

## **Nutrisoya v. Sunrich: Anatomy of a Sales Dispute**

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*This paper describes an innovative classroom exercise on a recent international sales contract dispute, designed to give business students an opportunity to appraise an actual, complete contract, consider causes of the dispute, and assess decisions made by companies involved. Students work collaboratively to understand how legal requirements may affect businesses. The exercise reviews legal concepts including UCC Article 2, choice of law under the CISG, jurisdiction, and civil procedure. It encourages practical application of legal rules in a business context and integrative thinking.*

Business leaders make optimal decisions when they have a deep understanding of the business environment and have anticipated and planned for possible future problems (Useem, 1998; Sheldon, 2010, pp. 42-43). Successful business leaders engage in integrative thinking—taking into account multiple perspectives and ideas from multiple disciplines (Martin, 2007). Successful business leaders are able to exercise judgment in complex circumstances (Colby, Ehrlich, Sullivan & Dolle, 2011, p. 55). As Bennis and O’Toole (2005) observed:

The best classroom experiences are those in which professors with broad perspectives and diverse skills analyze cases that have seemingly straightforward technical challenges and then gradually peel away the layers to reveal hidden strategic, economic, competitive, human, and political complexities—all of which must be plumbed to reach truly effective business decisions. (p. 100)

The classroom exercise described here aims to provide that sort of classroom experience in an undergraduate Business Law course. It highlights the complexity of the business environment, which includes the legal environment, and the pitfalls of changing circumstances. The central focus of the exercise is on legal issues confronted by Nutrisoya Foods, Inc. and Sunrich, LLC in their recent contract dispute. But this exercise has broad aims. Learning objectives for the exercise are:

- active, collaborative learning;
- appreciation of the complexity of business relationships and disputes in the real world;
- successful analysis and application of rules of law to an actual case;
- development/confirmation of legal knowledge and business skills (e.g., anticipating problems and resolving disputes); and
- integrative thinking.

The contract at issue is for the sale of “rice milk,” a beverage processed from rice that is popular with lactose-intolerant and vegan consumers. Sunrich Foods, Inc., a Minnesota corporation, entered into an installment contract to manufacture rice milk for Nutrisoya Foods, Inc., of Quebec, Canada. A dispute arose, and the parties went to trial in federal court in Minnesota in the fall of 2009. The jury ruled in favor of Nutrisoya, the buyer, awarding it \$209,000 in damages for Sunrich’s breach of contract. Sunrich appealed. On June 8, 2011, the United States Court of Appeals for the 8<sup>th</sup> Circuit affirmed the trial court decision (*Nutrisoya v. Sunrich*, 2011).

The attraction of this case is obviously not in its glamour or high-profile news value, but rather that students recognize it as representative of an average contract dispute that companies may face. The case gives students an opportunity to appraise a complete, actual contract, to consider causes of the dispute, and to assess decisions made by the companies involved. Additionally, it provides a review of legal concepts commonly covered in a business law course, including Article 2 of the Uniform Commercial Code (“UCC”), the United Nations Convention on Contracts for the International Sale of Goods (“CISG”) as this is an international case, jurisdiction, civil procedure, strict product liability, and common law contracts topics such as assignment and delegation.

The exercise was selected via double-blind review as a finalist in the 2011 Charles M. Hewitt Master Teacher Competition and was presented in plenary session at the annual international meeting of the Academy of Legal Studies in Business in New Orleans, Louisiana, in August 2011. This paper will discuss pedagogical underpinnings, more fully describe the exercise itself, providing some detail on notable lessons students may take from it, and report data on student reactions to the exercise.

## **PEDAGOGY**

I teach a typical Business Law course, with sections of about forty students (mostly sophomores and juniors with little work experience) and a lecture/modified Socratic method format. Lecture is an efficient way to present material to large classes, and a skillfully handled lecture (the back and forth of Socratic-style questioning) can engage students and prompt active participation. It helps that students have a natural interest in many business law topics—constitutional law, torts, criminal law, even some contract issues. One can imagine students being interested in contract issues connected with the founding of Facebook portrayed in *The Social Network* movie, or issues involving the Winklevoss twins and their releases, or conditions subsequent (morals clauses) in professional sports contracts. Over the years, I have accumulated a repertoire of supplements such as news articles and videos to keep students engaged. Students, however, can tire of a single approach. And students just find some topics dry.

A major challenge for teachers is generating enthusiasm and interest about a topic that is important but dry. The topic of Sales Contracts, which comes at the end of my course, would fit that description. The material is difficult. There are few captivating supplements and little natural student interest. To enliven that portion of the course, I determined to move away from my usual lecture method—to engage students in this real-world application of sales law and provide the benefits of student-directed, collaborative learning.

The idea of active learning contract exercises is not new. This exercise continues in the tradition of DiMatteo and Anenson (2007) (exercises to draft covenant not to compete and liquidated damage clause) and Denbo (2005) (employment contract negotiation exercise for small groups). Its design is consistent with Arum and Roksa’s (2011) recommendation that “students should not passively absorb the information but instead should engage in the learning process, often through applying what they have learned and working with others” (pp. 131-32). These authors emphasized active learning and the development of business skills. The DiMatteo/Anenson exercise, like mine, can be used in a single class session in a lecture course. The Denbo exercise is done primarily out of class over a period of weeks.

This exercise contributes something new to the literature in that it combines evaluation of contract terms *and* issues of dispute resolution in a single exercise which can be completed in a single class period. It provides students the experience of examining in depth a real contract—something which most of them have never done. The pedagogical literature emphasizes the value of “real world” exercises and those that

underscore the relevance of course material, both goals which are served by this exercise (Colby et al., 2011, pp. 32-33; Ambrose, Bridges, DiPietro, Lovett & Norman, 2010, pp. 69-83).

## THE EXERCISE

While the case could lend itself to other types of activities, such as mock trial arguments, the exercise described here is designed as a one-day, culminating review activity for an undergraduate Business Law course. It is easily used in a course that otherwise relies primarily on lecture and can be used with large numbers of students. The exercise was designed for a 75-minute class period, but would also work well in a longer class session or two shorter sessions.

The exercise has two phases: first, evaluation of the contract, and then consideration of the dispute and lawsuit. This structure simulates the experience that a business would have. The businessperson signs a contract, not knowing what the future will hold or what disputes may arise. By the time lawyers get involved in a dispute, there is already a contract and a history of dealings between the parties. Many a businessperson in such a situation may wish that he or she had paid closer attention to the contract and its terms.

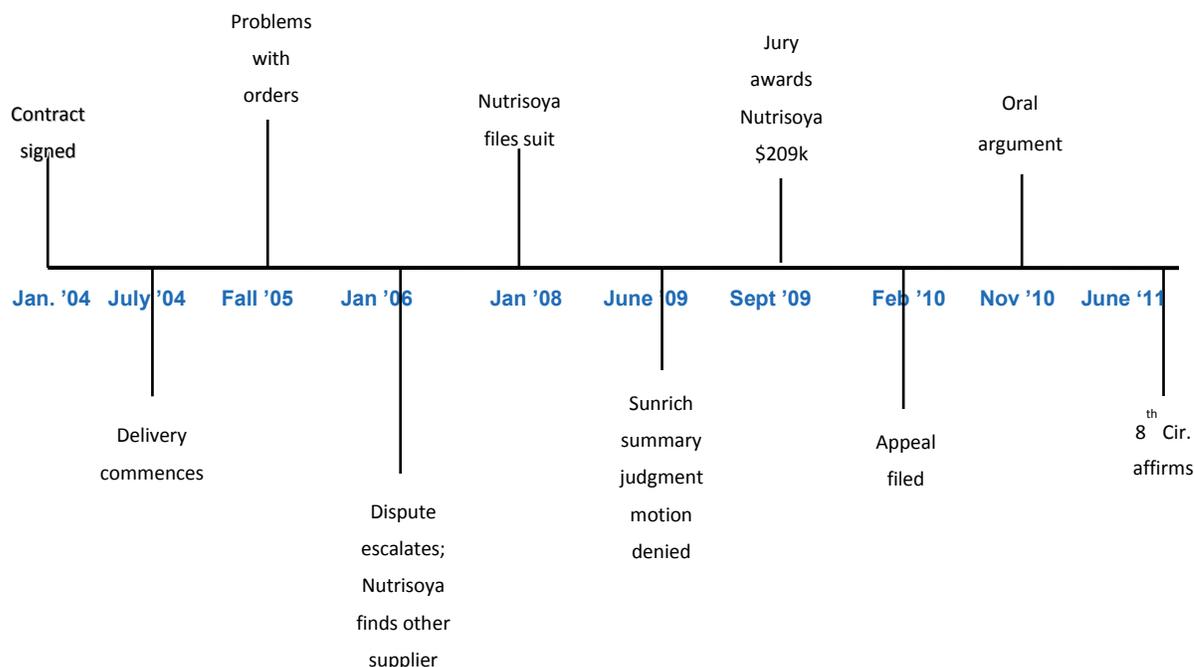
First, students evaluate the contract. Before class, students access online an instruction sheet and the ten-page Manufacturing and Packaging Agreement. The contract is annotated with comments on key provisions and questions on legal issues. For example, students are to consider such issues as whether the contract departs from normal UCC rules, how it allocates liability for defective products, the legality of the contract's non-solicitation clause, and how the contract provides for changes in circumstances such as inflation. Each student is to prepare written answers to half the questions before class (and so is an "expert" on those questions).

In class, students form groups of four or five and review these legal questions. Students collaborate, critiquing others' ideas. Students also consider broader questions about the contract, such as whether the contract appears to favor one party or the other and whether it is clear and well-drafted. Students are surprised by the level of detail, the length, and the ambiguities apparent in the contract. As the student groups evaluate the contract, the instructor circulates to answer questions, listening to and offering comments on group discussions. In this more intimate setting, students feel freer to ask questions of the instructor. This instructor/student interaction is a critical part of the exercise, and I would suggest that a single instructor could appropriately handle no more than 10-12 student groups. Teaching assistants might be trained to assist with larger classes. To give some basis for evaluating performance, each group hands in a written response to one of the broad questions.

The entire class reconvenes for a brief general discussion, with the instructor sharing some of the more enlightening written responses and answering any remaining student questions. The exercise then moves into its second phase, consideration of the dispute. Students receive a three-page handout setting out a timeline of events and asking questions about the legal issues presented. Figure 1 depicts major events on this timeline. Students are fascinated by the long duration of this case.

A much-condensed summary of the unfolding dispute is as follows. Under the three-year contract, Sunrich agreed to manufacture the quantity of rice milk required by Nutrisoya. About a year into the contract term, Sunrich called the size of orders "erratic" and complained about Nutrisoya's alleged failure follow procedures in the contract and to pay for one shipment. Nutrisoya complained that Sunrich had failed to fill orders. A fact that may have significance is that approximately a year into the contract, Sunrich obtained a \$60 million contract to produce soy milk for Costco at the same facility it was using for the Nutrisoya production.

**FIGURE 1**  
**SALES DISPUTE TIMELINE**



Students are asked to discuss legal issues presented by the dispute. For example, students examine whether Sunrich is excused due to commercial impracticability if it decides to get out of the rice milk business or if it has difficulty obtaining raw materials, whether Sunrich could have delegated its duties, whether either party has breached, and other issues including assurances, jurisdiction, and choice of law. The variety of legal issues synthesizes and underscores importance of course material covered during the semester.

With regard to choice of law, *Nutrisoya v. Sunrich* is a case worthy of particular note. The courts applied the Minnesota Commercial Code, modeled on the UCC, rather than the CISG, which would normally apply to a sales contract between parties from the United States and Canada, as both countries are signatory to that treaty. The choice of law provision in the Manufacturing and Packaging Agreement, which indicated simply that Minnesota law would apply, would not normally be adequate to opt out of the CISG's coverage (*Travelers Property Casualty Co. of America v. Saint-Gobain Technical Fabrics Canada Ltd.*, 2007). An argument can be made, however, that courts are required by the CISG to determine broadly the parties' intent on choice of law—looking at all the circumstances and not just the written contract (Johnson, 2011, p. 259). Because neither party here raised the argument that the CISG would apply, the parties' conduct shows intent to follow the Minnesota version of the UCC. One presumes that this was a reasoned decision by the lawyers. This case may provide evidence to support the observation of Staff (2010) and Spagnolo (2010) that many U.S. lawyers seek to avoid application of the CISG due to uncertainty arising from its more ambiguous provisions and lack of U.S. case law interpreting it.

Students also review business questions. What caused this dispute? How could it have been prevented? What lessons does this case hold for other companies? With regard to this last question, students have offered such advice as:

- taking more care at the contract negotiation stage,
- trying to anticipate changed circumstances and provide for them in the contract,
- observing more strictly contract requirements and procedures,

- keeping the other party apprised of issues as they arise so that the relationship is less likely to become contentious,
- considering the practical benefits of settlement rather than litigation, and
- examining the advantages and disadvantages of outsourcing manufacture of their products.

The point regarding settlement is a good one. It is hard to discern good business reasons to have taken this case all the way through trial and the appeal process. The parties do not have an ongoing relationship. It is not an important case for purposes of establishing a legal precedent. The case concerns a relatively small amount of money—surely, once taking legal fees into account, it would have been cost-effective to settle. The suggestion on outsourcing evidences the sort of broad, integrative thinking that is one of the goals of this exercise.

In connection with this discussion, students might reasonably question the effect this case has had, particularly on the loser, Sunrich. While the 8<sup>th</sup> Circuit decision was featured on the *National Law Journal* and *Law.com* Web sites and there was some criticism of Sunrich and its parent company, NASDAQ-listed SunOpta, on a *Yahoo Finance* message board (Mtrekman, 2011), the case received little media coverage or attention. SunOpta's stock price dropped sharply beginning on June 8, 2011, the date of the appellate decision, with a total drop of 16% (from \$7.95 to \$6.69) in the ten days following the appellate ruling (Historical Prices SunOpta, Inc., 2011). As a visual aid, the instructor might construct a chart depicting SunOpta and NASDAQ composite stock prices over several months surrounding the June 8 appellate decision. These facts provide an opportunity to raise a point from the finance discipline: there can be multiple causes of stock price changes, including market forces and other situations involving the company. There seems to be little indication here that this lawsuit had a significant announcement effect. These facts also provide an opportunity to caution against the “post hoc ergo propter hoc” logical fallacy, thus promoting sound critical thinking by students.

At the conclusion of the exercise, instructors might choose to test student understanding on an examination or by student papers. The Appendix contains possible exam questions or paper topics, designed to elicit the sort of application, analysis, synthesis, reflection, and integrative thinking that were the aim of this exercise. I would be pleased to provide upon request comprehensive materials, including the annotated contract, the timeline handout, and an extensive teaching note with background materials and research on the legal issues.

## ASSESSMENT OF LEARNING

I have used this case in twelve sections of an undergraduate introductory Business Law course at the University of Notre Dame's Mendoza College of Business, a top-tier business college located in the Midwest, beginning with the Fall 2009 semester. The best evidence of learning was students' earnest, spirited, informed group discussion of this case. Because of other concurrent changes to the course (including moving testing of the UCC material from a separate exam to the final, which made room for this exercise), I cannot draw reliable conclusions from exam performance as compared with prior semesters. Performance on UCC questions on the final has been, however, at least as strong as in prior semesters.

To gauge student reaction to this exercise, semester-end course evaluations for Fall 2009, Spring 2010, and Spring 2011 questioned to what degree students agreed that “the UCC review activity on *Nutrisoya v. Sunrich* [was] a valuable learning experience.” There were a total of 256 respondents. Eighty-six percent of the respondents agreed or strongly agreed. Twelve percent were “not sure,” and 2% disagreed. There is some assurance of candor in these results, as students complete the evaluations anonymously and instructors do not receive results until final grades have been completed.

Additionally, students' narrative comments indicate that this exercise aided learning. Comments were uniformly positive. Many comments suggest that higher-level learning (application, analysis, synthesis, reflection) took place. These comments are representative:

“I liked how [the case] was presented: contract first, then the dispute. It helped me visualize how a dispute emerges and how it can be prevented.”

“Good change of pace to take what we have been learning and apply it to a real case with more complications than we usually consider.”

“It got me to *think* about what we have learned in class and apply it to a real life scenario.”

“It provided a hands-on way to explore contracts and *show* what we’ve learned.”

“This was the first in-depth contract I’ve ever examined. ... We had to look at the contract from the perspective of a business in order to identify problem areas.”

“[The case] synthesized a lot of the course material. It helped to identify weaker areas of understanding and build confidence in strong areas of understanding.”

## CONCLUSION

In this innovative exercise, students work collaboratively to understand how legal requirements affected businesses involved in an actual contract dispute. Student feedback has been overwhelmingly positive. I observed high levels of student engagement. Based on my experience and student feedback and performance, it appears that learning objectives for the exercise were met. This exercise would fit within a business school curriculum aimed at training business leaders with broad perspectives, capable of rigorous thought and judgment. It is hoped that lessons from this exercise will inform students’ own future business dealings, leading them to think carefully about contract terms, how to nurture positive business relationships, and how effectively to manage disputes that may arise—important considerations for any business leader.

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## APPENDIX

### Sample Paper Topics/Exam Questions

- One surprising aspect of the *Nutrisoya v. Sunrich* case is that it proceeded to trial and beyond, through the appeal process. This would have been a time-consuming and expensive undertaking for both parties, and one with results that both parties probably view as unsatisfactory. How might the situation have been handled more effectively, without recourse to protracted litigation? You might consider methods of Alternative Dispute Resolution, but also any actions that the companies might have taken independently (such as seeking other suppliers). Assess advantages and disadvantages of each option you suggest. Use appropriate legal terminology.
- Assess the Nutrisoya/Sunrich Manufacturing and Packaging Agreement. Is it a well-drafted contract? Does it favor one party or the other? Are there ambiguities or deficiencies in the contract that contributed to the eventual dispute? Can you recommend specific changes or additions to the contract that might have prevented the dispute or

resulted in more satisfactory handling of it? At the time the contract was negotiated and signed, would the parties have likely agreed to those terms you suggest? Discuss, using appropriate legal terminology.

- The relationship between Nutrisoya and Sunrich clearly broke down in this case. Discuss whether each party seems to have acted in good faith, as required by the UCC. How might the parties have acted differently to meet their business needs, salvage a cordial business relationship, and avoid the need for litigation? Provide specific recommendations, using appropriate legal terminology. Assess the advantages and disadvantages of each option you suggest. More broadly, comment on lessons that this case may hold for other companies.
- What are the most valuable lessons you take away from the Nutrisoya/Sunrich exercise? For example, perhaps it helped you better understand the course material. Perhaps you learned something about dispute resolution or business relationships. Explain. Be as specific as possible. How might the lessons you learned here affect the way you handle contractual relationships in the working world?