Unit 14 – Sales of Goods under the UCC and Product Liabilities

The Uniform Commercial Code (UCC)

I. Applies to “Goods”

Article 2 of the UCC deals with the sale of goods. “Goods” means all things, including specially manufactured goods, which are tangible and moveable at the time of identification to the contract for sale. This includes unborn animals, growing crops and other identified things attached to realty. A present contract to sell “future” goods (those which are not both existing and identified) is considered a contract to sell, not a contract for the sale of goods. Article 2 does not apply to the transfer of property resulting from gifts, security interests in property, leases or bailments because these are not sales.

II. Statute of Frauds

One of the requirements of the Statute of Frauds is that a contract for sale of goods for the price of $500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought. If the other requirements are met, the contract is not enforceable beyond the quantity shown in the writing.

If there is a sale between merchants, the requirements of the Statute of Frauds are met if, within a reasonable time, there is a written confirmation to the party to be charged, the party to be charged has reason to know the contents of the confirmation, and that person fails to object to the contents within 10 days of receiving it.

Under certain other circumstances, a contract for sale will be enforceable even if it does not meet the formal requirements of the Statutes of Frauds: (1) there is a completed transaction in which payment has been made and accepted or the goods have been offered and accepted: (2) there are specially manufactured goods which are not suitable for sale to another buyer in the ordinary course of business and under circumstances that reasonably indicate that the goods are for this buyer and the seller has made a substantial beginning on their manufacture; and (3) the making of the contract is admitted to in pleadings or otherwise by the party against whom enforcement is sought, but it is not enforceable beyond the quantity of goods admitted to.

III. Merchant

In the case of merchants only, Article 2 allows an exception to the Statute of Frauds requirements that is called “the merchant’s exception” (mentioned above). If one merchant sends a written confirmation of an oral agreement to another merchant within a reasonable time and the other merchant does not object within 10 days, the oral agreement is enforceable. The UCC defines “merchant” as a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill
peculiar to the practices or goods involved in the transaction. In North Carolina, a farmer is considered a “merchant” under the UCC. Generally, one is a “merchant” only for the purposes of the business in which he is regularly engaged.

IV. Remedies for Breach

When the non-breaching party is the seller, the UCC allows him several options for seeking damages from the buyer. First, if the buyer breaches before the seller has delivered the goods, the seller may resell the goods and then sue for the difference between the original contract price and the resale price plus adjustments for expenses incurred or expenses saved in the resale. Second, the seller may choose not to resell the goods and bring an action for damages against the buyer based on the difference between the contract price and the market price for such goods at the time and place of tender (plus expenses). Third, in cases where damages would be inadequate to place the seller in as good a position as he would have been had the contract been performed, the seller may sue to recover lost profits from the buyer. This remedy is often used by a “volume seller.”

There are also remedies available to a buyer in the case of non-delivery or non-conforming goods. First, the buyer can “cover,” which means that he can buy substitute goods from another source and then seek as damages the difference between the original contract price and the cover price plus incidental expenses. To cover, the buyer must first have rejected the nonconforming goods. Second, if the buyer decides to accept non-conforming goods, he may give notice of non-conformity, keep the goods, and then sue for damages based on breach of warranty.

Products Liability

I. Warranties

There are several bases for plaintiffs to sue in products liability cases. If the theory focuses on the product and its characteristics, the theory is breach of warranty, which is a contract action. If the action focuses on the conduct of the seller or manufacturer, then the theory is negligence or strict liability, which are tort actions.

Regarding the breach of warranty theory, two kinds of warranties accompany the sale of personal property. An express warranty results from plain statements made by the seller about the goods. It may be oral or written, but it does not include representations made during the sales process which may not be totally true but are not stated strongly enough to constitute a warranty (called “puffing”).

The other kind of warranty is an implied warranty which is defined in the UCC as a warranty that the goods shall be merchantable and fit for a particular purpose. No statement of any kind is required to create an implied warranty. A warranty that goods are merchantable is implied in a contract for sale if the seller is a merchant for those
goods. An implied warranty can also arise from usage of the trade. In addition, when the seller knows that the buyer is relying on the seller’s knowledge and knows that purpose for which the buyer is seeking the product, the seller warrants that the goods are *fit for the particular purpose* for which they buyer intends to use them.

II. Contract Defenses

Possible defenses to a contract claim of breach of warranty include: (1) privity of contract, (2) disclaimer of warranties, and (3) obvious defects. Historically, privity of contract (the contractual relationship between the buyer and seller) was a significant barrier to suits by consumers against manufacturers. At common law consumers were required to have a contractual relationship with the manufacturer as a precondition for bringing a products liability suit against the manufacturer. Typically the consumer purchased the product from a retailer and had no contractual relationship with the manufacturer. Third parties, such as children and guests, had no contractual relationship with either the retailer or the manufacturer. In North Carolina, the UCC has restricted the privity defense by extending warranties to the family or household of the buyer and any guests.

A seller can attempt to limit or modify the implied warranty by disclaiming with language such as “as is” or “with all faults.” To be effective, such disclaimers must be conspicuous but will not be effective if the limitation is unconscionable. A disclaimer of liability for personal injury from consumer goods is “*prima facie* unconscionable.” A disclaimer is also an ineffective defense against fraud, e.g., concealment of a material defect.

As to a disclaimer for obvious defects, the UCC provides that if the purchaser has examined the product or refused to inspect it after requested to do so by the seller, no implied warranty is created regarding defects that would have been discovered by such examination.

III. Negligence and Strict Liability in Tort

Regarding a product liability claim based on negligence, manufacturers have a duty to exercise reasonable care in the manufacture or design of a product and to warn of its foreseeable dangers. Members of the general class of persons who might reasonably be expected to come in contact with the product may recover for breach of this duty.

North Carolina law uses a negligence standard for product liability claims. A strict liability standard is prohibited under NCGS §99B-1.1.