

Sales

Baker - Fall, 1998

I. GENERAL PRINCIPLES

1. Sale of Goods § 2-106(1) = any transaction or contract by which seller transfers title to goods to buyer for a price
2. Common Law: supplements UCC under § 1-103
3. Service Contracts: not governed by Article 2, only sales of goods
4. Good Faith: § 1-201(19) = honesty in fact in the conduct or transaction concerned and applies to every contract governed by UCC § 1-203
5. Merchant: § 2-104(1) a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agency who holds himself out as having such knowledge or skill
6. Purchaser: § 1-201(33) = a person who takes by purchase
7. Purchase § 1-201(32) = taking by sale, discount, negotiation, mortgage, pledge, lien, issue or re-issue, gift or any other voluntary transaction creating an interest in property
8. Apparent or Ostensible Ownership = creditor holds the debtor's goods and prevents the debtor from misrepresenting his wealth by borrowing against the same property → disables the owners from committing fraud
9. Lien = always refers to a voluntary transaction in property but refers to an involuntary, non-consensual transaction with reference to UCC
10. Issue = first transfer of the negotiable instrument from the party who initiated the instrument
11. Re-issue = subsequent issue after the first
12. Bill of Lading = looks like an elaborate check; "delivered to order of ..."
13. Value: § 1-201(44)(d) = in return for any consideration sufficient to support a simple contract; promise is sufficient consideration to support contract under UCC
14. Present Sale = sale which is accomplished by the making of a contract - title passes when the contract is made
15. Contract to Sell Goods at Future Time = when title passes is largely within the control of the parties
 - § 2-401(2) unless otherwise agreed, title passes to the buyer at the time and place at which the seller completes his performance with respect to physical delivery of the goods
1. § 2-507 Buyer's Reclamation Rights: Buyer's rights to the goods on seller's insolvency
2. § 2-702 Seller's Reclamation Rights: seller's remedies if buyer is insolvent
3. § 2-709 Seller's Specific Performance: when buyer fails to pay as it becomes due, the seller may recover when:
 1. goods have been accepted by the buyer
 2. goods are destroyed and risk of loss passed to buyer or
 3. goods are specially manufactured and are no longer fit for resale then seller has an action for the price
 - seller's specific performance remedy = claim for the price = can only be granted in the preceding three circumstances

I. PERFORMANCE REQUIREMENTS AND REMEDIES

A. DISTRIBUTION

- FOB DESTINATION CONTRACT: seller agrees to deliver goods to buyer (risk of loss on seller until goods arrive at buyer's destination)

- All other contracts are SHIPMENT POINT CONTRACTS and the seller's responsibility ends when he delivers the goods to the carrier
- A. PERFORMANCE RULES (distributing and tendering goods and price) (215-233)
1. **§ 2-609 Right to Adequate Assurance of Performance**
 1. designed to enable the non-breaching party to put the other party in breach and enabling the non-breaching party to sue
 2. buyer can withhold payment unless seller can give adequate assurance to buyer that he will deliver
 1. HYPOTHETICAL: Seller cannot fill buyer's order for copper b/c the price went up. Buyer running out of copper and demanding delivery. Buyer may withhold the price. Seller can sue, stating that buyer withheld payment. Buyer can use § 2-609 to justify his withholding
 2. **§ 2-610 Anticipatory Repudiation**
 3. HYPOTHETICAL: If the seller of copper does not give adequate assurance of performance, the buyer will turn to this section to go after anticipatory damages. Seller will have burden of proving that a reasonable time had elapsed before buyer's decision to sue for damages.
 4. **§ 2-513 Buyer's Right to Inspection of Goods**
 - buyer has the right to an inspection at a reasonable place and time and in any reasonable manner when seller sends goods to buyer, the inspection may be after their arrival
 - Buyer bears cost of inspection UNLESS the buyer finds a defect in the inspection, in which case he will be able to recover the costs of inspection as part of his incidental damages
 1. HYPOTHETICAL: Consumer shows up to pick up new car, asks to take it for a trial run and dealer will not give him the keys. Seller states that he may not inspect without taking possession (test-drive) the car until he pays the price.
 2. **§ 2-503 Tender of Delivery: General Requirements and Manner of Delivery**
 3. **§ 2-507 Effect of Seller's Tender: Delivery on Condition**
 - deals with a cash or check payment rather than sale on credit
 - tender of delivery is condition to buyer's duty to accept the goods and his duty to pay for them - tender entitles the seller to acceptance of the goods and to payment according to the contract
 - read in connection with § 2-511 which gives buyer time to collect money
- A. TENDER OF DELIVERY
1. taking of tender is not acceptance
 2. upon tender of delivery, buyer may accept or reject the goods
 3. examination is what you do before taking delivery, inspection usually takes place after or upon delivery to determine whether to accept or reject the goods
 4. prior to buyer's obligation to accept the goods, the buyer is able to reject and is not responsible for the purchase price
 5. **§ 2-601 Buyer's Rights on Improper Delivery "Perfect Tender Rule"**
 - if goods or tender of delivery fail in any respect to conform to contract, buyer may: reject the whole, accept the whole, accept any commercial unit and reject the remainder
 - perfect tender and substantial performance are competing concepts
 - if goods are high-priced, court will generally impose perfect tender
 - when price of goods falls, buyer will attempt to find an imperfection, reject the goods, and buy them cheaper elsewhere

1. *Platex v. Machlett Labs*

- Baker feels opinion is wrong b/c: if goods are not fit for resale, the buyer has a claim for the price
- Acceptance of goods was based on fact that buyer's engineers looked at the goods which were not completed - judge finds this was an inspection and that when buyer received tender, he accepted the goods
- Specially manufactured goods, arguably unfit for resale b/c there is no ready market for them

1. Moulton Cavity v. Lyn-Flex

- perfect tender rule does not apply to installment sale contracts
- if you get involved in an installment sale contract, you cannot escape unless you can show that the entire contract is spoiled b/c of the impairment of one installment

A. ACCEPTANCE

1. § 2-606 What Constitutes Acceptance of Goods

1. acceptance of goods occurs when buyer
 - a. after reasonable opportunity to inspect, signifies that they are conforming or that he will retain them despite their non-conformity
 - b. fails to make an effective rejection but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them or
 - c. does any act inconsistent with seller's ownership (selling goods as if they were his own and without giving notice to the seller that he was selling the goods for the seller's account)
1. HYPOTHETICAL: Buyer was to pay price 60 days after delivery. Upon delivery, goods were not acceptable. Buyer sold goods for less price as chicken feed. Seller told buyer that price was overdue. Buyer should have notified seller that he was not accepting the goods, that he would store the goods, or sell the goods for seller's account. If buyer received no response from seller, he could have sold the goods for seller's account so long as he acted within reason. If buyer does not do these things, he has accepted.
 - § 2-606(1)(b) buyer accepted b/c he did not give notice of the defect
 - § 2-606(1)(c) buyer accepted b/c he sold the goods as his own without notifying seller that he was selling for his account
 - Seller gets judgment for contract price b/c buyer accepted the goods
1. **§ 2-607(3)(a) Notice of Breach**
buyer must within a reasonable time after he discovers or should have discovered any breach notify the seller of breach or be barred from any remedy
2. **§ 2-714 Buyer's Damages for Breach in Regard to Accepted Goods**
 1. measure of damages is the difference at that time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances exist
 - has nothing to do with price, only with value

A. REJECTION

1. NOTICE MUST BE PARTICULARIZED FOR REJECTION (does not have to be for breach of warranty claims)

2. § 2-602 Manner and Effect of Rightful Rejection

1. must be within reasonable time and must be notice to the seller (even if the goods are non-conforming)
2. rejection means that buyer is not taking the goods, he does not take title to the goods, and he is not paying for them

- if the buyer prepays, he takes a security interest in the goods and the seller would have to repay the buyer for that interest in order to make him whole → if buyer does not prepay, he does not have a security interest

1. § 2-603 Merchant Buyer's Duties as to Rightfully Rejected Goods

1. buyer has duty to store goods and not leave out in rain and must make reasonable effort to sell them if necessary and there are no instructions otherwise
2. buyer who sells goods is entitled to reimbursement from seller for storage, shipment, sale, etc

1. § 2-604 Non-Responsive Seller

- if seller gives no instructions within a reasonable time, buyer may store the goods, reship them, or resell them for the seller's account

1. § 2-605 Waiver of Buyer's Objection by Failure to Particularize the Defect

- where the seller could have cured if defect was stated reasonably

1. Rightful/Wrongful v. Effective Rejections

- Rejection can be effective but wrongful when the buyer rejects conforming goods in bad faith by finding some trivial non-conformity
- Seller gets 2-708 or 2-706 remedy but no price remedy
- If a buyer is ineffective in rejecting the goods, the risk of loss is on the buyer (ex. if value of goods dropped from \$2000 to \$300 while they sat in buyer's warehouse, the buyer is liable for that difference in value to the seller)

A. CURE & COVER (233-277)

1. § 2-508 Cure by Seller of Improper Tender or Delivery: Replacement

- when tender or delivery is rejected by buyer and time for performance has not yet expired, seller may notify buyer of his intention to cure by replacement
- if time for performance has elapsed but time of was not of the essence of the contract, courts will be hard on a buyer who does not accept the cure
- attempts to defeat the buyer's use of a trivial defect to defeat the seller's interest and get out of the contract

1. § 2-712 Cover: Buyer's Procurement of Substitute Goods

- failure to cover does not bar claims to other remedies, but buyer must cover if he could in order to receive consequential damages

1. § 2-714 and (2) based on value

A. REVOCATION OF ACCEPTANCE

1. § 2-608 Revocation of Acceptance in Whole or in Part

1. buyer may revoke acceptance whose non-conformity substantially impairs its value to him if he has accepted if:
 - a. he accepted on the assumption that it would be cured and it has not
 - b. if acceptance was reasonably induced by the difficulty of discovery or by the seller's assurances
1. revocation must occur within a reasonable time after buyer discovers or should have discovered the defect and before a substantial change in the condition of the goods which is not caused by their own defects (ex. manufacturer who buys textiles and adds die does not have the right to revoke but still has a claim for breach of warranty)
2. buyer who revokes has same rights or duties as if he had rejected them
 - defect must be substantial or important rather than trivial
 - particular buyer must show why defect was a substantial impairment to him

I. SECURED TRANSACTIONS

A. QUESTIONS TO ASK

1. Does Transaction fall within Article 9? Intent to create a security interest, whether type of collateral or transaction is covered and whether exclusions apply
2. Has a valid security interest arisen? Without attachment, there is no security interest.
3. Is the security interest perfected? Filing a financing statement; taking possession, or automatic perfections
4. Against whom will the secured party prevail?
5. Is the secured party's interest valid in bankruptcy? Perfection necessary
6. Rights of secured party on default?
7. Was there a bulk transfer of inventory? If so, article 6 rules must be met.
- A. SCOPE OF ARTICLE 9
 1. Applies to **any transaction** which is **intended to create a security interest in personal property or fixtures** including goods, documents, instruments, general intangibles, chattel paper, or accounts and also to **any sale of accounts or chattel paper**.
 2. COLLATERAL:
 - a. Goods; virtually identical to Article 2 definition
 - b. FOUR TYPES OF GOODS § 9-109
 1. **Consumer Goods:** if they are bought for use primarily for personal, family or household purposes (§ 9-109(1))
 2. **Inventory:** if they are held for sale or lease to others in the ordinary course of business; includes material used or consumed in a business (pencils and stationary)(§ 9-109(4))
 3. **Farm Products:** use or produced in farming operations and are in the possession of the farmer/debtor. Includes crops, livestock, and products of crops and livestock as long as the products are still in their unmanufactured state. Once they are manufactured, they cease to be farm products and if held out for sale to others, become inventory
 4. **Equipment:** used in a business or by a nonprofit entity or governmental subdivision, or if they *do not fit into any of the other three categories*
 - a. QUASI-TANGIBLE COLLATERAL
 1. Instruments (negotiable and non-negotiable): checks, promissory notes, drafts, and certificates of deposit
 2. Documents of Title: Bills of Lading and Warehouse Receipts
 3. Chattel Paper: writing that evidences both monetary obligation and a security interest in or a lease of specific goods
 4. Accounts: buyer gives oral promise to pay for goods without signing
 - a. INTANGIBLE COLLATERAL
 1. Accounts (receivable): right of repayment for goods or services sold or leased that is not evidenced by an instrument or chattel paper
 2. General Intangibles: catchall to include new types of personal property
 3. TYPES OF TRANSACTIONS
 - a. LEASES
 1. Compared to Security Interests: § 1-201(37)
 - a. Option to Purchase: at end of lease for no or nominal consideration
 - b. Termination Clause: if lessee may not terminate the lease
 - c. Economic Life of Goods Expired: at end of lease
 - d. If Option to Renew Lease: for remainder of economic life of goods
 - a. CONSIGNMENTS
 1. consignor sends goods to consignee who holds the goods as a type of bailment and sells the goods for the consignor
 2. Ostensible Ownership Problems
 3. Good Faith Purchasers = Buyers from Consignor

4. SALE ON APPROVAL

- a. if consignee is getting goods from consignor for consignee's use, it is a sale on approval (until consignee approves the goods)
- b. approval is based on need of consignee
- c. if goods are in hands of consignee, consignee's creditors may reach goods regardless of the fact that title to goods remains in the hands of the consignor

1. Protecting Goods from Consignee's Creditors:

- a. sign law in some states
- b. if people generally know that consignee deals with other people's goods
- c. ***consignor can file financing statement that he is bailing goods

A. CREATION OF A SECURITY INTEREST

1. ATTACHMENT § 9-203

- a. Requirements:
 1. Complete Security Agreement (formalities, signatures, collateral description)
 2. Secured Party Gave Value
 3. Debtor had Existing Rights in Collateral
- a. SECURITY AGREEMENT (writing, granting, description, signature)
 1. If the secured party has possession of the collateral, a written security agreement is not necessary § 9-203(1)(a)
 2. WRITTEN AGREEMENT REQUIRED: must be signed by debtor and contain a description of the collateral § 9-203(1)(a)
 3. Financing Statement: does not satisfy for a security agreement b/c there is no granting clause
 4. Conveyance of the Interest: § 9-105(1)
 - a. "grants" or "conveys" typically used but not necessary
 - b. "conditional sales" can still qualify
 - c. no limited in what it may contain
1. Description of Collateral § 9-203(1)
 - a. must *reasonably identify* what is described
 - b. must be able to determine what collateral the parties intended to cover
 - c. much more detailed than that required in the financing statement
 - d. error in description is not fatal if there is some other proof that the parties intended the collateral in question to be covered
1. **After-Acquired Property** § 9-204(1)
 - a. Security Interest may be created in property that will be acquired later
 - b. Exceptions: may not create after-acquired property interests in *consumer goods* nor to *household goods*
 - c. Agreement must *expressly* use the term "after-acquired property" or otherwise clearly refer to the collateral to be acquired in the future
 - d. INVENTORY: when agreement refers to inventory, it is *implied* that inventory acquired in the future is covered
 - e. FARM EQUIPMENT: after acquired property of this type is implied to be covered by the agreement

a. VALUE

1. Value Necessary § 9-203(1)(b)
2. Definition § 1-201(44)
 - a. in return for any consideration sufficient to support a simple contract
 - b. as security for a pre-existing claim (or in partial or total satisfaction)
 - c. by accepting delivery under a preexisting contract for purchase or
 - d. in return for abiding commitment to extend credit (whether or not the credit is ever drawn upon)

- a. DEBTOR'S RIGHTS IN COLLATERAL § 9-203(1)(c)
 - 1. Title is Irrelevant
 - 2. Identified: buyer has rights as soon as the goods have been identified by the seller, even before buyer has possession
 - Ex. Farmer ordered tractor. Company picked out tractor for farmer in its warehouse and tagged it. As soon as the tractor was tagged, the bank's security interest attached, even though farmer had never even seen or paid for the tractor.

A. PERFECTION

- 1. Three Ways to Perfect
 - a. File Financing Statement
 - 1. Notes secured party's interest and generally describes the type of collateral included under the security agreement
 - 2. Exclusive Method of Perfection for accounts and intangibles
 - 3. **Effective for all types except instruments**
 - a. Taking Possession of Collateral
 - 1. possession of collateral results in perfection as soon as all the requirements for attachment have been met § 9-305
 - 2. Possession Perfects: **goods, money, documents, instruments, and chattel paper** § 9-305
 - 3. Exclusive Method of Perfection for money and instruments § 9-304(1)
 - 4. Field Warehouse: means of taking possession of inventory § 9-304(2)
 - 5. Goods in Possession of Bailee: perfection by possession is accomplished by having a receipt issued in the name of the secured party or by notifying the bailee of the secured party's interest § 9-304(3)
 - 6. Rights of Duties of the Party in Possession
 - a. duty of reasonable care
 - b. right to be reimbursed by debtor for reasonable expenses § 9-207(2)(a)
 - c. money received from collateral must be returned to debtor or applied against the secured obligation § 9-207(2)(c)
 - d. risk of loss is borne by the debtor to the extent that the secured party's insurance is insufficient § 9-207(2)(b)
 - e. secured party may operate collateral or use it to the extent it is necessary to preserve the collateral or its value § 9-207(4)
 - a. Automatic Perfection
 - 1. **Purchase Money Security Interest in Consumer Goods**
 - 2. upon attachment, perfection occurs automatically
 - 3. must still be a security agreement
 - 4. consumer goods defined § 9-109(1)
 - 5. Temporary Automatic Perfection:
 - a. proceeds from collateral or documents and instruments § 9-302(1)(b)
 - b. proceeds = anything received on the sale or disposition of the collateral in which the security interest exists; where proceeds are a different type of collateral than the original security interest collateral, the temporary perfection terminates 10 days after the sale of the original collateral
 - c. secured party as to documents or instruments who advances *new value* under an existing written agreement obtains a 21-day perfection period

A. FILING

- 1. § 9-302 When Filing Required to Perfect
- 2. FINANCING STATEMENT
 - a. Puts the world on notice that a security agreement of some kind is in effect but gives little details of the underlying transaction § 9-402(3)

- b. REQUIREMENTS § 9-402(1)
 - 1. names of both debtor and secured party: gives notice of where to go for more information
 - 2. address of secured party
 - 3. mailing address of debtor
 - 4. types or description of collateral
 - 5. signature of debtor
 - a. After-Acquired Property: may be covered in financing statement but does not have to be mentioned so long as the types of property are adequately described (ex. motor vehicles would suffice)
 - b. Fixtures must be expressly stated as applying
- 1. WHERE TO FILE
 - a. § 9-401 gives three systems from which states may choose
 - b. § 9-401(2) filing made in good faith but wrong place is still effective
- 1. MECHANICS OF FILING
 - a. Effective: upon presentment and paying the filing fee § 9-403(1)
 - b. Errors in Filing: interest protected even if filing officer makes a mistake
 - c. Duration: effective for 5 years from date of filing § 9-403(2)
 - d. § 9-402 Search Names
- 1. REQUEST FOR STATEMENT OF ACCOUNT OR LIST OF COLLATERAL
 - a. Debtor has power to force secured party to provide information under § 9-208
 - b. Debtor may request amount of unpaid loan and list of collateral
 - c. Secured party has two weeks to respond to the request
 - d. § 9-208(3) secured party is protected against burdensome requests by limiting a debtor to one such statement every six months without charge
- A. PRIORITIES
 - § 9-312 Conflicting Security Interests: dealing with two perfected secured creditors and no lien creditor; first in time is first in right
- B. DOCUMENTS
 - 1. Financing Statement (page 491)
 - is a notice filing and is not a record of the transaction
 - description is not operative or important
 - this is a public record but does not necessarily tell us about the deal between the buyer and the seller, merely states that the creditor may have an interest in the property
 - 1. Dealer Inventory and Security Agreement
 - is proprietary and will be between the buyer and the lender (bank)
 - item 5: grant of security interest → the bank is given a perfected security interest in the inventory (car)
 - is not filed except in the case where there is no financing statement and you use a security agreement to file in the place of the financing statement (this will occur in the drama where you the lawyer see the debtor going to the courthouse, you determine that there is no financing statement already filed and you need something filed before the debtor declares bankruptcy → if they declare bankruptcy before you file something, you are an unsecured creditor).
 - 1. Security Agreement (pg 492)
 - Matter of good practice and forms
 - Should contain covenants of parties and their rights

- Granting clause: nothing in article 9 stating that there must be a granting clause but many courts require one somewhere in the contract and so is good practice to include one
1. Demand Note (pg 499)
 - For convenience of the creditor b/c when he sues the debtor, he would like to get a judgment as quickly as possible
 - A negotiable promissory note is a prima facie case in debt and the burden shifts to the defendant to raise a defense
 - To contest something such as the signature on the note, the def must plead it in the answer to the complaint or waives the defense
 - Holders in Good Course: the premiere good faith purchasers; one who purchases the interest in a secured promissory note; he is virtually unbeatable
 1. Loan Request Form (page 501)
 - Main Motors requests a loan from First Bank to cover the purchase of the cars from GM
 - GM and those like it will typically not sell on credit or time, but insist on cash
 1. Assignment and Repurchase Agreement (page 508)
 - In the consumer defaults, the bank needs someplace to repossess the cars which have been repossessed
 - Bank's deal with Main Motors includes getting Main to repossess the cars which have been defaulted on and hold them
 1. Installment Sale Contract
 - Contract between the consumer and the bank
 - Language is often prescribed for consumer protection reasons
 - There is no negotiable promissory note b/c they have been virtually excluded from consumer transactions --you cannot be a good faith purchaser to the contract nor take free of the claims and defenses
 1. Certificate of Origin
 - Certificate of origin is transferred to the state when the consumer buyer asks for title to the car
 - The state inspects the certificate of origin and issues a title → the certificate of title goes either to the consumer buyer or to the secured lender
 - If the title goes to the secured creditor, the state is a title state - cannot be a transfer of the title to the car without getting the express permission from the secured creditor
 - If the title goes to the consumer buyer, the state is a lien state - it is possible for the consumer buyer to transfer the interest to the car in violation of the security agreement
 1. Certificate of Title (pg 518)
 - For automobiles, this is equivalent to the financing statement
 1. Notice of Repossession
 - If there is resistance to the repo-man, there is breach of the peace, he must cease and desist, and the secured creditor must then turn to the police
 - Notice is sent to debtor that it is last chance before repo-man comes for the car
- A. IMPORTANT THEMES
1. Negotiable Promissory Note = possession to perfect
 2. Chattel Paper (negotiable promissory note with a written security agreement) = file or possess to perfect

3. Open Account = must file to perfect (cannot be possessed or transferred b/c this is like an account receivable, is actually a contract (buying the account is not good enough, if must be filed in order to be perfected)
 4. Negotiable Documents = filing
 5. Negotiable Instruments (checks) = possession
 - A. INSTALLMENT CONTRACTS § 2-612
- difficult to get out of these types of contracts
 - to revoke, must show that the goods have a substantial impairment equivalent to material breach

I. GOOD FAITH PURCHASE

1. Good Faith Purchaser: § 2-103(1)(b) one must take without notice of another's interest in the property
 - merchants must deal with honest in fact and commercial reasonableness
1. Thieves: takes voidable title when he takes from the bearer of a negotiable instrument
 - When a thief appears in the chain of title, all subsequent takers take what the thief had, which is nothing
 - Thievery transcends any other characteristic that he has (that he is a merchant)
1. Merchant: § 2-104(1) a person who
 - a. deals in goods of the kind or has an ancillary transaction with the goods or
 - b. by his occupation holds himself out as having knowledge or skill peculiar to the goods or
 - c. hires someone who has the skills
1. Buyer in Ordinary Course of Business: § 2-109(9) a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods, buys in the ordinary course from a person in the business of selling goods of that kind
 - Buying may be for cash or in exchange for other property
 - Excludes pawnbrokers
 - Does not include buying in bulk or in satisfaction of a money debt
1. Entrusting Possession: § 2-403(2) entrusting possession of goods to a merchant who deals in goods of that kind gives the merchant the power to transfer all rights of the entruster to a buyer in the ordinary course of business
2. Entrusting Def.: § 2-403(3) entrusting includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties
3. Good Faith Purchaser can take in exchange for an unpaid debt, but a buyer in the ordinary course of business cannot take in return for a debt
4. Rules do not apply when buying in bulk
5. Holder in due course - taking delivery is the key
6. **Porter v. Wirtz 1981 - GOOD FAITH PURCHASER**
 - *V holds himself as W and tells P he is interested in buying painting*
 - *P agrees to let V hang painting in house, V gives painting to W (deli worker) and told him to sell it to a gallery, W sold painting to F (gallery owner) who sold it to B who sold it to 3rd party*
 - *F cannot be a good faith purchaser b/c he is in the business and did not operate in good faith when buying painting from deli worker and making no inquiry into its history*
 - *F can also not be a buyer in the ordinary course b/c he is acting in bad faith and did not take from someone who deals in goods of that kind*
 - *Although V was an art dealer and W was his agent, F was not aware of this and so cannot be a buyer in the ordinary course*

I. WARRANTIES (terms, specifications, title, quality, and writings)

A. TITLE WARRANTIES (38-46)

1. **§ 2-312(1) Seller warrants that:** (1) title conveyed by him shall be good, and its transfer rightful and (2) the goods will be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting had no knowledge
2. Buyers expect good and clean title
3. Two situations defeat this expectation:
 - a. sales of stolen goods
 - if there was a thief in the seller's chain of title, the true owners may demand return from anyone whose claim derives from the thief
 - **§ 2-312(1)(a):** seller's responsibility to the buyer who is compelled to surrender goods to the rightful owner → title conveyed shall be good and the transfer is rightful
 - a. sales of encumbered goods
 - arise under voluntary action of the owner (security interest); by the action of a third party against the will of the owner (attachment process); or by the operation of law without a judgment (tax or mechanic liens)
 - **§ 2-312(1)(b):** warranty against encumbrances - "goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge"
 - **§ 2-312(2):** seller's warranty can be excluded or modified by *specific language* in agreement or sale or certain circumstances

1. *Wright v. Vickaryous 1980*

- **Encumbered goods case**
- *three entities had consented to releasing their security interests in cows which were bought by V from W at an auction*
- *V refused to accept cows and stopped payment on down payment check*
- *W resold cows and attempted to hold V liable for difference*
- *Court found that W could easily have explained to V that the secured parties consented to the sale of the cows, and b/c he did not do so and make an effort to cure the uncertainty which constituted the breach, he was not entitled to recover from V*
- *Must ask: is the buyer a professional buyer of cattle*

1. Inventory Finance

- merchants and farmers commonly borrow money to finance activities and lenders often secure loans with interests in the goods to be sold
 - seldom will buyer knowingly take goods subject to pre-sale encumbrance b/c lenders release the encumbrances at the time of resale
 - **§ 9-306(2):** provides that a security interest does not continue upon the authorized sale of goods
 - **§ 9-307** protection of buyer's goods as long as he takes without knowledge that it is violation of someone's security interest - must purchase from buyer in ordinary course of business to be protected
1. **§ 9-307(1) Protections of Buyers of Goods**
 - Buyer in the ordinary course of business (except buyer of farm products from a person engaged in farming operations) takes free of a security interest created by his seller even though the security interest is perfected and even if the buyer knew of its existence
 - Assumes that the products should be sold and that the financier wants them to be so that he can be paid

1. Clouds on Title
 - Third-party claims of title to goods or claims of encumbrances on goods can range from plausible to fanciful
1. Three remedies for buyer for seller reneges on contract
 1. seller can sue for price
 2. § 2-706 seller resells and get difference between contract and resale price
 3. § 2-708 seller does not resell but seeks difference in market value
1. Monetary Remedy for Breach
 - UCC does not provide clear remedy when seller breaches warranty of title
 - What date at which the value of the goods should be measured
 - § 2-714(2) (buyer's damages for breach in regard to accepted) determines value of goods as warranted at time of acceptance
 - § 2-711(1) (buyer's remedy in general) and § 2-713(1) (buyer's damage for non-delivery) determines the value of the goods at the time when the buyer learned of the breach
1. **§2-312 Warranty of Title Against Infringement**
 1. There is in a contract for sale, warranty by the seller that the title transferred shall be clear and with no clouds
 2. Specific language can exclude or modify (1) or if the seller lets the buyer know that he does not claim title in himself or that he is only selling through as he or a third person might have
 3. Buyer who furnishes specifications cannot hold the seller liable for any claim arising out of compliance with the specifications
1. **§ 2-714 Buyer's Damages for Breach in Regard to Accepted Goods**
 1. where buyer has accepted goods and gives notification, he may recover for any non-conformity of tender resulting from the seller's breach in any reasonable manner
 2. measure of damages = difference at the time and place of acceptance between the value of the goods accepted and value they would have had if as warranted
 3. any incidental and consequential damages may also be recovered
1. AGENCY PRINCIPLES
 - a. § 2-607(5)(a) Effect of Acceptance; buyer can bring in seller to fight litigation
 - b. § 2-312(2) Auctioneer: warranty of title will be modified under circumstances which make buyer believe that the person selling does not claim title in himself
 - c. Agency Principle Doctrine: assumption that agent is acting for himself and he would implead another party (person he was selling goods for)
 - d. though he is only the auctioneer, he is still the seller in terms of the code b/c he physically sold or contracted to sell the goods, though it was on behalf of a third party
- A. **EXPRESS AND IMPLIED WARRANTIES OF QUALITY (62-110)**
 1. **Express Warranties § 2-313(1)**
 - a. Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise
 - b. Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description
 - c. Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

- strict liability rule: intent of seller is almost immaterial; intent of buyer may have some relevance
- puffery: not abolished; seller is permitted to use sales talk to induce the sell without crossing over into liability
- if the comments deal with performance of the goods, it is a warranty
- **if an assertion is made that can be proven it is a warranty**
- buyer must only show that the warranty was the basis of the bargain (no longer has to show reliance)
- difficult to disclaim express warranties b/c burden shifts to seller to show non-reliance
- § 2-316(1) If a disclaimer cannot be read consistently with an express warranty, then the disclaimer is inoperative

1. Implied Warranties - Merchantability § 2-314

- a. seller must be merchant which sells goods of that kind; food and drink sold to be consumed on the premises or elsewhere is a sale
- b. Goods must be of fair and average quality for goods of that kind, and fit for the ordinary purpose for which such goods are used (§ 2-314(2))
- c. goods to be merchantable must be at least such as would:
 1. pass without objection in the trade under contract description
 2. with fungible goods, must be of fair average quality
 3. are fit for the ordinary purposes for which such goods are used
 4. run of even kind, quality, quantity within each unit and among units
 5. are adequately contained, packaged, labeled as the agreement requires
 6. conform to the promise or affirmations of fact made on the container or label (must meet trade standards)
- a. other implied warranties may arise b/c of trade standards or course of dealings aside from those required here
- b. **§ 2-316: Implied Warranty of Merchantability May be Disclaimed**
 1. orally or in writing
 2. language must mention merchantability
 3. and if in writing, must be conspicuous

1. Implied Warranties - Fitness for Particular Purpose § 2-315

- a. when seller knows of particular purpose and buyer is relying on seller's skill or judgment to select suitable goods, there is an implied warranty that the goods will be fit for such purpose
- b. NO MERCHANT IN GOODS OF THAT KIND REQUIREMENT
- c. reliance on the seller must be reasonable
- d. seller does not have to be a merchant to be liable for breach of particular purpose warranty; however, one who is not a merchant is unlikely to be held liable b/c buyer would not reasonably rely on his skill or judgment
- e. § 2-316(2) Exclusion or Modification of Warranties
 1. must be in writing
 2. must be conspicuous

A. DISCLAIMERS AND LIMITATIONS (110-149)

1. GENERAL INFORMATION

- a. Doubt should be resolved in favor of warranty existing
- b. Sellers will offer limited warranty with limitation on remedies
- c. Conflict between express and implied = express controls (except with implied warranty of fitness for particular purpose where implied takes precedence)

1. § 2-316 Exclusion or Modification of Warranties

2. Three Ways Implied Warranties Can be Disclaimed (other than express language)
 - a. all implied warranties are excluded by expressions such as "as is" "with all faults" or like language
 - b. when the buyer has examined the goods or refused to examine them, there is no implied warranty as to defects which examination ought to have revealed (different than inspection which occurs after delivery)
 - c. implied warranty can be excluded or modified by course of dealing or course of performance or usage of trade
1. Seller's Preferred Remedy
 - a. repair or replacement is optimal choice b/c are often quite cheap
 - b. seller likely to give some extremely limited warranty so that he can say one exists; even unsophisticated buyers will ask
1. Buyer has 3 Opportunities to Question Quality of the Goods
 1. Acceptance of Goods (tender, acceptance, rejection)
 - a. buyer takes possession, realizes that they are not as contracted for and decides to reject the goods, ships them back to seller and tells seller he will not be responsible for the price
 - b. Burden of Litigation: depends on how much of the price was paid → if most of the price was paid, the buyer will litigate for refund of his money → if none of the price was paid, the seller will litigate
 - c. Burden of Proof: on the seller
 - d. Burden of Persuasion: on the seller to prove that the goods were in fact conforming
 1. Revocation of Acceptance
 - a. Buyer believes that seller will cure and seller does not → buyer revokes his acceptance → court deals with this just as if the buyer had rejected the goods
 - b. Burden of Proof and Persuasion: on the seller
 1. Breach of Warranty Claim
 - a. Burden of litigation, proof and persuasion on the Buyer
 - b. Advantageous for Buyer to revoke as soon as possible so as to keep burden of proof and persuasion on the seller
1. **§ 2-202 Final Written Expression: Parole or Extrinsic Evidence**
 - a. what is written is seen as final expression of what is intended
 - b. evidence of any prior agreement or contemporaneous oral agreement may not be used to contradict it
 - c. written agreement may be supplemented by or explained by:
 1. by course of dealing or usage of trade (§ 1-205) or by course of performance (§ 2-208) and
 2. by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement
 - a. **any agreements occurring subsequent to written agreement are always admissible**
1. Examination v. Inspection: examination takes place before execution of contract and inspection occurs post-delivery
2. **§ 2-719 Contractual Modification or Limitation of Remedy**
 1. seller is justified in limiting the remedies to the buyer (by insisting on repairing and replacing)
 2. court can make buyer whole if circumstances do not (refuses to eliminate buyer's rights completely)

- consequential damages may be limited so long as limit is not unconscionable → limiting damage for personal injury is prima facie unconscionable → limiting commercial loss damages is fine (loss of profits and damage to property)

T.J. Stephenson v. Bags of Flour

- *beetles in the flour shipped to Bolivia*
- *ADM gave express warranty of merchantability "fit for ordinary purposes for which such goods are used"*
- *How many beetles does it take to make flour unmerchantable: trade usage is used by the court to determine that the flour was unmerchantable b/c of the infestation of live beetles*
- *Bolivia paid with letter of credit, already paid and had to sue*
- *ADM can implead the carrier who will call on the insurance company*
- *POINT: merchantability is ambiguous and has little meaning without trade usage and extrinsic evidence*

Sidco v. Gulf Oil

- *Gulf selling MLE, described it generically, offered professional invitees to take a sample and do its own testing*
- *Sidco contracted with an invitee to buy the MLE, gave it to third party to process, did damage to their heaters, and discovered it would be quite expensive to remove the hazardous material*
- *Court states that Sidco had chance to look at the goods, could not prove that they were different than described, nor that the examination would not have revealed the hazardous waste*
- *HOLDING: Gulf did not misrepresent*

Royal Business Machines v. Lorraine

- *Seller must show that the representations made were not a part of the basis of the bargain*
- *Representation Made by Seller:*
 - machines and parts were of high quality → opinion*
 - experience and testing show frequency of repairs was low → opinion*
 - replacement parts were readily available → warranty (opinion)*
 - cost of maintenance and supplies low, less than 1/2 cent per copy → "low" was puffery but specific figure was warranty*
 - machines were tested and ready to be marketed → opinion*
 - experience shows that purchase and leasing would return substantial profits → opinion*
 - machines were safe and could not cause fires → warranty*
 - service calls required on average of 7000-9000 copies → warranty*

1. **§ 2-607(4) Objective Reasonableness of Buyer's Expectation;** burden on buyer to establish breach with respect to goods accepted

2. **§ 2-608(3) Revocation of Acceptance in Whole or in Part**

- *seller can be held liable even if he did not intend to create a warranty*
- *if buyer is as knowledgeable as seller, representations made by seller may not be part of basis of the bargain b/c buyer relied on his own knowledge*

1. Basis of the Bargain - majority puts burden on seller but some jurisdictions place burden on the buyer

2. Mistake: innocent fraud

3. Mutual Mistake: court determines what is equitable

4. **§ 2-607(5) Vouch-In Provision**

Chatlos v. National Cash Register

- damages awarded were higher than expectation damages - unusual
- both parties were in the trade and buyer should have known he was getting too good of a deal

1. § 2-715(2) Buyer's Incidental and Consequential Damages

- *Carnation v. Olivet Egg Ranch*
- must be foreseeable that the breach would cause direct damage

1. § 2-719 Contractual Modification or Limitation of Remedy

- possible for parties to choose arbitration
 - arbitrator's award can be collaterally attacked if there is substantial claim of unfairness, arbitrariness, or capriciousness
- R = risk of liability P = probability of defect C = cost of defect
 $R = P \times C + (P1 - P) \times C2 \rightarrow$ includes element of risk in the price, consequential damages
 $R = P1 \times C1 \rightarrow$ direct damages

1. 2-715(2)(b) Personal Injury = Consequential Damages

Award in Case No. 3779 of 1981 (under § 2-719)

- both parties acted in good faith and dispute arose from misunderstanding
 - buyer was 3/5 negligent and seller was 2/5 at fault
- Award of Sept. 27, 1982**
- buyer's commercial reputation was damaged when boots were not delivered by seller on time and could not be later sold b/c fashion
 - buyer received commercial reputation damages
- Insurance Co of North America v. Automatic Sprinkler**
- disclaimers were on back page, only page that had writing on the back, and included consequential damages and personal injury damages
 - MAJOR POINT: states began incorporating 2-316 (disclaimers must be conspicuous) with 2-719, and stating that limitations on remedies must also be conspicuously disclosed (although the code does not state this)
- Universal Drilling v. Camay Drilling**
- drill was deemed saleable although not operable
 - court states that "as is" is good enough to disclaim all warranties and that there is no other way to sell goods as is
 - if negotiating for buyer, should negotiate what the meaning of "as is" is - that the equipment would at least operate
 - lawyer here could have argued that the he bought a drill and if it did not drill, the product was not what seller said it was
- Western Industries v. Newcor Canada**
- argued that b/c the ovens were experimental, trade usage should be excluded from evidence
 - HOLDING: if trade usage is intended to be excluded, there must be express language to that extent, otherwise it is automatically included
- Kunststoffwek Alfred Huber v. RJ Dick**
- paragraph stated that seller was responsible for replacement or price reduction for defective goods and disclaimed damages of any kind
 - course of dealing used here - consequential damages were not unusual in this type of situation
 - course of performance deals with prior contracts made between the two

- *if buyer had before claimed consequential damages, been denied, and not protested, there would be course of performance between parties which would exclude consequential damages*
 - *breach of warranty v. breach of contract (warranty breach are only of quality; all other breaches are of contract)*
1. **§ 2-712 Cover: Buyer's Procurement of Substitute Goods**
 - buy replacement goods elsewhere and look to seller for difference price
 - buyer may recover difference in prices less any money saved by breach
 - buyer's replacement remedy
 1. **§ 2-714 Buyers Damages for Breach in Regard to Accepted Goods**
 - difference of the price of goods as they were warranted and how they were delivered, defective
 - deal with value rather than price
 1. **§ 2-713 Buyer's Damages for Non-Delivery or Repudiation**
 - damage remedy that is buyer's equivalent to refund
 - after seller fails to deliver and buyer decides not to buy comparable goods elsewhere, he can recover the price the goods would cost in the market
 1. **§ 2-508 Cure by Seller of Improper Tender or Delivery; Replacement**
Milgard Tempering v. Selas
 - *limited liability to repair or replacement*
 - *RULE: limited repair failed of its essential purpose and seller's default was sufficiently sever to expunge the cap on consequential damages*
 - *RULE: repair failed of essential purpose b/c it failed to make buyer whole*
 - *RULE: failure of repair remedy does not automatically remove a consequential damages cap, but the default here caused a loss which was not part of the bargained-for allocation of risk*
 - *§ 2-719 → failure of essential purpose*
SM Wilson v. Smith International
 - *repair remedy failed of its essential purpose, but the provision barring recovery of consequential damages was enforceable*
 - *seller did not ignore its obligation, it was merely unable to complete it*
 - *default of the seller was not so total and fundamental as to require that its consequential damage limitation be expunged from the contract*
 - *BAKER VIEW: holding is incorrect*
Chatlos System v. National Cash Register
 - *buyer of computer system never worked*
 - *court found no disparity in bargaining power, no surprise element b/c limitation was in short clear contract and so no consequential damages*
 - *some disruption in normal business routines, expenditure of employee time, and impairment of efficiency cannot be considered highly unusual or unforeseeable in a faulty computer system*
Fiorito Brothers v. Fruehauf
 - *trucks not capable of hauling wet concrete, seller never acted to repair or replace, jury awarded damages, appeals court affirmed*
 - *repair and replace remedy failed of its essential purpose*
A&M v. FMC
 - *tomato machine did not work, had to be sent through twice, caused damage to tomato crop*
 - *seller sued for remainder of purchase price*

- *court held that it would be unconscionable to enforce the limitation of consequential damages b/c the seller had the ability to prevent the harm and the farmer had no ability to do so*
- *MAIN POINT: unconscionability based on the allocation of risk*
Hill v. BASF
- *herbicide to be used "just like the one you are using now," weeds killed crops, warranty stated that cans could be sent back unopened for refund*
- *court held that statements made by representative was puffery and so the limitations on the can were valid*
- *BAKER: wrong holding*
- *§ 2-719: authorizes remedy limitations such as that expressed on the can unless the limitations are deemed to be unconscionable, not intended to be exclusive, or to have failed in their essential purpose*

1. § 2-318 Vertical and Horizontal Warranty

A. BARS TO WARRANTY CLAIMS (150-170)

1. MK Associates v. Stowell

- **§ 2-207 Notice:** *court requires clear statement from buyer to seller that there is a breach; no formality of notice is required nor exact amount of damages that will be incurred*
- *waiting until the seller sues for remainder of purchase price, to claim a breach of contract fails to satisfy timely notice requirement*
- *Three purposes in requiring notice:*
 1. *enable seller to cure or replace*
 2. *give seller opportunity to prepare for negotiation and litigation*
 3. *ensure finality*
- **buyer who does not give adequate notice barred from any remedy**

1. § 2-601 Buyer's Rights on Improper Delivery (notice may be vague)

- *if the goods or the tender of delivery fail in any respect to conform to the contract, the buyer may:*
 - a. *reject the whole or*
 - b. *accept the whole or*
 - c. *accept any commercial unit and reject the rest*
- ****If buyer is arguing that seller breached a warranty, notice can be vague**
- ****If buyer is arguing seller improperly delivered (breach of contract), notice must be detailed**

1. MUST GIVE MORE DETAILED NOTICE FOR REJECTION THAN BREACH

2. Tittle v. Steel City Oldsmobile

future performance warranties v. defect warranty

- *pl had extended warranty, accepted car and found numerous defects*
- *court made distinction between warranties as to defects in the goods as delivered and warranties as to future performance*

1. UCC § 2-725 Statute of Limitations on Contracts of Sale

1. *cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach*
- *4-year period which begins to run on the date delivery is tendered*
- *exception: when warranty covers future performance of the goods, the cause of action accrues when the breach is or should have been discovered*

I. CONSUMER PROTECTION AND MAGNUSON-MOSS ACT (170-91)

A. Introduction

1. QUESTIONS:

- a. Is the transaction consumer or commercial (is there a commercial buyer or lessor)? If consumer then question 2.
 - b. Is there a written warranty? If so then MM is applicable and warranty must be either limited or full
1. MMWA § 110 allows for collection of attorneys fees
 2. Jurisdiction of MM is limited b/c to get into fed court, must meet \$75,000
 3. Seller is free to give no warranty, but if a written warranty is issued, it must be either full or limited → market constraints force sellers to give warranties
 4. **UCC § 2-316 still applies to commercial transactions
 5. ****MM only applies to consumer transactions****
 6. **MMWA § 101(6) Written Warranty**
 - a. warranties which are written
 - b. remedies
1. **MMWA § 101(4) Supplier:** any person engaged in the business of making consumer products directly or indirectly available to consumers
 2. **MMWA § 101(1) Consumer Product**
 - a. tangible personal property which is normally used for personal family, or household purposes
 - b. if commercial buyer purchases something normally used for personal, family, or household purposes, that commercial buyer is held liable
1. **MMWA § 108 Limited Warranties**
 - a. supplier may not disclaim or modify any implied warranty if there is any written warranty to the consumer or a service contract applying to the product
 - b. implied warranties may be limited in duration to the same time as the written warranty, as long as the written warranty duration is reasonable → implied warranty must be conscionable, set forth in clear and unmistakable language, and displayed on the face of the warranty
 - c. disclaimer, modification, or limitation made in violation of the section is ineffective for purposes of the act and state law
1. **§ 104 Full Warranties:** must be conspicuous
 2. **MMWA § 101(3) Consumer:** commercial sellers who buy consumer goods can be considered consumers
- Skelton v. General Motors***
- *advertising regarding transmissions was not an express warranty under the statutory definition and so not covered under MM*
 - *§ 101(6) advertising was not an express warranty under this section*
1. **Consequential Damages:** Can be limited under § 104(3) but not mentioned in 108
 2. **HYPOTHETICALS**
 - a. If there is no written warranty, MM does not apply.
 - b. If a furnace is bought with no written warranty, and explodes, MM will not apply. Best bet is to use UCC § 2-313(1)(b) and § 2-314 (Fitness for Particular Purpose) because it includes description and the furnace was described in writing as a furnace. MM includes affirmation of fact or written promise concerning material or workmanship, but does not include "description."
 - c. Air-conditioner breaks down after 1 1/2 years. MM § 108(a) states that the limited warranty duration must be reasonable. Because this is a major investment, 1 1/2 years may not be reasonable.
 - d. Air-conditioner was not big enough to cool the home: UCC § 2-315 Warranty of Fitness for Particular Purpose

- e. Consequential damages may be limited so long as conspicuous under MM § 104(3) so we can assume that they may be limited under § 108. (air-conditioner was of adequate size but a leak caused damage to the home)
- f. Seller sold new car with conspicuously disclaimed consequential damages. Buyer may recover for personal injury b/c prima facie unconscionable to disclaim, but may not recover for economic loss.

I. STRICT TORT LIABILITY § 402(a)

1. if there is personal injury, would sue for consequential damages under § 2-719 and under strict tort liability (claims limited to physical injury)
2. must have defect in product which makes it unreasonably dangerous
3. five or six year statute of limitations
4. tort responsibilities may not be disclaimed
5. privity is not an issue

I. PRIVACY AND WARRANTIES (192-214)

1. VERTICAL PRIVACY
 - a. PROPER PLAINTIFF AND PROPER DEFENDANT
 - b. Economic Privity: none in economic injury suits, can use impleader and interpleader rules
 - c. Long Term Supply Contracts vertical privity possible to form thru these
 - d. Warranties: from retail seller and manufacturer create warranties
 - e. UCC silent on vertical privity
1. HORIZONTAL PRIVACY § 2-318
 - a. Three Types
 1. family or household, guest - consumed or affected by goods and injured
 2. any natural person reasonably expected to use or consume the goods or be affected by the goods and is injured
 3. any person (includes corporation) injured (personal or economic) (minority view)
 4. Other Theory: third party beneficiary of buyer's warranty rights

Morrow v. New Moon

- *mobile home purchased from salesman with oral warranty*
- *default judgment against retail seller but bankrupt*
- *no privity required for personal injury but this is economic loss*
- *buyer's best cause of action against the manufacturer b/c they made the mobile home and in best position to protect against liabilities through insurance*
- *§ 2-314 Implied Warranty of Merchantability*
- *§ 2-315 Implied Warranty Fitness for particular purpose*

Szajna

- *gets around Illinois rule by creating constructive privity between the consumer and manufacturer through the written warranty*

Collins v. Carbolene

- *RULE: assignee of a warrantee's rights under an express warranty, if the assignment is otherwise valid, stands in privity with the warrantor and enables him to sue for economic loss and consequential damages, just as an original contracting party might do*

I. REMEDIES

A. BUYER'S REMEDIES

1. Introduction

- a. Notification: § 2-607(3)(a) and (b) If buyer does not give reasonable notice to seller, then he is barred from any remedy at all
- b. Buyer Remedies Before Acceptance:

1. recover what he has already paid
2. cover
3. recover damages for non-delivery under § 2-713
4. demand specific performance under some circumstances § 2-502
- a. Buyer Remedies After Acceptance
 1. Pay contract price with damages to be deducted § 2-714 and § 2-717
 2. Revoke acceptance in some circumstances (latent defects, seller's failure to cure after promising to do so) § 2-704
- a. Cover § 2-712
 1. Buyer's procurement of substitute goods
 2. If buyer pays more for cover than contract price, he can recover the excess, as well as incidental and consequential damages, less any expenses saved in consequence of the breach
 3. Buyer must effect cover seasonably and in good faith
 4. Buyer is NOT obligated to cover (he can instead seek market price damages under § 2-711(1) → BUT IF HE DOES NOT ATTEMPT COVER, BUYER IS NOT ENTITLED TO CONSEQUENTIAL DAMAGES
 5. Does not have to find CHEAPEST cover, only act reasonable and in good faith
- a. Buyer's Incidental Damages § 2-715(1) include but not limited to: (out of pocket)
 1. Inspection
 2. receipt
 3. transportation
 4. care and custody of goods rightfully rejected
 5. commercially reasonable charges
 6. expenses or commissions related to effecting cover
 7. any other reasonable expense incident to delay or other breach
- a. Buyer's Consequential Damages § 2-715(2)
 1. no directly associated to seller's breach but traceable
 2. include also injury to person or property proximately resulting from breach
 3. Ex. Buyer's lost profits
- a. Damages: Buyer Accepted and Sues for Breach § 2-717 and 2-714(2)
 1. damages measured by the value of conforming goods less the value of the goods delivered
 2. focus is on value, not on price
 3. 2-717 "The buyer, on notifying the seller of his intention to do so may deduct all or any part of the damages resulting from any breach of the contract from any part of the price still due under the same contract."
- a. Damages: Buyer accepts, time for revocation passed, buyer sues for non-conformity
 1. § 2-714(1)
 2. buyer may recover the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable
 3. must notify seller of breach within reasonable time or barred from any remedy
- a. Damages: Buyer Rightfully Rejects but Has Already Paid Price
 1. § 2-711
 2. Cover Price (market price is buyer chooses not to cover) - Contract Price + Price Already Paid
 3. If buyer does not cover, he gets no consequentials and any expenses saved as a result of the breach must be deducted
- a. Damages: Buyer's Damages for Non-Delivery or Repudiation
 1. § 2-713

2. Repudiation: Market price is determine at the place set for tender
3. Revokation or Rejection: market price determine at place of delivery
4. Difference between market price at time when buyer learned of the breach + contract price (+ incidental/consequential damages if buyer attempted to cover)
- a. Damages: For Breach of Warranty
 1. § 2-714(2)
 2. Value of Goods as Warranted - Value of Goods Accepted = Buyer's Recovery
 3. Calculated at time and place of acceptance
 4. Can generally also recover incidental and consequential damages under § 2-715
- a. Specific Performance § 2-716
 1. Available where the goods are unique or other circumstances justify it
 2. Replevin is only available where goods are identified to the contract and after reasonable efforts to cover fail, or circumstance indicate cover is not available
- a. Revocation
 1. § 2- 608
 2. revocation barred when there has been a substantial change in the condition of the goods if the change is not caused by the defects themselves

1. BUYER'S GOODS ORIENTED

- a. § 2-502 Buyer's Right to Goods on Seller's Insolvency
 1. buyer who has paid all or party of the purchase price may recover the goods within ten days after seller's receipt of first installment of the price
 2. buyer can choose to claim only those goods which comply with the identification in the contract
- a. § 2-501
- b. § 2-716 Specific Performance AND Replevin Remedy
 1. specific performance if goods are unique or in proper circumstances (inability to cover)
 2. specific performance may include payment of: price, damages, or other relief to make the buyer whole
 3. buyer has right to replevin if after reasonable effort he is unable to effect cover for the goods, if such effort will be unavailing, or if the goods have been shipped under reservation and satisfaction of the security interest has been made or tendered

1. BUYER'S MONETARY REMEDIES

- a. § 2-714 Buyer's Damages for Breach in Regard to Accepted Goods
 1. measure of damages is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances exist
 2. does not have anything to do with price, only with value
- a. § 2-711 Buyer's Remedies in General for Non-Delivery or Repudiation
 - a. buyer has a security interest in goods and can resell them in order to be paid
- a. § 2-712 Cover: Buyer's Procurement of Substitute Goods
- b. § 2-715 Buyer's Incidental and Consequential Damages

A. SELLER'S REMEDIES

1. INTRODUCTION

- a. Under UCC § 2-703, when Buyer Breaches, Seller Can:
 1. **Withhold** Delivery
 2. **Stop Delivery** by a carrier/bailee (§ 2-705)
 3. **Finish Unfinished Goods** (if commercially feasible under § 2-704(2))
 4. **Resell** the Goods and Recover Damages (§ 2-706)
 5. **Recover Damages** for non-acceptance (§ 2-708)

6. **Recover the Price** of the goods in a proper case (§ 2-709)
7. **Cancel** the contract
 - a. Consequential Damages: Contractual Limitation of Liability § 2-719(3)
 1. limitation may not be **unconscionable**
 2. limitation of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable
 3. limitation of damages where loss is commercial is not
 - a. Seller May Withhold Delivery § 2-703 when buyer:
 1. wrongfully rejects the goods
 2. wrongfully revokes acceptance
 3. fails to make payment due on or before delivery
 4. repudiates the contract
 5. § 2-702(1) when seller learns of buyer's insolvency, he can withhold delivery except for cash payment
 - a. Reselling Goods
 1. § 2-706
 2. If Seller Resells, damages = contract price - resale price
 1. If Seller Does Not Resell, damages = contract price - market price
 2. Seller is entitled to damages whether or not he resells
 - a. Right to Stop Goods in Transit § 2-705
 1. if seller discovers buyer is insolvent
 2. if buyer breaches contract (repudiation, failure to pay before delivery is such payment is required, etc.)
 3. Seller right to stop shipment lasts only until:
 - a. buyer receives the goods
 - b. bailee other than the carrier acknowledges receipt of goods for buyer
 - c. carrier reships or holds goods on buyer's behalf
 - d. buyer is issued a negotiable document of title covering the goods
 1. **SMALL SHIPMENTS: Seller may only stop only upon buyer's insolvency → may not stop delivery due to buyer's breach**
 - a. Recovery of Purchase Price § 2-709(1)
 1. buyer has accepted the goods
 2. goods conformed to contract and were lost or destroyed within a commercially reasonable time after risk of loss passed to the buyer or
 3. goods were identified to the contract and the seller could not resell them after a reasonable effort (or circumstances under which such effort would be in vain)
 - a. Demand of Cash on Delivery § 2-702(1)
 - b. Demand of Adequate Assurances § 2-609(1)
1. **SELLER'S GOODS ORIENTED REMEDIES**
 - a. § 2-705 Stoppage in Transit
 1. seller may stop delivery of goods when he discovers buyer's insolvency -- buyer has perpetrated fraud on the seller
 2. seller may stop delivery until:
 - a. receipt of goods by buyer
 - b. when bailee acknowledges to buyer that he is holding goods for him
 - c. acknowledgement to buyer by carrier or warehouseman (same as b)
 - d. negotiation to buyer of negotiable document of title covering the goods
 1. when any of these things occur, buyer's possessory rights begin and seller may no longer place a stoppage on the goods
 1. to stop delivery, seller must notify the bailee by reasonable diligence to prevent delivery of the goods

- a. § 2-702 Seller's Reclamation Rights
 1. reclaiming goods from buyer after they have been delivered
 2. seller can change contract from credit to COD - buyer contends that if he gets the goods from the seller, he will no longer be insolvent - buyer then gets letter of credit, borrows money, etc. to come up with the cash for the COD
 3. seller has 10 days after buyer's receipt of goods to make demand for reclamation
→ if misrepresentation by buyer of his solvency was made in writing within three months before delivery, the 10 day limitation will not apply (refuses to limit seller's remedy when buyer has committed fraud, intentional or non-intentional)
 4. seller's exclusive fraud remedy
- a. Bankruptcy Code § 546 (Reclamation)
 1. seller may reclaim goods if debtor has received them while insolvent but:
 - a. seller may not reclaim goods unless seller demands in writing reclamation of the goods
 1. within ten days after receipt of goods by the buyer
 2. if 10 day period expires after the commencement of the bankruptcy proceeding, before 20 days after the receipt of the goods by the debtor
- a. § 2-507 and § 2-511 plus Common Law Replevin
 1. these sections are the substantive rights on which you base the common law claim of replevin

1. SELLER'S MONETARY REMEDIES

- a. § 2-709 Action for the Price
 1. seller may recover together with incidental damages, the price
 - a. of goods accepted or of conforming goods lost or damages within a commercially reasonable time after risk of loss has passed to the buyer
 - b. of goods identified in the contract if seller is unable after reasonable effort to resell them or circumstances indicate that such effort will be unavailing
- a. § 2-706 Resale
 1. if buyer breaches, seller should resell and sue for difference between the contract price and the price goods were resold for
 2. similar to buyer's self-help remedy of allowing seller to cure
 3. seller must act with commercial reasonableness and resell at a reasonable time
 4. seller may not speculate at the buyer's expense
- a. § 2-708 Damages for Non-Acceptance or Repudiation
 1. market level damages
 2. profit that would have been made + overhead - any costs saved by breach

I. DOCUMENTARY EXCHANGES

1. Non-Negotiable Title (bill of lading) = document of transfer of the goods and receipt; does not contain a place to endorse; evidence of title only
2. Negotiable Title = document of title in the goods (printed on yellow paper) (delivery and endorsement)
3. Bill of Lading
4. Drafts (type of negotiable instrument) = checks, she who signs is liable, pay to the order of
5. Sight Drafts: drawn by the seller on the buyer, treating the buyer as money
6. Presentment: seller makes an order on buyer to pay
7. Sequence of Events
 - a. carrier gives seller negotiable bill of lading
 - b. seller gives carrier the goods

- c. seller transfers NBOL to the bank
- d. bank gives notice to the buyer to pay the purchase price
- e. buyer pays purchase price and gets the NBOL
- f. bank transfers payment of purchase price to the seller
- g. buyer received goods from carrier

1. Things that Could Go Wrong

- a. bank teller bribed by buyer to give NBOL before payment of purchase price
- b. buyer could bribe carrier to get the goods before he has been given the NBOL
- c. seller could give non-conforming goods to seller in return for purchase price

I. RISK OF LOSS

** He who controls the goods has the risk and he who has insurance has the risk

WAS THERE A BREACH OF THE CONTRACT OTHERWISE

NO § 2-509 YES § 2-510

- 1. If about non-conformities at the acceptance rejection stage and the buyer has a right to reject the goods? § 2-510(1). Risk of loss on the seller
- 2. If the buyer has accepted non-conforming goods with the reasonable belief that the non-conformities will be cured? § 2-510(2) Risk of loss is the buyer to have insurance
- 3. Breach by the buyer who repudiates the contract and the seller is unwillingly in possession of the goods? § 2-510(3) Risk of loss on the buyer.

- a. Carried? (1)
- b. Bailed? (2)
- c. Neither Carried nor Bailed? (3)

Was the contract:

- a. Shipment Point Contract →
(risk of loss passes to buyer at shipment point)
- b. Destination Point Contract →
(risk of loss passes to buyer at destination point)

1. TWO PARTY TRANSACTIONS (383-405)

a. *United Airlines v. Conductron*

- *United at all times had the right to reject the goods b/c they were non-conforming from the time of shipment; therefore, the burden never passed to them*

a. SHIPMENT POINT v. DESTINATION POINT

- parties must state "f.o.b. destination" or it is assumed to be shipment point
- "f.o.b. seller's city" = shipment point contract
- "f.o.b. buyer's city" = only destination point contract
- if the parties are silent, it is a shipment point contract

- a. TITLE - Focus is not on who holds title; although the bill of lading is stated to be a document of title, it does not effect the risk of loss
 - b. If goods conforming at shipment point then risk of loss passes to buyer if non-conforming at time tendered at shipment point buyer has a right to reject - must determine if goods conforming at time tendered
 - c. HYPOTHETICAL: Buyer does not have the right to refuse payment b/c he was unable to inspect before the goods before delivery. He still has the right to reject the goods, but has already paid purchase price and would have to initiate litigation. Buyer still maintains §§ 2-601, 602, 603 rights, and may sell the goods for the seller's account → Seller does not have to allow anyone the opportunity to inspect the goods until he has the document of title (Negotiable Bill of Lading) and until buyer pays the purchase price, he does not have the NBOL.
 - d. HYPOTEHTICAL: Goods arrive three weeks late. IF the contract was FOB Destination Point, buyer may sue seller under § 2-601 b/c the carrier was an agent of the seller. IF the contract was a shipment point contract, the carrier became an agent of the buyer when the goods were delivered to the carrier. Therefore, the carrier was an agent of the buyer and buyer may not sue seller.
 - e. HYPOTHETICAL: Seller discovers before delivery that buyer is insolvent. Seller may (1) § 2-609 demand adequate assurance of performance which will take time, (2) § 2-702(1) seller can demand cash transaction (if buyer cannot pay cash and feels aggrieved, he can sue seller for breach of contract.
 - f. HYPOTHETICAL: Seller discovers during transit of the goods that the buyer is insolvent. Seller may (1) retake possession of the goods up until they are in the hands of the buyer, (2) § 2-705 stop delivery of the goods, or (3) § 2-609 demand adequate assurance of performance.
 - g. **§ 7-403 Obligation of Carrier or Warehouseman to Deliver**
 - a. bailee must deliver the goods to the person entitled under the document
 - b. seller's § 2-705 right to stop the goods in transit trumps the buyer's right to delivery of the goods under the non-negotiable document
 - a. **§ 7-303 Diversion, Reconsignment, Change of Instructions**
 - a. there is no instance where the bailee/carrier may ignore sellers instructions
1. CASUALTY DURING SHIPMENT (406-421)
- a. whether delay is a breach giving rise to the right of rejection of the buyer
 - b. time is not of the essence with shipment carriers