Chapter 15: Formation of Sales and Lease Contracts
Part III Objectives

1. Summarize the ways in which the Uniform Commercial Code (UCC) has changed the common law rules of contracts, especially as they relate to offer and acceptance, consideration, and the writing requirements for contracts under the statute of frauds.

2. Apply the provisions of Articles 2 and 2A of the UCC to sales and lease contracts, respectively.
Part III Objectives

3. Determine the point at which risk of loss (and in some cases, title) passes from buyer to seller in the various types of sales and lease contracts.

4. Discuss the duties of the buyer and seller in a contract for the sale and lease of goods.
5. Summarize and analyze remedies available to the buyer and the seller for breach of the sales and lease contract.

6. Explain product liability and three well-recognized theories of product liability available to injured parties as the bases for personal injury lawsuits.
The Legal Setting for a Sale of Goods

The Evolution of Law:

• Common law.

• The Uniform Sales Act.

• National Conference of Commissioners on Uniform State Law (NCCUSL).

• Uniform Commercial Code (UCC).
Article 2 of the UCC and its Scope

• Article 2 of the UCC governs contracts for the sale of goods for any dollar amount.

• Sale: contract that transfers title in goods from seller to buyer for a price.

• Goods: tangible personal property.
Types of Property

• Tangible property is physically in existence—it can be touched.

• Movable property means that the item can be carried from place to place and therefore is considered personal property.

• Real property is excluded from this definition.
Article 2 of the UCC and its Scope

• The UCC, Article 2, applies to all sellers and buyers of goods, whether they are merchants or nonmerchants.
Merchants and Nonmerchants

- Merchant: one dealing regularly in the sale of goods or having specialized knowledge of goods.
- Nonmerchant: casual or occasional seller.
Formation of the Sales Contract

• A sales contract must contain the same essential elements as other contracts.
• Under the UCC, it is now far easier to form a binding sales contract than under common law.
• To offset these relaxed rules, the Code insists on two conditions that the parties cannot waive or disclaim.
UCC Conditions for the Formation of a Sales Contract

- First, the parties to the contract must perform their obligations in good faith.
- Second, if the parties to the contract are of unequal bargaining power, the dominant party must avoid being unfair in dealings with the other party.
Formation of the Sales Contract

• Offer.
• Acceptance.
• Consideration.
• Statute of Limitations.
• Statute of Frauds.
Offer

• Under the UCC, a sales contract will not fail for indefiniteness even if some of the terms are left open.
• Intention must be conclusive.
• The UCC distinguishes between merchants and nonmerchants in regard to the offer.
Acceptance

• Acceptance by the offeree may be communicated by any reasonable means.
• The UCC permits acceptance of an offer by performing rather than by communicating.
• The seller can ship conforming or nonconforming goods.
Consideration

• The UCC still requires the exchange of consideration.
• However, an agreement modifying a contract for the sale of goods needs no consideration to be binding.
Statute of Limitations

• Under the UCC, action for the breach of a sales contract must be started within four (not six) years.

• The parties to a sales contract may agree to reduce this four-year period to as little as one year but may not agree to extend it beyond four years.
Statute of Frauds

• The statute of frauds provision of the UCC states that sales contracts for goods priced at $500 or more ($5,000 under the 2003 amendments), and lease contracts requiring total payments of $1,000 or more must be in writing to be legally enforceable in a court of law.
Statute of Frauds

• Quantities must be in writing.
• Intent to form a contract must be in writing.
Enforceable Oral Sales Contracts

Oral contracts are enforceable under the UCC if:

1. Buyer receives and accepts the goods.
2. Buyer makes full payment.
3. Buyer makes a part payment on the goods.
Enforceable Oral Sales Contracts

4. Specially manufactured goods.

5. Admission in court of an oral contract.

6. Written confirmation between merchants.
Unconscionability

• This doctrine, which has been around for centuries, has become significantly more important under the UCC 2-302.

• Under the UCC, courts have expanded powers to deal with unfairness and to ensure that all contracts seem perfectly ethical.
Unconscionability

If the contract or any part of it is deemed unconscionable at the time it was made, the court can:

1. Refuse to enforce the contract.
2. Enforce the contract minus the unconscionable clause or clauses.
3. Limit the application of any unconscionable clauses to avoid an unconscionable result.
The Parol Evidence Rule

- Parol evidence—evidence of an oral agreement made prior to or at the time of signing the written agreement—cannot be presented in court to change or add to the terms of the written agreement.
- The UCC goes beyond this.
Parol Evidence Allowed
Under the UCC

1. Course of dealing.
2. Course of performance.
3. Usage of trade.
Course of Dealing

• Course of dealing: conduct between parties that took place prior to a specific dispute.
Course of Performance

- Course of performance: way in which a particular transaction has been carried out.
Usage of Trade

• Usage of trade: standard custom or widely accepted practice in a particular occupation that can be applied to a dispute.
Formation of the Lease Contract

• Article 2A defines a lease as a transfer of possession and use of goods (tangible personal property) for a certain period of time by a lessor (owner) to a lessee (renter) based on a consideration with the expectation that the goods will be returned to the owner at the end of the lease term.
Lease Types Under the UCC

Article 2A recognizes two types of leases:

• Consumer leases.
• Finance leases.
Consumer and Finance Leases

• A consumer lease is made by a lessor who regularly engages in the business of making leases and is made to a lessee for personal, family, or household usage.

• A finance lease is a special type of lease generally involving three parties instead of two.
Formation of E-Sales Contracts

• Uniform Commercial Code, as passed, has relaxed the rules of traditional contract law, making it easier to apply the Code to online transactions.
Offers and acceptances may be exchanged by:

- E-mail.
- Web site.
- Electronic data interchange (EDI).
- By a combination of electronic communication with traditional faxes
- Human involvement.
- Written communication.
Changes Due to Technology

• The mailbox rule is obsolete due to the instantaneous transfer of information over the Web.

• It is sometimes unclear in an online agreement whether the offeree voluntarily assented to the terms contained in the offer.

• Writing and signature requirements.
Mistakes in Electronic Communications

• Human and programming errors.
• How mistakes are handled will depend on:
  1. Whether the party receiving the wrong information would be harmed.
  2. Whether it would be harmful to hold the person receiving the wrong information accountable.
  3. What stage the contract is at when the mistake was discovered.