

Chapter 14 - Sales, Leases, and Product Liability

Articles 2 and 2a

- Article 2—The Sale of Goods
 - Article 2 of the UCC governs sales contracts (contracts for the sale of goods)
 - Whenever a conflict arises between a common law contract rule and the state statutory law based on the UCC, the UCC controls.
 - What is a sale?
 - What are goods?

 - Who is a merchant?
 - A person who deals in good of the kind involved in the sales contract
 - A person who, by occupation, holds himself or herself out as having knowledge and skill unique to the practices or goods involved in the transaction
 - A person who employs a merchant as a broker, agent, or other intermediary
- Article 2A—Leases
 - Covers leases or subleases of goods
 - Difference from Article 2 is that it applies to leases rather than sales of goods
 - Note: Article 2A is not concerned with leases of real property; land or buildings

Formation of sales and lease contracts

- Articles 2 and 2A modify common law contract rules.
- Offer
 - Open terms
 - Merchant's firm offer

- Acceptance
 - Communication of acceptance
 - Additional terms
 - UCC dispenses with the mirror image rule
 - A contract is formed if the offeree's response indicates a definite acceptance of the offer, even if the acceptance includes terms additional to or different from those contained in the offer.
 - Rules when one party or both parties are non-merchants
 - Rules when both parties are merchants

- Consideration
 - Common law rule that a contract requires consideration also applies to sales and lease contracts
- The Statute of Frauds
 - Special rules for contracts between merchants
 - Exceptions

Performance

- Consists of the duties and obligations each party has under the terms of the contract
- Obligations of the Seller or Lessor

- Place of delivery
- The perfect tender rule
 - Cure
 - Substitution of carriers
 - Commercial impracticability
 - Destruction of identified goods
- Obligations of the Buyer or Lessee
 - Payment
 - Right of inspection
 - Acceptance
- Anticipatory Repudiation

Remedies for breach

- Remedies of the Seller or Lessor
 - The right to cancel the contract
 - The right to withhold delivery
 - The right to resell or dispose of the goods
 - The right to recover the purchase price or lease payments due
 - The right to recover damages
- Remedies of the Buyer or Lessee
 - The right to cancel the contract
 - The right to obtain the goods on insolvency
 - The right to obtain specific performance
 - The right of cover
 - The right to replevy goods
 - The right to recover damages
 - The right to reject the goods
 - Revocation of acceptance
 - The right to recover damages for accepted goods
- Additional Provisions Affecting Remedies
 - A seller and buyer can expressly provide for remedies in addition to those provided in the UCC.
 - Can also specify remedies in lieu of those provided in the UCC, or change the measure of damages

Warranties

- Articles 2 and 2A designate several types of warranties
- Title Warranties – can automatically arise in sales and lease contracts
- Express Warranties – concerns the quality, condition, description, or performance potential of the goods
 - Express warranties arise when seller or lessor indicates:
 - That the goods conform to any affirmation of fact or promise that the seller or

- lessor makes to the buyer or lessee about the goods
 - That the goods conform to any description of them
 - That the goods conform to any sample or model of the goods shown to the buyer or lessee
- Basis of the bargain
- Statements of opinion and value

- Implied Warranties
 - Implied warranty of merchantability
 - Implied warranty of fitness for a particular purpose
 - Warranties implied from prior dealings or trade custom
- Warranty Disclaimers

Product liability

- Based on the theories of negligence, misrepresentation, and strict liability
- Negligence
 - If a manufacturer fails to exercise “due care” to make a product safe, a person who is injured may sue for negligence.

- Misrepresentation
 - When a user is injured as a result of a manufacturer’s or seller’s fraudulent misrepresentation, the basis of liability may be the tort of fraud.
 - Misrepresentation on a label or ad is enough to show intent.
 - Buyer must have relied on the misrepresentation.

- Strict Product Liability
 - People may be liable for the results of their acts regardless of their intentions or their exercise of reasonable care.
 - Requirements
 - Proving a defective condition
 - Unreasonably dangerous products
 - Product defects – manufacturing and design

- Defenses to Product Liability
 - Assumption of risk
 - Product misuse
 - Comparative negligence
 - Commonly known dangers