

1-1-1987

A Student's Guide to Sales of Goods, Letters of Credit and Documents of Title

Frederick M. Hart

University of New Mexico - School of Law, hart@law.unm.edu

Robert Laurence

Follow this and additional works at: https://digitalrepository.unm.edu/law_facbookdisplay Part of the [Law Commons](#)

Recommended Citation

Hart, Frederick M. and Robert Laurence. "A Student's Guide to Sales of Goods, Letters of Credit and Documents of Title." (1987): 223 pages. https://digitalrepository.unm.edu/law_facbookdisplay/5

This Book is brought to you for free and open access by the School of Law at UNM Digital Repository. It has been accepted for inclusion in Faculty Book Display Case by an authorized administrator of UNM Digital Repository. For more information, please contact amywinter@unm.edu.

**A STUDENT'S GUIDE TO
SALES OF GOODS,
LETTERS OF CREDIT AND
DOCUMENTS OF TITLE**

Frederick M. Hart

*Professor of Law
University of New Mexico*

Robert Laurence


*Professor of Law
University of Arkansas, Fayetteville*

STUDENT GUIDE SERIES

1987



Matthew Bender

 **Times Mirror
Books**

Copyright © 1987
by Matthew Bender & Company
Incorporated

When published as issued, works of the federal and state governments, including all statutes and decisions of the courts as well as all legislative and administrative histories, studies and reports, are matters in the public domain. As compiled, arranged and edited, however, such works and all other materials contained in this publication are subject to the foregoing copyright notice.

All Rights Reserved
Printed in United States of America
Library of Congress Catalogue Number: 86-72821

MATTHEW BENDER & CO., INC.
11 PENN PLAZA, NEW YORK, NY 10001 (212) 967-7707
2101 WEBSTER STREET, OAKLAND, CA 94612 (415) 446-7100
1275 BROADWAY, ALBANY, NY 12201 (518) 462-3331

LEGAL EDUCATION PUBLICATIONS

ADVISORY BOARD

ALAN R. BROMBERG, Chairperson
University Distinguished Professor of Law
Southern Methodist University

JOSEPH G. COOK
Williford Gragg Professor of Law
University of Tennessee

WALTER E. DELLINGER, III
Professor of Law
Duke University

JEFFREY O'CONNELL
John Allan Love Professor of Law
University of Virginia

PAUL F. ROTHSTEIN
Professor of Law
Georgetown University

LEWIS D. SOLOMON
Professor of Law
George Washington University

DAVID H. VERNON
Allen D. Vestal Professor of Law
University of Iowa

DEDICATION

This book is dedicated to numerous Harts and Laurences, in thanks for their support and love.

Andrew

Brigid

Christiane

David

Dee

Ellen

F. Michael

Greg

Helen

James C.

James M.

Joan Marie

John

Karen

Katie

Margaret

Molly

Patrick

Zack

ACKNOWLEDGMENTS

Many people helped in the creation of this book; we would like to thank a few here, publicly. Rhonda Laster typed and retyped the early drafts with her usual efficiency and good humor. For the third time in the *Student's Guide* series (see the books on Estates in Land and on Secured Transactions), Carol Kennedy of the University of New Mexico Law School staff prepared the final manuscript for publication and designed its format, and, for the third time, the very existence of the book depended on her skill. Norma Oliver of the University of New Mexico Law School staff assisted with the typing of the final drafts. Beverly Ohline, a student at the University of New Mexico Law School, and Ellen Greenblatt of Matthew Bender both read a late draft and made valuable suggestions. Deans can either encourage or discourage, smooth the way or make it rough. Robert J. Desiderio of New Mexico and J.W. Looney of Arkansas encourage and smooth, for which we are both lucky and grateful. Our environs in the desert and Ozarks helped too, for which our gratitude is aimed elsewhere.

Frederick M. Hart
Albuquerque

Robert Laurence
Fayetteville

August 1986

PREFACE

When we set out to write the Preface to this Student's Guide, to explain what exactly we are up to and why we write the way we do, we found that the Preface had already been written. An earlier volume, our *Student's Guide to Secured Transactions*, states the philosophy and the style of this book too, and we reprint it here, changed a bit to make it apply to Articles Two, Five and Seven. For those of you who have already read it in the other book, we welcome you back, thank you for your loyalty and promise that everything after these few pages is new.

Why another book or guide to commercial transactions? There are excellent texts on the market and a plethora of outlines. This is not a text. Indeed, we urge you to read and study those that are available. It is an outline, but, we believe, a very different kind of outline; less complete than others that have been published, but, we hope, more useful to those learning the subject for the first time.

Why do we believe this Guide will be more helpful than those written by others? Well, we think we have a different approach. We are not trying to summarize the law, as useful as that may be. This book is not much interested in the details; nor in the complex problems that arise under the law, as much as those problems may interest us as teachers and researchers. What we have tried to do is to give an approach to the several types of problems that arise under Articles Two, Five and Seven of the Uniform Commercial Code. Through the use of relatively straightforward problems, we have attempted to show how we (and we believe everyone else) analyzes these problems. Through this approach, we believe you can best learn the basic concepts necessary to master these areas of the law.

We are somewhat suspicious of detail. A lot of detail, we suspect, you will forget until your first client with a commercial problem *really* gets your attention. We want to teach you now some things that you have a chance of remembering past the exam. To wit: *concepts*. How

to approach any Article Two problem; the purpose of a letter of credit; how documents of title work. Occasionally, we will specifically leave issues unanswered, referring you to your teacher or the cases. When we do, it is because we want you not to be distracted from the concepts by details you can easily master, when the time comes, on your own.

A few suggestions as you *use* this Guide. First, we emphasize the word *use*, because it is not written to be *read* like a treatise or summary. It is more like a workbook, requiring, perhaps, more effort on your part if you are to understand and become comfortable with our approach to the analysis of problems.

Second, we encourage you to go through *each* step of your analysis of a problem carefully at the beginning. As your knowledge of the law becomes more extensive, you may be able to eliminate steps or give short shrift to some in the context of some problems, but wait awhile before you try to speed your analysis.

Read the statute. **READ THE STATUTE.** You will find many statutory references in this Guide. Usually, these citations take up only about a half-inch of space in the text and are easily ignored. Reading the statutory sections cited is time consuming, and understanding what the statute says is often difficult. Believe us, however, that it is essential to read the section if you are to learn commercial law and that it will become easier the more you do it. Learning how to read the statute is the most important skill taught by a commercial law course. Any lawyer will tell you how significant statutes are in the practice of law and that it is a skill no less important than that of reading cases. Don't worry too much if you have trouble with the wording of a particular section the first time you read it. Read it again, in connection with the applicable part of this Guide and the Official Comments. Read it again! **READ IT AGAIN!** We are confident that ultimately even the most complex sections of the Uniform Commercial Code will become understandable.

We also encourage you to read the many fine treatises, texts and summaries of commercial law that have been published. This is not a substitute for them. They all have more detail than does this Student's Guide, and each attempts to explain the law in its own way. We still regularly consult them in our research and in preparing for class. Seeing how others approach a topic is usually enlightening and will aid in your understanding of the subject matter. And don't ignore the Official Comments. They are often helpful in explaining the statutory language.

Finally, use this Guide in conjunction with the course you are taking. It is not designed as a quick review to be picked up the night before your final exam. Although we have used this Guide, successfully we believe, as the primary book in a survey course, supplemented by a number of handouts, we expect that most of you will be in courses where your instructor is using one of the national casebooks or locally produced materials. The casebook is important, and you should not neglect it. The cases demonstrate what happens when courts are faced with the same problem that you have; i.e., applying the statute to a fact situation. Your course will also flesh out the details omitted from this Guide.

A word about language: readable. That's what we have tried to be. Occasionally we have dropped the precision that is required by a treatise. We paraphrase, we change punctuation in order to get the concept across. Again, whenever we refer you to a particular statutory section, we urge you to look up that section and read it. When dealing with the U.C.C. or any other statute, there is absolutely no substitute for reading the statute.

One other word about language: sex. The English language has it. Many writers wish it didn't. We have attempted to take advantage of it. Generally speaking, throughout this book sellers are male; buyers are female. We find that this sometimes makes sentences and problems easier to understand. We hope you agree.

We begin, then, with Article Two of the Uniform Commercial Code and the sale of goods, one of the most common commercial transactions in our country's economy. Good luck. We hope you enjoy your work.

TABLE OF CONTENTS

	<u>Page</u>
Preface	ix
 <u>PART A: SALES OF GOODS UNDER ARTICLE TWO</u> 	
I. THE BASIC OVERVIEW AND OUTLINE	1
II. THE BASIC APPROACH APPLIED	13
Problem A-1	13
Analysis of Problem A-1	14
Problem A-2	21
Analysis of Problem A-2	22
Problem A-3	32
III. SOME DETAILS	34
A. <i>Contract Formation</i>	34
1. Offer and Acceptance—Some Slightly Different Rules	34
2. The Mirror Image Rule and § 2-207	36
Problem A-4	39
Analysis of Problem A-4	39
Diagram of Problem A-4 and § 2-207	45
Problem A-5	46
Analysis of Problem A-5	46
3. The Irrevocable (Firm) Offer	49
4. Modification of Contracts	50
B. <i>Enforceability of Contracts for the Sale of Goods</i>	51
1. Fraud, Duress, Illegality and Capacity	51
2. Unconscionability	51
3. Statute of Frauds	52
Problem A-6	57
Analysis of Problem A-6	58

	<u>Page</u>
C. <i>Interpretation of Contracts and the Parol Evidence Rule</i>	62
1. In General	62
2. The Parol Evidence Rule and § 2-202	63
Diagram of the Parol Evidence Rule	67
3. Contract Interpretation	68
D. <i>More on Seller's Obligations</i>	71
1. In General	71
2. Place and Method of Tender	71
E. <i>More on Warranties</i>	73
1. Creation of Warranties	74
a. Express Warranties	74
Problem A-7	76
Analysis of Problem A-7	76
b. Implied Warranties	82
2. Modification or Exclusion of Warranties or Limitations on the Buyer's Remedies	84
Problem A-8	85
Analysis of Problem A-8	86
3. Scope of Warranties	91
a. Express Warranties	91
b. Implied Warranties	92
Problem A-9	92
Analysis of Problem A-9	93
Problem A-10	95
Analysis of Problem A-10	95
Problem A-11	97
Analysis of Problem A-11	97
4. "Privity" of Warranty	102
Problem A-12	104
Analysis of Problem A-12	104
Problem A-13	105
Analysis of Problem A-13	106

	<u>Page</u>
Problem A-14	110
Analysis of Problem A-14	111
F. <i>Nibbling Away at the "Perfect Tender" Rule</i>	115
Problem A-15	117
Analysis of Problem A-15	118
Problem A-16	123
Analysis of Problem A-16	124
G. <i>Inspection and the Manner of Rightful Rejection</i>	126
Problem A-17	130
Analysis of Problem A-17	131
Problem A-18	133
Analysis of Problem A-18	134
H. <i>Cover</i>	134
Problem A-19	135
Analysis of Problem A-19	136
I. <i>Remedies</i>	138
1. <i>Cover and Resale</i>	139
2. <i>The Buyer's (MP - KP) Damages and Seller's (KP - MP) Damages</i>	139
3. <i>Specific Performance and Action for the Price</i>	139
4. <i>Replevin and Stop Delivery</i>	140
5. <i>Incidental Damages</i>	140
6. <i>Consequential Damages and Lost Profits</i>	140
7. <i>The Buyer's Damages for Breach of Warranty or Breach of Tender Obligations</i>	141
Problem A-20	141
Analysis of Problem A-20	142
Problem A-21	142
Analysis of Problem A-21	143
Problem A-22	143
Analysis of Problem A-22	144
Problem A-23	145
Analysis of Problem A-23	145

	<i>Page</i>
J. <i>Risk of Loss</i>	146
Problem A-24	148
Analysis of Problem A-24	149
Problem A-25	150
Analysis of Problem A-25	150
K. <i>Identification of Goods to the Contract</i>	151
L. <i>Insurable Interest</i>	153
M. <i>Insolvency</i>	153
Problem A-26	154
Analysis of Problem A-26	155
N. <i>Anticipatory Repudiation and the Right to Assurances of Performance</i>	156
O. <i>Installment Contracts</i>	157
P. <i>Impracticability and Substituted Performance</i>	157
Problem A-27	159
Analysis of Problem A-27	160
Q. <i>Buyer's Payment Obligations</i>	161
1. <i>When Is Payment Due?</i>	161
2. <i>Shipment Under Reservation</i>	162
3. <i>Payment by Letter of Credit</i>	163
4. <i>How Is Payment to Be Made?</i>	164
R. <i>Bona Fide Purchasers</i>	164
 <u>PART B: LETTERS OF CREDIT UNDER ARTICLE FIVE</u> 	
I. INTRODUCTION	169
Problem B-1	169
II. DETAILS	176
A. <i>"Establishment" and Amendment of the Credit</i>	176
B. <i>Partial Demand</i>	178

	<u>Page</u>
C. <i>What Happens on Wroagful Honor?</i>	178
D. <i>The Beneficiary's Warranty on Presentment</i>	179
E. <i>The Beneficiary's Fraud</i>	180
F. <i>What Happens on Wrongful Dishonor?</i>	180
III. CONCLUSION	181

PART C: DOCUMENTS OF TITLE UNDER ARTICLE SEVEN

I. INTRODUCTION	185
II. THE BASIC OVERVIEW AND OUTLINE	187
Problem C-1	194
Analysis of Problem C-1	195
III. DETAILS	202
A. <i>The Form of a Document of Title</i>	202
B. <i>Alterations, Duplicates and Forgeries</i>	202
C. <i>Lost Genuine Documents</i>	203
D. <i>Buyers from the Bailee</i>	204
Problem C-2	204
Analysis of Problem C-2	205
E. <i>The Warehouseman's Lien</i>	206
F. <i>Enforcement of a Judgment Against the Goods Stores</i>	208
G. <i>Excuses for Failure to Redeliver</i>	209
Problem C-3	209
Analysis of Problem C-3	209
H. <i>Non-negotiable Documents</i>	210
APPENDIX TO PART A	213
INDEX	219