



# SALES & LEASES OF GOODS

## LEASING



### GENERAL CONSIDERATIONS

#### COMMERCIAL LAW

- Under the **Uniform Commercial Code (UCC)**, transactions take various forms, subject matter is personal property, and parties include merchants and consumers
- Parties to contract of **sale** include seller and buyer (U. 1-201(1); parties to **lease** of goods are lessor and lessee (U. 2A-103(1);
- Contracts for sale of goods are regulated by **UCC Article 2**; contracts for lease of goods are regulated by **UCC Article 2A**

### CONTRACT FORMATION

#### IMPORTANCE OF AGREEMENT

- A **contract** is formed when Article 2 gives legal effect to parties' agreement in fact; total legal obligation that results from parties' agreement (U. 1-201(1)(3))
- An **agreement** is the bargain in fact of parties as found in their language or by implication from other circumstances (U., course of dealing, course of performance, usage of trade) (U. 1-205, 2-208)

#### OFFERS & ACCEPTANCE

- An **offer** is display of willingness to enter into a bargain made to justify another person's understanding that assent to bargain is invited and ends it
- A **firm offer** (an option) may be created without consideration or reliance in a writing signed by a merchant
- An **acceptance** may be in any reasonable method or manner unless otherwise unambiguously indicated (U. 2-206(1))
- Offeree may accept by **promise, performance or commencing performance**
- A contract is formed if offeree gives definite acceptance with different terms or if there is conduct by both parties that recognizes a contract even when writings do not agree (U. 2-207)
- If contract is formed, then additional or different terms may become part of agreement if offeror has expressly assented to them

#### EVIDENCE OF FRAGILE

- It conditions enforceability of an agreement with the presence of a **writing** indicating that the contract for sale has been made and signed by the obligated party (U. 2-201(1))
- Requirement is met even though writing does not contain all material terms or where merchant fails to object to satisfactory confirmation in writing sent by other merchant
- Other non-writing provisions are included (e.g., specially manufactured goods, part performance, admission in court, reliance)
- Agreement is **not enforceable** beyond quantity of goods shown in writing or evidenced by performance or admission

#### GENERAL PRINCIPLES

- Emphasis is upon **agreement**, not a promise or consideration (U. 2-204)
- Less emphasis on **formalities**; best evidence of agreement may be parties' **conduct** rather than their words
- Parties' **intention** to make a contract is given legal protection, even though time of contract formation cannot be determined or material terms have not been agreed upon
- If parties intended to make a contract, but a material term has not been agreed, then court will supply a **reasonable term** and enforce bargain

### THIRD PARTY CLAIMS

#### BUYER'S CLAIMS

- When an **owner** seeks to **replevin** goods sold by a seller to a buyer, that seller can only provide the buyer with title that is within his/her power to transfer (U. 2-402)
- **Exceptions** occur when the owner has delivered goods to the seller in a **transaction of purchase** (later claimed to be voidable) and owner has **unrecovered** goods (but not power to replevin to merchant where buyer makes a purchase in ordinary course of business)

#### SECURITY INTEREST CLAIMS

- **Security interests** in goods are created and perfected under Article 9
- If a secured party creates a **perfected security interest** in seller's goods, and seller sells those to buyer, then buyer is subject to that security interest
- Buyer takes **free of security interest** if secured party authorized sale or buyer is a buyer in ordinary course of business and security interest was created by seller

#### SECURITY INTERESTS

- If seller creates a **security interest by agreement** or retention of title in goods sold and delivered to a buyer, then problems of perfection of security interest, priority, and enforcement are governed by Article 9
- If seller **retains** or regains possession of goods upon buyer's **default**, then he/she may have **possessory security interest** under Article 2
- Security interest is created without security agreement and perfected without filing a finance statement

#### SELLER'S WARRANTY OF TITLE

- Seller makes a **warranty** to the buyer that title conveyed is good, its transfer rightful, and goods are free of any security interest (U. 2-312(2))
- Buyer's **damages** for breach include incidental and consequential damages (U. 2-714(2))

#### OTHER PARTIES' CLAIMS

- After delivery, **seller** has a limited right to **reclaim goods** from a buyer in a credit sale where buyer was **insolvent** (U. 2-505(2)) or **cash sale** where check in payment is dishonored (U. 2-505(3))
- Reclamation power is subject to **purchasers**, including a secured party, who have the right to **interpose** before a demand is made
- A **consignor of goods** is protected from claims of consignee's creditors and secured parties if appropriate notice is given
- A **buyer** who leases **harmful goods** in **seller's possession** may be entitled to them as against the seller through specific performance, replevin or reclamation
- A **purchaser** of those goods from seller may prevail if **retention of possession** is established to a merchant and sale was in the ordinary course of business
- Seller's **creditor** may prevail over buyer if retention or identification was **fraudulent**
- **Buyer** in ordinary course of business may prevail over perfected security interest even though goods have been left with seller

# Sales And Leases Of Goods

**R Barnett**



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