

Comment 1a: Article 2 of the UCC should not apply to this transaction because the wooded hillside lot is not a “good” as defined in the UCC. The lot is real estate and not a good because, among other things, a good is defined to be a thing that is “movable.”

You start with s. 2-102 which states that it applies to “transactions in goods”. You then consider s. 2-105 which contains a definition of “goods.” For completeness, s. 2-107 describes limited circumstances in which Article 2 applies to a sale which relates to real estate in some fashion. Section 2-107 does not apply to a sale of a fee simple [i.e. “fee simple” is a term of art which refers to a full ownership interest in land—which the sale of the lot appears to be].

Comment 1b: Principles of contract law other than the UCC apply to a contract for the sale of real estate. These other principles of contract law will determine whether the land contract is enforceable. Note that other principles of law may apply to a transaction in goods IF these principles are not displaced or modified by the UCC. Section 1-103(b) of the UCC makes this clear. Even if Article 2 applies to a transaction, Article 2 does not provide the exclusive body of law to which reference is made when considering a dispute or issue. It is clear from s. 2-107 that a transfer of an interest in land may be effective under other law.

Comment 2a: This transaction is not within Article 2 of the UCC because Woodsman is to perform services. As a general matter, Article 2 applies to “sales” of goods and not to the provision of services. This could be clearer; Article 2, s. 2-102 says it

applies to “transactions” in goods; arguably “transaction” is broader than “sale.” However, if you look, for example, at s. 2-105, you can infer that Article 2 contemplates “sale” transactions: e.g. s. 2-105(3)(“There may be a **sale** of a part interest in existing goods”)(emphasis supplied). Identify all the other parts of s. 2-105 which suggest a sale transaction.

Comment 2b: This later sale of the stacked logs is a classic transaction subject to Article 2. The stacked logs are movable things and thus “goods.” In contrast to the services provided by Woodsman, owner has a contract to sell logs to Lumber Mill.

Comment 3: The lease of the automobile is a potential transaction subject to Article 2 because it is a “transaction” in a good (though not a sale), or so some courts reasoned. Indeed, from a financial standpoint, a lease might be structured to have the same or similar terms as a sale. Some courts applied Article 2 to lease transactions by analogy to a sale. However, the UCC was amended to include Article 2A which specifically applies to leases. Section 2-106 contains further language which suggests that Article 2 applies to sales and not other types of transactions: e.g. the reference to a “contract for sale.”

Comment 4a: This is another example of a classic sale of goods transaction subject to Article 2. Significantly, StereoLand is simply selling goods and not providing any services.

Comment 4b: This is an example of a “mixed” transaction in which the seller agrees both to sell goods and to provide a related service. Mixed transactions are sometimes referred to as hybrid

transactions. Article 2 does not explain which law applies to such a transaction, leaving the application of law up to the courts. You may contrast this with the CISG, Article 3(2), which contains a test for mixed transactions:

*(2) This Convention does not apply to contracts in which **the preponderant part** of the obligations of the party who furnishes the goods consists in the supply of labour or other services.*
(Emphasis supplied.)

Question (4)(b) presents you with an initially attractive option: apply Article 2 if the dispute relates to the goods and apply other applicable law if the dispute relates to the services.

However, the question challenges you to consider a more problematic case by directing your attention to s. 2-201—the Article 2 statute of frauds provision. This is the section of law which states that a contract for the sale of goods with a price of \$500 or more requires some writing to be enforceable (subject to exceptions).

In a mixed transaction, if you are to allow different provisions of law to govern different parts of the contract, how do you pick a law to apply when what is at stake is some aspect of the entire contract? Does Article 2 apply? Or other law? It may be unworkable to suggest that some parts of the contract required a writing while other parts of the contract did not require a writing.

Comment 5a: The question focuses on “custom” goods. One might try to argue that a specially designed and manufactured good could involve

more labor than materials. Contrast this with a retail store which simply sells items which it does not produce. Article 2 is clear that it applies to “specially manufactured goods” which are specifically mentioned in s. 2-105(1). Additionally, s. 2-704(2) addresses a case in which goods are “unfinished”—showing that Article 2 addresses work in process. Further, you might consider s. 2-201(3)(a) which contains an exception to the statute of frauds requirement for certain specially made goods.

Comment 5b: This part of the question is a bit of misdirection. Certainly the typed document and the fancy cover are “movable” things. However, they appear ancillary to the service of the lawyer providing legal advice. The papers are necessary to evidence the “will” of the Client when he has passed—but the Client is not primarily interested in the paper, ink and cover, as such. Consider the case of a painter who is hired to paint a portrait—would the contract be for a good or a service? It should be clear that Article 2 does not apply to the provision of legal services but it can be hard to articulate a reason why. The predominate purpose of the will is not to buy a good. In the case of the painting, it might be a closer call—because you really do want the object in the form of a completed painting.

Predominant Factor Test: The Florida treatment of a mixed or hybrid transaction follows the predominant factor test, as discussed in [BMC Industries, Inc. v. Barth Industries, Inc.](#)

Comment 6: Is a house a movable thing? Generally, no. Of course, the materials which are brought to the construction site are movable. It should not matter that the house does not yet exist; however,

when it exists if it is not movable, it would not be a good, and thus, not subject to Article 2. This might be contrasted with a mobile home and, potentially, with a pre-fabricated home.

Comment 7: The sale of the house to Buyer after it is built should not be subject to Article 2 because the house is not a movable good. This is true if the house is sold together with the land or if the house is sold without the lot (which might happen if the lot were subject to a long-term lease). One might wonder if the house were sold with the intention of moving it to another lot—that sometimes happens. What if a mobile home is brought to the lot and “permanently” attached to the land?

Comment 8: The problem here is that we have a mixed transaction in which there is a lease of land and a building (not subject to Article 2), a service agreement (not subject to Article 2), presumably a license to run the franchise—an intangible right (and not subject to Article 2), and an agreement to buy food products and cleaning supplies (subject to Article 2). Indeed, on a dollar volume basis, the agreement to purchase food and cleaning supplies might be quite large. How do you decided what the predominate purpose of the contract is? Is it a pure numerical test based on the dollars involved? What if the contract does not include some form of itemized pricing? Does it matter whether all of these arrangements are included in a single document? What if, in form, there are several documents which govern the relationship?

Comment 9: The key point here is that software is often thought to be an intangible. However, in the recent past, it was common to purchase a CD-rom or disk which contained the software. This looked

and felt like you were purchasing a physical thing—like book. We would think of it generally as a good—but when you buy a book you get a copy—but you do not get the copyright. At present, much software is downloaded without a disk at all. One agrees to a license of the software as a condition to the download. There is one sense in which the software exists in tangible form—electrons on a magnetic tape somewhere—but another sense in which we think of the software as an intangible—not a movable thing. There generally is a void in the law about how to treat software and licenses of software. Much as courts applied Article 2 to leases before passage of Article 2A, some courts apply Article 2 to software licensing by analogy.

Surprisingly to some, most courts find that software is a “good” within the meaning of Article 2. And, many are willing to treat the licensing of that good as a covered transaction even though no sale is involved in the license:

The vast majority of courts addressing this issue have found that software licensing agreements fall under the U.C.C. *See e.g., First Nationwide Bank v. Fla. Software Servs., Inc.*, 770 F.Supp. 1537, 1543 (M.D.Fla.1991) (noting that the pervasive view is that computer software programs are “goods” under the U.C.C.); Stephen J. Sand, *Validity, Construction, and Application of Computer Software Licensing Agreements*, 38 A.L.R. 5th 1 § 9 (1996) (surveying cases explicitly or implicitly applying the U.C.C. to software license agreements); *Arbitron, Inc. v. Tralyn Broad., Inc.*, 400 F.3d 130, 138 n. 2 (2d Cir.2005) (same); *CECG, Inc. v. Magic Software Enters., Inc.*, 51 Fed.Appx. 359, 362 (3d Cir.2002); *Franz Chem. Corp. v. Philadelphia Quartz Co.*, 594 F.2d 146, 149 (5th

Cir.1979) (applying the U.C.C. to a patent license agreement); *BMC Inds., Inc. v. Barth Inds., Inc.*, 160 F.3d 1322, 1329–30 (11th Cir.1998) (applying the “predominant factor” test to determine whether mixed contract for goods and services fell under the U.C.C.).

[Tingley Systems, Inc. v. HealthLink, Inc.](#), 509 F. Supp. 2d 1209, 1214 (M.D. Fla. 2007)