



LESSONS ON LOVE FROM THE UNIFORM COMMERCIAL CODE

Lee H. Rosenthal & Jay L. Westbrook

WE RECENTLY FOUND OURSELVES in a lovely little jewel box of a chapel, one of us officiating at a most unusual wedding and the other “standing up” for both bride and groom. The place: Bond Chapel, on the main quadrangle of the University of Chicago. The bride: Emily, a brilliant professor of law specializing in pre-modern European legal history, with expertise in the history of bankruptcy, early modern commercial law, contracts, and sales. The groom: Bruce, also a brilliant professor of law specializing in contracts and bankruptcy. Emily could be called intense (some might say obsessive); Bruce is more . . . laid back. Both are warm and funny. The wedding: all the usual features of proud, tearful parents, joyful friends, adorable moppets all dressed-up, and an exchange of vows and rings. But there was more. The ceremony included an unusual exchange. We heard it for the first time as we carried out our official wedding duties, and we have never enjoyed a wedding quite as much. We thought it perfect to share with our fellow *Green Bag* readers.

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Professors Emily Kadens and Bruce Markell met through their shared commitment to students. Emily's responsibilities for the judicial clerkship program, first at Texas and now at Northwestern Law School, led her to create innovative workshops that brought federal and state judges to the law school to meet students and faculty and to educate students in the ways of clerkships. Emily wanted to include a bankruptcy judge. Her colleague Jay Westbrook suggested she invite Bruce Markell, then a federal bankruptcy judge. It was the old story: over chili and tacos laced with the Federal Rules of Bankruptcy Procedure, the cinders of love began to glow.

The rest, as they say, is history. Emily asked Judge Lee Rosenthal to officiate. (They had met through Emily's tireless efforts to help her students find judicial clerkships.) Emily and Bruce together asked Jay Westbrook to serve as some combination of best man and matron of honor.

On that crisp (the romantic word for cold) spring evening in Bond Chapel, Emily and Bruce asked each other: what does the UCC tell us about love? The answer: almost everything.

We all know that there is a long tradition of looking to varied sources for lessons on that most mysterious of emotions. Literature is low-hanging fruit. Guidance is everywhere, from the Aeneid to anything by Jane Austen. Mathematics is a less obvious source, with its cautionary features of the tangent lines (which have one chance to meet, then part), parallel lines (which are meant never to meet), and asymptote (which get closer and closer, but will never be together).¹ There is economics, which offers rules on relationships that may seem unromantic (but we might have said that about the UCC as well, before Emily and Bruce got to it). Economics teaches us that to evaluate a relationship, we should ignore the sunk costs of past good times and think about the opportunity costs of better times that could be had elsewhere; we should think about our risk preferences – whether we prefer steady long-term stability or the thrill of volatile uncertainty with big one-off payoffs – before investing in a relationship; we should find undervalued assets like warmth

¹ See m.funsubstance.com/fun/73948/math-teaches-us-love-stories/.

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or kindness, and pursue those over the more conventionally valued assets of beauty or wealth; and we should know that that if we sacrifice the liquidity of some freedoms, we are much more likely to obtain the better return – love.² But few have ventured to the UCC for lessons on love. Enter Emily and Bruce.

During the wedding planning, Emily was putting together her materials on Contracts and Bruce was revising his Contracts casebook (how is that going to work, exactly?). Their conversations were naturally preoccupied with all things Contracts, especially Article 2. Such is the stuff of love.

We knew there was a place in the script for Emily and Bruce to add their own reading. We did not know what it was. (And in true law-professor fashion, the revisions in the script continued until the day of the wedding itself.) After the vows, after a reading from St. Paul in both Latin and English, the bride and groom turned to the assembled and delivered the following *Lessons on Love from the Uniform Commercial Code* (which we quote exactly as they wrote them).

EMILY: One of the many shared interests that brought us together is our enjoyment of teaching Contracts. In that course we teach Article Two of the Uniform Commercial Code, which governs the sale of goods. Since love is a good, we looked to Article Two for rules about it.

BRUCE: We first consulted the Code when I made an offer of marriage. Offer is governed by § 2-206(a), “an offer shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances.” The problem was that Emily did not respond immediately, and § 2-206(b) then states, “an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.” So there could have been some concern there, but we consulted § 2-205, concerning Firm Offers, which states, “An offer which by its terms gives assurance that the offer will be held open is not revocable during the time stated or if no time is stated for a

² William Nicolson, *The Romantic Economist: A Story of Love and Market Forces*, Marble Arch Press (2013).

reasonable time, but in no event may such period of irrevocability exceed three months.” Since I consistently reiterated that my offer was firm, Emily had three months to accept.

EMILY: At that point, I had to consider acceptance or rejection. According to § 2-206(a), acceptance occurs when “the buyer,” which would be me, “after a reasonable opportunity to inspect the goods” (that would be Bruce) “signifies to the seller [Bruce] that the goods are conforming, or that she will take or retain them in spite of their non-conformity.” I took every opportunity to inspect the “goods” afforded me by § 2-513, which states, “the buyer has a right before acceptance to inspect [the goods] at any reasonable place and time and in any reasonable manner.” This included a quick trip across country to Vegas to see Bruce receive the praise of attorneys on his last day on the bench, a three-day drive in a U-Haul from Austin to Chicago with my stuff, sleeping on the floor in Bruce’s new house before it had furniture, and hiking in the middle of nowhere on an impossibly muggy Virginia summer afternoon where Bruce attracted all the bugs and I got poison ivy. At the end of this inspection period, I decided to accept.

BRUCE: Once we had decided to get married, other issues arose, such as in what state we would live and how to fit both of our book collections in Emily’s small apartment. But such uncertainties do not, according to the law, affect a contract, including a contract of marriage. Instead, § 2-311, concerning “Options and Cooperation Respecting Performance” instructs that, “an agreement which is otherwise sufficiently definite is not made invalid by the fact that it leaves particulars of performance to be specified by one of the parties. Any such specification must be made in good faith and within limits set by reasonableness.” We knew we had good faith,

EMILY: defined in § 1-201 as “honesty in fact and the observance of reasonable standards of fair dealing,”

BRUCE: and for the rest, we made certain warranties to each other, express and implied, pursuant to §§ 2-313, 2-314, and 2-315, concerning matters of performance and fitness for a particular purpose that I won’t go into in mixed company.

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EMILY: As we take these vows and pass title according to § 2-401 by making delivery of these rings to one another, we pledge to remember one last bit of guidance from § 2-306(2), “A lawful agreement by either the seller or the buyer for exclusive dealing imposes an obligation by the seller to use best efforts to supply the good” (that is, love) “and by the buyer to use best efforts to promote” its deepening and growth.

BRUCE: And, Emily, I just want to remind you that, under § 2-605(1), “the buyer’s” (that would be you) “failure to state a particular defect which is ascertainable by reasonable inspection precludes [you] from relying on the unstated defect to establish breach.”

EMILY: Yeah, well, since under § 2-209(1) I need no consideration to modify our contract, I now state that I am giving myself to you, per § 2-316 “as is, with all faults.” Do you accept?

BRUCE: I accept.

[The parties shake hands.]



Confirming mutual acceptance under the Code: Professors Bruce Markell (second from left) and Emily Kadens (far right). Officiating: Judge Lee Rosenthal (second from right). Standing up: Professor Jay L. Westbrook (far left). Photograph by Josh Sears.

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The rest of us stood for a moment in silent awe at the power of the Uniform Commercial Code. (Just to be sure, the groom broke the glass under the *chuppah*.) We adjourned to toast the bride and groom and reflect on the lessons we had learned.

