

4 Summary of California Law (10th), Sales

I. INTRODUCTION

A. Sales Distinguished From Other Transactions.

- 1. [§1] Bailment.**
- 2. [§2] Sales Agency and Consignment.**
- 3. [§3] Option To Buy.**
- 4. [§4] Pledge.**

B. [§5] Former Uniform Acts.

C. Uniform Commercial Code.

- 1. [§6] Drafting and General Acceptance.**
- 2. [§7] Adoption in California.**
- 3. [§8] Structure of the Code.**
- 4. [§9] Authorities and Source Materials.**
- 5. Purposes, Policies, and Construction.**
 - (a) [§10] Liberal and Uniform Construction.**
 - (b) [§11] Other Rules of Construction.**
 - (c) [§12] Supplementary General Law.**
 - (d) [§13] Variation by Agreement.**
- 6. Definitions.**
 - (a) [§14] In General.**
 - (b) [§15] Buyer and Buying.**
 - (c) [§16] Value.**
 - (d) [§17] Notice and Knowledge.**
 - (e) [§18] Agreement and Contract.**
- 7. [§19] Other General Provisions.**
- 8. [§20] Continuing Vitality of Code.**

D. [§21] Other Statutes Regulating Sales.

II. CONSTRUCTION AND SCOPE OF U.C.C. DIVISION 2

A. Definitions.

1. Contract for Sale of Goods.

- (a) [§22] Sales and Sales Contracts.**
- (b) Goods.**
 - (1) [§23] In General.**
 - (2) Existing and Future Goods.**
 - (aa) [§24] Former Law and Commercial Code.**
 - (bb) [§25] Appropriation and Identification.**
 - (3) [§26] Goods To Be Severed.**
 - (4) [§27] Lot and Commercial Unit.**

2. [§28] Merchant.

3. [§29] Financing Agency.

4. [§30] Termination and Cancellation.

B. [§31] Applicability of Division 2 to Particular Transactions.

III. FORM, FORMATION, AND READJUSTMENT OF CONTRACT

A. [§32] Statute of Frauds.

B. [§33] Parol Evidence.

C. Formation of Contract.

1. [§34] In General.
2. Firm Offer by Merchant.
 - (a) [§35] In General.
 - (b) [§36] Firm Offer to Contractor.
3. [§37] Form of Acceptance.
4. Additional Terms in Acceptance.
 - (a) [§38] Modern Approach Supporting Formation of Contract.
 - (b) [§39] Illustration.
- D. [§40] Modification and Waiver.
- E. [§41] Delegation of Performance.
- F. [§42] Assignment of Rights.

IV. GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT

- A. In General.
 1. [§43] General Obligations.
 2. [§44] Allocation of Risks and Burdens.
 3. [§45] Certainty: Details and Cooperation.
- B. Price.
 1. [§46] Medium of Payment.
 2. [§47] Open Price Term.
- C. Place and Time of Performance.
 1. [§48] Place of Delivery.
 2. [§49] Time of Delivery.
 3. [§50] Time of Payment.
- D. Warranties.
 1. In General.
 - (a) [§51] Nature and Effect.
 - (b) [§52] Commercial Code, Consumer Warranty Act, and Federal Warranty Law.
 - (c) [§53] Necessity of Sale.
 - (d) [§54] Transfer of Document of Title.
 - (e) [§55] Fraudulent Representation Distinguished.
 2. Express Warranties.
 - (a) [§56] Promissory Language.
 - (b) Representations.
 - (1) [§57] Affirmation of Fact.
 - (2) [§58] Distinction: Value or Opinion.
 - (3) [§59] Buyer's Reliance Not Required.
 - (c) [§60] Advertisements.
 - (d) [§61] Description or Designation.
 - (e) [§62] Sample or Model.
 - (f) New Motor Vehicle Warranties.
 - (1) [§63] In General.
 - (2) [§64] Adjustment Programs.
 - (g) [§65] Mobilehome Warranties.
 - (h) [§66] Home Roof Warranties.
 3. Implied Warranties.

- (a) [§67] Title.**
- (b) [§68] Against Infringement.**
- (c) Merchantability.**
 - (1) [§69] Any Sale by Merchant.**
 - (2) [§70] Consumer Goods Sold at Retail.**
 - (3) [§71] ""Merchantable"" Quality.**
- (d) Fitness for Particular Purpose.**
 - (1) Nature and Scope.**
 - (aa) [§72] In General.**
 - (bb) [§73] Secondhand Goods.**
 - (cc) [§74] Livestock.**
 - (2) Elements of Warranty.**
 - (aa) [§75] Seller's Status and Knowledge of Buyer's Purpose.**
 - (bb) [§76] Reliance by Buyer.**
 - (3) [§77] Fitness.**
- (e) [§78] Warranty Arising From Custom or Usage.**

4. Exclusion or Modification.

- (a) [§79] Usage or Custom.**
- (b) [§80] Examination by Buyer.**
- (c) [§81] Proof of Purchase Forms.**
- (d) Disclaimer.**
 - (1) [§82] Express Warranty.**
 - (2) [§83] Warranty of Title and Against Infringement.**
 - (3) Implied Warranty.**
 - (aa) [§84] In General.**
 - (bb) [§85] Conspicuous Language Requirement.**
 - (cc) [§86] ""As Is"" Sale.**
 - (dd) [§87] Sale of Used Vehicle to Dealer.**
 - (ee) [§88] Warranty of Fitness for Particular Purpose.**
 - (ff) [§89] Warranty of Merchantability.**
 - (4) [§90] Consumer Warranties.**
 - (5) Insufficient or Invalid Disclaimers.**
 - (aa) [§91] Strict Construction.**
 - (bb) [§92] Illegal Disclaimer.**
 - (cc) [§93] General Disclaimer Followed by Express Warranty.**
 - (dd) [§94] Where Warranty Is Fraudulent.**

5. Cumulation and Conflict.

- (a) [§95] Rule of Construction.**
- (b) [§96] Priorities Among Conflicting Warranties.**

6. Privity.

- (a) [§97] Traditional Rule.**
- (b) [§98] Modern View.**
- (c) Exceptions.**
 - (1) [§99] Manufacturer's Express Warranty.**

(2) [§100] Seed Grower's Express Warranty.

(3) [§101] Dangerous Instrumentality.

7. Sale of Food, Beverages, and Drugs.

(a) Implied Warranties.

(1) [§102] Ordinary Warranties Apply.

(2) [§103] Food Sold in Sealed Package.

(3) [§104] Service of Food in Restaurant.

(4) [§105] Drugs.

(5) [§106] Blood and Other Biologics.

(6) [§107] Condition of Bottle.

(b) What Constitutes Breach of Warranty.

(1) [§108] Bones and Other Hard Substances.

(2) [§109] Other Conditions.

(3) [§110] Consumer's Negligence No Defense.

(4) [§111] Allergy as Defense.

(c) No Requirement of Privity.

(1) [§112] Food, Drugs, and Home Pesticides.

(2) [§113] Biologics.

E. Delivery Provisions.

1. [§114] In General.

2. [§115] F.O.B.

3. [§116] F.O.B. Vessel, F.A.S., and Ex-Ship.

4. [§117] C.I.F.

5. [§118] C.I.F. Modifications.

6. [§119] Bill of Lading in Overseas Shipment.

7. [§120] No Arrival, No Sale.

F. Special Sales Agreements.

1. [§121] Sale on Approval.

2. [§122] Sale or Return.

G. [§123] Sale by Auction.

V. TITLE, CREDITORS, AND GOOD FAITH PURCHASES

A. Title.

1. [§124] Approach of Commercial Code.

2. [§125] Agreement of Parties Controlling.

3. Rules Where No Contract Provision.

(a) [§126] In General.

(b) [§127] Identification of Goods.

(c) [§128] Delivery to Buyer or Bailee Required.

(d) [§129] Delivery Without Moving Goods.

4. [§130] Title Revested in Seller.

5. Title or Possession Reserved for Security.

(a) [§131] Only Security Interest Reserved.

(b) Conditional Sale.

(1) [§132] Pre-Code Case Law.

(2) [§133] Commercial Code Provisions.

B. Rights of Creditors Against Sold Goods.

1. [§134] Seller's Creditors.
2. [§135] Buyer's Creditors.
- C. [§136] Good Faith Purchase.
- D. [§137] Goods Entrusted to Merchant.
- E. Transfer of Document of Title.
 1. [§138] Nature of Document.
 2. [§139] Effect of Transfer of Negotiable Document.

VI. PERFORMANCE

- A. In General.
 1. [§140] Identification of Goods to Contract.
 2. [§141] Insurable Interest and Special Property.
 3. [§142] Recovery of Goods From Insolvent Seller.
- B. Seller's Tender or Delivery.
 1. [§143] In General.
 2. [§144] Shipment by Seller.
 3. [§145] Shipment Under Reservation.
 4. [§146] Delivery on Condition.
 5. [§147] Cure of Improper Tender or Delivery.
 6. [§148] Merchandise to Consumer.
- C. Inspection of Goods.
 1. [§149] Right To Inspect.
 2. [§150] Procedure.
- D. Risk of Loss.
 1. [§151] Pre-Code Title Theory.
 2. Commercial Code.
 - (a) [§152] Contractual Approach.
 - (b) [§153] In the Absence of Breach.
 - (c) [§154] Effect of Breach.
- E. Payment by Buyer.
 1. [§155] In General.
 2. [§156] Payment by Check.
 3. [§157] Payment Before Inspection.
- F. [§158] Preserving Evidence.

VII. BREACH, REPUDIATION, AND EXCUSE

- A. Buyer's Rights on Improper Delivery.
 1. [§159] Delivery in Single Lot.
 2. [§160] Delivery in Installments.
- B. Rejection.
 1. [§161] Manner and Effect of Rightful Rejection.
 2. [§162] Notice of Defects.
 3. [§163] Buyer's Duties.
 4. [§164] Buyer's Option To Salvage.
- C. Acceptance.
 1. [§165] What Constitutes Acceptance.
 2. [§166] Effect of Acceptance.
- D. Revocation of Acceptance.

1. [§167] In General.
 2. [§168] Justifiable Revocation.
 3. [§169] Time and Notice of Revocation.
- E. Repudiation of Contract.**
1. [§170] Right to Assurance of Performance.
 2. Anticipatory Repudiation.
 - (a) [§171] Nature and Effect.
 - (b) [§172] Retraction of Repudiation.
- F. Excusable Nonperformance.**
1. [§173] Casualty to Identified Goods.
 2. [§174] Inability To Deliver or Pay as Agreed.
 3. Excusable Delay or Nondelivery: Impracticability.
 - (a) [§175] In General.
 - (b) [§176] Partial Capacity To Perform.
 - (c) [§177] Agreed Modification.

VIII. REMEDIES

- A. In General.**
1. [§178] Remedies for Fraud or Breach of Collateral Contracts.
 2. [§179] Actions Against Third Parties.
 3. [§180] Effect of Cancellation or Rescission.
- B. Remedies of Seller.**
1. In General.
 - (a) [§181] Outline of Seller's Remedies.
 - (b) [§182] Buyer's Insolvency.
 - (c) [§183] Forfeiture of Deposit.
 2. [§184] Identification of Goods to Contract.
 3. [§185] Withholding or Stoppage of Delivery.
 4. [§186] Reclaim of Goods.
 5. [§187] Resale.
 6. Damages for Nonacceptance or Repudiation.
 - (a) [§188] In General.
 - (b) Measure of Damages.
 - (1) [§189] Based on Resale Proceeds.
 - (2) [§190] Based on Market Price.
 - (3) [§191] Lost Profits.
 7. [§192] Action for Price.
- C. Remedies of Buyer.**
1. [§193] In General.
 2. [§194] Cover.
 3. Damages.
 - (a) Nondelivery or Repudiation.
 - (1) [§195] Based on Market Price or Cover.
 - (2) [§196] Lost Profits.
 - (b) [§197] Nonconformities.
 - (c) Breach of Warranty.
 - (1) [§198] In General.

(2) Notice of Breach.

(aa) [§199] Nature and Purpose of Requirement.

(bb) [§200] Notice to Antecedent Seller: Voucher To Defend.

(cc) [§201] Reasonable Time.

(dd) [§202] Exception: Consumer's Action Against Manufacturer.

(3) Measure of Damages.

(aa) [§203] Statutory Rules.

(bb) [§204] Illustrations: Economic Loss.

(cc) [§205] Illustrations: Personal Injury and Property Damage.

(d) Incidental and Consequential Damages.

(1) [§206] General Rules.

(2) [§207] Agreement Limiting Consequential Damages.

(e) [§208] Deduction of Damages From Price.

4. [§209] Specific Performance or Replevin.

D. [§210] Proof of Market Price.

E. [§211] Contractual Modification of Remedies.

F. [§212] Liquidated Damages.

G. [§213] Statute of Limitations.

IX. TRANSFERS INVALID AGAINST THIRD PARTIES

A. [§214] In General.

B. Transfer Without Change of Possession.

1. [§215] Requirement of Immediate Change of Possession.

2. [§216] Exceptions.

3. What Constitutes Sufficient Change of Possession.

(a) [§217] Test and Illustrations.

(b) [§218] Insufficient Change.

C. Bulk Sales.

1. [§219] In General.

2. [§220] Businesses Covered.

3. [§221] Transfers Covered.

4. [§222] Exceptions.

5. Notice to Creditors.

(a) [§223] Requirement and Content of Notice.

(b) [§224] Recordation and Publication.

(c) [§225] Auction Sales.

(d) [§226] Sales Through Escrow.

6. [§227] Effect of Noncompliance.

7. [§228] Applicability of Fraudulent Transfer Act.

D. Sale by Person Not the Owner.

1. Apparent Ownership or Authority: Estoppel.

(a) [§229] General Principles.

(b) [§230] Sale of Motor Vehicle.

2. [§231] Buyer Under Conditional Sale.

- 3. Seller With Voidable Title.**
 - (a) [§232] General Principles.
 - (b) [§233] Illustrations.

- 4. [§234] Seller With Void Title.**

X. SPECIAL STATUTES REGULATING SALES

A. Sale of Motor Vehicle.

1. Registration With Department.

- (a) **Nature of Requirement.**
 - (1) [§235] Issuance of Certificate and Card.
 - (2) [§236] Indorsement and Transfer.

- (b) **Effect of Noncompliance.**
 - (1) [§237] Sale Void.
 - (2) [§238] Exceptions.

2. Formal Requisites of Conditional Sale.

- (a) [§239] Nature and Purpose of Statute.
- (b) [§240] Scope and Exclusions.
- (c) **Regulatory Provisions.**
 - (1) **Form and Content of Contract.**
 - (aa) [§241] Written and Signed.
 - (bb) [§242] Disclosure of Cost Items.
 - (bb-1) [§242A] (New) Disclosures Separate From Contract.
 - (cc) [§243] Warning Notices to Buyers.
 - (2) [§244] Copy to Buyer and Retention by Seller.
 - (3) [§245] Limitation of Charges.
 - (4) [§246] Right To Rescind If Financing Unavailable.
 - (5) [§247] Assignment by Seller.
 - (6) [§248] Refund of Payment or Insurance.
 - (7) [§249] Right To Pay Before Maturity.
 - (8) [§250] Notice of Intent To Sell.
 - (9) [§251] Notice to Cosigner.
 - (10) **Deficiency Judgment.**
 - (aa) [§252] In General.
 - (bb) [§253] Exceptions: Mobilehome or Motor Vehicle.
- (d) [§254] Prohibited Terms or Acts.
- (e) **Effect of Noncompliance.**
 - (1) [§255] In General.
 - (2) [§256] Violation of Contractual Requirements or Finance Provisions.
 - (3) [§257] Violation of Provisions for Prepayment of Balance.
 - (4) [§258] Substantial Compliance and Technical Violations.
 - (5) [§259] Correction.
 - (6) [§260] Venue, Attorneys' Fees, and Costs.

2A. [§260A] (New) Sales by Buy-Here-Pay-Here Dealers.

3. [§261] Consignment Sales.

B. [§262] Sale of Vessel.

C. Retail Installment Sale.

1. [§263] Nature of Act.

2. Scope of Act.

(a) [§264] Retail Installment Contract.

(b) [§265] Services.

(c) [§266] Purchases From Out of State.

(d) [§267] Application to Financing Agency.

3. Exclusions.

(a) [§268] Inapplicable to Commercial Sales.

(b) [§269] Inapplicable to Real Property.

(c) [§270] Inapplicable to Aircraft or Vessel.

(d) [§271] Loan by Supervised Financial Organization.

4. Regulatory Provisions.

(a) Retail Installment Contracts.

(1) Writing and Terms.

(aa) [§272] Written and Signed.

(bb) [§273] Disclosure of Cost Items.

(cc) [§274] Notice to Buyer.

(dd) [§275] Compliance With Regulation Z.

(2) [§276] Copy to Buyer.

(3) [§277] Prohibited Terms and Acts.

(4) [§278] Limitation of Charges.

(5) [§279] Right To Rescind If Financing Unavailable.

(6) [§280] Right To Pay Before Maturity.

(7) [§281] Assignment by Seller.

(b) Retail Installment Accounts.

(1) [§282] Required Disclosures.

(2) [§283] Limitation of Charges.

(3) [§284] Other Regulations.

(c) Repossession and Resale.

(1) [§285] In General.

(2) [§286] Collateral Recovery Act.

5. Violation of Act.

(a) [§287] Penalties.

(b) [§288] Correction.

(c) [§289] Venue, Attorneys' Fees, and Costs.

D. Home Improvement and Swimming Pool Contracts.

1. [§290] Nature and Scope of Statute.

2. [§291] Where Loan Is Necessary.

3. [§292] Real Property Security.

4. [§293] Swimming Pools.

5. [§294] Enforcement of Contract Violating Statute.

E. Consumer Protection Laws.

1. [§295] Consumer Affairs Act.

2. [§296] Consumers Legal Remedies Act.

3. Consumer Credit Reporting Agencies Act.

- (a) [§297] Nature and Scope of Statute.
 - (b) [§298] Disclosure of Information.
 - (c) Credit Report.
 - (1) [§299] Contents.
 - (2) [§300] Correction of Inaccuracies.
 - (3) [§301] Adverse Use of Report.
 - (4) [§302] Prohibitions as to Marketing and Resale.
 - (d) [§303] Consumer's Remedies.
 - (e) [§304] Cosigner's Rights.
- 4. [§305] Commercial Credit Reports.
- 5. [§306] Investigative Consumer Reporting Agencies Act.
- 6. [§307] Disclosure of Reasons for Denying Consumer Credit.
- 7. [§308] Consumer Contract Awareness Act.
- 8. Credit Services Act.
 - (a) [§309] Nature and Scope of Statute.
 - (b) [§310] Prohibited Acts.
 - (c) [§311] Information Statements.
 - (d) [§312] Requisites of Contract.
 - (e) [§313] Remedies and Penalties.
- 9. Consumer Warranties.
 - (a) [§314] Scope of Act.
 - (b) [§315] Language of Warranty.
 - (c) Regulatory Provisions.
 - (1) [§316] Notice of Rights Under Warranty.
 - (2) [§317] Maintenance of Service and Repair Facilities.
 - (3) Repair, Replacement, or Refund for New Motor Vehicles.
 - (aa) [§318] In General.
 - (bb) [§319] Tanner Consumer Protection Act.
 - (cc) [§320] Automotive Consumer Notification Act.
 - (d) Penalties for Violations.
 - (1) [§321] In General.
 - (2) [§322] Costs and Attorneys' Fees.
 - (3) [§323] Remedies Available Only to New Motor Vehicle Purchasers.
 - (4) [§324] Action by Seller or Independent Service Person.
 - (e) [§325] Tolling of Warranty Period.
 - (f) [§326] Service Contract in Lieu of Express Warranty.
- 10. [§327] Magnuson-Moss Warranty Act.
- 11. [§328] Solicitation in Form of Invoice.
- 12. Home Solicitation.
 - (a) [§329] Buyer's Right To Cancel.
 - (b) [§330] What Constitutes Home Solicitation.
 - (c) [§331] Disclosure of Identity and Purpose.
- 13. Repair Services.
 - (a) [§332] Automobiles and Farm Machinery.
 - (b) [§333] Electronic Equipment and Appliances.

(c) [§334] Upholsterers.

(d) [§335] Noncommercial Aircraft.

F. Miscellaneous Statutes.

1. [§336] Advertising.
2. [§337] Anabolic Steroids.
3. [§338] Automatic Checkout Systems.
- 3A. [§338A] (New) Automatic Purchase Renewals.
4. [§339] Bottled Water.
- 4A. [§339A] (New) Car Buyers' Protection Act.
5. [§340] Cemetery Contracts.
6. [§341] Charitable Solicitations.
7. [§342] Check Cashing Services.
8. [§343] Cigarette Sales.
9. [§344] Cigar Labeling.
10. [§345] Contact Lenses.
11. [§346] Continuing Care Contracts.
12. [§347] Cordless Telephones.
13. [§348] Dating Service Contracts.
14. [§349] Deceptive Identification Documents.
15. [§350] Dental Services.
16. [§351] Discount Buying Services.
17. [§352] Drug Prescriptions.
18. [§353] Electronic Commerce.
19. [§354] Factory-Built Housing.
20. [§355] Fine Prints.
- 20A. [§355A] (New) Food Labeling and Disclosures.
21. [§356] Food or Drug Ordered Removed From Sale.
22. [§357] Franchise Investments.
23. [§358] Funeral Services.
24. [§359] Gasoline Price Posting.
25. [§360] Gift Certificates.
26. [§361] Groceries Commodities Pricing.
27. [§362] Health and Dance Services Contracts.
- 27A. [§362A] (New) Health and Safety Labor or Services.
28. [§363] Home Protection Contracts.
29. [§364] Insurance Sales by Banks.
30. [§365] Invention Development Services Contracts.
31. [§366] Life Insurance Policy Illustrations.
32. [§367] Long-Term Care Insurance.
33. [§368] Mail Order and Internet Sales.
34. [§369] Manufacturer's Identification Mark.
35. [§370] Medi-Cal and Asset Liquidation Disclosures.
36. [§371] Membership Camping Contracts.
37. [§372] Money Exchange Houses.
38. [§373] Motor Vehicle Damage and Safety Defects.
39. [§374] Pet Sales.

40. [§375] Political Items Sold as Originals.
41. [§376] Postdated Checks.
42. [§377] Precomputed Finance Charges in Residential Sale.
43. [§378] Precomputed Interest in Personal Loan.
44. [§379] Prepaid Calling Cards and Services.
- 44A. [§379A] (New) Recalled Products.
45. [§380] Rental-Purchase Agreements.
46. [§381] Retail Refund Policies.
47. [§382] Seller Assisted Marketing Plans.
48. [§383] Seminar Sales Solicitation Contracts.
49. [§384] Solicitation of Insurance by Lender.
50. [§385] Sports Memorabilia.
51. [§386] Sports Trading Cards.
52. [§387] Supermarket Club Cards.
53. [§388] Swap Meets and Flea Markets.
54. [§389] Sweepstake Entry Materials.
55. [§390] Telephone Sellers.
56. [§391] Television Customer Service.
57. [§392] Ticket Sellers.
58. [§393] Travel Sellers.
59. [§394] Unaccredited Law Schools.
60. [§395] Unsolicited Sending of Merchandise or Services.
61. [§396] Used Mobilehomes.
- 61A. [§396A] (New) Used Vehicle Certification Programs.
- 61B. [§396B] (New) Used Vehicle Contract Cancellation Options.
62. [§397] Water Treatment Contracts.
63. [§398] Weight Loss Contracts.