**Battle of the Forms (UCC 2-207) PodCast – An Interview with Professor Jennifer Martin**

**Quentel**: Hi, my name is Deb Quentel. I’m the Director of Curriculum Development for CALI and today we’re speaking with Professor Jennifer Martin, Associate Professor of Law at Western New England College School of Law.[[1]](#footnote-1) Hi, Professor Martin. Thank you very much for joining us today. I appreciate your time. I wanted to talk to you about your lesson, Battle of the Forms. Could you tell me a little bit about what it covers, first of all?

**Martin**: Well, the Battle of the Forms lesson actually draws on the whole first starting with the common law notion of the mirror image rule. And then breaks into the Uniform Commercial Code Article 2 which actually in some ways reverses or at least alters the common law rule. And so starting off with something that might be familiar to many law students and then transitioning into something that the students often find more challenging when they start to work with statutory material. So it begins then to go through the parameters of the existing Uniform Commercial Code Article 2-207. And then also has some additional discussion on the Revised Article 2 that’s currently under consideration as potential statutory law for many of the states.

**Quentel**: Why is this material challenging for the students do you think?

**Martin**: The thing that becomes challenging about it is that most of, much of law school is focused on the common law experience and judge made law whereas statutory interpretation and reading of statutes belongs in a few courses or maybe students get it later on in their study of the law. And so particularly for first-year students or students taking a sales course, they may find this is the first time of having to read a statute and figure out how to parse it out, which parts mean different things and how to do the analysis and approach through the statute.

**Quentel**: Well, since I do have you here, Professor Martin, and we’re one on one, let me ask you. This is a great opportunity to sort of get the inside track on the analysis from a law professor. What’s your tip for students or any tips that you have for students for how to approach this material?

**Martin**: Well it’s interesting because I actually had this conversation last night with some other professors and perhaps we often, as is the case in law, have differing views on where to start and how to go through it. My approach is that students should always start at the beginning of 2-207. And that there’s three sections of it. There’s a one, a two and a three. And that one and two really work together. And then three is essentially if you fail the test under the first section, you can actually skip and go to an alternate route under three. So I think one of the tricks for students is to always start with the first section. And that if that section applies, then you move to subsection two. But if subsection one has failed for some reason, you never go to two and you automatically go to the alternative route, which is solely composed in three.

**Quentel**: Do you think the third section is more difficult to apply?

**Martin**: Well, actually I think the third section is maybe easier for students to apply because it has a definitive way of forming a contract based upon conduct of the parties. So no matter what else happens amongst the writings that the parties may have sent backwards and forwards, if all that gets messed up in communication, we have this default rule that you can still go based on conduct of any sort. You can still form a contract where we intuitively think that there should be one. And then the thing that I think makes the third section maybe easier than working under the first track, is that it allows you to fill in the contract in terms of deciding what terms become part of it based upon the things the parties did in fact agree upon and then taking the gap filling provisions from the rest of article two and so perhaps then that becomes easy about the third section or the alternative tract is in figuring out if you form a contract what in the world are the terms of the contract.

**Quentel**: You mentioned initially that there was a revised section UCC 2-207. What was the need for the revisions?

**Martin**: Well, what ended up happening with the original Article 2 was that there was a lot of, you know, litigation about what things would be covered and how would you know whether a contract was formed under the first section. And in addition we have really just a lot of new technologies and the question about whether, you know, contracts could be formed electronically in this battle of the forms scenario. So there maybe was some open questions that were being posed and perhaps even resolved differently amongst different states and different circuit courts. And so there was this need how do you put it all together. And so Article 2 as a whole, not just 2-207, but Article 2 as a whole underwent revision within the past few years and it took a long time for the revision to actually come about and this kind of centralizing how you form contracts under Article 2 has been changed with the revised Article 2 that perhaps streamlines the process a little bit particularly in favoring the formation of contracts and making it perhaps easier to determine what the terms are.

**Quentel**: Have any states adopted 2-207 the revised version yet?

**Martin**: Well, at this point, no. Now the revision itself was just adopted by the ABA and the ALI within the last two years and so it does take some time for state legislatures to introduce their revised Article 2 as proposed statutory law, to move through the various state congresses. At this time no state has adopted it and there certainly are perhaps, there’re some questions about whether the revised Article 2, which is meant to be a uniform law, will in fact be adopted uniformly throughout the states as the original Article 2 has been.

**Quentel**: Do you want to make any predictions when you think we’ll start seeing it adopted.

**Martin**: Well, I think certainly some states will adopt the revised Article 2 and so it is a matter of time and so but it may be perhaps another, you know, two years before we start seeing some adopt, more widespread adoption of revised Article 2. You know it’ll start with a few states, here and there, and maybe that will make it easier for other states to adopt particularly if some of the controversy surrounding some of the provisions of the revised Article 2 are worked out and some of the state legislatures that’ll be perhaps some compromise positions that other states may be willing to undertake as well. Perhaps then we’ll get some uniformity in the revision.

**Quentel**: You’ve mentioned controversies in adopting it. Is there anything specific that you can talk about?

**Martin**: Well, I think the primary controversy around the revised Article 2 has to do with protections for consumers. Since we’re talking about Article 2, Article 2 governs transactions for goods and primarily we’re talking about the sale of goods which often involves not only businesses but consumers. And so there’s been some differing positions on to what extent Article 2’s provisions should provide some protections for consumers. And so that debate has not been resolved in the revision itself and will have to ultimately be taken up at the various state legislatures which might ultimately result in a little bit of lack of uniformity when the states ultimately adopt some form of the revision.

**Quentel**: Thank you. I think that’s all the questions I had. Did you have any other thoughts you wanted to add about your lesson?

**Martin**: No, well I guess the only thing I’d like to add is this idea of doing statutory interpretation and that when working through the lesson, that students will see that there, when each part of a statute you’re not only separating the statute perhaps by sections, one, two, and three, but even within each section there are methods and tactics that the student should be looking for on how to parse up even one section to decide what various parts mean and how to focus on actually applying the statute because some of these sections can be long and I think this is a good step for students to take in terms of starting to learn the statutory interpretation process.

**Quentel**: That sounds like a great idea. Professor Martin, thank you very much for joining us today. I appreciate your time.

**Martin**: Thank you for having me.

1. Since this podcast was recorded, Prof. Martin has joined the faculty at St. Thomas University School of Law. [↑](#footnote-ref-1)