

Apply the Law: Sales

Sales 1	Sales 2	Performance 1	Performance 2	Transfer Title, Risk of Loss
\$200	\$200	\$200	\$200	\$200
\$400	\$400	\$400	\$400	\$400
\$600	\$600	\$600	\$600	\$600
\$800	\$800	\$800	\$800	\$800
\$1000	\$1000	\$1000	\$1000	\$1000

Sales 1 for \$200

◆ What is a sale?

- Transferring title of goods for a price by an owner to a buyer



Sales 1 for \$400

◆ Upon which two concepts is Article 2 of the UCC based?

- Good Faith (Honesty-in-Fact)
- Unconscionability
 - unconscionable provisions precluded enforcement



Sales 1 for \$600

◆ How does the UCC differ from the common law concerning manifestation of assent?

- UCC provides that a contract does not fail for indefiniteness, even though one or more terms are missing, and provides standards for determining missing terms, e.g., price



Sales 1 for \$800

◆ Can a contract be modified under the UCC without new consideration?

- Yes



Sales 1 for \$1000

◆ What is a firm offer under the UCC?

- A signed writing by a merchant to hold an offer open for the purchase or sale of goods (or lease of goods) for a maximum of three months



Sales 2 for \$200

◆ Does the UCC follow the mirror image rule regarding acceptances?

- No: if merchants add additional terms, these become part of the contract if they do not materially alter the agreement and are not objected to by the other party
 - battle of the forms



Sales 2 for \$400

◆ What is sufficient as a writing under the UCC?

- UCC merely requires a writing
 - sufficient to indicate that a contract has been made between the parties
 - signed by the party against whom enforcement is sought (or by authorized agent or broker)
 - including a term specifying the quantity



Sales 2 for \$600

◆ What is the ten day rule under the UCC?

- Between merchants, a written confirmation is sufficient against the recipient of it unless the recipient gives written notice of objection within ten days after receipt.



Sales 2 for \$800

◆ What exceptions to the Statute of Frauds under the UCC permit enforcement?

- Where a party who in his pleading, testimony, or otherwise in court admits that a contract was made
- Where an oral contract is for specifically manufactured goods
- Where a contract has been performed or partially performed, in which goods that have been delivered and accepted or for which payment has been made and accepted



Sales 2 for \$1000

◆ How does the UCC Modify the parol evidence rule?

- Contractual terms set forth in a writing intended by parties as final expression of agreement
 - may not be contradicted by evidence of prior written or contemporaneous oral agreement
 - but may be explained or supplemented by course of performance, course of dealing, usage of trade, or by consistent add



Performance 1 for \$200

◆ How long should tender (offer) of goods be held open by the seller?

- Tender, made at a reasonable time, must be kept open for a reasonable period to enable the buyer to take possession



Performance 2 for \$400

◆ Where is place of tender or delivery if not specified in the contract?

- Delivery terms can be used to specify
 - whether the contract is shipment or destination contract and
 - where seller must tender delivery of goods



Performance 1 for \$600

◆ What delivery terms are used in contracts under the UCC?

- Shipment Contracts
 - FOB place of shipment, FAS seller's port, CIF, and C&F
- Destination Contracts
 - FOB city of buyer, ex-ship, and no arrival, no sale
- Goods Held by Bailee
 - delivery occurs with tender of title document or acknowledgment by bailee that buyer has right of possession



Performance 1 for \$800

◆ What is the Perfect Tender Rule?

- Obligates seller to conform tender of goods exactly to requirements of contract
- If either tender of delivery or goods fail to conform to the contract in any respect, buyer may
 - reject the whole lot,
 - accept the whole lot anyway, or
 - accept any number of commercial units and reject rest



Performance 1 for \$1000

◆ What are three limitations of the perfect tender rule?

- Agreement between Parties
- Cure by Seller
 - if original performance deadline has not elapsed, or
 - if seller reasonably expected nonconforming goods to be acceptable
- Installment Contracts



Performance 2 for \$200

◆ What performance is required of the buyer under the UCC?

- To accept conforming goods and to pay for them according to the contract terms
 - not required to accept tender or delivery of nonconforming goods
- Right of Inspection
- Right of Rejection



Performance 2 for \$400

◆ What constitutes acceptance by the buyer?

- After reasonable opportunity to inspect goods, buyer
 - signifies to seller that goods conform to the contract,
 - signifies to seller that he will take the goods or retain them despite their nonconformity to the contract, or
 - fails to make an effective rejection of goods



Performance 2 for \$600

◆ When can buyer revoke acceptance?

- Defective goods
 - if nonconformity substantially impairs the value of the goods and if either
 - buyer reasonably expected seller to correct defect, or
 - if defect was difficult to discover, and therefore not found during inspection
- Revocation gives buyer same rights and duties as if he had rejected goods
 - but is not effective until notification given to seller



Performance 2 for \$800

◆ When is payment due under the UCC?

- Unless otherwise agreed, payment is due at the time and place the buyer is to receive the goods
 - even if the place of shipment is the place of delivery
- Buyer the right to inspect the goods before paying for them



Performance 2 for \$1000

◆ What are the excuses for non-performance under the UCC?

- **Casualty to Identified Goods**
- **Nonhappening of Presupposed Condition**
- **Substituted Performance**
- **Right to adequate assurance of Performance and Cooperation**
- **Anticipatory Repudiation**



Transfer of Title and Risk of Loss for \$200

◆ When are goods identified to the contract?

- when the contract is made, if goods already existing and identified;
- when the seller ships, marks, or otherwise designates existing goods, if the contract is for goods which did not already exist at the time of the contract; or
- when the crops are planted or start growing, if the contract is for crops to be grown within twelve months, or at the time of the next normal harvest, or when the young animals are conceived



Transfer of Title & ROL for \$400

◆ Distinguish between a shipment contract and a destination contract and when the title and risk of loss pass under each?

- A **shipment contract** does not name a required destination; title is transferred when and where the seller delivers goods to the carrier who will deliver them.
- A **destination contract** specifies the destination; title is transferred upon **tender** of goods at the destination.



Transfer of Title and ROL for \$600

◆ When does a seller have a right to transfer title and when is this transfer void or voidable?

- If the seller is the rightful owner of goods or is authorized to sell the goods for the rightful owner, the seller has the right to transfer title.
 - A person claiming ownership of goods by an agreement that is **void** obtains no title to the goods and therefore cannot transfer it.
 - A **voidable** title is one for which the transferor can reverse the transfer of title back to herself. Although the buyer has acquired legal title, the seller may rescind the transfer (good faith purchaser acquires good title).



Transfer of Title & ROL for \$800

- ◆ Explain the Rules of Risk of Loss where there is a breach?
 - **Breach by the Seller** — The risk of loss is on the seller until the buyer has accepted the goods or until the seller has remedied the defect.
 - **Breach by the Buyer** — Where conforming goods have been identified to a contract that the buyer repudiates or breaches before risk of loss has passed to him, the seller may treat the risk of loss as resting on the buyer “for a commercially reasonable time” beyond the seller’s effective insurance coverage.



Transfer of Title & ROL for \$1000

- ◆ Explain the Rules of Risk of Loss in absence of a breach
 - **Agreement of the Parties** — The parties, by agreement, may not only shift the allocation of risk of loss but may also divide the risk between them. Such an agreement is controlling.
 - **Contracts Involving Carriers** — Under a shipment contract, risk of loss passes to the buyer when the goods are delivered to the common carrier. Under a destination contract, risk of loss passes to the buyer when the goods are tendered to the buyer at the named destination.

