

**THE UNIVERSITY OF AKRON**

**School of Law**

SALES TRANSACTIONS: INTERNATIONAL

AND DOMESTIC LAW

## COURSE DESCRIPTION AND OBJECTIVE

The course focuses on the law relating to transboundary sale of goods and related arrangements. However, appropriate references are made to US domestic sales law (UCC Art 2, 5) from a comparative perspective. The course covers the basic sales contract, documentary letters of credit as a form of payment for goods; and international commercial arbitration.

## COURSE MATERIALS

### Required

1. Spanogle & Winship (“S&W”) International Sales Law: A Problem – Oriented Coursebook (West Group, 2000)
2. Spanogle & Winship (“S&W DOC”) Documents Supplement to the International Sales Law (West Group, 2000)
3. Ocran, Supplementary Reading On International Sales Law (“Ocran”) [University of Akron DocuZip Center, 2001 (Includes Materials on LCS, Arbitration, etc.)]

### Recommended

Murray & Flechtner (“M&F”); Sales, Leases and Electronic Commerce: Problems and Materials On National and International Transactions. (West Group, 2000) St. Paul, MN.

## COURSE OUTLINE\*

[\*It might be necessary to modify the topics and pages indicated under particular class periods as we go along. The materials as arranged under the COURSE OUTLINE will be used basically as a roadmap.]

### TP 1

#### NEGOTIATION OF THE BASIC SALES CONTRACT AND RELATED TRANSACTIONS

readings: S&W pp. 23-25, 28-40  
Ocran pp .....

#### THE LAW APPLICABLE TO INTERNATIONAL SALE OF GOODS

A. The Problem of Applicable Law: The Evolution of Lex Mercatoria and International Conventions on the Sale of Goods

*readings*: S&W pp. 40-52  
Ocran pp.....

#### review topic:

1. Factors determining the applicable law in a conflict-of-law situation in international sale transactions.

readings: S&W pp. 52-59

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### TP 2

#### APPLICABILITY AND SCOPE OF THE UCC ART. 2 AND THE UN CONVENTION ON INTERNATIONAL SALE OF GOODS (CISG)

- A. Primary Applicable Law and Residual Law
- B. Scope of Application

<u>CISG Articles</u>	<u>UCC Sections</u>
Art. 1	.....

Art. 10(a)	
Art. 6	
Art. 7(2)	1.103; 1.105 (1) & (2)
Art. 4(a)	1.103
Art. 5	.....
Art. 2a	2.103; 2.105(1), (2)
Art. 95	

readings: S&W pp. 44-47 (Recap); 51-52 (Recap); 60-77; CISG; UCC Art 1, Art 2  
Ocran p. ....

review topic:  
Applicability and Scope of CISG.

**TP 3**

problems: 1-2 Q. (a), (b).  
[S&W p. 54]

FORMATION OF THE SALES CONTRACT

II A. What are Sales Transactions? What are Goods?

readings: S&W pp. 77-83

<u>CISG Arts.</u>	<u>UCC Arts.</u>
2a	2 – 105 (1) & (2)
2f	2 – 107
3(2)	2 – 102]]

B: Formalities: Offer, Acceptance, Revocation, Modification, etc.

readings: S&W pp. 84-104

1. Form of the Contract: Any Statute of Frauds?
2. Offer and Acceptance
3. “The Battle of the Forms”

## TP 4

C: Terms of the Contract:

1. Missing Terms, Trade Usage, Course of Dealing, Course of Performance
2. Limitations on Parties' Rights to Define Bargain Terms: "Mandatory" Law; Issues Excluded By Applicable Convention, Statute, etc.
3. Interpretation of the Contract: Parole Evidence Rule, Trade Usage, etc.

reading: S&W pp. 104-138; 149-156

problems: NIL

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## TP 5:

problems: 2-8(a),(b) [S&W pp. 118-119]

### PERFORMANCE OF THE SALES CONTRACT

A. Performance of the Sales Contract: General

1. General Obligations of the Parties

readings: S&W pp. 163

B. Performance by Seller

1. General Considerations: Basic Performance Obligations of Seller
2. Conformity of the Goods to the Contract.
3. Warranties
  - a. Warranty of Title [S&W pp. 203-207]
  - b. Express Warranties As To Quality [S&W pp. 188-189]
  - c. Implied Warranties As To Quality [S&W pp. 189-201]

readings: S&W pp. 187-207

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## TP 6

problems: 2-6(a) [S&W pp. 108-109]

- d. Warranty Disclaimers and Limitations [S&W pp. 198-203]
- 4. Conformity of the Goods: The Perfect Tender Rule
- 5. Time of Delivery
- 6. *[Delivery and the Identification of Goods]*
- 7. Points of Delivery by Seller: Special Trade Terms [S&W pp. 164-187]

readings: S&W pp. 164-187  
187-207 (Cont'd);

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## TP 7

problems: 3-12 [S&W p. 206]

Performance by Seller (Continued)

Point of Delivery (cont'd)

- 8. Transfer of Title
- 9. Transfer of Risk of Loss

readings: S&W pp. 164-187 (Cont'd)

CISG Articles

Art 30  
Art 9  
Art 35  
Art 41  
Art 42 (1), (2)  
Art 4 (b)  
Art 9  
Art 30  
Art 31 (a), (b), (c)  
Art 32  
Art 35 – 38  
Art 35 (1), (2)  
Art 36  
Art 39 (1)  
Art 39 (2)  
Art 40  
Art 5  
Art 34, 37  
Art 47, 48

UCC Sections

2.504, 2.301, 2-503  
2.319 to 2.324  
2.313 – 2.318  
2.312 (1)  
2.312 (3), 2.313 – 2.318  
2.401 – 2.403  
2.319 – 2.324  
2.503  
2.504, 2.308  
2.503, 2.504  
2.319 – 2.324  
2.316  
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2.607; 2.602 (1)  
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2.508 (1), (2)  
2.508

Art 49	2-601
Art 39, 40, 44	2-607
Art 44	2-508
Art 67(1)	2-509
Art 69(1)	2-510(3)
Art 68	-----
Art 69(2)	-----
Art 70	-----

C. Buyer's Response to the Seller's Tender

1. Buyer's Right To Inspect Goods: [S&W pp. 169-195]

**TP 8**

2. Accepting Seller's "Cure" of Non-Conformity: The Exceptions to the Perfect Tender Rule

readings: S&W pp. 207-213

problems: 3-7(a), (b). [S&W p. 194]

D. Performance by Buyer

1. Duty to Pay [S&W pp. 213-216]
2. Rejection and Acceptance of Goods [S&W pp. 216-217]
3. Revocation of Acceptance

readings: S&W 213-217

<u>CISG Articles</u>	<u>UCC Sections</u>
Art 53, 54	2.304, 1.201 (24)
Art 55	2.305 (1)
Art 58	2.309; 2.507
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Art 66, 67, 68	2.509
Art 69, 70	2.510

E. Excusable Non-Performance by Either Party

1. Commercial Frustration, Impossibility, Commercial Impracticability, Force Majeure

<u>CISG Articles</u>	<u>UCC Sections</u>
Art. 79 (1)	2-615(a), (c)
Art. 79 (3)	2-613

Art. 79(5)	2-614(1), (2)
Art. 79(2)	2-615(b)
	2-616

readings: S&W pp. 217-235

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**TP 9**

Excusable Non-Performance (Cont'd)

**problems:** 3 – 2 [S&W p. 175]  
 3 – 1 [S&W p. 164]

REMEDIES

1. Remedies: General

readings: S&W pp. 236-237

<u>CISG Articles</u>	<u>UCC Sections</u>
Art. 45	
Art. 46 (1), 28	2.502
Art. 50	2.717
Art. 52	
Art. 47	
Art. 48	-----
Art. 25	2.601
Art. 82 – 88	2.602 – 2.605
Art. 73	2.612
Art. 78	
Art. 79, 80	2.613, 2.614, 2.615
Art. 71	2.610, 2.702, (1), 2.705
Art. 75, 76 (1)	2.706, 2.708 (1)
Art. 74	2.708 (2)
Art. 64 (1b)	2.703
Art. 62, 28	2.709
Art. 63	-----
Art. 64	2.703
Art. 74, 76	2.710
Art. 74	2.713, 2.714, 2.715
Art. 75, 76	2.712
Art. 77, 5	2.715, 1.203
Art. 46 (1), 4 (b)	2.716
Art. 81 (1)	
Art. 81 (2), 82, 84	2.718
Art. 49 (2b)	2.718

2. Seller's Remedies

readings: S&W pp. 237-241; 241-247; 247-264; 271-276

problems:

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**TP 10**

readings:

3. Common Remedies

readings: S&W pp. 283-291; 291-308; 311-317

4. Buyer's Remedies [S&W pp. 265-271]

review topic

1. Discuss the main provisions of the CISG on the remedies for breach of contract.

problems: 3-13 [S&W p. 208]; 3-23 [S&W p. 222]

4. Statute of Limitations

readings: S&W pp. 308-310

CISG Articles

UCC Section

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S. 2-725(1), (2), (4)

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**TP 11**

FORMS OF PAYMENT IN INTERNATIONAL SALES: LETTERS OF CREDIT

1. Different Forms or Modes of Payment for Goods: Direct, Indirect
2. Two Basic Forms of Documentary Payment: Collection Arrangements, Documentary Letters of Credit
3. Letters of Credit: Nature and Mechanics
4. The Governing Laws: UCC Arts, UCP (ICC), UNCITRAL Convention on Independent Guarantees
  - a. Relationship between Art 5 and UCP: Choice of Law Issues
  - b. Objectives of the Revised Art. 5: Harmonization of International Banking Practice

readings: S&W pp. 30-40 (Recap)

Ocran pp.....

5. Some Legal Aspects of Letters of Credit
  - a. Definition of LC
  - b. Types of LCS: Confirmed, Unconfirmed, Revocable, Irrevocable; Sight Drafts, Time Drafts
  - c. Terms of the Agreement: Limits to Modifications and Disclaimers
    - (i) The Doctrine of Strict Compliance
    - (ii) The Doctrine of Independence or Autonomy of the LC Transaction
    - (iii) The Fraud Exception to the Doctrine of Independence

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**TP 12**

Problems: Ocran p.....

Letters of credit (Continued)

- d. More Issues in Presentation, Examination and Honor
  - (i) Time for Honor
  - (ii) Notification of Defects upon Examination
- e. Post-Honor Reimbursements
- f. Warranties from Seller/Beneficiary
- g. Transfer of Rights and Assignment of Proceeds
- h. Subrogation Rights of Issuer or Applicant
- i. Remedies
- j. Statute of Limitation

readings: S&W pp. ....; M & F in Ocran pp.....

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**TP 13/14**

**ARBITRATION OF INTERNATIONAL COMMERCIAL DISPUTES**

1. The Arbitral Process and Examples of Arbitral Rules

readings: Ocran pp.....

2. Enforcement of Foreign Arbitral Awards

readings: Ocran pp.....

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**TP 15**

problems: [Ocran pp.....]

3. Example of Award Under UNCITRAL or ICC Rules
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## CLASS PREPARATION

Students are expected to do the assigned weekly readings and to participate fully in general class discussions. Case problems from the required books will be assigned from time to time for class discussion; and individual students may be appointed to prepare and lead such discussions.

Mental notes will be made of the level of class preparation of individual students and evaluated at the end of the semester.

## CLASSROOM ATMOSPHERE AND CLASS ATTENDANCE

1. Be punctual. Do not wait in the corridor for the professor to walk by before you rush in to take your seat.
2. NO FOOD IN CLASS, PLEASE
3. Please avoid chatting when class starts.
4. Please avoid exchange of personal notes or messages, and any other forms of behavior that distract the attention of other students while classes are going on.
5. I INSIST ON CLASS ATTENDANCE AND WILL BE CIRCULATING AN ATTENDANCE SHEET FOR CLASS MEETINGS.
6. I may deduct points from the final score of students who miss more than two periods of the Summer session for reasons not considered as justifiable excuses by the law school. Additionally, I may not permit students who miss more than a third of the classes for the entire session to take the final exam. YOU WILL RECEIVE A NOTE FROM THE DEAN'S OFFICE ON MY BEHALF IF YOUR ABSENCES TOTAL TWO OR MORE.

## CLASS EVALUATION

Students will write either 15 page seminar papers or 30 page GWR papers. The GWR paper will satisfy both the course requirements and the GWR graduation requirement.

Points will be awarded for significant and regular contributions to class discussion. Points may also be deducted for habitual lack of preparation for class discussions.

## **TEACHER EVALUATION**

Teacher evaluation forms may be distributed towards the end of the semester. In filling out those forms, please remember to write only what you truly mean and express yourself in a professional, objective manner.

## **DEADLINES FOR SUBMISSION OF PAPERS**

The 15 page Seminar papers are due at the end of Summer II; while the 30 page GWR papers are to be turned in by August 30<sup>th</sup> (Just after the commencement of the Fall Semester).