CHAPTER 3  CONTRACT FORMATION

I. The Statute of Frauds
   Elig v. Molina
   St. Ansgar Mills, Inc. v. Streit
   J.B.B. Investment Partners, Ltd. v. Fair

II. The Parol Evidence Rule
   Columbia Nitrogen Corp. v. Royster Co.

III. Offer and Acceptance
   A. General Rules
   B. The Battle of the Forms
      Diamond Fruit Growers, Inc. v. Krack Corp.
      Bayway Refining Co. v. Oxygenated Marketing and
      Trading A.G.
      Northrop Corporation v. Litronic Industries
      Klocek v. Gateway, Inc.

CHAPTER 4  WARRANTIES

I. The Warranty of Title
   Moore v. Pro Team Corvette Sales, Inc.
   Lindholm v. Brant et al.

II. Warranties of Quality
   A. Express Warranties
      In re Toshiba America HD DVD Marketing and Sales
      Practices Litigation
   B. Implied Warranties
1. Merchantability 138
   - Shaffer v. Victoria Station, Inc. 139
   - Webster v. Blue Ship Tea Room, Inc. 143
   - In re Carrier IQ, Inc. 148
2. Fitness for a Particular Purpose 158
C. Warranty Disclaimers and Limitations 159
   1. Disclaiming Express Warranties 159
      - Bell Sports, Inc. v. Yarusso 159
   2. Disclaiming Implied Warranties 167
      - Cate v. Dover Corp. 167
      - Bowdoin v. Showell Growers, Inc. 176
      - Rinaldi v. Iomega Corp. 180
   3. Limitations on the Warranty 185
      - Wilson Trading Corp. v. David Ferguson, Ltd. 186
      - Pierce v. Catalina Yachts, Inc. 192
      - Helena Chemical Co. v. Williamson 197
D. Defenses in Warranty Actions 202
   1. Notice 202
      - Fitl v. Strek 203
   2. Burden of Proof 208
      - Flippo v. Mode O'Day Frock Shops of Hollywood 208
   3. Privity 211
      - Reed v. City of Chicago 214
   4. A Note on Strict Products Liability 216
      - Lincoln Company v. Detroit Diesel Corporation General Insurance 217
E. UCC Warranties and the Magnuson-Moss Act 223
   - Ventura v. Ford Motor Corp. 226
F. Warranties and Article 2A 237
   - Colonial Pacific Leasing Corp. v. McNatt Datronic Rental Corp. 238
G. Warranties in International Sales 245

Chapter 5  Terms of the Contract 249

I. Filling in the Gaps 249
   - Casserlie v. Shell Oil Company 251
## Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>II. Unconscionability</td>
<td>257</td>
</tr>
<tr>
<td>III. Identification of the Goods</td>
<td>258</td>
</tr>
<tr>
<td>IV. Risk of Loss: No Breach</td>
<td>259</td>
</tr>
<tr>
<td>A. General Rules</td>
<td>259</td>
</tr>
<tr>
<td>B. Delivery Terms</td>
<td>261</td>
</tr>
<tr>
<td><em>Cook Specialty Co. v. Schrlock</em></td>
<td>262</td>
</tr>
<tr>
<td><em>Rheinberg-Kellerei GmbH v. Vineyard Wine Co.</em></td>
<td>266</td>
</tr>
<tr>
<td><strong>CHAPTER 6 PERFORMANCE OF THE CONTRACT</strong></td>
<td>275</td>
</tr>
<tr>
<td>I. Installment Sales</td>
<td>276</td>
</tr>
<tr>
<td><em>Cherwell-Ralli, Inc. v. Rytman Grain Co.</em></td>
<td>277</td>
</tr>
<tr>
<td>II. The Perfect Tender Rule</td>
<td>279</td>
</tr>
<tr>
<td>III. Cure</td>
<td>280</td>
</tr>
<tr>
<td><em>Wilson v. Scampoli</em></td>
<td>282</td>
</tr>
<tr>
<td>IV. Rejection and Acceptance</td>
<td>284</td>
</tr>
<tr>
<td><em>Ramirez v. Autosport</em></td>
<td>286</td>
</tr>
<tr>
<td><em>Plateq Corp. of North Haven v. Machlett Laboratories, Inc.</em></td>
<td>293</td>
</tr>
<tr>
<td>V. Revocation of Acceptance</td>
<td>298</td>
</tr>
<tr>
<td><em>Waddell v. L.V.R.V. Inc.</em></td>
<td>298</td>
</tr>
<tr>
<td>VI. Risk of Loss: Breach</td>
<td>309</td>
</tr>
<tr>
<td><em>Jakowski v. Carole Chevrolet, Inc.</em></td>
<td>309</td>
</tr>
<tr>
<td>VII. Impossibility of Performance</td>
<td>313</td>
</tr>
<tr>
<td><em>Arabian Score v. Lasma Arabian Ltd.</em></td>
<td>314</td>
</tr>
<tr>
<td><em>Louisiana Power &amp; Light Co. v. Allegheny Ludlum Industries, Inc.</em></td>
<td>318</td>
</tr>
<tr>
<td><strong>CHAPTER 7 REMEDIES</strong></td>
<td>331</td>
</tr>
<tr>
<td>I. Special Remedies</td>
<td>331</td>
</tr>
<tr>
<td>A. Remedies on Insolvency</td>
<td>332</td>
</tr>
<tr>
<td>B. Liquidated Damages</td>
<td>333</td>
</tr>
<tr>
<td>C. The Breaching Buyer’s Restitution</td>
<td>333</td>
</tr>
<tr>
<td>II. Seller’s Remedies</td>
<td>334</td>
</tr>
<tr>
<td>A. Accepted Goods</td>
<td>334</td>
</tr>
<tr>
<td>B. Unaccepted Goods</td>
<td>335</td>
</tr>
<tr>
<td><em>Teradyne, Inc. v. Teledyne Industries, Inc.</em></td>
<td>337</td>
</tr>
</tbody>
</table>
PART 2 PAYMENT 389

CHAPTER 8 NEGOTIABILITY 391

I. Introduction 391
II. Types of Negotiable Instruments 392
III. The Negotiability Concept 394
   A. “Writing” 396
   B. “Signed” 404
   C. “Unconditional Promise or Order” 404
      1. Implied Conditions 404
         Triffin v. Dillabough 405
      2. Consideration Stated 413
   D. “Fixed Amount of Money” 414
      Heritage Bank v. Bruha 415
   E. “Courier Without Luggage” Requirement 418
      Woodworth v. The Richmond Indiana Venture 419
   F. “Payable on Demand or at a Definite Time” 422
   G. “Payable to Bearer or to Order” 423
   H. Consumer Notes 424

CHAPTER 9 NEGOTIATION 431

I. Some Technical Terms 431
   A. Parties 431
   B. Negotiability vs. Negotiation 432
II. Transfer and Negotiation 432
III. Special and Blank Indorsement 433
IV. Forgery of the Payee’s Name 437

CHAPTER 10  HOLDERS IN DUE COURSE 443

I. Acquiring Holder in Due Course Status 443
   A. Some History of the Doctrine 443
   B. The Payee as Holder in Due Course 444
      Heritage Bank v. Bruha 445
   C. “Holder” 449
   D. “Value” 450
      Falls Church Bank v. Wesley Heights Realty, Inc. 452
   E. “Good Faith” and “Notice” 453
      In re Dixon-Ford 453
      Any Kind Checks Cashed, Inc. v. Talcott 460
      Winter & Hirsch, Inc. v. Passarelli 468
      Dawda, Mann, Mulcahy & Sadler, P.L.C. v. Bank of America, N.A. 474
      Jones v. Approved Bancredit Corp. 482
      Sullivan v. United Dealers Corp. 489
   F. The Shelter Rule 491
      Triffin v. Somerset Valley Bank 493

II. Real and Personal Defenses/Claims 499
   A. Defenses Against a Holder in Due Course 499
      Federal Deposit Insurance Corp. v. Culver 500
      Sea Air Support, Inc. v. Herrmann 507
      Kedzie & 103rd Currency Exchange, Inc. v. Hodge 508
   B. A Special Note on Forgery 516
   C. Procedural Issues 517
      Virginia National Bank v. Holt 518
   D. Defenses Against a Non-Holder in Due Course 521
      Herzog Contracting Corp. v. McGowen Corp. 521
   E. Jus Tertii 527
   F. Conclusion 528
CHAPTER 11. THE NATURE OF LIABILITY 533

I. The Underlying Obligation 534

Gray CPB, LLC v. SCC Acquisitions, Inc. 535

Ward v. Federal Kemper Insurance Co. 540

II. Liability on the Instrument 545

A. The Maker's Obligation 546

B. The Indorser's Obligation 547

C. The Surety's Obligation 550

1. Exoneration 552

2. Subrogation 552

3. Contribution 552

4. Strictissimi Juris 552

5. The Accommodation Party 555

Floor v. Melvin 556

6. Tender of Payment 560

7. Section 3-605 — Strictissimi Juris Again 561

Chemical Bank v. Pic Motors Corp. 562

London Leasing Corp. v. Interfina, Inc. 569

8. New Notes for Old 571

D. The Drawer’s Obligation 572

1. Presentment and Dishonor 572

Messing v. Bank of America, N.A. 573

2. Notice of Dishonor 579

3. Protest 579

4. Excuse 579

Makel Textiles, Inc. v. Dolly Originals, Inc. 581

E. The Drawee’s Obligation 582

1. The Non-Bank Acceptor 583

Norton v. Knapp 584

2. Checks 586

Galven Petroleum Co. v. Hixson 586

3. Certification 588

F. Signature by an Agent 589

Mundaca Investment Corp. v. Febba 590

Nichols v. Seale 594

III. Other Theories of Liability 596
CHAPTER 12  MORTGAGES AND PROMISSORY NOTES

I. Introduction 601
II. The Person Entitled to Enforce the Instrument 604
  Bank of America v. Kabba 606
  Hogan v. Washington Mutual Bank, N.A. 610
III. The Merger Rule 614
IV. Lost Notes 616
  State Street Bank and Trust Company v. Lord 617
V. Conclusion 619

CHAPTER 13. BANKS AND THEIR CUSTOMERS 625

I. The Checking Account 626
  A. “Properly Payable” Rule 626
    Cincinnati Ins. Co. v. Wachovia Bank, Natl. Assn. 627
  B. Wrongful Dishonor 637
    Twin City Bank v. Isaacs 637
  C. Death or Incompetence of Customer 642
  D. Bank’s Right of Setoff 642
    Walter v. National City Bank of Cleveland 644
  E. Customer’s Right to Stop Payment 648
    1. Ordinary Checks 648
      Parr v. Security National Bank 649
      Canty v. Vermont National Bank 653
    2. Cashier’s, Teller’s, and Certified Checks 657
      Patriot Bank v. Navy Federal Credit Union 658
  F. Bank Statements 664
II. Bank Collection 666
  A. Funds Availability 667
    1. Cash 668
    2. Checks 668
  B. Check Truncation 676
    1. Introduction 676
    2. Creating the Image and the Substitute Check 677
    3. Legal Equivalence 679
    4. Warranty Liability 680
5. Indemnity Liability 681
   *First Financial Bank, N.A. v. Citibank, N.A.* 682
6. Expedited Recredit for Consumer 689
7. Expedited Recredit for Banks 690
8. Lawsuits and Miscellaneous Provisions 690
C. Final Payment 691
   *Rock Island Auction Sales, Inc. v. Empire Packing Co.* 694
D. Check Return 703
E. Charge Back 704
   *Valley Bank of Ronan v. Hughes* 706
F. Undoing Final Payment 713
G. Delays 715
H. Restrictive Indorsements and Banks 716
I. Priorities in the Bank Account: The Four Legals 717

**CHAPTER 14   WRONGDOING AND ERROR** 723

I. Forgery of the Payee’s Name 724
   A. Some Basic Ideas 724
   B. Warranty Liability 726
   C. Conversion Liability 728
      *Leeds v. Chase Manhattan Bank, N.A.* 730
II. Forgery of the Drawer’s Name 735
    *Price v. Neal* 736
    *Decibel Credit Union v. Pueblo Bank & Trust Co.* 739
    *Wachovia Bank, N.A. v. Foster Bancshares, Inc.* 742
III. Validation of the Forgery 748
   A. Common Law Validation 749
      *Hutzler v. Hertz Corp.* 749
   B. The Impostor Rule 755
      *State Sec. Check Cashing, Inc. v. American General Financial* 757
   C. The Employee Forgery Rule 765
      *Auto-Owners Ins. Co. v. Bank One* 766
   D. The Negligence Rule 775
Contents

The Bank/First Citizens Bank v. Citizens and Associates 776

E. The Bank Statement Rule 784

Peters v. Riggs Natl. Bank, N.A. 785

Clemente Bros. Contracting Corp. v. Hafner-Milazzo 793

IV. Alterations 806

CHAPTER 15 ELECTRONIC BANKING 813

I. Consumers and Electronic Fund Transfers 814
   A. Credit Cards 814
      1. Basic Liability 814
         Azur v. Chase Bank, USA 815
      2. Asserting Defenses Against the Credit Card Issuer 824
      3. Billing Errors 825
   B. Debit Cards and Other Consumer Electronic Funds Transfers 825
   C. Foreign Remittances 831
   D. Other Payment Systems 832

II. Wire Transfers 832
   A. Scope of Article 4A 834
   B. Acceptance of Payment Orders 836
      First Place Bank v. Olympia Logistics & Services, Inc. 838
   C. Transmission Errors 845
      Grain Traders, Inc. v. Citibank, N.A. 845
      Corfan Banco Asuncion Paraguay v. Ocean Bank 856
      Bank of America N.T.S.A. v. Sanati 861
   D. Unauthorized Funds Transfers 867
      Choice Escrow and Land Title, LLC v. BancorpSouth Bank 868
   E. Conclusion 885

CHAPTER 16 INVESTMENT SECURITIES 891

I. Terminology 892

II. Overissue 895

III. The Issuer and the Holder 895

PART 3   PAYMENT IN DOCUMENTED SALES

CHAPTER 17   DOCUMENTS OF TITLE

I. Warehouse Receipts
   A. Form
   B. Basic Bailment Law
      Procter & Gamble Distributing Co. v. Lawrence American
      Field Warehouse Corp.
      Admiralty Island Fisheries, Inc. v. Millard Refrigerated
      Services, Inc.
   C. Bailee's Lien
   D. Delivery Orders
   E. Terminology: The Issuer

II. Bills of Lading
   A. Federal Law
   B. The Basic Idea
   C. Form
      1. Negotiable
      2. Nonnegotiable
   D. Misdescription
      GAC Commercial Corp. v. Wilson

III. Due Negotiation
   A. The Basic Concept
      Cleveland v. McNabb
   B. The §7-503(a) Owner
      Agricredit Acceptance, LLC v. Hendrix
   C. Other Transfers

IV. Collection Through Banks
A. “Payment Against Documents” 963
B. Liability of the Collecting Bank 966


CHAPTER 18 LETTERS OF CREDIT 975

I. The Basic Problem 976
II. Definitions and Scope of Article 5 980
III. The Issuer—Duties and Rights 980

Voest-Alpine Trading Co. v. Bank of China 982

IV. Fraud 993

Sztejn v. J. Henry Schroder Bank Corp. 993

Hook Point, LLC v. Branch Banking and Trust Company 997

V. Assignment 1003
VI. Subrogation 1004

PART 4 SECURED TRANSACTIONS 1009

CHAPTER 19 INTRODUCTION TO SECURED TRANSACTIONS 1011

I. Bankruptcy 1014
II. Pre-Code Security Devices 1016

Benedict v. Ratner 1016

A. Pledge 1020
B. Chattel Mortgage 1021
C. Conditional Sale 1021
D. Trust Receipt 1022
E. Factor’s Lien 1023
F. Field Warehousing 1023
G. Conclusion 1024

CHAPTER 20 THE SCOPE OF ARTICLE 9 1025

I. Security Interest Defined 1025
II. Consignments 1027

In re Fabers, Inc. 1029
CONTENTS

III. Leases

   Gibraltar Financial Corp. v. Prestige Equipment Corp. 1034

IV. Other Transactions 1044

V. Exclusions From Article 9 1045
   A. Federal Statutes 1045
      Philko Aviation, Inc. v. Shacket 1047
   B. Landlord’s Lien and Other Statutory Liens 1051
   C. Wage Assignments 1051
   D. Non-Financing Assignments 1052
   E. Real Estate 1053
   F. Other Exclusions 1053

CHAPTER 21 THE CREATION OF A SECURITY INTEREST 1059

I. Classifying the Collateral
   In re Troupe 1061
   Morgan County Feeders, Inc. v. McCormick 1068

II. Technical Validity of the Forms 1071
   A. The Security Agreement 1072
   B. The Financing Statement 1073
   C. The Debtor’s Identity 1074
      In re John’s Bean Farm of Homestead, Inc. 1075
      In re PTM Technologies, Inc. 1084
   D. Description of the Collateral 1090
      In re Grabowski 1090

III. Attachment of the Security Interest 1097
      Border State Bank of Greenbush v. Bagley Livestock
      Exchange, Inc. 1098
      In re Howell Enterprises, Inc. 1105

CHAPTER 22 PERFECTION OF THE SECURITY INTEREST 1113

I. Perfection by Possession (Pledge) 1114

II. Automatic Perfection 1116
   A. Purchase Money Security Interest in Consumer Goods 1117
      In re Short 1118
| Contents |
|-----------------|-----------------|
| "General Electric Capital Commercial Automotive Finance, Inc. v. Spartan Motors, Ltd." | 1127 |
| B. Certain Accounts and Other Intangibles | 1135 |
| "In re Wood" | 1136 |
| III. Perfection by Filing | 1140 |
| A. The Mechanics of Filing | 1140 |
| B. Other Filings | 1142 |
| "In re Motors Liquidation Company" | 1144 |
| IV. Perfection by Control | 1150 |

**CHAPTER 23 MULTISTATE TRANSACTIONS**

| I. General Choice of Law Rules | 1155 |
| II. Certificates of Title | 1159 |
| "Metzger v. Americredit Financial Services, Inc." | 1160 |

**CHAPTER 24 PRIORITY**

| I. Simple Disputes | 1171 |
| "In re Zaochney" | 1175 |
| II. Purchase Money Security Interests | 1180 |
| A. The Basic Rule | 1180 |
| "In re Wild West World, L.L.C., Debtor" | 1181 |
| "In the Matter of Faith Ann Peaslee and Others" | 1187 |
| B. Inventory and Livestock | 1191 |
| "Kunkel v. Sprague National Bank" | 1192 |
| III. Control and Priority | 1201 |
| A. Control over Investment Property | 1202 |
| B. Control over Deposit Accounts | 1203 |
| C. Control over Letters of Credit Rights | 1204 |
| IV. Buyers | 1205 |
| "International Harvester Co. v. Glendenning" | 1206 |
| "In re Western Iowa Limestone, Inc." | 1211 |
| "Clovis National Bank v. Thomas" | 1222 |
| "Farm Credit Bank of St. Paul v. F&A Dairy" | 1231 |
| V. Leases | 1235 |
Contents

VI. Article 2 Claimants  1237
    In re Arlco, Inc.  1238

VII. Statutory Lien Holders  1247

VIII. Fixtures  1248
    George v. Commercial Credit Corp.  1248
    Lewiston Bottled Gas Co. v. Key Bank of Maine  1253
    Maplewood Bank & Trust v. Sears, Roebuck & Co.  1258

IX. Accessions and Commingling  1263

X. Federal Priorities for Debts and Taxes  1263
    A. The Federal Priority Statute  1263
    B. Tax Liens — Basic Priority  1265
    C. Tax Liens and After-Acquired Property  1265
    D. Tax Liens and Future Advances  1273

CHAPTER 25 BANKRUPTCY AND ARTICLE 9  1279

I. The Trustee’s Status  1279
    In re Duckworth  1281

II. Preferences  1291

III. The Floating Lien in Bankruptcy  1296
    In re Smith’s Home Furnishings, Inc.  1297

IV. Fraudulent Transfers  1304
    James H. Rice Co. v. McJohn  1305
    Aptix Corp. v. Quickturn Design Systems, Inc.  1306

V. Non-Consensual Liens and the Trustee  1311

CHAPTER 26 PROCEEDS  1317

I. The Meaning of Proceeds  1317
    Farmers Cooperative Elevator Co. v. Union State Bank  1318
    Helms v. Certified Packaging Corp.  1322

II. Priorities in Proceeds  1324
    HCC Credit Corp. v. Springs Valley Bank & Trust Co.  1326
CHAPTER 27  DEFAULT  1341

I. Pre-Default Duties of the Secured Party  1341

II. Default  1343

State Bank of Piper City v. A-Way, Inc.  1343
Klingbiel v. Commercial Credit Corp.  1348

III. Repossession and Resale  1353

Smith v. AFS Acceptance, LLC  1354
Hilliman v. Cobado  1359
R & J of Tennessee, Inc. v. Blankenship-Melton Real Estate, Inc.  1366
Coxall v. Clover Commercial Corp.  1385

IV. Redemption and Strict Foreclosure  1391

Reeves v. Foutz & Tanner, Inc.  1392

Appendix: 1990 Version of §3-605  1401

Table of Cases  1413

Table of Statutes  1425

Index  1439