

13.2: Scope of the UCC

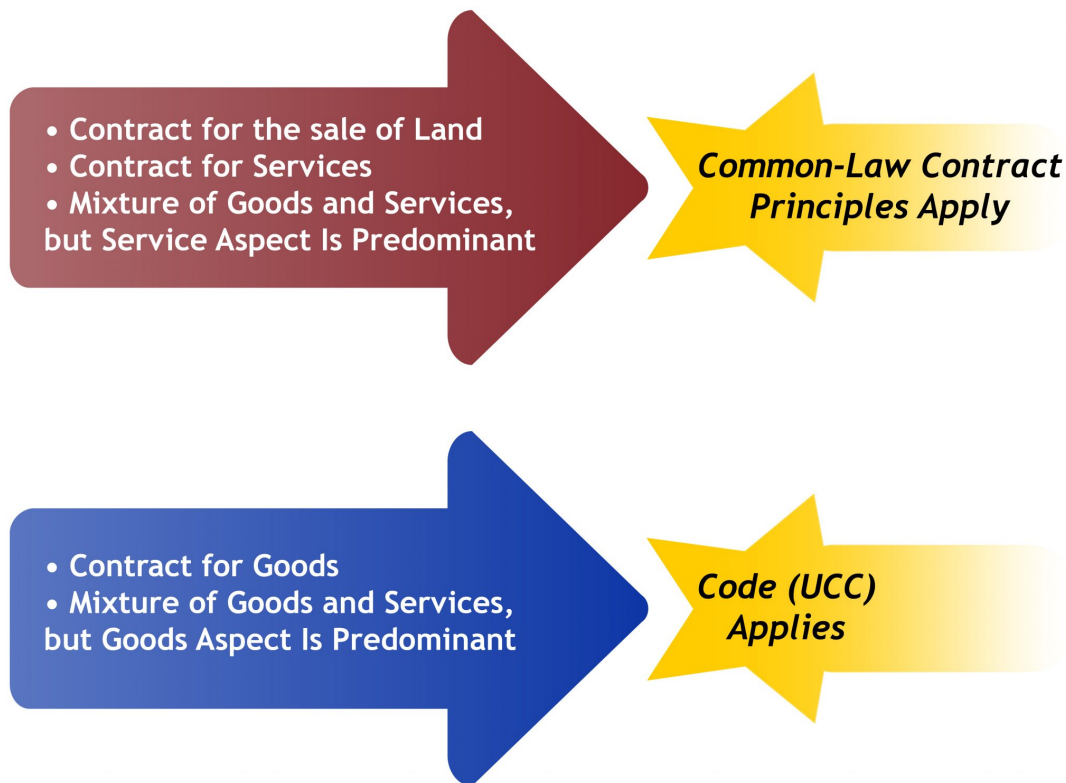
The UCC deals with commercial transactions from start to finish. The power of the UCC is that if the parties do not have a contract with express terms, then the UCC “fills the gaps” with legal requirements. For example, if the parties do not negotiate the terms of delivery, then the UCC states where and when delivery should occur. This is incredibly beneficial to businesses because it provides legal certainty and consistency across jurisdictions. If parties have a dispute, or unforeseen circumstances result in a breach of contract, the parties can resolve the problem without having to litigate the issue in court. This saves businesses a lot of time, money and resources, as well as helps them maintain good working relationships.

The UCC also addresses four important problems that merchants struggled with under the common law:

Problem	Common Law	UCC	Example
Contract Formation	Mirror Image Rule: Offer must be followed by acceptance showing meeting of the minds on all essential terms	Contract can be made in any manner that shows agreement and some terms, including price and time of delivery, may be left open (§2-204 & §2-305)	Jimena writes Ahn that she needs a new computer. Ahn delivers the computer and Jimena starts to use it. Under the common law, there is no contract because price was not discussed. Under the UCC a contract exists for a reasonable price.
Required Writing	All essential terms must be in writing	Any writing that intends to be a contract is enforceable; “merchant” exception can create a contract against party that does not object to writing within ten days (§2-201)	Home Depot sends a purchase order to a wholesaler. The wholesaler receives the order but does not respond. Under the common law, no contract exists. Under the UCC, a contract exists after ten days that Home Depot may enforce against the wholesaler.
Additional Terms	An acceptance with any additional terms is a counteroffer	Additional and different terms are not necessarily counteroffers, may just be part of negotiation process (§2-207)	A florist sends a preprinted order form to buy specific supplies from a manufacturer for a stated price. The manufacturer responds with its own preprinted form accepting the order but adding the term that unpaid balances incur interest. Under the common law, the additional term is a counteroffer and no contract is formed until the florist accepts it. Under the UCC, there is a valid contract that includes the interest term.
Modification	To be valid, a modification must be supported by new consideration	A modification does not need to be supported by new consideration (§2-209)	Fred Farmer agrees to sell produce to Aponi for her restaurant. They agree to all essential terms, including goods, price, and delivery. The next day a hurricane floods the interstate doubling the delivery costs. Fred calls Aponi who agrees to pay half of the increased cost. Under the common law, the modification is void. Under the UCC, the modification is enforceable.

A common problem is determining when the UCC applies. The UCC does not apply to contracts related to the sale of land, intangible personal property, construction, or for services. The UCC applies to the sale of **goods**, which the Code defines as any moveable physical object except for money and securities. In other words, goods are tangible personal property.

Figure 11.1 Determination of when the UCC Applies to Sales Transactions



Mixed contracts are for both the sale of goods and services. For example, a contract for the sale of a dishwasher that includes the service of installation is a mixed contract. The UCC only applies to mixed contracts when the primary purpose of the contract is the sale of goods. In the dishwasher example, the UCC applies because installation would not occur without the sale of the dishwasher.

The UCC also does not apply if none of the parties are a merchant. In other words, the sale of goods between individuals is governed by the common law. If a sales transaction involves a merchant, then the UCC usually applies. A **merchant** is someone who routinely deals in the goods involved in the transaction or who, by his or her occupation, holds himself or herself out as having special knowledge with respect to the goods. Suppliers of services are not merchants.

The UCC provides merchants with rules that facilitate their business needs. For example, contract formation is more informal and flexible than under the common law. However, the UCC often holds merchants to a higher standard of conduct than non-merchants. Merchants are required to act in good faith and to observe reasonable commercial standards of fair dealing.

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