

ASPEN PARALEGAL SERIES

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Basic Contract Law for Paralegals  
Ninth Edition

 Wolters Kluwer

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Chapter 8

# THE UNIFORM COMMERCIAL CODE



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# Learning Objectives

After studying this chapter you will be able to:

- Explain the background of the Uniform Commercial Code
- Discuss the basic guidelines to be used when applying the UCC
- Indicate the obligations imposed by Article I of the UCC
- Discuss the concept of “custom and usage” as it applies to contracts
- Distinguish between contracts for goods and contracts for services
- Define the UCC concept of “merchant”
- Discuss the UCC express and implied warranties
- List and discuss conditional sales contracts
- List and discuss shipment contracts
- Discuss the various remedies afforded parties under the UCC
- Define a “secured transaction”
- Indicate the requirements to create a security interest
- Define a “financing statement”

# Uniform Commercial Code

Major statutory basis of several important areas of contract law. The UCC was created to promote commerce and to establish certain basic guidelines for those parties involved in commercial transactions.

# Basic Guidelines of Article I

- The law of the state applies unless otherwise superseded by the UCC.
- The parties to a contract may, by their agreement, vary the provisions of the Code.
- The UCC is to be liberally construed.

# Obligations Imposed by Article I

- To perform in “good faith”—honesty in fact
- To perform in a “reasonable time,”  
“reasonableness” to be determined by the facts  
and circumstances of each situation
- To perform according to past business dealings  
and practices (custom and usage)

# Basic Guidelines of Article II, Sales

- The type of contracts that are governed by the UCC
- Specific contractual provisions regulated by the Code covering warranties and risk of loss
- Certain remedies that the contracting parties may be entitled to that differ from the general contractual remedies

# Types of Contracts Covered by Article II

- Contracts for the sale of goods
- Contracts for the lease of goods
- Contracts between merchants



# Article II-A Leases

- Many jurisdictions have added a new subsection to Article II to deal with the lease of goods.

# Contracts for the Sale of Goods Between Merchants

- Article II makes several modifications to the general contract requirements if the contract is between merchants.
- The modifications exist so as to advance the Code's purpose to promote commerce, and it is assumed that merchants are the best judges of their own contractual needs.
- However, two problems may arise in these types of contracts.

# Definition of Merchant

- Because the UCC is to be liberally construed (Article I), Article II of the Code defines merchant as any person who regularly deals in the kind of goods covered by the contract, or, any person who, by his occupation, holds himself out as having knowledge or skill peculiar to the practice of dealing with the goods in question.
- What this means is that not only will a business person be deemed a merchant, but a hobbyist is considered a merchant for the purpose of Article II as well.

# Battle of the Forms

- ▶ The second problem regarding merchants arises as an exception to the mirror image rule of contract formation.
- ▶ Merchants may meet the requirements of a writing by using purchase order forms, billing receipts, and the like.
- ▶ However, because businesses usually use preprinted forms, and each form is designed to protect the interests of the preparer, the writings that act as the memoranda of the verbal agreement may conflict.
- ▶ This is known as the battle of the forms.

# Warranties

- ▶ A *warranty* is a guaranty with respect to the goods covered by the sale.
- ▶ The manufacturer of the goods warrants, or guarantees, that the product is exactly what has been ordered, that it is fit as sold for its intended use, and that the seller has title sufficient to pass the goods to the buyer.
- ▶ A warranty can be created either by the *express representations of the seller* or be *implied by the operation of law*.

# Conditional Contracts

- ▶ With conditional contracts, the sale is predicated upon certain conditions being met at the time of transferring the goods.
- ▶ Four Types:
  - Cost on Delivery (COD)
  - Sale on Approval
  - Sale or Return
  - Consignment

# Shipment Contracts

- In a general shipment contract, the contract merely requires the seller to send the goods to the buyer. Therefore, once the goods are shipped, the risk passes to the buyer. However, the parties may make special contractual arrangements whereby the seller retains the risk for a slightly longer period, but still not to the point of delivery.
- Three types:
  - FOB (place of shipment)—free on board
  - FAS (vessel)—free alongside
  - FOB (carrier)

# Remedies Available under Article II

- Remedies available to Seller
  - Withhold delivery
  - Stop delivery
  - Reclaim goods from insolvent buyer
- Remedies available to Buyer
  - Cover
  - Replevin
  - Revocation
  - Claim goods from insolvent seller



# Article IX

## Secured Transactions

A secured transaction is any transaction, regardless of form, that is intended to create a security interest in personal property or fixtures, including tangible goods, intangibles, and documents.

# Requirements to Create a Security Interest

- There must be a security agreement
- There must be attachment
- There must be perfection