

The book tells you to read these sections, as does the syllabus. Follow directions and do this now! You can look at your printed supplement or the versions which exist online. Note that there is a model version and the instructor gave you links to versions of the UCC in Florida, New York and Nebraska. Read the other sections highlighted in the text as well.

At this point you should read §§ 2-102, 2-105(1), and 2-107(1) and (2) of the Uniform Commercial Code and the related Comments. Then consider the following questions (some of these are quite difficult and complicated):

(1) Owner buys a wooded hillside lot located at 123 N. Main Street for \$20,000 from the Subdivision Development Corporation. Would Article 2 of the UCC apply to this transaction? See §§ 2-102, 2-105(1), 2-107. If not, does this mean that their contract is not legally enforceable? See § 1-103(b).

Comment 1a

Comment 1b

(2) Owner hires Woodsman to cut the trees and remove the stumps from the wooded hillside lot. Under the contract, Woodsman is to trim the felled trees to create marketable logs, stack the logs neatly, and transport the stumps and non-marketable small branches to the municipal dump. Is this transaction between Owner and Woodsman within Article 2 of the UCC? See § 2-105(1). If Owner later sells the stacked logs to Lumber Mill for an agreed price, is this transaction within Article 2?

Comment 2a

Comment 2b

(3) Businessperson leases an automobile for one day from Rent-A-Car. Is this transaction within Article 2 of the Code? See §§ 2-102, 2-106(1).<sup>13</sup>

Comment 3

(4) Owner buys components for a music system from StereoLand. Consider two variations:

(a) Owner receives cartons containing components at the store, and she assembles the system at her house. Is this transaction within Article 2 of the UCC?

Comment 4a

(b) The contract calls for a StereoLand employee to go to Owner's house and set up the system. Does it matter whether the dispute is about the quality of the goods before installation, whether the installation was done right, or whether there is a writing to make the transaction enforceable under § 2-201?

Comment 4b

(5) Owner makes a contract with Engineer to produce a specially designed automobile. Engineer is to supply the design, labor, and parts and deliver a completed automobile to Owner. Is this transaction within Article 2 of the UCC? See § 2-105(1); cf. § 2-704(2). What about a case in which Client consults Lawyer, and Lawyer prepares a will reflecting Client's wishes for the disposition of his property after his death? Lawyer produces a 10-page typewritten document on expensive paper with a fancy cover. This is handed to Client, who pays Lawyer's fee. Does this transaction fall within the boundaries of Article 2? If you have any question about the application of Article 2 here, how does the transaction differ from the production of a specially designed automobile?

Comment 5a

Comment 5b

Consider whether the UCC would require a writing to make this K for the automobile enforceable. Read s. 2-201 (3). Does it matter that, at the time the contract is made, the automobile does not exist? See s. 2-501(a) and (b). Would the CISG apply to this transaction if the Engineer were from France and the Owner from Florida?

In *Bonebrake v. Cox*,<sup>14</sup> the court said,

<sup>13</sup> This is a bit of a trick question. Article 2A, Leases, was proposed for adoption in 1987 to resolve the special issues involved in leasing goods. All states except Louisiana have now adopted it. The Article applies to short-term rentals of automobiles or do-it-yourself equipment by consumers, on the one hand, and to commercial leases of such items as aircraft and industrial machinery, on the other. Under Article 2A, you do not have to worry about the question we asked in the text.

<sup>14</sup> 499 F.2d 951, 960 (8th Cir. 1974).

Why is a Federal Circuit Court case articulating a test under the UCC? Is not the UCC state law? What is the precedent value of such a Federal case?

The test for inclusion or exclusion [in Article 2 of the UCC] is not whether they [goods and services] are mixed, but, granting that they are mixed, whether their predominant factor, their thrust, their purpose, reasonably stated, is the rendition of service, with goods incidentally involved (e.g., contract with artist for painting) or is a transaction of sale, with labor incidentally involved (installation of a water heater in a bathroom).

Why is a Federal Circuit Court case articulating a test under the UCC? Is not the UCC state law? What is the precedent value of such a Federal case?

Note: the predominant factor test is the majority position in the case law. It is the position taken in Florida and New York.

Read Article 3 of the CISG: find the "preponderant part" test.

The "gravamen of the action" test is a minority position in the case law. Note: when signing a K you can not say which law will govern a dispute until you know the dispute. What if the issue relates to the contract as a whole and not just to the goods aspect or the services aspect of the transaction?

Do you find that this test helps you solve these problems? Another approach sometimes used by the courts is to look at the "gravamen of the action," that is, the aspect of the transaction in dispute. If the dispute in a mixed transaction is about the goods aspect of the transaction, Article 2 will apply, but if it is about the services element, it will not.

(6) Owner makes a contract with General Contractor to build a house on Owner's lot. General Contractor is to supply labor and materials. Is this transaction within Article 2 of the UCC? See §§ 2-106, 2-107, and 2-501(1)(a) and (b).

Comment 6

(7) After the house is built, Owner sells it to Buyer. Is this transaction within Article 2 of the UCC? Does it matter whether Owner sells only the house or sells the house and the lot on which it is built? See § 2-107(2).

Comment 7

(8) Local Fast Food enters a dealer franchise agreement with National Chain. Under this agreement, Local leases from National the land and building constituting the local restaurant; agrees to provide various services such as keeping the restaurant open during certain hours, keeping records in certain forms, and running the restaurant; and agrees to buy various food products and cleaning supplies from National. The franchise agreement provides that National can cancel the arrangement upon giving 60 days' notice, and National exercises this right. Local's lawyer wants to argue that National's action violated the obligation of "good faith" imposed by the Code under §§ 1-304 and 2-103(1)(b). National's lawyer argues that the UCC is not applicable to this transaction, and that the general contract law of the particular jurisdiction imposes no such obligation. The courts have had a great deal of trouble with this problem. Do you see why?<sup>15</sup>

Comment 8

This is a case in which the choice of law is outcome determinative: that is usually when a dispute exists over the choice of applicable law.

(9) Lawyer buys a software package for her law office for billing, tracking documents, and so forth. A dispute arises with the seller with respect to whether the software has performed as promised. Should the UCC apply? In Maryland and Virginia, where UCITA has been enacted, that statute would govern. In other states, most courts have applied Article 2 to software transactions, even involving custom software.

In particular, read the UCC definition of "good".

Comment 9

Can a blood transfusion or organ transplant constitute a sale of goods under Article 2?

Article 2 of the UCC applies to "transactions in goods." These problems have shown that application of this rather simple phrase yields considerable uncertainty in a variety of situations. You may find this troubling. If you do, you might find solace in suggestions by Ludwig Wittgenstein (1889-1951) in his *Philosophical Investigations*, an enigmatic landmark in 20th-century philosophy. Wittgenstein

Compare Model UCC, s. 2-316 with Fla. stat. s. 672.316. Does the Florida version of Article 2 contain additional language? What about NY?

What if the UCC said "sales of goods" rather than "transactions in goods"?

<sup>15</sup> As we will see later, Local may have rights under federal and state franchise protection statutes passed in the 1960s and 1970s, but those statutes do not cover all situations involving franchisees. Furthermore, the general contract law of many jurisdictions will impose a duty of good faith and fair dealing, making the applicability of the Code of little importance in this circumstance. See Restatement (Second) of Contracts § 205 (1981).

Read Restatement s. 205 now!