

TERMS TO KNOW

You should be able to define the following terms:

Uniform Commercial Code	trade usage	implied warranty
goods	requirements contract	merchantable
good faith	output contract	fitness for a particular purpose
merchant	tender	warranty disclaimer
sale	perfect tender rule	cover
title	cure	incidental damages
sales contract	warranty	consequential damages
firm offer	warranty of title	
Statute of Frauds	express warranty	



DISCUSSION QUESTION

What is the advantage of the UCC compared to the common law of contracts? Are there disadvantages to the adoption of a statute such as the UCC?

CASE QUESTIONS

- Cal-Cut had dealt with Idaho Pipe for years. Idaho Pipe requested 30,000 feet of steel pipe from Cal-Cut. Cal-Cut sent written confirmation. Idaho Pipe accepted the offer by return mail, changed the delivery date from October 15 to December 15, and sent \$20,000 in partial payment. Cal-Cut confirmed the order and did not change the October 15 delivery date, but wrote, "We will work it out," on the contract. Cal-Cut delivered 12,937 feet of pipe before October 5, which Idaho Pipe accepted. Then Cal-Cut refused to deliver any more pipe. The sale had become unprofitable, as the price of pipe had risen quickly. Was this deal enforced? Could Idaho Pipe recover damages? [*Southern Idaho Pipe and Steel v. Cal-Cut Pipe and Supply*, 567 P.2d 1246, Sup. Ct. Id. (1977)]
- Polygram, a French company, made records, tapes, and CDs. 32-03, a New York distributor, ordered goods from Polygram that were delivered in four shipments with written invoices. The invoices noted that payment was due in 60 days and that claims about problems must be made within three months of delivery. The companies had done business this way for years. 32-03 objected to the terms of sale for the first time in this incident, and refused to pay. It claimed there was no written contract in violation of the Statute of Frauds, and it was trade custom in the industry for distributors to be allowed to return any defective goods for credit. Polygram claims that the terms of the agreement were violated and sued for payment. Who was right? [*Polygram v. 32-03 Enterprises*, 697 F. Supp. 132, E.D. NY (1988)]
- Marquette agreed to provide all cement that Norcem would need for two years. The quantity and sales price for the first two shipments were specified in the contract. The third shipment, according to the contract, was to be negotiated for a price "not to exceed \$38 per short ton." At the time of the third shipment, Marquette told Norcem the price would be \$38; Norcem responded that Marquette's insistence on the maximum price was not in good faith and refused to buy the cement. Marquette sued for breach of contract. Was Marquette right? [*Marquette v. Norcem*, 494 N.Y.S.2d 511, Sup. Ct., App. Div., NY (1985)]
- Eureka Water in Oklahoma sold "Ozarka" branded water that it bottled and distributed for Nestle Waters. The companies got into a dispute. Would this case fall under the UCC or the common law? Much of the value of the contract arose from the use of the Ozarka trademark, but most of the work involved bottling and distributing water. [*Eureka Water Co. v. Nestle Waters North America*, 690 F.3d 1139, 10th Cir. (2012)]
- Community Television Services (CTS) hired Dresser to build a 2,000-foot antenna tower in South Dakota for \$385,000. The contract contained technical specifications warranting that the tower would withstand winds of 120 mph. During negotiations, Dresser had given CTS a sales brochure that stated: