

2008

Commercial Contracting: Sales, Leases, and Computer Information

David Frisch

University of Richmond, dfrisch@richmond.edu

Follow this and additional works at: <http://scholarship.richmond.edu/law-faculty-publications>



Part of the [Commercial Law Commons](#)

Recommended Citation

Francis J. Mootz III et al., *Commercial Contracting: Sales, Leases, and Computer Information* (2nd ed. 2008).

This Book is brought to you for free and open access by the School of Law at UR Scholarship Repository. It has been accepted for inclusion in Law Faculty Publications by an authorized administrator of UR Scholarship Repository. For more information, please contact scholarshiprepository@richmond.edu.

COMMERCIAL CONTRACTING: SALES, LEASES, AND COMPUTER INFORMATION

SECOND EDITION

FRANCIS J. MOOTZ III
*William S. Boyd Professor of Law
University of Nevada, Las Vegas
William S. Boyd School of Law*

DAVID FRISCH
*Professor of Law
The University of Richmond
T.C. Williams School of Law*

PETER A. ALCES
*Rita Anne Rollins Professor of Law
College of William and Mary
Marshall-Wythe School of Law*



LexisNexis®

ISBN: 978-1-4224-2387-5

This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

LexisNexis, the knowledge burst logo, and Michie are trademarks of Reed Elsevier Properties Inc, used under license. Matthew Bender is a registered trademark of Matthew Bender Properties Inc.

Copyright © 2008 Matthew Bender & Company, Inc., a member of the LexisNexis Group.

Library of Congress Control Number: 2008928637

All Rights Reserved.

No copyright is claimed in the text of statutes, regulations, and excerpts from court opinions quoted within this work. Permission to copy material exceeding fair use, 17 U.S.C. § 107, may be licensed for a fee of 25¢ per page per copy from the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, telephone (978) 750-8400.

NOTE TO USERS

To ensure that you are using the latest materials available in this area, please be sure to periodically check the LexisNexis Law School web site for downloadable updates and supplements at www.lexisnexis.com/lawschool.

PREFACE TO THE SECOND EDITION

We largely have retained the approach of the first edition, but have updated the materials. You should find that the text provides a succinct overview of each section, and then the cases and problems will support class discussion that takes the analysis to the next level. We have added a number of new cases and streamlined the book. Most important, we have eliminated references to Amended Article 2, which was adopted and submitted to the states by the National Conference of Commissioners on Uniform State Laws in 2003. As you will find in the introductory chapter, there was a long, drawn-out and politically-charged battle to update and revise Article 2. It now appears that even the “compromise” amendments will not be adopted. Your professor may choose to use the amended language for teaching purposes, but we no longer believe that it makes sense to burden the text with these references. We have adopted the same strategy with the Uniform Computer Information Transactions[®] Act (“UCITA”), which was adopted in two states but now appears moribund.

We again owe many debts in connection with this book. Professor Mootz would like to thank Jennifer Stull ('08) for her superb research assistance, and especially for finding the Posner opinion regarding the aquarium set that came equipped with plastic piranhas and “fake blood.” Jessica Vanderkam ('08) and Matt Hoover ('08) both did excellent work in proof-reading the entire text and making extremely helpful suggestions, and Jessica then provided careful review of the page proofs of the entire text. Professor Frisch wishes to express gratitude to Trevor Reid ('08) for his help in research and editing. Professor Alces would like to recognize the research assistance of Christine R. Tartamella ('07) and Marcus T. Massey ('07).

All three authors benefitted from the excellent and dedicated work of Felicia Burton, Director of the Office of Faculty and Academic Support at The College of William and Mary School of Law. Ms. Burton caught a number of errors and she produced a wonderfully clean text. It was a pleasure to work with her.

Finally, many of the changes to this edition reflect the feedback that we have received from students. We strive to present excellent teaching materials and look forward to hearing from you if we can improve this text in any way.

Francis J. Mootz III
Las Vegas, NV

David Frisch
Richmond, VA

Peter A. Alces
Williamsburg, VA

July 1, 2008

PREFACE TO THE FIRST EDITION

This casebook emphasizes that Uniform Commercial Code methodology contemplates more than “the skill of working out language puzzles.” Professor Karl Llewellyn was primarily responsible for the drafting and adoption of Article 2—Sales. His unique vision as a legal scholar animates Article 2. These underlying jurisprudential and doctrinal principles provide a level of coherence and cohesiveness that is rarely found in statutory schemes. Our goal in this casebook is to expose these consistent threads of Article 2 to serve as a guide for learning the skill of statutory problem-solving.

Although the casebook emphasizes Article 2, we also refer to related law. These other laws include Article 2A—Leases (dealing with commercial leasing of goods), the Uniform Computer Information Transactions Act (dealing with the licensing of computer information), and the United Nations Convention on the International Sales of Goods (dealing with certain international sales). Perhaps most important, we constantly refer to the recently completed Amended Article 2, which is likely to be presented to the states for adoption in the near future. Although there is quite a bit of material in this course, you will find that by focusing on the underlying principles and policies of Article 2 and using these other sources of law for comparison purposes, it will be manageable. This is not a course about memorizing the rules; this is a course about learning how to use statutory law to anticipate and prevent, or (if that fails) to solve, your client’s problems.

We have created a casebook that can be adapted to different teaching and learning styles. We have chosen a number of recent cases that provide a good introduction to current controversies, while still relating back to the underlying principles of Article 2. We have provided text that attempts to organize the material and to provide a description of the law that is as concise and clear as possible. Finally, we have provided a number of problems that require you to apply the text and cases to new scenarios. This casebook is suitable for courses that are taught exclusively by the case method, courses that are taught exclusively by the problem method, and courses that combine both approaches.

We do not believe that there is any purpose served by “hiding the ball.” Our goal in this book is to establish the legal and business background through text and well-chosen cases, and then ask you to apply this knowledge to new or difficult scenarios raised in the cases and the problems. To help you to develop a sophisticated commercial perspective, we have included excerpts from thoughtful commentaries that clarify the caselaw or challenge the prevailing interpretations offered by courts. We begin with the assumption that neither the Code nor any line of cases can hope to be perfect, and we offer these scholarly excerpts to provide models of how you can adopt a critical perspective on the law. We are grateful to the scholars who have granted us permission to reproduce portions of their work.

This casebook would not have been completed without the assistance of many people. Professor Mootz was assisted by a number of students over a period of several years in putting together these materials, locating source material, and proofreading the text. He thanks Carrie A. Leslie ('02), Andrew T. Tillapaugh ('02), Thadeus M. Creech ('04), Aaron C. Jackson ('05), Elizabeth A. Johnson ('05), and Peter J. O'Mara ('05). He is particularly grateful for the two years of excellent research work provided by Melissa S. Hill ('03) and Samantha A. Wilcox ('03). Professor Frisch wishes to thank Ronna Kinsella ('05). Professor Alces extends his grateful appreciation to Brian C. Hayes ('05); Chasity N. Simpson ('05); Sarah C. Black ('05); Adam M. Nebeker ('05); Nicholas H. Grainger ('06); and Samuel M. Gross ('06), all JD, The College of William and Mary School of Law.

Finally, we extend our thanks to Della W. Harris, the Director of the Faculty Support Center

PREFACE TO THE FIRST EDITION

at The College of William and Mary School of Law. She performed flawlessly, as usual, and the authors remain in her debt.

Professors Frisch and Mootz were pleased and honored to be invited to join Professor Alces on this new edition of the book, and all three authors acknowledge the continuing contribution of Professor Nathaniel Hansford that carries forward from the first edition.

Francis J. Mootz III
Carlisle, PA

David Frisch
Richmond, VA

Peter A. Alces
Williamsburg, VA

July 2004