

GOALS

- Define sale and explain how the UCC governs the sale of goods
- Identify unconscionable contracts and contracts of adhesion
- Distinguish between payment, delivery, and transfer of title of goods

WHAT IS A SALE?



WHAT'S YOUR VERDICT?

At the Dan-Dee Discount Department Store, Jack and Jean Medina signed a contract to buy a clothes washer and dryer set. The Dan-Dee salesperson explained that although the set on display was not in stock, "We will deliver and install it within two weeks." While shopping at the store, the Medinas left their car in the store's automobile service department to have the engine's idling speed adjusted and to have squeaks in the door eliminated. The charge for labor was \$45. There was no charge for parts or supplies. The service attendant recommended replacing the car's tires, and the Medinas agreed. The cost of the tires was \$300, plus \$25 for balancing and installation. The Medinas also bought a new battery for \$59. It was installed free of charge.

Were all of these agreements sales?

A **sale** is a contract in which ownership of (title to) goods transfers immediately from the seller to the buyer for a price. If the transfer of ownership is to take place in the future, the transaction is a **contract to sell** rather than a sale. **Price** is the consideration for a sale or contract to sell goods. It may be expressed in money, in services, or in other goods. When parties exchange goods for goods, the sale is a **barter**.

Sales of Goods Under the UCC

The Uniform Commercial Code (UCC) governs sales of goods. It also governs contracts to sell goods in the future. **Goods** are tangible (touchable), movable personal property,

such as airplanes, books, clothing, and dogs. By UCC definition, goods do not include the following:

1. money (except rare currency or rare coins, which are collectible items with value that may exceed their face amounts)
2. intangible (not touchable) personal property, such as legal rights to performance under a contract, transferred by assignment rather than by sale
3. patents and copyrights, which are exclusive rights given by the federal government to inventors and writers
4. land and other forms of real property, which are transferred

by conveyance and are subject to special rules (as discussed in Unit 4 on Property)

Under the UCC, a sales contract may be made in any manner sufficient to show agreement. The resulting contract suffices if the parties by their actions recognize the existence of a contract. This is true even though a court might not be able to determine precisely when the contract was made, and even though one or more terms are left open in accordance with customs of the trade.

Payment occurs when the buyer delivers the agreed price and the seller accepts it. Receipt of goods means that the buyer takes physical possession or control of the goods. Receipt usually involves actual delivery. However, delivery may be constructive. This happens when there is no actual transfer of possession of the goods, but the recipient has the power to control them, as intended by the parties involved. Examples would be when the buyer gets the keys to a car or receives a warehouse receipt for stored goods.



OTHER METHODS OF SALES CONTRACTING UNDER THE UCC



WHAT'S YOUR VERDICT?

The Tastie Treat Shop mailed an order for 500 one-pound boxes of fruit and nut candies to the Chocolate Castle Company. Chocolate Castle could have accepted the order by mail, telephone, wire, or fax machine. Instead, it immediately shipped the candy and simply added the usual amount to the next invoice mailed to the Tastie Treat Shop.

Was the Chocolate Castle Company's acceptance of the order valid?

Sales contracts may be made through a traditional exchange of offer and acceptance. But the UCC also recognizes alternative methods. Instead of telephoning, sending a facsimile (fax), or mailing an acceptance, the seller may simply ship the goods and thereafter notify the buyer of this action. In *What's Your Verdict?* the Chocolate Castle Company's immediate shipment of the order to the Tastie Treat Shop did constitute a valid acceptance.

Under the UCC, an offeror may state that the offer to buy or to sell goods must be accepted exactly as made or not at all. Otherwise the offeree may accept and still change some terms of the contract or add new ones. Recall that in most contract negotiations such changes

would end the original offer and would be considered a counteroffer. Under the law of sales of goods, however, the new term is treated as a *proposal for addition* to the contract.

The provision of the UCC for a new term to be treated as a proposal for addition to the contract helps to avoid what courts have called the "battle of the forms." This battle occurs when a merchant buyer makes an offer with a preprinted *purchase order form*. It contains detailed terms, often many that clearly favor the buyer. In response, a merchant seller accepts by using a *sales order form* with differing terms, which favor the seller.

When both parties are merchants, a new term inserted by the offeree automatically becomes part of the

IN THIS CASE

A pottery manufacturer offered to sell red clay flowerpots in three different sizes to a garden supply store. The store accepted the offer but specified that the pots had to be packaged in sets of three (with one of each size) rather than in bulk as described in the offer. This was a material change in the terms. The pottery maker did not object or revoke the original offer. Instead it packaged and shipped the goods as requested. Thus a contract resulted, with no other change in terms.

contract if the offeror fails to object within a reasonable time. However, the new term must not materially alter the offer. In addition, the original offer must not expressly bar such changes. If the new term is a *material* (important) alteration, it is included in the contract only if the original offeror expressly agrees to be bound by it.

UNCONSCIONABLE SALES CONTRACTS



WHAT'S YOUR VERDICT?

FrostiFresh Corporation sold a refrigerator to Nguyen. A recent immigrant, Nguyen spoke, read, and wrote Vietnamese and French, but he did not speak English. The refrigerator was sold on an installment payment contract. The negotiations and sale of the refrigerator were made in French. However, the written contract was entirely in English, although the seller knew that Nguyen could not read English. FrostiFresh paid the manufacturer \$348 for the refrigerator. FrostiFresh then sold it to Nguyen on the installment plan for \$3,146, plus a credit charge of \$546.

Was this agreement unconscionable?

The UCC provides that a court may find that a contract or a clause of a contract is **unconscionable**, that is, grossly unfair and oppressive. An unconscionable contract or clause offends an honest person's conscience and sense of justice, as does the contract in *What's Your Verdict?* The terms need not be criminal nor violate a statute, but they are unethical.

Contracts of adhesion are more likely to be unconscionable. This is so because in such contracts one of the parties dictates all the important terms. The weaker party must

generally accept the terms as offered or not contract at all.

A court that decides whether a clause of a contract is unconscionable may do any of the following:

- refuse to enforce the contract
- enforce the contract without the unconscionable clause
- limit the clause's application so that the contract is no longer unfair

The law is not designed to relieve a person of a bad bargain. A person may be legally bound by the purchase of overpriced, poor quality, or unneeded goods.



THINK ABOUT LEGAL CONCEPTS

Answer the following questions about legal concepts.

1. Rare coins, even though currency, can be considered goods under the UCC. **True or False?**
2. Patents are goods. **True or False?**
3. Which of the following would not be considered goods under the UCC's law of sales? (a) **passenger plane** (b) **computer** (c) **six acres of land** (d) **all of the above are goods under the UCC**
4. Contracts to sell are not governed by the UCC's law of sales. **True or False?**
5. In a basic sale, ?, transfer of possession, and transfer of ? take place at the same time.

THINK CRITICALLY ABOUT EVIDENCE

Study the following situations, answer the questions, then prepare arguments to support your answers.

6. The Caribbean Mill sold a quantity of standard electrolytic copper bars to Pollard. The contract was complete in all respects except that it failed to state the price. Was the contract a valid one, thus enforceable in court?
7. At Ellen's request, her doctor prescribed and injected her with a drug. The drug had been tested and approved for sale by the federal Food and Drug Administration. It had been manufactured by maker *A*, sold to wholesaler *B*, then sold to retail pharmacy *C*, which sold it to the doctor. The doctor charged Ellen \$15 for the drug and \$50 for his services. Twenty years later, Ellen's daughter developed a cancer traceable to the drug that her mother had taken. Was the doctor a seller and therefore liable for breach of warranty?
8. As Brackston was examining a China place setting in the Nook and Cranny Shoppe, the place setting slipped from her hands. It smashed into countless pieces when it hit the floor. After the proprietress swept up the mess, she pointed to a sign on the wall that said, "Handle with Care! If You Break It, You Buy It." She then rang up a sales charge of \$300 plus \$18 sales tax. Was Brackston the vendee in a sales contract?
9. After their business law class, Alexa and Ronald were discussing contracts of adhesion. Ronald insisted that when a "big ticket item," such as a television, is sold on credit terms, the seller prepares the contract. "You agree to it as written or you're out of luck. No sale." Alexa argued, "That's the truth, but not the whole truth." Can you explain what Alexa meant by her comment? Is it ethical for a seller to use contracts of adhesion?

Acceptance of goods means that the buyer has agreed, by words or by conduct, that the goods received are satisfactory. Acceptance is shown when the goods are used, resold, or otherwise treated as if they were owned by the buyer. Acceptance may also be indicated when a buyer fails to reject the goods within a reasonable time, if the buyer has had adequate opportunity to inspect them.

In general, the law of contracts has been simplified and made less strict in its application to sales of goods. For example, the price for goods usually is fixed in the contract. However, the parties may indicate that the price is to be set in a certain way at a later date. This method is especially used in long-term contracts when consid-

erable instability of prices is expected. Ordinarily, when nothing is said about the price, a contract results if all other essentials are present, and provided the parties do not express a contrary intent. In such a case, the buyer is required to pay the price that is reasonable at the time of delivery.

Contracts for Personal Services

In many situations, the contract is primarily for personal services. Such contracts are not sales because any goods supplied are merely incidental. In *What's Your Verdict?* the work on the car engine and the doors was a contract for services. Any goods supplied, such as lubricants, were inci-

idental. Even if a specific charge was made for them, the contract would remain one for the services that were the dominant part of that agreement.

On the other hand, the transfer to the Medinas of title to the tires was a sale of goods, even though a small charge was made for related labor. The battery also was acquired in a sale of goods, with no charge for labor. The Medinas' agreement to buy the washer and dryer at a later date was not a sale. Instead, it was a contract to sell—a contract in which ownership of goods is to transfer in a sale in the future. In both sales of goods and contracts to sell, the seller is known as a **vendor**. The buyer is known as the **vendee** or the **purchaser**.

MUST DELIVERY AND PAYMENT BE MADE AT THE SAME TIME?



WHAT'S YOUR VERDICT?

The Baumgartens bought Hannukah gifts for their three young children during the Sunrise Center's October lay-away sale. Delivery was scheduled for early December, and payment was due before January 15 of the following year.

When did the Baumgartens become owners of the gifts they had purchased?

In the basic sales transaction, payment, delivery (transfer of possession), and transfer of title take place simultaneously at the seller's place of business. Even if payment or delivery, or both, take place later, title still passes when the buyer selects (identifies to the contract) and agrees to buy existing goods in the seller's store.

At the appropriate time fixed in the sales contract, the buyer has a duty to pay, and the seller has a duty to trans-

fer possession. Generally neither is obligated to perform until the other does. Thus, unless it is otherwise agreed (as when the sale is on credit), or if it is the custom of the trade, the seller may retain the goods until the buyer makes payment in full. Similarly, the buyer may refuse to pay the price until the seller delivers all the goods. The buyer is entitled to a receipt when payment is made.

A **bill of sale** is a receipt that serves as written evidence of the transfer of ownership of goods. Such a document is sometimes required by statute, as in the case of automobile sales. If a bill of sale is signed by the seller, buyer, or both, it can satisfy the requirements of the statute of frauds for a signed writing. However, neither a sales contract nor a bill of sale necessarily identifies the parties nor explains the terms of the transaction.

A bill of sale makes resale of the property easier because it provides the owner with written evidence of ownership. When goods are lost, stolen, or destroyed, as in a fire, the document can be used to help prove value. The bill of sale is not absolute

proof of ownership because other persons may have acquired claims against the goods since the bill of sale was issued. Also, dishonest persons may forge such documents to help dispose of stolen property.

To encourage business, most sellers extend credit to qualified buyers, including other business firms. Some retailers do most of their business selling to customers who use credit cards or charge accounts, or who pay in installments. Thus, the buyer may get both title and possession before payment. In *What's Your Verdict?* assuming the goods were set aside for the Baumgartens at the time of the sale, they received title in October, possession in December, and paid for the goods in January.

