I. This chapter focuses on the UCC. We will cover only the portion that deals with sales.

A. Variations in state law meant interstate commerce could be complex.

B. In the 1940s, two groups of legal scholars began meetings to develop a common set of laws to govern commercial transactions. Eventually these meetings led to release of the UCC.

C. The UCC was not law until adopted by the states. Ultimately, the Code or parts thereof was adopted in all 50 states. However, not all versions are uniform.

D. The UCC is divided into articles. Different articles deal with different topics, like sales, product liability, etc.

E. Article 2 governs contracts for the sale of goods.

1. Goods are items that are movable, other than money and investment securities.
   
   a. Contracts for services, land or other items that do not meet the definition of goods are covered by common law.
   
   b. Recall definition of common law.
   
   c. Article 2 applies to sales, not leases.
   
   d. Where mixed contract, involving sales and service, UCC governs if predominant purpose of the agreement is the sale of goods.
      
      i. Example – contract for rugs in house to be cleaned.
      
      ii. If predominant purpose of contract is to supply services, common law rules apply.

2. Special rules apply to merchants. Merchants deal in goods of the kind, have special knowledge regarding those goods or hire an agent with special knowledge or skill. Merchants generally are held to higher standards, since they are presumed to have greater expertise.

II. Contract Formation

A. Under common law, a contract is formed when an offeror makes a clear offer containing all important terms and the offeree agrees.
B. The UCC is much more relaxed about contract formation.

1. The parties may make a contract in any manner sufficient to show agreement. This can include conduct in some cases.

2. A contract is enforceable even if one or more essential terms is left open. The only requirement is that a reasonably certain basis exist for calculating damages in the event of a breach. Under the UCC, a court uses “gap fillers” to supply terms where an agreement is lacking.

C. Requirement for a writing.

1. Under common law, certain agreements must be in writing to be enforceable. This rule is known as the Statute of Frauds.

2. Under the UCC, a writing is required for any contract for the sale of goods worth $500 or more.
   a. An informal writing is sufficient, so long as it indicates the existence of an agreement. A quantity term must be included.
   b. The writing must be signed by the defendant. However, if both parties are merchants, a writing good against the sender also binds the recipient. If the recipient does not wish to be bound, he or she must object within 10 days.
   c. If a buyer orders specially manufactured goods not suitable for sale to others in the ordinary course of the seller’s business, a verbal agreement is enforceable even if the goods cost more than $500.
   d. If a defendant admits the existence of the contract in a sworn statement, the agreement can be enforced.

D. Additional terms

1. Under common law, the mirror image rule applies. Under this rule, an acceptance that contains additional or different terms is really a counteroffer.

2. The UCC uses the Battle of the Forms rule. This recognizes that the preprinted forms commonly used in business rarely match.
   a. The parties must still intend to create a contract.
b. Additional terms - Additional terms are terms covering issues not addressed in the offer.

i. If both parties are merchants, add’l terms generally come in.

ii. Exceptions to this rule
   - Original offer limited acceptance to its terms.
   - Add’l terms materially alter offer OR
   - When offeror promptly objects.

c. Different terms contradict those found in the offer. Different terms cancel each other out.

i. If evidence indicates the parties orally agreed on the issue disputed in the forms, courts ignore contradictory writing and enforce oral agreement.

ii. If no clear oral agreement, the issue then is governed by applicable gap fillers.

3. Modifications
   a. Under common law, new consideration is required in order to modify a contract. Example – caterer agrees to supply chicken for event. Later agreement to supply steak instead must be supported by consideration, such as payment of additional money.

b. The UCC does not require consideration for contract modifications, so long as both sides agree to the change.

III. Performance and Remedies

A. A seller is expected to deliver conforming goods. A buyer has the right to inspect before payment or acceptance. Nonconforming goods may be rejected by notifying the seller within a reasonable period.

1. A seller has an absolute right to cure before the time for performance has passed.

2. Cure after the time for performance has passed is allowed where the seller had a reasonable expectation the nonconforming goods would be acceptable.

3. Where a seller breaches, the buyer may cover and sue for the contract price/cover price differential. Also, the buyer is entitled to incidental damages and consequential losses, less expenses saved.
a. Consequential losses result from unique circumstances of plaintiff. They can include lost profits. These must be foreseeable.

b. Incidental damages cover items like brokerage fees paid to locate replacement goods, advertising costs to find replacement goods, etc.

B. A seller’s remedies include refusing to deliver.

1. Where B breaches before goods delivered, B may refuse to make delivery.

2. A seller may resell the goods if commercially reasonable. The seller then can sue for the difference between the contract price and the resale price, plus incidental damages but less expenses saved.

3. Sellers are not entitled to consequential damages.

4. A seller may sue for the full contract price where the buyer accepted the goods and still retains them, where the goods cannot be resold, etc.

IV. Warranties and Product Liability

A. Product liability is the set of legal theories that allow recovery for injuries or property damage caused by a defective product. Product liability theories include

1. Warranty

2. Negligence


B. Warranties

1. A warranty is a promise regarding the capabilities or performance of a product. Warranties can arise expressly or by implication.

2. Express warranties

a. Express warranties are created by the language or actions of the seller. (An express warranty arises by actions where a seller provides a sample or model, for example.) Warranties can be made in writing or orally.
b. A seller may try to avoid warranty liability by arguing a disclaimer exists.

   i. A disclaimer is a statement designed to eliminate a particular warranty.

   ii. Generally, where a written disclaimer and oral warranty exist, the warranty drops out. This is because of the parol evidence rule.

   iii. Where a contract contains a written warranty and an inconsistent written disclaimer, the disclaimer drops out.

3. Implied warranties

   a. These warranties arise under the language of the UCC. They exist unless the seller takes affirmative action to eliminate them.

   b. The implied warranty of merchantability applies whenever goods are sold by a merchant. This warranty means goods are fit for the ordinary purposes for which they are sold.

      i. The warranty may be disclaimed by using the term “merchantable” or language like “as is” or “with all faults”.

      ii. Merchantable goods are fit for normal use. They are of fair, average quality, reasonably packaged, etc.

      iii. Recall a merchant is someone who deals in goods of the kind.

   c. The implied warranty of fitness for a particular purpose is also known as the warranty of fitness.

      i. Where the seller knows of the buyer’s particular purpose in buying the goods and knows that the buyer is relying on the seller’s judgment, an implied warranty exists that the goods are fit for that purpose.

      ii. The buyer’s reliance must be reasonable.

      iii. This warranty can be disclaimed using specific language, “as is”, “with all faults”, or similar terms.

   d. Consumer sales often involve special protections. For example, some states prohibit disclaimer of implied warranties in cases involving personal injury to consumers.
V. Negligence

A. Manufacturers, sellers and others have a duty to act as reasonable persons in bringing products to market.

1. Negligence can occur in any facet of production and distribution but typically arises in
   a. Design – a product should be designed to be free of unreasonable risk. A product is not required to be free of all risk. Reasonable safety features are required if cost appropriate.

   b. Manufacture – in this case, a product’s design is reasonable but the actual item departs from the design due to careless in manufacture, inspection, packaging etc.

   c. Warning – a manufacturer must warn users and purchasers of dangers arising from normal use and also foreseeable misuse. There is no duty to warn of obvious danger.

2. Note that negligence typically, but not always, involves manufacturers.

B. Recall discussion of negligence in chapter 6.
   1. To prove negligence, a plaintiff must show duty, breach, causation and damages.

   2. Defenses include plaintiff’s negligence and also assumption of risk.