### Volume 1

# CHAPTER 1. CONTRACT FORMATION: OFFER, ACCEPTANCE, AND THE STATUTE OF FRAUDS

§ 1:1	Sources of contract law
§ 1:2	Scope of Article 2—Sales of goods
§ 1:3	—Transactions that do not include sales of goods
§ 1:4	—Hybrid transactions
§ 1:5	The agreement process
§ 1:6	—Revocation of offers
§ 1:7	—Making offers irrevocable—The "firm" offer
§ 1:8	——Part performance
§ 1:9	——Reliance other than part performance
§ 1:10	Acceptance
§ 1:11	Arguments for and against the statute of frauds
§ 1:12	The Uniform Commercial Code statutes of frauds
§ 1:13	The Uniform Commercial Code Statutes of
	Frauds—Sale of goods: § 2-201
§ 1:14	Statutory exceptions to the statute of frauds
§ 1:15	—The merchant confirmation rule
§ 1:16	——Type of record required
§ 1:17	— —The ten-day period
§ 1:18	— —Who is a "merchant"?
§ 1:19	—Specialty goods
§ 1:20	—Admissions in legal proceedings
§ 1:21	——Scope of "admissions"
§ 1:22	——Scope of "proceedings"
§ 1:23	— —When do defendant's denials terminate
	proceedings?
§ 1:24	—Payment made or goods accepted
§ 1:25	—Is a usage of trade an exception to the statute
	of frauds?
§ 1:26	Common-law exceptions to the statute of frauds
§ 1:27	—Equitable estoppel
§ 1:28	—Promissory estoppel
§ 1:29	—Are estoppel concepts available under the
	Code's statute of frauds?

- § 1:30 Effect of the Uniform Electronic Transactions Act
- § 1:31 The Electronic Signatures in Global and National Commerce Act (E-Sign)

### CHAPTER 2. CONTRACT MODIFICATION

- § 2:1 Modification defined and distinguished
- § 2:2 The common law of contract modification—The preexisting duty rule
- § 2:3 —"Mechanical" approaches to avoiding the preexisting duty rule
- § 2:4 The Restatement (Second) of Contracts approach
- § 2:5 The Uniform Commercial Code approach—The consideration requirement and the statute of frauds: § 2-209
- § 2:6 —The "waiver" possibility
- § 2:7 Remaining limitations on enforcement

#### CHAPTER 3. CONTRACT TERMS

- § 3:1 Sources of contract terms
- § 3:2 Written documents: The "Battle of the Forms"
- § 3:3 —The common-law approach
- § 3:4 —The code approach
- § 3:5 —The Code approach—What is a definite and seasonable expression of acceptance?
- § 3:6 —The code approach—Additional and different terms
- § 3:7 ——The merchant rule
- § 3:8 ——The expressly conditional acceptance
- § 3:9 — What language creates an express condition of assent?
- § 3:10 —The Code approach—The expressly conditional acceptance—Consequences where expressly conditional acceptance is sent
- § 3:11 Oral terms and the parol evidence rule
- § 3:12 —Definition of the parol evidence rule
- § 3:13 —The policies behind the parol evidence rule
- § 3:14 —Situations traditionally excluded from the parol evidence rule
- § 3:15 —Total integration and partial integration
- § 3:16 —Brief history of the parol evidence rule—The "four corners" doctrine
- § 3:17 ——The "collateral contract" concept
- § 3:18 ——The "reasonable man" approach—An objective standard for total integration

§ 3:19	———Consistent express terms
§ 3:20	———Consistent implied terms
§ 3:21	———When is the term additional?
§ 3:22	The Restatement (Second) of Contracts approach
§ 3:23	The code's Parol Evidence Rule: § 2-202
§ 3:24	The code's parol evidence rule: § 2-202—Total integration and the "certainly" test
§ 3:25	—Partial integration and consistent additional terms: The Hunt Foods case
§ 3:26	—Developments since <i>Hunt Foods</i>
§ 3:27	—Developments since Hunt Foods—Intent to integrate totally
§ 3:28	— — The consistent terms requirement
§ 3:29	Merger clauses under the Code
§ 3:30	Course of dealing, course of performance, and
Ü	usage of trade as sources of additional terms
§ 3:31	Missing or omitted terms
§ 3:32	—Open and deferred price contracts
§ 3:33	—Requirements, output, and exclusive dealing contracts
§ 3:34	——Requirements and output contracts
§ 3:35	— Exclusive dealing contracts
§ 3:36	—Contracts of indefinite duration—
	Distributorship and franchise operations
§ 3:37	— — Judicial approaches to contract terminations
§ 3:38	— —Legislative responses to contract
	terminations
§ 3:39	—The obligation of good faith
§ 3:40	—Delivery—Tender of Delivery
$\S 3:41$	——Place of Delivery
§ 3:42	——Time for Delivery
§ 3:43	—Payment
§ 3:44	— —Time of Payment
§ 3:45	——Manner of Payment
§ 3:46	—Conditions
CHAI	PTER 3A. RISK OF LOSS

§ 3A:1	Significance
	Significance
§ 3A:2	In the absence of breach—Agreement by the
5	parties
§ 3A:3	—Goods transported by carrier
§ 3A:4	—Goods held by bailee
§ 3A:5	—Residual cases
§ 3A:6	—Sale on approval
8 3A:7	Effect of breach—By either party

- § 3A:8 —Right of the buyer to reject
- § 3A:9 —Buyer's revocation of acceptance
- § 3A:10 —Buyer's breach

### CHAPTER 4. CONTRACT INTERPRETATION

- § 4:1 Interpretation of contract terms
- § 4:2 Aids in the interpretation process
- § 4:3 —The parol evidence rule as a limitation— Narrow view
- § 4:4 ——Broad view
- § 4:5 —The plain meaning rule as a limitation
- § 4:6 Whose meaning controls?
- § 4:7 —Restatement of Contracts, §§ 227, 230, and 233
- § 4:8 ——Integrated contracts
- § 4:9 Restatement of Contracts, §§ 227, 230, and 233—Unintegrated contracts
- § 4:10 —Restatement (Second) of Contracts
- § 4:11 —The Uniform Commercial Code
- § 4:12 The role of rules of interpretation established by the original Restatement and the Restatement (Second)
- § 4:13 The role of course of performance, course of dealing, and usage of trade under the code
- § 4:14 —Definition of terms
- § 4:15 The role of course of performance, course of dealing, and usage of trade under the Code— Terms excluded from certain restrictions
- § 4:16 The role of course of performance, course of dealing, and usage of trade under the code—When is proof sufficient?
- § 4:17 Usage of the trade
- § 4:18 ——Course of dealing and course of performance
- § 4:19 —Supplementation of a contract formed under § 2-207(3)
- § 4:20 Judicial reaction to the code's sources of contract interpretation
- § 4:21 —Contracts with missing terms
- § 4:22 —Contracts with ambiguous terms
- § 4:23 ——Terms ambiguous on their face
- § 4:24 ——Terms latently found ambiguous
- § 4:25 —Express terms vs. usage of the trade, course of performance, and course of dealing—Limitations on admissibility: § 1-303(e)
- § 4:26 — The "false parol evidence" rule

- § 4:27 — Who decides the consistency issue?
- § 4:28 — What does "consistent" mean?

### CHAPTER 5. CONTRACT DEFENSES: UNCONSCIONABILITY AND EXCUSE

- § 5:1 History of the doctrine of unconscionability
- § 5:2 Codification and acceptance of the doctrine
- § 5:3 Procedural aspects of unconscionability
- § 5:4 —Hearing requirement
- § 5:5 —Burden of proof
- § 5:6 Scope of § 2-302—Outside Article 2
- § 5:7 —Within Article 2
- § 5:8 ——Contract terminations
- § 5:9 —Warranty disclaimers
- § 5:10 Unconscionability following contract formation
- § 5:11 Defining unconscionability
- § 5:12 —Procedural-substantive approach
- § 5:13 —Status-of-the-parties approach
- § 5:14 ——Between merchants of equal bargaining strength
- § 5:15 ——Between merchants of unequal bargaining strength
- § 5:16 ——Between merchants and consumers
- § 5:17 Remedies under the code
- § 5:18 History of excuse as a defense
- § 5:19 Destruction of specific goods: § 2-613
- § 5:20 Substitute methods of delivery or payment: § 2-614
- § 5:21 Commercial impracticability: § 2-615
- § 5:22 —The absence of fault requirement
- § 5:23 —Foreseeability, assumption of the risk, and risk allocation
- § 5:24 —Significant hardship
- § 5:25 —An additional requirement: Isolating the relevant causes
- § 5:26 Force majeure clauses
- § 5:27 Postexcuse concerns
- § 5:28 "Fair and reasonable" plan
- § 5:29 —Failure to notify
- § 5:30 Consequences of excuse
- § 5:31 —Expectation interest
- § 5:32 —Down payments
- § 5:33 —Reliance expenditures, restitution, and the risk of loss rules

- § 5:34 Sharing the losses in excuse cases
- § 5:35 Buyer's ability to claim excuse under § 2-615

### CHAPTER 6. ANTICIPATORY REPUDIATION

- § 6:1 Defining anticipatory repudiation
- § 6:2 —Demands not justified by the contract
- § 6:3 —Insolvency
- § 6:4 —Delay in performance
- § 6:5 —Unsatisfactory performance in an installment contract
- § 6:6 Demands for adequate assurances of performance
- § 6:7 —When are there reasonable grounds for insecurity?
- § 6:8 —When are assurances adequate?
- § 6:9 —How is § 2-609 invoked?
- § 6:10 Remedies for anticipatory repudiation
- § 6:11 Damages for anticipatory repudiation—The common-law approach
- § 6:12 —Measuring damages under the code
- § 6:13 ——The time for performance under the contract
- $\S 6:14$  Time of the repudiation
- § 6:15 ——A commercially reasonable time after the repudiation
- § 6:16 The Restatement (Second) of Contracts approach to measuring damages

### CHAPTER 7. SELLER'S RIGHTS IN THE GOODS

- § 7:1 Seller's rights before delivery
- § 7:2 —Breach by buyer before delivery: Seller's right to demand cash and stop goods in transit
- § 7:3 —Discovery of buyer insolvency before delivery
- § 7:4 When does the seller lose the power to stop delivery?
- § 7:5 —When does the buyer receive the goods?
- § 7:6 —Acknowledgment by the bailee
- § 7:7 —Who has the burden of proof?
- § 7:8 —Is the seller required to give notice?
- § 7:9 Is the seller's right of stoppage cut off by a good faith purchaser from the buyer?
- § 7:10 Seller's rights after delivery: The common-law situation
- § 7:11 Seller's rights after delivery: The Uniform Commercial Code

- § 7:12 —Unpaid sellers vs. subsequent buyers of the goods
- § 7:13 —Unpaid sellers vs. secured parties
- § 7:14 —Unpaid sellers vs. other creditors of the buyer
- § 7:15 —Unpaid sellers vs. buyer's trustee in bankruptcy

### CHAPTER 8. SELLER'S MONETARY DAMAGE CLAIMS

- § 8:1 The function of damage claims
- § 8:2 The resale measure of recovery: § 2-706
- § 8:3 Actions for the price: § 2-709
- § 8:4 —Accepted goods
- § 8:5 —Risk of loss on buyer
- § 8:6 —Goods not readily resalable
- § 8:7 Traditional market formula damages: § 2-708(1)
- § 8:8 Lost-profit claims: § 2-708(2)
- § 8:9 —Sellers covered by the lost-profit provision
- § 8:10 ——Lost-volume sellers
- § 8:11 ——Manufacturers using component parts
- § 8:12 ——Manufacturers using raw materials
- § 8:13 —Calculating lost-profit recoveries
- § 8:14 When lost profits overcompensate
- § 8:15 Incidental damages: § 2-710
- § 8:16 Down payments made by the buyer

### CHAPTER 9. BUYER'S RIGHTS IN THE GOODS

- § 9:1 Buyer's right to compel delivery of the goods— Specific Performance
- § 9:2 —The prepaying buyer
- § 9:3 Buyer's right to return the goods—Common-law rescission
- § 9:4 —Rejection of the goods
- § 9:5 —The Perfect Tender Rule: § 2-601
- § 9:6 — —Installment contracts: § 2-612
- $\S 9:7$  — The seller's right to cure:  $\S 2-508$
- § 9:8 ——Requirements for an effective rejection
- § 9:9 — Timeliness and notice
- $\S 9:10$  ——Contents of the notice
- § 9:11 ———Burden of proof
- § 9:12 ———Custody, care, and disposition of the goods
- § 9:13 ———The effect of continued use by buyer
- § 9:14 —Acceptance

- \$ 9:15 Revocation of acceptance
  \$ 9:16 The substantial impairment requirement
  \$ 9:17 Notice
  \$ 9:18 The effect of continued use by buyer
  \$ 9:19 Does the seller have a right to cure?
  \$ 0:20 Reducing the buyer's receivery when the good
- § 9:20 —Reducing the buyer's recovery when the goods have been used
- § 9:21 —Who is a seller for rejection or revocation of acceptance purposes?
- § 9:22 —A closing note on the buyer's right to return the goods

### CHAPTER 10. BUYER'S MONETARY DAMAGES

- § 10:1 An introduction to buyer's claims
- § 10:2 Buyer does not retain or never receives the goods: §§ 2-711, 2-712, and 2-713
- § 10:3 —The cover remedy
- § 10:4 —The market formula
- § 10:5 Buyer's damage claims where the buyer retains the goods: § 2-714
- § 10:6 —Economic loss doctrine
- § 10:7 ——Negligence and strict products liability
- § 10:8 —Misrepresentation and fraud
- § 10:9 Incidental and consequential damage claims: § 2-715
- § 10:10 —Foreseeability as a limitation—History of the doctrine
- § 10:11 ——Foreseeability under the Code
- § 10:12 ——Inherent problems
- § 10:13 —Mitigation as a limitation
- § 10:14 —Certainty as a limitation
- § 10:15 ——Inadequate proof of loss
- § 10:16 ——Damages not recognized, or not fully recognized, in breach of contract actions
- § 10:17 Specific types of consequential damages—Lost profits—The "reasonable certainty" requirement
- § 10:18 —Methods of proof
- § 10:19 ——Resale situations
- § 10:20 ——Manufacturing situations
- § 10:21 —The "New Business" Rule
- § 10:22 ——Proving lost profits for an unestablished business
- § 10:23 ——The Contemplated Business Rule

§ 10:24	—Goodwill
§ 10:25	—Wasted, saved, and added expenses
§ 10:26	—Third-party claims
§ 10:27	—Attorney's fees
§ 10:28	—Interest
§ 10:29	—Personal injuries and property damage
§ 10:30	—Emotional distress
§ 10:31	—Loss of use of goods
§ 10:32	—Impaired credit rating
§ 10:33	Alternatives to consequential damage claims
§ 10:34	—Liquidated damage provisions
§ 10:35	——Is it a liquidated damage clause or a
	penalty clause?
§ 10:36	——Are liquidated damage clauses the
	exclusive remedy for breach?
§ 10:37	—Alternative measures of damages
§ 10:38	—Reliance claims
§ 10:39	Punitive damages—The basic Code approach
§ 10:40	—Punitive damages in product liability cases

### Volume 2

## CHAPTER 11. PRODUCT DISSATISFACTION CLAIMS

§ 11:1	Scope of the code's warranty provisions
§ 11:2	—Used goods
§ 11:3	—Leased goods
§ 11:4	—Service contracts
§ 11:5	—Computer software
§ 11:6	— — The Uniform Computer Information
	Transactions Act
§ 11:7	———The UCITA generally
§ 11:8	———UCITA's approach to mixed transactions
	involving goods and computer information
§ 11:9	<ul> <li>Federal preemption of the implied warranty of merchantability</li> </ul>
§ 11:10	Express warranties by affirmation, description, sample, and model: § 2-313
§ 11:11	—The affirmation-opinion dichotomy
§ 11:12	—Basis of the bargain
§ 11:13	—Warranty by description
§ 11:14	—Warranty by sample or model
§ 11:15	Express warranties and the parol evidence rule

#### Law of Sales Under U.C.C.

§ 11:16	Implied warranty of merchantability: § 2-314
§ 11:17	—"Merchant with respect to goods of that kind"
§ 11:18	—Are the goods fit for their ordinary purpose?
§ 11:19	Implied warranty of fitness for a particular
	purpose: § 2-315
§ 11:20	—Reason to know
§ 11:21	—Particular purpose
§ 11:22	—Who is a seller?
§ 11:23	—Reliance by the buyer
§ 11:24	Warranty of title and against infringement
§ 11:25	—Warranty against infringement
§ 11:26	Proof of breach of warranty
§ 11:27	Warranty disclaimers and substituted remedy
	clauses
§ 11:28	—Warranty disclaimers
§ 11:29	— —Express warranties
§ 11:30	——Implied warranties
§ 11:31	— —"As is" disclaimers
§ 11:32	——Disclaimers not part of the written contract
§ 11:33	——Inspection of the goods
§ 11:34	——Course of dealing, course of performance,
¢ 11.05	and usage of trade
§ 11:35	— — Unconscionability
§ 11:36	— —Nonuniform provision on livestock
§ 11:37	—Substituted remedy clauses
§ 11:38 § 11:39	<ul><li>— "Expressly agreed to be exclusive"</li><li>— Does the remedy fail of its essential</li></ul>
8 11.59	purpose?
§ 11:40	— —Unconscionability
§ 11:40 § 11:41	— —The notice of breach requirement
§ 11:41	— — Must a limited remedy clause be
3 11.42	conspicuous?
§ 11:43	Limited damages clauses
§ 11:44	Substituted remedy and damage limitation
· ·	clauses in combination
§ 11:45	Notice of breach
§ 11:46	—Timeliness of notice
§ 11:47	—Form and content of notice
§ 11:48	—Who must give notice?
§ 11:49	Privity
§ 11:50	—Vertical privity
§ 11:51	——Implied warranties
§ 11:52	— — Express warranties
§ 11:52	—Horizontal privity
§ 11:54	Statute of limitations
3 11.01	S COLUMN OF ARRANGEMENT OF THE PROPERTY OF THE

§ 11:55	Defenses based on the claimant's conduct— Contributory negligence, assumption of the risk, and misuse
§ 11:56	Beyond the Uniform Commercial Code: other statutes affecting contracts for the sale of goods
§ 11:57	—The Magnuson-Moss Warranty Act
§ 11:58	— —The written warranty requirement
§ 11:59	— —The consumer product requirement
§ 11:60	— —The warrantor or supplier requirement
§ 11:61	— —The impact of the Act—Privity
§ 11:62	— — Substantive disclosure requirements
§ 11:63	——Presale availability
§ 11:64	———Limited and full warranties
§ 11:65	— —Enforcement and remedies
§ 11:66	— —Damage claims under the Act
§ 11:67	——Statute of limitations
§ 11:68	— —Measuring the Act's impact
§ 11:69	—State consumer protection statutes

#### CHAPTER 12. THE BULK SALES LAW

- $\$  12:1 A brief history of the bulk sales provisions of the code
- § 12:2 The function of the bulk sales law
- § 12:3 What is a bulk transfer?
- § 12:4 —The quantitative requirement
- § 12:5 —The problem of successive sales
- § 12:6 —The problem of multiple locations
- § 12:7 —Enterprises covered by the law
- § 12:8 Property subject to the Act
- § 12:9 Exempted transfers
- § 12:10 —for security purposes
- § 12:11 —Assumptions of liability
- § 12:12 —Other exemptions
- § 12:13 Compliance
- § 12:14 —The list of creditors
- § 12:15 —Contents and timing of the notice
- § 12:16 —The schedule of property
- § 12:17 The effect of noncompliance
- § 12:18 —Protected creditors
- § 12:19 —The nature of the transferee's liability
- § 12:20 The Statute of Limitations

### CHAPTER 13. RIGHTS OF THIRD PARTIES

§ 13:1 Assignment of rights and delegation of duties generally

#### Law of Sales Under U.C.C.

§ 13:2 Clauses dealing with assignment or delegation
§ 13:3 Priorities—The doctrine of derivative title
§ 13:4 —Voidable title and estoppel
§ 13:5 —Article 2's approach
§ 13:6 —The entrustment doctrine and buyers in the ordinary course
§ 13:7 —Secured parties
§ 13:8 —Unsecured creditors of the seller

#### **APPENDICES**

Appendix A. U.C.C. Article 2—Sales

**Table of Laws and Rules** 

**Table of Cases** 

Index