

Module 2: Special Rules for Sales Contracts

Table of Contents

Module 2: Special Rules for Sales Contracts	1
Lesson 2-1: Introduction to UCC Article 2.....	2
Lesson 2-1.1 Introduction to UCC Article 2	2
Lesson 2-2: UCC Article 2 Contract Formation.....	5
Lesson 2-2.1 UCC Article 2 Contract Formation	5
Lesson 2-3: Title to Goods & Risk of Loss: No Breach	18
Lesson 2-3.1 Title to Goods & Risk of Loss: No Breach	18
Lesson 2-4: Title to Goods & Risk of Loss: Breach.....	23
Lesson 2-4.1 Title to Goods & Risk of Loss: Breach	23
Lesson 2-5: Sale of Goods by Non-owners	26
Lesson 2-5.1 Sale of Goods by Non-owners	26
Lesson 2-6: Warranties for Sales of Goods	30
Lesson 2-6.1 Warranties for Sales of Goods.....	30

Lesson 2-1: Introduction to UCC Article 2

Lesson 2-1.1 Introduction to UCC Article 2

In this module, we discuss UCC Article 2, which is a special set of laws that provide some additional rules when it comes to contracts for the sale of goods. We've just spent an entire module talking about contracts, right? You're probably sick of contracts, you want to move on to something else, right? Sorry, really more contracts. Contracts are so important and I've said this before. In this module, we are looking at a very specific type of contracts, contracts for the sale of goods. So, when you sell somebody goods, we'll define that in a minute, there are different rules than if you sell somebody land or real estate, things like that.

Introduction to UCC Article 2



What is the Uniform Commercial Code?

UCC Article 2: Sales of Goods

Creates special rules for sales of goods

So, in this lesson, we're going to introduce what we call UCC Article 2. Which pertains to the sale of goods, and through the rest of the module, we're going to talk about some of the rules the UCC Article 2 puts on top of contracts for the sale of goods. So, let's back up for a minute. What is the UCC or the Uniform Commercial Code? This is a set of statutes that has been adopted either in whole or in part in every state. Now, states are required to have adopted the Uniform Commercial Code but many of them have. The reason it exists is because, a group of legal scholars and practitioners got together over 60 years ago and said, "It would be really, really helpful if each state had some similar laws so that businesses that want to conduct business in more than one state have an easy way to know that things will pretty much be handled the same way as they cross

state lines." Thus, the Uniform Commercial Code was born. UCC has a bunch of different articles. Article 2 pertains to the sale of goods. That's what we're talking about in this lesson and the rest of the lessons in this module. So, what is a good? A good is basically a tangible, movable thing. Cars are good, pencils are good, equipments are goods. Land, not a good. Buildings, not goods. For some, like a mobile home, that's a movable building, that could be a good. But a building that's affixed to land, not a good. Patents and trademarks, not goods. They're not tangible. Tangible, movable things are goods. We have some special rules that we're going to apply to contracts for the sale of goods. Now, before we get into those rules, we have to make a very important distinction here, the distinction between goods and services.

Introduction to UCC Article 2



Goods v. Services – Predominant factor test

Because sometimes, you have contracts that call for both goods and services and you need to think, does UCC Article 2 apply to this contract? Because if it doesn't, then we just default to the common law rules that we learned about in the previous module. Agreement, consideration, capacity, legality in writing, all that kind of stuff. All those rules still apply. The UCC just changes some of them a little bit. So, if the UCC applies and its a sale of goods, then we have to apply the new rules from the UCC. But if it doesn't, then we just go back to the old contract rules we've already learned about. So, the way we decide if a contract that contains goods and services is governed by the UCC is by the predominant factor test. The question is, what's the predominant factor of this contract? Are the goods predominant, or are the services predominant? So, for example, if I buy a new car and the car comes with a lifetime of free car washes, well, the car is a good. The car washers are a service. What's the predominant factor? In this case, the car is clearly the predominant factor. Would we buy a car without lifetime car

washes? Sure. Would we buy lifetime car washes without a car? Probably not. So, the goods are the predominant factor and therefore, UCC Article 2 applies to this contract.

Introduction to UCC Article 2



Merchants – A special type of people under Article 2

Another important term that we need to define as we move through our discussion of UCC Article 2 is what we call a merchant. Now, merchants are a special type of people under UCC Article 2 and special rules apply to transactions involving merchants. A merchant is one of two things. Most commonly, a merchant is someone who deals in goods of the kind involved in that transaction. So, if you go to a car dealership to buy a car. The person selling you a car is a merchant of cars. They're probably not a merchant of pencils but they're a merchant of cars. They deal in that type of goods. So, when you talk about a transaction involving a car, the car dealer is a merchant and has special rules they must follow. Another definition of merchants under UCC Article 2 is someone who holds him or herself out as having some knowledge or skill peculiar to a type of goods. So, for instance, I love barbecue. I'm from Texas originally. If I created a website to spout all of my encyclopedic knowledge of barbecue, which by the way is extensive, I might hold myself out as being an expert in the realm of barbecue. That could qualify me as being a merchant in barbecue even though I don't sell barbecue. I make it for my own personal use, and my family, and my friends, but I don't sell it. But if I hold myself out as an expert in barbecue, I could also qualify as being a merchant in barbecue.

Lesson 2-2: UCC Article 2 Contract Formation

Lesson 2-2.1 UCC Article 2 Contract Formation

In this lesson, we discuss the special rules that UCC Article 2 implements when we are forming contracts for the sale of goods. [MUSIC] All right, if you remember our discussion from the previous module about contracts, you'll know that contracts have to have agreement, consideration, capacity, legality, and they have to be in writing sometimes, right? Now UCC Article 2 changes three of these five elements when it comes to contracts for the sale of goods. So let's walk through the elements and see what is changed by UCC Article 2. We'll start with agreement.

Recall the Elements of a Valid Contract:



Agreement (offer & acceptance)

Consideration

Capacity

Legality

Satisfies the Statute of Frauds

Now we know that agreement has two parts, right, offer, acceptance. And UCC Article 2 actually changes the rules on offers and acceptance both.



So with respect to offers, you know that if you say, I offered to sell you my bike for \$100, that's an offer. Common law, that's an offer. It is also an offer for the sale of goods. So, we have to think, does UCC Article 2 apply? It does, does it change the rules? Well, not in that case, but in some other types of offers, UCC Article 2 will change the rules. And the most important way that UCC Article 2 modifies the rules pertaining to offers is that it permits what we call open terms.

UCC Article 2: Offers



Open terms allowed

Now when we discussed contracts in the previous module, we said that offers have to contain all the material terms of the contract, right, like price, and quantity, and all that kind of stuff. But UCC Article 2 says we don't really need all that kind of stuff, as long as there's some other way to determine it. It doesn't have to be in the offer, as long as the parties have a method to determine it that they can both agree upon. So, for instance, if I say I offered to buy 100 bushels of corn from you, well, I didn't put a price in there, right? The price term is an open term, but that's okay. Why? Because we know how much 100 bushels of corn is worth. There's a market for corn. We can just look up any given day how much corn is worth. So we don't actually have to have the term in the offer under UCC Article 2 for it to still be a valid offer.

UCC Article 2: Acceptances



Seller can accept by shipping goods

Accommodation shipment as acceptance

Now on the flip side, acceptance is also modified a little bit by UCC Article 2. Now under the common law rules that we've already learned, how do you accept an offer to form a contract? Well, you say something like, I accept, or I promise to do this, or something like that. UCC Article 2 changes this a little bit. And the first way that it makes a change is by allowing acceptance by performance. So if I say I promise to pay you \$100 if you promise to sell me your bike, that's an offer to form a contract by both of us making a promise. But if instead of promising to sell me your bike, you just ship me your bike, no, you're not accepting my offer in the way that I wanted you to accept my offer. But UCC Article 2 says, that's fine.

UCC Article 2: Acceptances



Seller can accept by shipping ←
goods

Accommodation shipment as
acceptance

A seller of goods can accept an offer simply by just shipping the goods. And that forms a valid and enforceable contract. Now even beyond that, a seller of goods can accept an offer by shipping the wrong goods.

UCC Article 2: Acceptances



Seller can accept by shipping
goods

Accommodation shipment as ←
acceptance

You can actually ship non-conforming goods, what we call the wrong goods, and if it's what we call an accommodation shipment, it's still a valid acceptance. It's essentially an acceptance in an immediate breach. So, if I say I want to buy 100 blue bikes and you

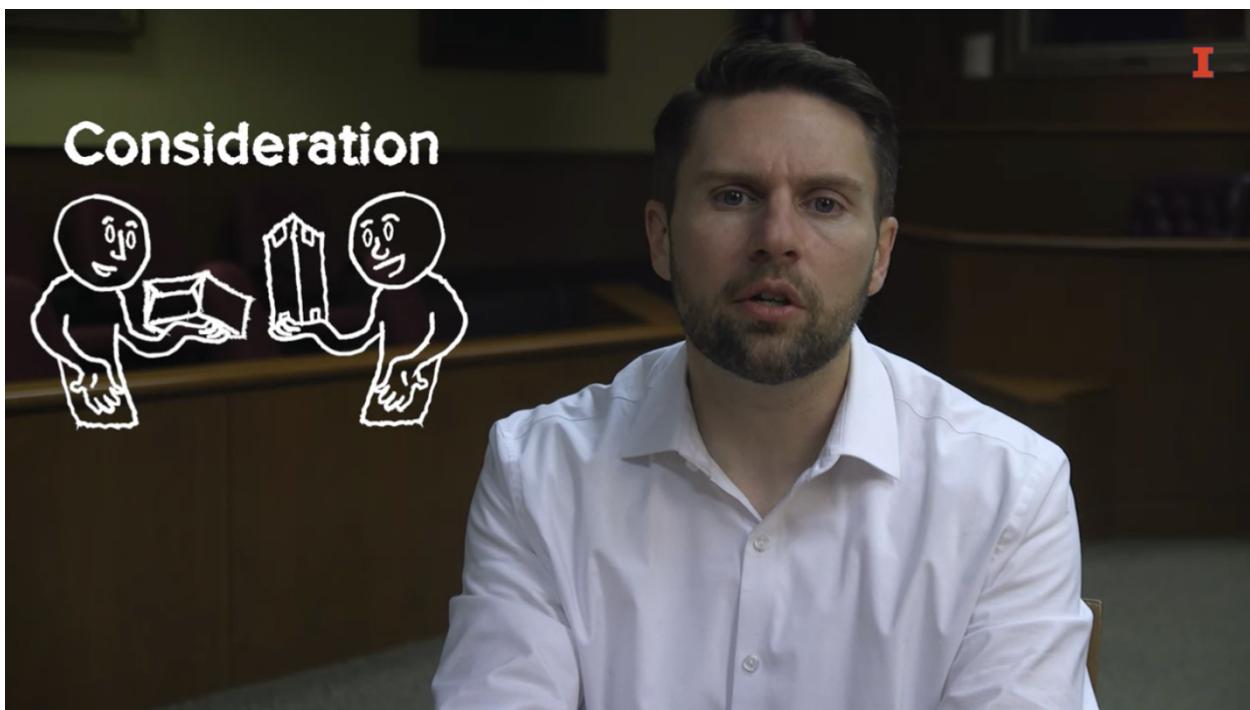
ship me 100 red bikes, you still accepted my offer. But you immediately breached it by shipping me non-conforming goods. But if you tell me, hey, this is an accommodation shipment, and I get the 100 red bikes, and I'm like, you know what? I kind of like these red bikes. I'll keep them. Then once I accept them, your breach has been cured, and there's no problem anymore. So shipping the goods, shipping non-conforming goods can both be methods of accepting an offer under UCC Article 2.

UCC Article 2: Consideration



No new consideration needed to
modify a contract

And what about consideration? We learned about consideration, what is it? It's like a bargain for exchange of value, you gotta bring something of value to the table.



Well, the rules under UCC Article 2 are pretty much the same, with one small exception. That if you want to modify a contract, the common law rules sometimes make you provide new consideration to modify a contract. And under the UCC, no such rules. You can modify contracts as long as both parties are acting in good faith.

UCC Article 2: Consideration

No new consideration needed to
modify a contract

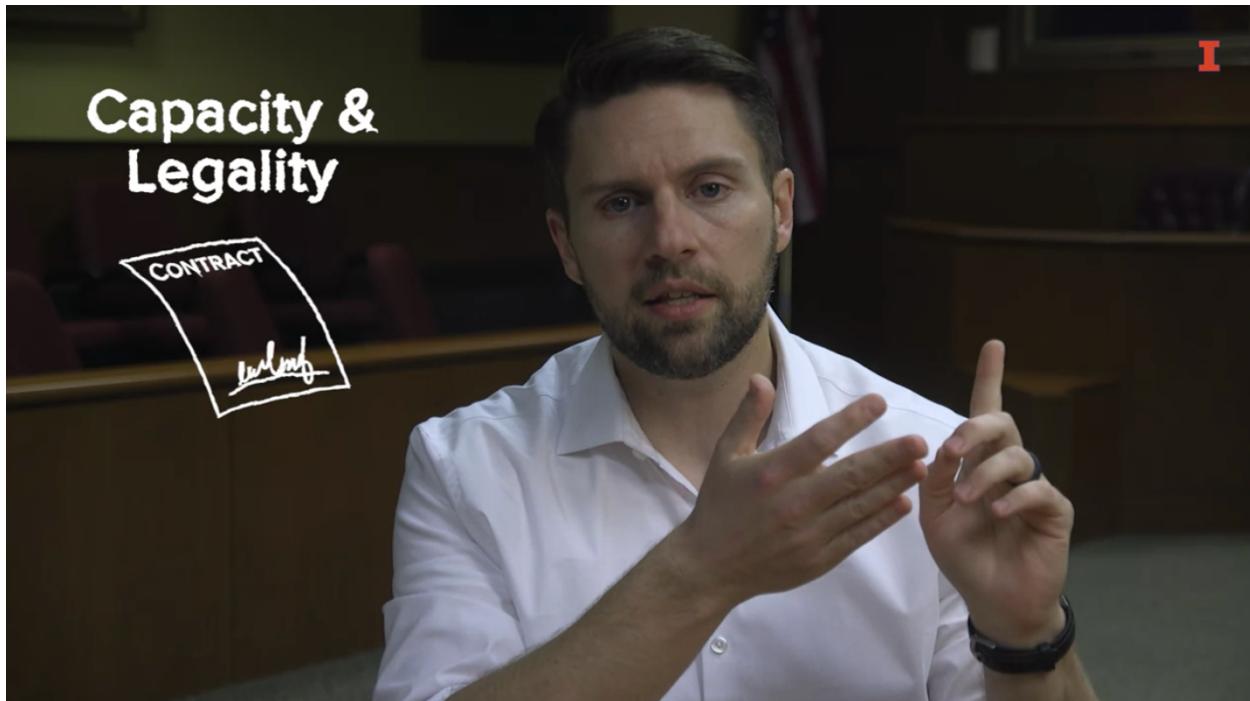
You don't need to provide any new consideration to modify a contract.

UCC Article 2: Capacity & Legality



Same rules as common law contracts!

Okay, capacity and legality, this is easy. UCC Article 2 rules are the same as the common law contract rules.



So when we talk about infants, the insane, the intoxicated, illegal contracts, contracts for illegal purposes, things like that, all the same rules. Don't need to worry about any differences for UCC Article 2 there.

UCC Article 2: Statute of Frauds



Sale of goods > \$500 must be in writing

Exceptions:

Buyer has accepted goods

Specially manufactured goods

Admission in court

But when it comes to the statute of frauds, the requirement that some contracts must be in writing, there is a little bit of a change. Now, we've already actually learned that contracts for the sale of goods in excess of \$500 do need to be in writing. And that's actually, we get that from the UCC. So when we learned that in the previous module, we learned that because the UCC sets forth that rule. But there are some exceptions to that rule provided by Article 2. First, if the buyer has already accepted goods, the buyer cannot then refuse to pay on the grounds that the contract wasn't in writing and it should have been in writing because the goods were valued at more than \$500. This is just not fair, right? You've already accepted the goods, you need to pay for the goods. You can't get out of it because the contract wasn't in writing. Next exception, if the goods are specially manufactured for the buyer, the buyer cannot be excused from the contract because it wasn't in writing when it should have been. Now the theory behind this is that if you're a manufacturer of goods and you manufacture unique and special goods, you're not going to do that for no reason. You're not going to do that unless you had a contract. So was your contract supposed to be in writing? Yes, but can we safely assume that there actually was a contract, even though it was verbal? Yeah, because you're not going to manufacture specially manufactured goods if there wasn't. So we're going to enforce that contract, even though it wasn't in writing and it should have been. And then finally, if one of the parties makes what we call an admission, usually in court, or a deposition, or something like that, that there was a contract even though it was verbal and should have been in writing. If you admit that there was a contract under oath most of the time, then a court will hold you liable for performance under that contract.

Parol Evidence Rule



For ambiguous contract terms under Article 2:

A last important rule that we get from Article 2 with regards to contract formation is called the parol evidence rule. And it's parol is spelled P-A-R-O-L, that's not a typo. If it has the E on the end, that's what happens when you get out of jail and you have to go live in a halfway house.



The P-A-R-O-L is actually related to the word oral. And you can actually think of this as the oral evidence rule. It basically states that if you have a written contract, you cannot

use any previous oral agreements, you cannot enforce anything that happened prior to that contract, if it contradicts with the terms of your contract. The assumption is, if you have a written contract, we assume that that's your final agreement, and any prior agreements that might contradict this are just null and void. Now that helps us sometimes, but sometimes, we actually have ambiguous terms in a contract that we could say, yeah, this is your final agreement. But we don't know what it means because there's an ambiguous term in there. And thankfully, Article 2 actually helps provide a mechanism for helping us determine what we mean by ambiguous terms. So, let's take an example.



Say I am a rancher in my home state of Texas, and I have lots of head of cattle, right? So I want to buy some corn. So, I call up a farmer in Illinois, and I say, hey, I need to buy 1,000 bushels of corn. And that's our contract. We can put it in writing so it's written, satisfies the statute of fraud, everything like that. But there's a couple different types of corn, right? There's feed corn, that's what you feed the animals. There's sweet corn, that's what people eat, but I didn't specify it. That term, corn, in our contract is ambiguous. So how do we know which type of corn we wanted? Well, Article 2 says, here's what you do.

Parol Evidence Rule



For ambiguous contract terms
under Article 2:

First, course of performance

Second, course of dealing

Third, industry usage

First, you look at what's called course of performance. Under this same contract, do we have any history that would indicate what type of corn you want? Now if this was the first time I ever call up this farmer and said give me some corn, then there's no course of performance history. But maybe we already had a contract that said, I'll ship you corn once a month for the next five years. And for the first two years of the contract, the farmer shipped feed corn. Well, the court's going to say, look, for the first two years of this contract, this word corn meant feed corn. Therefore, for the rest of the contract, we assume it means feed corn. That's course of performance. Under this same contract, how have you interpreted this term? But if you don't have any history under the current contract, the courts will next look to what we call course of dealing. This means, okay, this contract has no history, but do these parties have a history with each other? Have they engaged in other contracts in the past, and if so, can those help us understand what they mean? So maybe this farmer and I had a previous contract a couple of years ago, where I bought some corn. And they sent feed corn, and that was fine. So a court will say, look, in the past, you used the word corn, and you meant feed corn. So we're going to assume, this time, when you use the word corn, you also mean feed corn. But that doesn't always help us. Course of performance, course of dealing assume that the parties have had business with each other in the past. If they never, ever have done business together in the past, then we look to industry usage. So in general, when a cattle rancher calls a farmer and offers to buy 1,000 bushels of corn, in their industries, would this usually be feed corn or sweet corn? Well I'm a hungry guy, but I can't eat 1,000 bushels of sweet corn myself. So industry usage would dictate, it should be feed corn. And if you wanted sweet corn, then you should have specified otherwise. Because in your industry, we would assume that you meant feed corn. Your industry is cattle

ranching, you buy feed corn to feed your cattle, therefore industry uses will dictate. Now, does this solve all ambiguous terms? No, but it's a really helpful method provided by Article 2 to help us resolve some forms of ambiguity.

Lesson 2-3: Title to Goods & Risk of Loss: No Breach

Lesson 2-3.1 Title to Goods & Risk of Loss: No Breach

In this first part of a two part series on Title to Goods & Risk of Loss, we look at the rules from UCC article two that govern: who owns goods, and who bears the risk of loss assuming neither party has breached the contract? In this first of a two part series on Title to Goods & Risk of Loss, we're going to talk about: who owns goods when they are being transferred from a seller to a buyer, and who bears the risk of loss if those goods are damaged somewhere along the way? Why do we care about that? Well, consider you buy something online from an online retailer.

Title to Goods & Risk of Loss: No Breach



When do title and risk of loss transfer when selling goods?

And why do we care?

This lesson: No breach of contract

You might want to know, when do you actually own that? When is that your property? Is it when you click buy? Is it when they ship it to you? Is that when it arrives to you? And when more importantly than when you own it is, when are you responsible for damage to it? If it gets damaged in shipping, does the seller have to send you a new one? Is that on you? Should you have had it insured if it was valuable? That's why we care about this kind of stuff, because things happen and we want to make sure we know who bears the risk of loss when those things happen. So in this first lesson, we're going to discuss the rules of Title to Goods & Risk of Loss, when neither party has breached the contract. So everybody's doing what they're supposed to do, just accidents happen sometimes, right? The rules for when title transfers and when risk of loss transfers from

seller to buyer depend on the type of contract that you have. The first type of contract that we care about is what's called a "Shipment contract."

Shipment Contracts



Shipment contracts = Call for use
of a common carrier

Title & risk of loss *both* transfer
when goods delivered to common
carrier

A shipment contract specifically calls for the use of what we call a "common carrier." A common carrier is just a business whose business it is to ship stuff. The United States Postal Service, UPS, FedEx, DHL, these are all common carriers. So, when you purchase something from Amazon, and in the checkout screen it says, "how do you want to receive this?" and you click a button that says, "US Postal Service," this is a shipment contract. You're both specifically contemplating that a common carrier will be used to send your goods to you. And in this case, the title to those goods & the risk of loss for damage to those goods both transfer from the seller to the buyer when the seller delivers the goods to the common carrier. So, when Amazon gives the goods to UPS, you, the buyer, now own them and bear the risk of loss if something happens to them.

Destination Contract



Destination Contract = Seller to deliver goods to buyer

Title & risk of loss *both* transfer upon delivery

Now, contrast this with what we call a destination contract. A destination contract says, "I don't care how you get me the goods, just get them to me." The seller's obligation is to deliver goods to the buyer, whether it's the buyer's office, the buyers residents, whatever. Now, could a seller still use a common carrier? Sure. But the contract doesn't specifically say to use a common carrier, so the seller is responsible for getting the goods to the buyer however the seller chooses to do that. And under a destination contract, title to the goods & risk of loss both transfer from the seller to the buyer when those goods are actually delivered to the buyer's location. But those are both pretty easy. Where it gets a little tricky is when the goods are not delivered to the buyer or sent via a common carrier, but instead, the buyer picks up the goods from the seller. We call these goods delivered at the sellers location. Not really even delivered, they're just held for the buyer to come and pick them up. Now, in this case, title to the goods & the risk of loss might pass from the seller to buyer at different times. For instance, title to goods that are held at the seller's location passes to the buyer when one of two things happens. First, when the seller delivers what's called a "document of title," consumer transactions, this doesn't happen super often. But in business-to-business transactions, there something like a bill of lading or a warehouse receipt or something like this. Some document that says, "Hey, you now own these goods." That's a document of title. And at that moment, the buyer will own them even though they don't have them in their possession yet. More common than a document of title is when the seller identifies the goods. So if I call up a bicycle company and say, "Hey, I want to buy a hundred of bikes." And they have a warehouse full of a million bikes, and they take a hundred bikes, they put a sticker on them and say, "These are all my bikes." They've been identified at that point, out of the hole, my little subset has been identified for me. At that

point, title passes to me, because they've been identified to my contract. That's when ownership passes. But, again, what I really care when ownership passes in this case, what we really care about is, who bears the risk if something happens to them and they get damaged?

Title Passes



Goods delivered at seller's location

Title passes when goods are identified or a document of title is given

Risk of loss passes...

If seller is a merchant: when the buyer picks up the goods

If seller is not a merchant: upon tender of delivery

In a contract where goods are delivered at the seller's location, when the risk of loss passes depends on if the seller is a merchant or not a merchant. I told you, it would be important to know if the seller is a merchant at some point and this is where it becomes important, the first of several places where it becomes important. So if the seller is a merchant, they hold on to the risk of loss until the buyer comes to pick them up, even though they might not own them. Remember, the buyer owns the goods once they've been identified. But if the seller is a merchant, they bear the risk of loss until a buyer actually shows up to pick them up. This makes sense because we think, if you're a merchant of goods, we expect you to know how to keep them safe and secure and free from damage. That's your whole line of business, so we're going to keep you liable for damage until the buyer comes to get them. Now, if the seller is not a merchant, the opposite is true. We don't expect you to be any better than anybody else at keeping these good safe and free from harm. So, the risk of loss actually transfers from the seller to the buyer whenever the seller notifies the buyer that the goods are ready to be picked up. So for instance, I'm going to buy a bicycle off the Craigslist, so I find somebody who's selling a bicycle, I call them up and say, "Hey, I want to buy your bike." They say, "Great. You can come and get it any time." At that point, they said, "You can come and get it," the risk of loss actually transfers to me because that seller isn't a merchant of bicycles, it's just a person selling his or her old bike. They're not a

merchant. And so, once they tell me they're ready to be picked up, I bear the risk of loss. Meaning if their house burns down and the bike is still in it, that risk isn't on them it's on me. I still owe them the money for the bike because I bore the risk of loss at that time. So, those are the rules governing title the goods & risk of loss when there's no breach. In the next lesson, we're going to discuss Title & Risk of Loss: When one party has breached the contract.

Lesson 2-4: Title to Goods & Risk of Loss: Breach

Lesson 2-4.1 Title to Goods & Risk of Loss: Breach

In this, the second of our two-part series on Title to Goods and Risk of Loss, we discuss when transfer of title occurs and when risk of loss transfers from sellers to buyers when one of those parties has breached the contract. In the previous lesson we learned about transfer of title and transfer of risk of loss for contracts from the sale of goods, but we only discussed that in the context of each party doing what it was supposed to do. Nobody had breached the contract. But if one party does breach the contract the rules about transfer of title and risk of loss change a little bit. Actually, just the rules about risk of loss.

Title to Goods & Risk of Loss: Breach



How does a breach of contract affect transfer of title & risk of loss?

Transfer of title is **not** affected

The first thing we need to learn in this lesson is that transfer of title is not affected. But if one party breaches the contract the transfer of the risk of loss is affected. So, let's take separately the buyer and the seller and what happens when each of them breach the contract. So for a buyer, how does a buyer breach a contract for the sale of goods? Well, far and away, the most common way is just to say, "I'm not going to pay or I can't pay" or some indication that they're not going to pay for the goods.

Title to Goods & Risk of Loss: Breach



Risk of loss upon buyer breach

Risk transfers to buyer at the time of breach

Now, when that happens the buyer immediately obtains the risk of loss to the goods at the time they breached the contract. Even if it would not have transferred it to them until sometime later. So for instance, suppose we have a destination contract and the goods are on their way. They're being shipped. Remember, in a destination contract the seller bears the risk of loss until the goods get to the buyer. But say the goods are on their way when the buyer notifies the seller that it won't be paying for the goods. At that moment even though the goods are still in transit, the risk of loss of those goods shifts from the seller to the buyer. So, if they're damaged or destroyed after that time it's on the buyer and not on the seller. This makes sense, right? If you breach the contract you bear the consequences of it. We shouldn't hold a seller liable for this loss when the other party has breached the contract.

Title to Goods & Risk of Loss: Breach



Risk of loss upon seller breach

Usually happens when nonconforming goods are sent

Risk of loss stays with seller until acceptance or cure

Now on the flip side if the seller breaches the contract we have some different remedies. So, how does a seller breach a contract? Well, the most common way is to send nonconforming goods. Obviously, they can breach a contract by not sending any goods at all, but if they haven't sent any goods at all we're not super concerned about risk of loss because the seller still has them. So, when the seller sends goods but sends the wrong goods, what do we do? Well, the rule here is that the seller keeps the risk of damage or loss to those goods until the seller either cures the nonconformity or the buyer accepts the goods. So, let's take an example. Suppose we have a shipment contract calling for a bicycle company to ship me 10 blue bikes using FedEx or whatever. So, normally under this contract the moment they deposit the bikes with FedEx title and risk of loss would both transfer to me the buyer. But if instead of shipping 10 blue bikes they ship 10 red bikes, those are nonconforming goods. Therefore the seller keeps the risk of loss until they get to me, and even once I get them, they in my possession if they're damaged, that still is the responsibility of the seller until one of two things happen. Either I say, you know what? I like these red bikes, I'll keep them, they're fine. That's acceptance. At that point the risk of loss finally transfers to me. Or the seller comes up with some form of cure. Now, it's hard to turn a blue bike into a red bike, but with some products if you ship the wrong products it may be possible to ship a fix to those products or to show up and make a modification to them so that they are now conforming. Sellers have the opportunity to cure when they ship nonconforming goods.

Lesson 2-5: Sale of Goods by Non-owners

Lesson 2-5.1 Sale of Goods by Non-owners

In this lesson we discuss the sale of goods by someone who doesn't own those goods. In those situations, what rights do the original owner of the goods have? Okay, so in UCC Article 2 territory here, in this lesson we are going to discuss the sale of goods by non-owners. It doesn't happen all that frequently, but when it does, it can be very problematic. If you don't own goods but you sell them, what liability do you have and perhaps more importantly, what can the true owner of the goods do about it?

Sale of Goods by Non-owners



Question: If someone unlawfully sells goods that belong to you, can you get them back?

Answer: Depends on how they got the goods

General rule: You can *always* recover damages from the wrongdoer

If someone unlawfully sells goods that belong to someone else, can he get them back? And the answer is well, it sort of depends on how the person who sold them obtained them. Now as a general rule, you can always recover damages from the wrong-doer (someone who wrongfully sold goods), you can recover damages from that person like you can get a judgment in court against that person. The problem is that criminals tend not to just keep a lot of money around most of the time. So even though you can recover a court judgment against a wrongdoer, sometimes it's unlikely that you can actually recover the money from them. So, we want to know can we get the goods back? Because the goods are what we really want. The goods have the value. So, three different situations we're going look at: goods obtained through fraud, stolen goods and entrusted goods.

Goods Obtained via Fraud



Seller has voidable title to the goods

Can be reclaimed unless sold to a good faith purchaser for value

So start with goods obtained via fraud. So here is an example. Suppose you use a fake check to purchase some goods and then you resell them to somebody else for real money. Well, these are goods obtained via fraud, a fake check is fraudulent. Now when this happens, the seller (the original owner of those goods), can recover the goods themselves from the fraudster. That is an actual legal term fraudster. I love that word. You can recover the goods from the fraudster if the fraudster still has them, because that person has what we call voidable title to the goods. Now when the fraudster sells the goods to somebody else, in that case the true owner can reclaim those goods unless they were sold to what we call a good faith purchaser for value. So if the final person who buys the goods: not the person committing the fraud, but the person who buys the goods from the person who committed the fraud, if that person doesn't know they were obtained unlawfully, and paid fair value for them, and did so in good faith believing it to be a legitimate transaction, then that person gets to keep the goods and the true owner cannot get them back. But in all other instances, the true owner can get the goods back if they were obtained via fraud. Now, let's talk about goods that were obtained through theft.

Stolen Goods



Seller's title is void

All subsequent transfers are void

Stolen goods can always be returned to their original owner. Any subsequent title, the person who stole the goods or the person they sold the goods to or anybody else, all those transfers and all those titles are void. The true owner can always obtain the return of stolen goods. That's easy. Now what's not easy is entrusted goods. Now this is an interesting rule created by UCC Article 2 for goods that have been voluntarily given to someone else, and then that person sold the goods. These are entrusted goods, we have entrusted them to someone who we trusted with them, and then they wrongfully sold them.

Entrusted Goods



Seller can transfer good title, if:

Seller is a merchant

Sale takes place in ordinary course of business

Now, as a general rule, the true owner of entrusted goods can get them back except if the person to whom the goods were entrusted is a merchant of that type of goods, and then that person sells the goods in the ordinary course of his or her business, then the true owner cannot get the actual goods back. Again, they always have a claim in court against the merchant (the person who sold the goods wrongfully), but they can't get the actual goods back. There's sort of a famous case of a woman who owned a very expensive piece of art, and her art dealer (who's a merchant of art), offered to place the painting on loan to a museum. So the woman gave the art (the painting), to the art dealer, who instead of taking it to the museum, actually took it and sold it to someone else for millions of dollars, and then some time passed and the woman (the true owner of the painting), decided to sell it to someone else. So she called her art dealer and said "Hey, you know that painting that I loaned to the museum, I would like to have it back please". And then the whole scheme unraveled and the woman said "Well, I want to get it back from the person that you sold it to", but the court said you can't because you entrusted to a merchant, that merchant sold it in the ordinary course of his business, and that painting now belongs to the other person even though it was wrongfully sold. So that woman's only claim was against the art dealer himself.

Lesson 2-6: Warranties for Sales of Goods

Lesson 2-6.1 Warranties for Sales of Goods

In this, our final lesson about UCC Article 2, we look into warranties for the sale of goods. We'll talk about what is a warranty, what do they mean, and how can you disclaim warranties in your transaction. In this lesson, we'll talk about warranties. What's a warranty? You can actually, most of the time, interchange the word warranty and guarantee. For practical purposes, we use these terms interchangeably. The official legal term is a warranty, but there's a scene in one of my favorite movies *Tommy Boy*, where Chris Farley's character Tommy is out trying to sell auto parts to auto companies and the customer says, "Yeah, but your competitor has a guarantee right on the box." *Tommy Boy* says, "Well, if you want me to sell you a guaranteed piece of crap, I will. But you might want to consider buying a quality product from us." I love that scene. I show it in my in-person class all the time because it's a good reminder of what is it that we are promising when we make a warranty or a guarantee? Well, basically, we are promising that our product, our goods live up to some standard. Now, can we have a product that lives up to a standard without a warranty? Yeah, of course. But the warranty is basically just to make the customer feel good that it does what it's supposed to do. There are two types of warranties that we care about.

What Is a Warranty?



Types of warranties

Express 

Implied

The first is an express warranty. That warranty written on the box, that's an express warranty. It's a promise that this product conforms to these standards. It will do this.

What Is a Warranty?



Types of warranties

Express

Implied 

The other type are implied warranties. These are warranties that we don't expressly state. They're not written anywhere, but they are assumed to be part of our transaction in certain circumstances.

Warranties for Sales of Goods



Express warranty: Affirmative promise of **fact**

Now, let's start with express warranties. This is an affirmative promise of fact. Very important that we just delineate fact from opinion.



Warranties for Sales of Goods

I

Express warranty: Affirmative promise of **fact**

Not statements of opinion

Effect of breach of express warranty

If I say, "This is the coolest car in the world," that's not a warranty. That's a statement of opinion. If I say, "This truck gets 10 miles to the gallon," that is a statement of fact. If I'm the salesperson trying to sell you a truck and I say, "This truck gets 10 miles to the gallon," that is an express warranty. If that warranty is breached, you buy the truck based on the fact that it gets 10 miles per gallon, but it actually ends up only getting six miles per gallon, you actually have suffered damages because my express warranty has been breached. The goods don't live up to the standard that I promised, and you

can actually recover damages from me, usually the difference between the value of the truck if it actually did live up to the standards and the value of the truck that you actually got. What's the difference between those two values? That's your damage as a result of the breach of this express warranty. There's not a whole lot else to say about express warranties. They're pretty easy. Did you make a promise a fact? Yes. Okay. That's it. Now implied warranties can be a little tricky because different implied warranties attached to a transaction depending on the nature of the circumstances and the relationships between the parties. So, first type of implied warranty. This actually automatically attaches to all sales of goods no matter what they are.

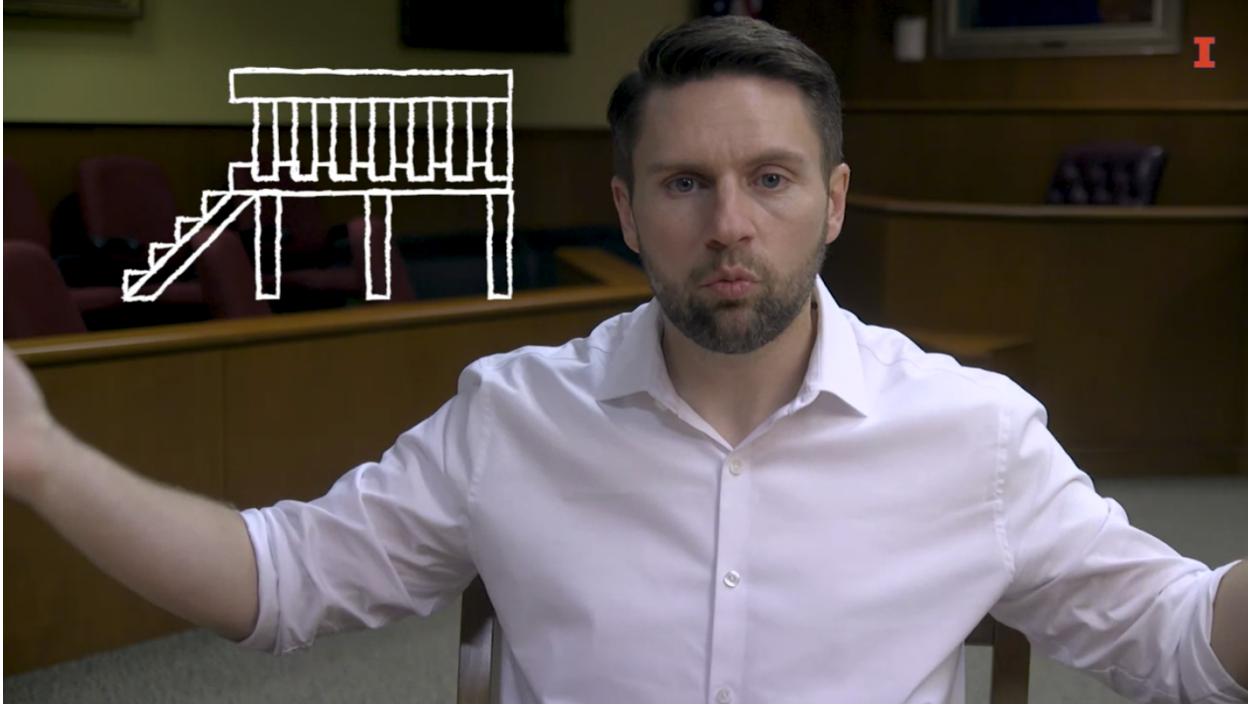
Implied Warranties



Implied warranty of good title

Implied warranty of fitness for a particular purpose

The implied warranty of good title. This is just the implied warranty that if I'm selling you goods, I guarantee you that I have the authority to transfer title to these goods. I didn't steal them, I didn't obtain them fraudulently, I have good title to these goods and I can sell them to you. Second form of implied warranty. The implied warranty of fitness for a particular purpose. Now this one is sort of unique, and it can be a little bit tricky. If you are a seller of goods, and you know that the buyer has a certain purpose in mind for the use of those goods, and you recommend a specific type of goods to the buyer and they rely on this recommendation, then you are guaranteeing that the goods will work for the purpose that you know the buyer will be using the goods for. Now that sounds kind of complicated. Let's think about example. Say I go to Home Depot, and I am walking around the lumber aisle aimlessly because I don't know anything about lumber.





A Home Depot employee comes up to me and says, "Can I help you?" I say "Yes. I am building a deck, and I'm trying to find two by fours." They say, Oh, these two by fours right here are what you need." So I buy some two by fours, but I get home and I build my deck, and I find out they're the wrong kind of two by fours, and my deck collapses and people get injured and all things like that. This is a breach of the implied warranty of fitness for a particular purpose. Why? The seller, Home Depot, knew what my purpose was, they recommended some goods to me, I relied on that recommendation and the goods didn't work for that purpose. That's a breach of the implied warranty of fitness for a particular purpose.

Implied Warranties



Implied warranty of good title

Implied warranty of fitness for a particular purpose

Implied warranty of merchantability

Implied warranty of trade usage

Now, sort of similar is the implied warranty of merchantability, but the implied warranty of merchantability doesn't take into account the buyer's specific intent. This just guarantees that whatever goods being sold by a merchant are fit for their ordinary purpose. So, if I am a merchant and I'm selling tennis shoes, the implied warranty of merchantability attaches to every sale of tennis shoes, that they are fit for running around and walking and stuff like that. If you use them for something outside their ordinary purpose, I don't warrant that they're good for that, but I warrant that they are fit for their ordinary purpose. When you take your first step in them, they're not going to automatically cause you to roll your ankle and break your ankle or something like that. So, the implied warranty of merchantability attaches to all transactions from emergent that the goods are fit for their ordinary purpose. Then, finally, the implied warranty of trade usage. This is just a warranty that if there are customary practices in your industry with regards to whatever these goods are, the seller guarantees that they have followed those customary practices.

Warranty Disclaimers



“As-is” disclaimer



We'll wrap up this discussion of warranties with a few words about how you disclaim warranties. So, sometimes you might not want any warranties to attach to your sale, even the implied ones, so how can you get rid of them? Well, the easiest way to get rid of all implied warranties in your contract is just to have language in your contract that says something like, "These goods are sold as is with all faults," or "as is with no warranties," or the words "as is" are powerful. The as-is disclaimer gets rid of all the implied warranties. But you might just want to disclaim one of the implied warranties.

Warranty Disclaimers



“As-is” disclaimer

Implied warranty of fitness for a particular purpose disclaimer

Implied warranty of merchantability disclaimer

Really, the two that we care about are the implied warranty of fitness for a particular purpose and the implied warranty of merchantability. If you want to get rid of the fitness for a particular purpose warranty, you can really use any language as long as it's clear. You can say, "This contract does not carry with it any implied warranty if it is for particular purpose." That's fine. You can say, "Seller does not guarantee that these goods are fit for buyers' purposes." That's also fine. Any language that gets the point across is fine. Now, here's the weird thing. Getting rid of or disclaiming the implied warranty of merchantability has a special magic word.



You have to use the word merchantability in your disclaimer. So, if your contract says, "Seller specifically disclaims the implied warranty of merchantability," that's fine. Your disclaimer is effective. If you say, "Seller does not promise that these goods are fit for their ordinary purpose," you have not effectively disclaimed the implied warranty of merchantability because you didn't use the word merchantability. Is that weird? Yes, but it's the rules.

Warranty Disclaimers



“As-is” disclaimer

Implied warranty of fitness for a particular purpose disclaimer

Implied warranty of merchantability disclaimer

Express warranties cannot be disclaimed

Then, finally, with regards to express warranties, there's actually some debate in the legal academy about whether you could ever disclaim an express warranty. We're not going to get into that debate even though I know you'd find it totally fascinating. But for our purposes, we're just going to say, express warranties cannot be disclaimed. In theory, it might be possible but in practice, you cannot disclaim an express warranty. This makes sense because if I say, this truck gets 10 miles to the gallon, then in my contract I say, I disclaim any express warranties. Those two things just don't make any sense with one another. I make express warranties to get you to enter into a contract, so then I can't disclaim, so we're just going to assume no express warranties can be disclaimed.