

## Volume 3A—2023 Revision Highlights

**New features and recent developments in this 2023 revised volume 3A of Lawrence’s Anderson on the Uniform Commercial Code, Third Edition include:**

### Notable Case Law Updates

- Where a contract included 18 single-space pages of buyer’s specifications and confirmed the buyer’s ultimate responsibility for the design of the compressors, the Fifth Circuit relied on Official Comment 9 to U.C.C. § 9-316 to hold that the warranty for a particular purpose did not arise. *Baker Hughes Process and Pipeline Services, L.L.C. v. UE Compression, L.L.C.*, 938 F.3d 661, 100 U.C.C. Rep. Serv. 2d 57 (5th Cir. 2019) (applying Texas law).
- Buyers of a hair product were permitted to bring suit for breach of express warranty because the product’s labelling was inconsistent with how a reasonable person would expect the product to perform and the statements made by the manufacturer formed the basis of the bargain. *Naiser v. Unilever U.S., Inc.*, 975 F. Supp. 2d 727, 81 U.C.C. Rep. Serv. 2d 864 (W.D. Ky. 2013).
- Because a complaint failed to mention the words “auction” or “bid,” one court raised the possibility that seller’s request for offers did not even constitute an auction. *Restaurant Supply, LLC v. Giardi Limited Partnership*, 330 Conn. 642, 200 A.3d 182, 97 U.C.C. Rep. Serv. 2d 1144 (2019) (applying Connecticut law).
- Contract language attempting to control how title passed did not prevent title from passing where the buyer had possession of the goods. *In re Panthera Enterprises, LLC*, 622 B.R. 201, 103 U.C.C. Rep. Serv. 2d 300 (Bankr. N.D. W. Va. 2020) (applying Virginia law).
- Where a seller engaged in fraudulent “puffing” to inflate the price of a horse at auction, one court held that the seller’s conduct justified the equitable remedy of rescission. *In re Rose*, 100 U.C.C. Rep. Serv. 2d 243 (Bankr. E.D. Tex. 2019) (applying Texas law).
- The Second Circuit affirmed a trial court’s rejection of a claim based on application of the “entruster provision,” which precluded a claim based on the plaintiff’s friend’s sale of a painting to an art gallery due to the lack of “red flags” in the transaction. *The Galin v. Hamada*, 283 F.

Supp. 3d 189, 93 U.C.C. Rep. Serv. 2d 1087 (S.D. N.Y. 2017),  
aff'd, 753 Fed. Appx. 3, 96 U.C.C. Rep. Serv. 2d 1179 (2d  
Cir. 2018) (applying New York law).

- The defense of impracticability was not applicable to operator's refusal to accept the corn, based on the threat of flooding, as there was a commercially viable alternate site for delivery, which the operator refused. *Hansen-Mueller Co. v. Gau*, 838 N.W.2d 138, 81 U.C.C. Rep. Serv. 2d 466 (Iowa Ct. App. 2013) (applying Iowa law).
- A New Mexico court denied buyers' motion for summary judgment because a genuine issue of material fact existed over whether the parties had agreed to modify the default rule that risk of loss passes from a merchant seller to the buyer only upon receipt of the goods. *Philmar Dairy, LLC v. Armstrong Farms*, 97 U.C.C. Rep. Serv. 2d 1033 (D.N.M. 2019) (applying New Mexico law).
- Where buyer rightfully rejected shipment of goods, the risk of loss remained with the seller until the defect was cured. *3L Communications L.L.C. v. Merola*, 81 U.C.C. Rep. Serv. 2d 661 (Tenn. Ct. App. 2013).
- The court rejected the buyer's argument that he and the other members of the putative class were intended third-party beneficiaries of BMW's implied warranties because the buyer did not allege specific provisions in the contracts between BMW and its dealers that would evidence such intent. *Catalano v. BMW of North America, LLC*, 167 F. Supp. 3d 540, 89 U.C.C. Rep. Serv. 2d 8 (S.D. N.Y. 2016) (applying New York law).
- The Sixth Circuit affirmed the district court's dismissal of the express warranty claim on the basis that plaintiff was not in privity with the manufacturer. *Montgomery v. Kraft Foods Global, Inc.*, 822 F.3d 304, 94 Fed. R. Serv. 3d 1123, 89 U.C.C. Rep. Serv. 2d 809 (6th Cir. 2016) (applying Michigan law).