk through the elements of 2-201(1) or the possible exception, and identify the facts that exist or are missing that show whether the S of F or the exception has been satisfied. **READ** the material but **SKIP** Problem 6-6. Disregard references to the 2003 amendments.

**Day 10** **Assignment 7 - The Definition of Merchant - Work through ALL the Reading Problems.** We will cover this material largely through question and answer that will explore your understanding of what this section of the Code means, but we will not walk through these problems specifically unless you raise a question. These problems are background to the discussion we will have initially in class before moving into **Application Problems. Prepare All of Problem 7-5, 7-6, 7-7, and 7-8.** In addition to 2-104 and its comments, you will need to look at the other referenced sections for guidance as to the “merchant” affected by those sections. Disregard references to the 2003 amendments.

**Upon completion of Assignment 7 - QUIZ NO. 1**

## **WARRANTIES**

Day 10-11      Assignment 8 - Introduction to Warranties; Creation of Implied Warranties. **You are responsible for all material in Problems 8-1 through 8-4 DO ON YOUR OWN and come to class with questions. Prepare ALL of Problems 8-5 through 8-9.** Disregard references to the 2003 amendments.

Day 12-13      Assignment 9 - Creation of Express Warranties. **You are responsible for all material in Problems 9-1 through 9-4, and 9-6 DO ON YOUR OWN and come to class with questions. Problem 9-1** This Problem is a straightforward reading of the statute to see what the statute requires on its face. **Problems 9-2, 9-3, and 9-4** address the ways courts have construed the phrase

“basis of the bargain” and how that phrase relates to representations made otherwise than in the “heat of the transaction.” **Prepare ALL OF PROBLEMS 9-5, 9-7 AND 9-8.** **Problem 9-5** In each case be able to articulate your reasons why a particular statement is or is not an affirmation of fact. Disregard references to the 2003 amendments.

Day 14-15 Assignment 10 - Warranty Disclaimers and Conflicts. You should prepare **Problems 10-1 and 10-2** in anticipation of a class discussion focusing on the question of whether express warranties can be disclaimed, and how 2-316(2) and (3) inter-relate in establishing how implied warranties are disclaimed. Is it fair to characterize 2-316(2) as a “safe harbor” provision? What IS a “safe harbor” provision? Consider - is 2-316(2) the ONLY way to disclaim implied warranties? How does one disclaim the warranties in 2-312? **Prepare All of Problems 10-3, 10-4, 10-5, 10-6 (A), 10-7(B), (C), and (D), and Problem 10-8** **Assignment 11 - Extending Warranties to Third-Party Beneficiaries.** Do Problems 11-1, 11-3, AND 11-4 ON YOUR OWN - this will be CRITICAL to your understanding of the way 2-318 operates. Prepare **Problem 11-2.** Disregard references to the 2003 amendments.

Day 16-17 Assignment 12 - Parol Evidence Rule: Suppression of Evidence of Express Warranties. Section 2-202, as your authors note, is a difficult section to parse. As always you are responsible for **all** of the readings and problems in the book, and I will be happy to answer any questions you have on any of the problems in class. However, we **will only do** the following problems in class - **Problems 12-3(A) and (B), 12-4, 12-5, 12-8, and ALL the application problems 12-12 through 12-16. Read Nanakuli thoroughly and carefully.** Disregard references to the 2003 amendments.

**Upon completion of materials relating to Warranties - QUIZ NO. 2**

## **PERFORMANCE AND REMEDIES**

Day 18 Assignment 13 - Identification, Tender of Delivery, Risk of Loss and Passage of Title (Skip Assignments 14-16) ONCE AGAIN - YOU ARE RESPONSIBLE FOR ALL MATERIAL IN THIS ASSIGNMENT and I will be happy to answer any questions

you have on any of the problems in class. We will cover in class the following problems **Problem 13-1, 13-7, 13-8, 13-9 and ALL application Problems 13-12 through 13-14**. Disregard references to the 2003 amendments.

Day 19 Assignment 17 - Buyer's Rights and Duties after Tender, Part I: Inspection, Rejection and Cure. **ONCE AGAIN - YOU ARE RESPONSIBLE FOR ALL MATERIAL IN THIS ASSIGNMENT** and I will be happy to answer any questions you have on any of the problems in class. We will cover in class **Problems 17-7 through 17-10** Disregard references to the 2003 amendments.

Day 20 Assignment 18 - Buyer's Rights and Duties after Tender, Part II: Acceptance and Revocation of Acceptance. **ONCE AGAIN - YOU ARE RESPONSIBLE FOR ALL MATERIAL IN THIS ASSIGNMENT** and I will be happy to answer any questions you have on any of the problems in class. We will cover in class **Problems 18-5, 18-6 and 18-10 (NOT (E)) (SKIP THE MATERIAL** on Effect of Breach on Risk of Loss, P. 271-273). Disregard references to the 2003 amendments.

Day 21-22 Assignment 20 - Buyer's Remedies for Seller's Breach (Skip Assignment 19). **ONCE AGAIN - YOU ARE RESPONSIBLE FOR ALL MATERIAL IN THIS ASSIGNMENT** and I will be happy to answer any questions you have on any of the problems in class. We will cover in class **Problems 20-3(A-E), 20-9 and 20-10 in class (SKIP 20-11)**. You will have to work through Problems 20-1 through 20-8 **ON YOUR OWN** in order to do the two application problems. Disregard references to the 2003 amendments.

Day 23-24 Assignment 21 - Seller's Remedies for Buyer's Breach. **ONCE AGAIN and F), 21-8, 21-9, and 21-13** Disregard references to the 2003 amendments. Disregard references to the 2003 amendments.

Day 25-26 Assignment 22 - Modification or Limitation of Remedies. **ONCE AGAIN** Disregard references to the 2003 amendments.

Day 27-28 Open for now.

Upon completion of materials relating to Performance and Remedies - QUIZ NO.  
3 - May include this objective portion with the Final Examination.