

**Revised UCC Article 2
Agenda
September 18-20, 1998**

As it now stands, Revised Article 2 will go final at the ALI and NCCUSL in 1999. The Reporters and the Chair of the Drafting Committee will meet with the ALI Council on Thursday, October 22, 1998, just before the next Drafting Committee meeting in Wilmington, Delaware. To prepare for the Council, this agenda raises again what appear to be the most difficult questions and attempts to order them in terms of priority and to allocate suggested time for discussion. Please review the relevant text and notes in the May, 1998 draft.

A. Top Priority

1. Review statute of frauds revision, **2-201**. [15 minutes]

Is \$5,000 floor OK?

Are revisions in subsection (c)(2) & (3) acceptable?

Any other problems?

2. Review parol evidence issues: **2-202** [15 minutes]

Explain by “credible evidence

“Certainly would be included test for partial integration

3. **Warranties, Part 4** [Four hours]

Review changes made after last DC.

2-401:

Should a definition of “transferee be added to 2-401?

2-402:

Review disclaimer language in 2-402(b)

Extension WT beyond immediate buyer, bracketed 2-402(d).

Tolling time for breach WT action: how long?

2-403:

Should bracketed word [only] in line 1, sub. (a) be retained?

Is “obligation better than “warranty.

Can treatment of “promise be clarified vis a vis “representation.

Sub. (c) structure: representation or promise becomes part of the basis of the bargain “unless

Phrasing of (c)(2): knowledge and belief test.

Does this have burden of proof implications?

Proposed comment: “no reasonable person would believe.

2-404: Implied warranty of M.

Note 4 on personal injuries. Consumers oppose comment.

2-406.

Review effect of revisions on consumers.

Choose bracketed language, 2-406(b).

Sub. (c) as written does not apply to consumers. Should (c)(1) also apply to consumers?

Clarify that (d) [bracketed] applies to both commercial and consumer.

2-407.

Should bracketed language in (3), “except in a consumer contract , be retained.

2-408.

Discuss Consumer Union objections; make other clarifications.

2-409.

Should freedom to vary effect of section, see sub. (e), be limited to non-PI cases?

4. Unconscionability in consumer contracts, **2-105(b)**. [Four hours]]

Review sections with special consumer rules: 2-102(a)(8), (9); 2-104(a)(1)(2); 2-105(b); 2-209(b); 2-114; 2-402(d); 2-406(c); 2-407(3); 2-408(b)(2)(a); 2-409(a); 2-810(b), Alt. A; 2-810(c); 2-814(a).

5. **Remedies: Damages** [Three hours]

2-803(c):

What controls should be placed upon the power to select remedies: Choose an

alternative.

2-806. Consequential damages.

Should a definition of consequential damages be in Part 1?

Review subsection (a)(1), where loss to property other than goods sold is included but the “probably result” limitation is added.

Review subsection (b) and the “unreasonably disproportionate” limitation.

2-810. Contractual modification of remedy

Either select from three alternatives in subsection (a) or leave the “minimum adequate remedy” problem to the comments.

Select one of three alternatives proposed in subsection (b).

Review subsection (c)

2-821, 2-826. Damages, breach by repudiation.

Does sub (a)(1) state a sound rule for measuring market damages for breach other than repudiation?

Does sub (a)(2) state a sound rule for damages in repudiation cases, especially in long-term contracts where the case comes to trial after part performance but where time on the contract still remains?

In 2-821, Does sub (b) adequately deal with damage choice other than market damages, especially where “lost volume” is involved?

6. Contract formation: **2-204, 2-205, 2-206, 2-207.** [Two hours]

“Gateway” problem, 2-204(e): When does a “rolling contract” stop and a contract modification begin?

Problems in and around 2-207:

Unless limited to standard forms, is the “knockout” rule too broad?

Clarity in splitting contract formation off from old 2-207: Conditioning contract upon agreement, 2-204(d); Effect of “definite and seasonable” acceptance. 2-206(a)(1).

Other

B. Important issues as time dictates

1. Rejection: Cure [One hour]

2-703. Rejection

When should the time for notice begin to run? Chose between brackets in sub (b).

2-709 Cure (substantial revision)

Cure before time for performance expires. Sub (a)

Cure after time for performance has expired. Sub (b)

2. 2-612. Risk of loss. [One hour]

Major changes: Review

Sub (b) states basic rules

Sub (c) states limited exceptions for breach of contract

Notes identify questions remaining.

3. Creditor Rights [Two hours]

2-816. Seller's right to withhold and reclaim.

Sub (b) integrates two grounds for reclamation remedy

Sub (a)(1) tries to conform to BA §546. Is this sound?

Sub (c) limits remedy against third parties and makes it exclusive as against the goods. Too restrictive?

2-505. Rights of seller's creditors against buyer, see 2-824.

Elimination of "unsecured" in sub (a).

2-506. Sale on approval, return and consignments.

Are creditor rules for sale on approval ok? Sub (e)

Treatment of so-called consignment and relation to A. 9. Sub (f), bracketed.

2-824 Prepaying Buyer's Right to Goods.

Sub (a) states rights of prepaying buyer to goods against seller. Creditors of seller

are governed by rule in 2-505: Whose right vests first? Vesting is defined in sub (c).

Sub (b) states old replevin remedy in 2-716(3), which is subject to vesting rule where creditors of S are involved.

Are these remedies sound?

Have they been properly coordinated with Article 9?

Do they adequately protect a financing buyer of uncompleted goods or must Article 9 still be satisfied?

4. **2-814.** Statute of Limitations.

Review effect of discovery test added to sub (a).

Should power to reduce period of limitation by agreement apply to consumers?

Review and coordinate three exceptions to accrual rule in sub (b).

Review special rules for breach of warranty in sub (c).

Are actions for indemnity adequately covered in 2-814?