

Sources of Contract Law

by Sophia



WHAT'S COVERED

In this lesson, you will learn more about where contract law comes from. Specifically, this lesson will cover:

1. Case (Common) Law and the Restatement of Contracts

Because contract law was forged in the common law courtroom, hammered out case by case by individual judges, it grew in the course of time to house volumes of written decisions. By the early twentieth century, tens of thousands of contract disputes had been submitted to the courts for resolution, and the published opinions, if collected in one place, would have filled dozens of bookshelves. Clearly this mass of case law was too unwieldy for efficient use.

A similar problem had developed in the other leading branches of the common law. Disturbed by the profusion of cases and the resulting uncertainty of the law, a group of prominent American judges, lawyers, and teachers founded the American Law Institute in 1923 to attempt to clarify, simplify, and improve the law. One of its first projects, and ultimately one of its most successful, was the drafting of the **Restatement of the Law of Contracts**, completed in 1932. A revision, the Restatement (Second) of Contracts, was undertaken in 1946 and finally completed in 1979.

The Restatements (others exist in the fields of torts, agency, conflicts of laws, judgments, property, restitution, security, and trusts) are a detailed collection of the law embodied in these decided cases. They are broken down into various principles that have emerged from the courts, and to the maximum extent possible, the Restatements declare the law as the courts have determined it to be.

The Restatement of Contracts won prompt respect in the courts and has been cited in innumerable cases. The Restatements are not authoritative, in the sense that they are not statutes or actual judicial precedents, but they are nevertheless weighty interpretive texts, and judges frequently look to them for guidance. They are as close to “black letter” rules of law as exist anywhere in the American legal system for judge-made (common) law.



TERM TO KNOW

Restatement of the Law of Contracts

A summary of U.S. case law regarding contracts compiled by the American Law Institute and

considered to be authoritative. It is currently in its second form as the Restatement (Second) of the Law of Contracts.

2. Statutory Law and the Uniform Commercial Code

Common law contract principles govern contracts for real estate and for services, obviously very important areas of law. But in one area, the common law has been superseded by an important statute: the **Uniform Commercial Code (UCC)**, especially Article 2, which deals with the sale of goods.



TERM TO KNOW

Uniform Commercial Code (UCC)

A uniform act relating to commercial law that has, over time, been adopted in all 50 states, the District of Columbia, and U.S. territories. It is not a federal law, but its adoption throughout the U.S. makes interstate commercial transactions harmonious, although not all states have adopted all parts of the UCC.

2a. A Brief History of the UCC

The UCC is a model law developed by the American Law Institute and the National Conference of Commissioners on Uniform State Laws; it has been adopted in one form or another in all fifty states, the District of Columbia, and the American territories. It is the only “national” law not enacted by Congress.

Before the UCC was written, commercial law varied, sometimes greatly, from state to state. This first proved a nuisance and then a serious impediment to business as the American economy became nationwide during the twentieth century.

Although there had been some uniform laws concerned with commercial deals - including the Uniform Sales Act, first published in 1906 - few were widely adopted and none nationally. As a result, the law governing sales of goods, negotiable instruments (such as a check drawn on a bank), warehouse receipts, securities, and other matters crucial to doing business in an industrial, market economy was a crazy quilt of untidy provisions that did not mesh well from state to state.

But in so doing, many of these states changed particular provisions. As a consequence, the Uniform Commercial Code was no longer so uniform. Responding to this development, the American Law Institute established a permanent editorial board to oversee future revisions of the code.

Various subcommittees went to work redrafting, and a 1962 Official Text was eventually published. Twelve more states adopted the code, eleven of them the 1962 text. By 1966, only three states and two territories had failed to enact any version: Arizona, Idaho, Louisiana, Guam, and Puerto Rico.

Meanwhile, non-uniform provisions continued to be enacted in various states, particularly in Article 9, *Secured Transactions*, to which many amendments have been made. In 1971, a redraft of that article was readied and the 1972 Official Text was published. By that time, Louisiana was the only holdout. Two years later, in 1974, Louisiana made the UCC a truly national “law” when it enacted some, but not all, of the 1972 text (significantly, Louisiana has not adopted Article 2, *Sales*).

Additional major changes were made in 1978 and 1994 to Article 8, *Investment Securities*, necessitated by the electronics revolution that led to new ways of transferring investment securities from seller to purchaser.

Beginning in 1998, various changes have been made to Article 9, "Secured Transactions," which are like mortgages or liens that provide security for debts and obligations.

From this brief history, it is clear that the UCC is now a basic law of relevance to every business and business lawyer in the United States, even though it is not entirely uniform because different states have adopted it at various stages of its evolution— an evolution that continues still.

2b. The Basic Framework of the UCC

The UCC embraces various aspects of “commercial transactions,” that may include, for example, the making of a contract for the sale of goods, the signing of a check, the endorsement of the check, and so on. However, the UCC presupposes that each of these transactions is a facet of one single transaction: the sale of and payment for goods. The Code deals with phases of this transaction from start to finish.

These phases are organized according to the following “articles,” which have had to evolve quickly in recent years due to the high impact of technology:

- *Sales*: Article 2
- *Leases*: Article 2A
- *Negotiable Instruments (formerly Commercial Paper)*: Article 3
- *Bank Deposits and Collections*: Article 4
- *Funds Transfers*: Article 4A
- *Letters of Credit*: Article 5
- *Bulk Sales*: Article 6
- *Documents of Title*: Article 7
- *Investment Securities*: Article 8
- *Secured Transactions*: Article 9

We now turn our attention to the sale— the first facet, and the cornerstone, of the commercial transaction. Sales law is a special type of contract law in that Article 2 applies only to the **sale of goods**, defined (Section 2-105) in part as “all things... which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid....” Thus, the only contracts and agreements covered by Article 2 are those relating to the present or future sale of goods (as opposed to a sale of services or real estate). In certain cases, the courts have difficulty in determining the nature of the object of a sales contract. How can goods and services be separated in contracts calling for the seller to deliver a combination of goods and services?

This difficulty frequently arises in product liability cases in which the buyer sues the seller for breach of one of the UCC warranties.

➞ **EXAMPLE** You go to the hairdresser for a permanent and the shampoo gives you a severe scalp rash. May you recover damages on the grounds that either the hairdresser or the manufacturer breached an implied warranty in the sale of goods?

➞ **EXAMPLE** Say a contract involves delivery of materials, such as hauling a load of stones for a construction project. In such cases, a court may have difficulty determining if the contract is actually for services or for materials (goods). The UCC will probably not apply if labor is a significant part of the contract.



Sale of Goods

Contracts covered by Article 2 of the Uniform Commercial Code involving the sale of goods between merchants where title passes from seller to buyer for a price.

3. Three Basic Contract Types

With this brief description of the UCC, it should now be clear that the primary sources of law for the three basic types of contracts are:

- Real estate: common law
- Services: common law
- Sale of goods: UCC (as interpreted by the courts)

Common law and UCC rules are often similar.

➞ **EXAMPLE** Both require good faith in the performance of a contract.

However, there are two general differences worth noting between the common law of contracts and the UCC's rules governing the sales of goods:

1. The UCC is more liberal than the common law in upholding the existence of a contract.

➞ **EXAMPLE** In a sales contract (covered by the UCC), "open" terms, or terms that the parties have not agreed upon, do not require a court to rule that no contract was made. However, open terms in a non-sales contract will frequently result in a ruling that there is no contract.

2. Although the common law of contracts applies to every person equally, "merchants" sometimes receive special treatment under the UCC, particularly where it concerns formation of a contract. By "merchants," the UCC means persons who have special knowledge or skill and who deal in the goods involved in the transaction.

4. The Convention on Contracts for the International Sale of Goods

A Convention on Contracts for the International Sale of Goods (CISG) was approved in 1980 at a diplomatic conference in Vienna. (A convention is a preliminary agreement that serves as the basis for a formal treaty.) The Convention has been adopted by several countries, including the United States.

The Convention is significant for three reasons:

1. The Convention is a uniform law governing the sale of goods— in effect, an international Uniform Commercial Code. The major goal of the drafters was to produce a uniform law acceptable to countries with different legal, social, and economic systems.
2. Second, although provisions in the Convention are generally consistent with the UCC, there are significant differences.

➔ **EXAMPLE** Under the Convention, consideration is not required to form a contract, and there is no Statute of Frauds (a requirement that some contracts be evidenced by a writing to be enforceable).

3. Finally, the Convention represents the first attempt by the U.S. Senate to reform the private law of business through its treaty powers, for the Convention preempts the UCC if the parties to a contract elect to use the CISG.



SUMMARY

In this lesson, you learned that the main sources of contract law are **case (common) law and the Restatement of Contracts, statutory law via the Uniform Commercial Code** for contracts involving the sale or leasing of goods, and treaty law via the **Convention on Contracts for the International Sale of Goods**.

There are **three basic contract types**: real estate, services, and sale of goods. Common law is the primary source for real estate and services contracts, while the UCC is the primary source for contracts involving the sale of goods. You also learned **a brief history and the basic framework of the UCC** to gain a better understanding of how it applies to specific contracts.

Best of luck in your learning!

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