Chapter 20 – Formation of Sales and Lease Contracts Under the Uniform Commercial Code

1. Article 2 (Sales) and 2A (Leases) -- Apply to sales/leases of “goods” (tangible personal property).

Generally relaxes the common law standards for formation of a contract ---

Additionally – further relaxes and shifts burdens if one (or both) of the parties to an agreement are “merchants” – one who deals in goods of a particular kind.

Goods Associated with Real Estate/Mixed Contract (predominant-factor test) – what factor are we looking at for the determination?

1. Finance Leases – why and how they work

v. Operating/consumer leases

1. Offers Under the UCC-

Open Terms

As long as both parties intent to make a contract and the court can grant and appropriate remedy, a contract (offer) will not fail for indefiniteness

Price – Market Price

Payment – commercially normal means

Delivery – Seller’s place of business

Duration – reasonable notice before termination

Quantity – this is the one term that must still be definite, or no contract is formed

Exception – Requirements and Output Contract – no fixed quantity, but quantity is still ultimately determinable, so Court will enforce these agreements.

1. Merchant’s Firm Offer – to make an offer irrevocable, if the offer is from a merchant it is sufficient that the offer is in writing. No additional consideration is need to make the offer irrevocable. Must be written and signed by the offeror.
2. Acceptance – either by prompt promise or performance (blurs the issue of unilateral v. bilateral)

Shipment of non-conforming goods – effect – acceptance and breach -- accommodation

Communication – acceptance by performance requires notice to the offeror – reasonable time

* 1. Additional Terms –

When acceptance is definite – there is a contract even if there are additional or different terms included in the acceptance.

Are the additional terms then part of the Agreement?

Depends on who the parties are. – If one or both of the parties are non-merchants, the agreement is on the original terms – changed or additional terms are not part of the agreement.

When both parties are merchants – the changed/additional terms become part of the agreement unless : 1) specified in advance no changes to the offer; 2) change/additional results in a material change to the contract; 3) objection by offeror after within a reasonable period of time.

Consideration –

For contact modification – no new consideration required. Good faith still, and if the change makes the contract subject to the statute of frauds, then the modification/agreement must be in writing and signed.