

THE UNIFORM COMMERCIAL CODE

Navigating the Links between Acceptance, Rejection, and Revocation of Acceptance

The Uniform Commercial Code (UCC) was enacted by states to promote maximum flexibility in commercial transactions, yet still provide a consistent background or framework of law on which the parties could depend. The stated purpose of the code is:

- (a) to simplify, clarify and modernize the law governing commercial transactions;*
- (b) to permit the continued expansion of commercial practices through custom, usage and agreement of the parties;*
- (c) to make uniform the law among the various jurisdictions.¹*

Two areas that were modernized under the code were acceptance and rejection. The concept of revocation of acceptance was also introduced. For purposes of illustrating these concepts, the following fact situation is proposed:

A commercial nursery ordered 500 t-shirts and sweatshirts printed with a custom and dated design for sale at a garden show. The anticipated attendance was over 25,000 people. The shirts were ordered one week before the show and were delivered the evening before the garden show opened to the public. Upon delivery, a few sample shirts were viewed while standing in the greenhouse door. The shirts were immediately transported to the site of the garden show. In the early afternoon of the next day (opening day of the garden show) the buyer discovered that although the shirts on the top of the boxes appeared okay, the majority of the shirts were misprinted. The design was blurry and the colors faded and changed from one side of the shirts to the other. The building, which was intended as the central part of the design, changed color from pink on one side to bright orange on the other. The greenery printed on the shirts looked like it was in desperate need of Miracle Gro®. The next morning at the opening of the business day, the owner of the nursery called the print shop, complained about the misprinting, and requested that they send someone to the garden show to immediately look at the shirts. The print shop's response was to continue to sell the shirts and something would be worked out after the show. The price of the shirts was lowered but less than 10 percent of the shirts were sold. After the show ended the print shop refused to make any adjustments on price and ultimately demanded the full purchase price of the order.

The issues presented in this hypothetical case include acceptance, rejection, and revocation of acceptance under Article 2 of the Uniform Commercial Code.

The authors of the code intended to move beyond the rigidity of the common law. At common law, delivery and taking possession of goods were generally equated with acceptance of the goods and the doctrine of caveat emptor prevailed. According to White and Summers, acceptance is only tangentially related to a buyer's possession of the goods for some time before he or she has accepted them within the meaning of the code. The mere taking of possession of goods by or delivery of goods to a buyer does not equal automatic acceptance. The UCC makes an important and just allowance of a "reasonable opportunity" to inspect goods.² To decide otherwise would be a return to caveat emptor.

UCC 2-513³ provides that a buyer has a right before payment or acceptance to inspect the goods at any reasonable place and time and in any reasonable manner. In *Colonial Dodge, Inc v Miller*⁴ the court noted that the inspection of a newly purchased automobile could occur after the car was driven home. The issue presented in *Capitol Dodge Sales v Northern Concrete Pipe, et al.*⁵ was whether a buyer after taking possession of a truck could reject the truck due to problems with the engine overheating. The seller prevailed in the trial court but the court of appeals reversed

"finding that the evidence shows no acceptance within the meaning of the Uniform Commercial Code, MCL 440.2606; MSA 19.206, and that defendant had an absolute right to reject the truck, MCL 440.2601; MSA 19.2601."

In the hypothetical case, one question is whether viewing one or two shirts at the time of delivery constituted a "reasonable opportunity" to inspect, especially considering the shirts were delivered so late in the day and needed to be transported to the location of the garden show. Under the UCC, inspection of one item of a large lot of similar items is not intended as an acceptance of all of the items if the remaining items are nonconforming. The key factor is whether the buyer has a "reasonable opportunity" to inspect all of the goods, not just the sample.

Another issue raised in the t-shirt case is the effect of the buyer selling some of the shirts prior to the buyer's discovery of nonconformities. Does this constitute an acceptance? Clearly the code recognizes that if a buyer takes possession of goods upon delivery and exercises control over them in a manner detrimental to the seller, then the buyer's actions would signal an acceptance.⁶ However, even if goods are retained and used by the buyer this does not bar the buyer's claim of rejection and/or revocation of acceptance under the contract. In *Distco Laminating, Inc v Union Tool Corporation*,⁷ the plaintiff-buyer filed suit seeking rescission of a contract to purchase a \$115,315 laminating machine. After delivery and possession, various attempts were made to bring the machine up to the functional capacity specified in the contract. After the buyer filed suit, the buyer still attempted to make the machine operable and continued using it. The court of appeals held that the buyer's attempts at fixing the problem did not constitute a waiver of the right of rescission.

In our hypothetical situation, there is no doubt that the shirts sold to third persons were accepted by the buyer. However, the goods at issue are not the ones that were sold to others but are in-

Fast Facts:

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stead the defective goods that were *not* sold. The drafters of the UCC contemplated such a scenario by including a provision that when nonconforming goods are delivered, an aggrieved buyer is allowed to (1) accept the goods, (2) reject the goods, or (3) accept some of the goods and reject the rest.⁸ Thus, the code provides that a buyer upon discovering nonconformities after some of the goods have been sold still has the opportunity to reject the remaining nonconforming goods.

Once a buyer discovers nonconformities, what must a buyer do to effectuate a valid rejection of the goods? Assuming that the shirts in the above example were not accepted at time of delivery, the issue is whether a rejection was timely made. If goods are delivered and no rejection is made, the goods are deemed to have been accepted.⁹ UCC 2-601¹⁰ establishes the "perfect tender" rule: goods must conform to the contract and unless they do, the buyer has the right to reject them. However, the buyer must reject the goods within a reasonable time after taking possession and notify the seller of the rejection and the reason for the rejection.¹¹

The question then in the hypothetical case is: Did the phone call to the print shop satisfy the requirements for rejection? UCC 2-602¹² requires that rejection of goods must be within a reasonable time after their delivery and the buyer must notify the seller of the rejection and the reason for the rejection. The phone call notifying the seller of the specifics of the defects in the shirts coupled with the buyer's request for the seller to visually inspect the defective shirts was a rejection by the buyer. The seller's response to the buyer to continue to try and sell the shirts is consistent with UCC 2-603(1)¹³ that directs a merchant buyer who has rejected goods to follow the seller's instructions regarding the further disposition of the goods.

Even if the buyer's actions in the t-shirt case were deemed to be an ineffective rejection and acceptance occurred, the remedy of revocation of acceptance is still available. At common law, once the goods were deemed accepted caveat emptor prevailed. One of the improvements to contract law under the UCC is the inclusion of the opportunity to revoke an acceptance if certain criteria are met. The intent was to provide a mechanism where an aggrieved buyer who did not immediately discover nonconformities in delivered goods was not completely without remedy. Unlike UCC 2-601,¹⁴ which allows a buyer to reject for any nonconformity, UCC 2-608¹⁵ only allows revocation of acceptance if the nonconformity substantially impairs the value of the goods. Revocation of acceptance is an important remedy especially when a buyer relies on a seller's assurances that the goods are conforming. Unfortunately, this is a subjective standard and is open to interpretation.

One of the first cases that addressed revocation of acceptance is *Birkner v Purdon*.¹⁶ The seller of a load of Christmas trees sued the buyer for non-payment pursuant to a contract of sale. The buyer offered conclusive proof that the trees were nonconforming. The revocation of acceptance did not occur until three weeks after the trees were on sale to the general public. The court of appeals held that even with this passage of time, the revocation of acceptance was proper. In *Minsel v El Rancho Mobile Home Center, Inc.*,¹⁷ the plaintiffs-buyers purchased a mobile home and moved into it in July. By early September, the defendant had failed to correct numerous problems so the buyers tendered their notice of revocation of acceptance. Because the buyers encountered difficulty in finding another place to live, they did not move out of the mobile home until November. The buyers thoroughly cleaned the home and continued to monitor the property including paying rent and utilities on the lot until the defendant removed the unit some three months later. The court of appeals held that the buyer's occupancy after revocation of acceptance was not wrongful against the seller because the UCC imposes a duty on the buyer to treat the seller's goods with reasonable care after a time sufficient to permit the seller to remove them.¹⁸

In *Diane King v Taylor Chrysler Plymouth*,¹⁹ the plaintiff-buyer filed suit nine months after taking possession of a station wagon. The buyer tendered the vehicle to the defendant in exchange for a refund of the purchase price. The defendant refused so the plaintiff stored the vehicle pending the outcome of litigation. The trial court found that the buyer properly revoked her acceptance and entered a damage award of \$16,850 plus \$11,560 in attorney fees. On appeal the judgment was affirmed.

Despite this clear history of Michigan law allowing revocation of acceptance, the Genesee County Circuit Court struggled with the application of UCC 608(1)(b) to a pop-up camper sale. In *Head v Phillips Camper Sales and Rental*,²⁰ the issue presented was whether, after the buyer revoked her acceptance, the seller had a right to make extensive repairs and thus establish a defense to a revocation of acceptance claim? The trial court's decision in favor of the seller was vacated on appeal and the case remanded for a new trial. What constitutes a "reasonable time" depends on the facts and circumstances of the individual case.

The UCC is a highly integrated statute and the sections must be carefully read as integrated law. Fair and just application of the code rarely involves reference to only one section.²¹ The sections of the code were not intended to be read in isolation. One of the problems with applying the UCC has been the lack of understanding among attorneys and judges of the interwoven provisions of the code. Non-familiarity with the code comes as no surprise because at first glance the code appears to be a jumble of provisions with no clear direction. Early approaches on how to apply the code focused on using a "road map" approach. Under this approach, questions are presented that represent forks in the road. A "yes" answer directs one down a different path than a "no" answer. Although different answers lead down different paths, often times the same code sections are encountered. The goal under the road map approach is to reach an end destination.

The problem with this approach is that the end of the road does not necessarily provide all the answers or understanding of the nature of the case presented. The UCC was intended to provide an overview of an entire transaction. The road map approach limits the view to only those provisions in the code encountered on the path traveled.

Fast forward to 2002. Although the original drafters of the UCC did not know about websites and hyperlinked text, the code they wrote is ideally suited to this format. Instead of limiting travel to a linear path, hyperlinked text allows the user to move freely between pages. This is what the drafters of the code intended.

The concept of the code as an interconnected web has great potential for appropriately applying all the relevant code provisions. Given the incredible amount of information that can be stored on a CD-ROM or accessed through a linked database, the potential for simplifying legal research involving the UCC is tremendous. On any given page where the user chooses which web strand to follow, appropriate case citations for the particular code sections could be accessed with a link to the full text of cases.

If an interactive CD-ROM program were available in a simple format that helped attorneys and judges apply the relevant provisions of the code to factual situations, this would help toward achieving the drafters' goal of consistency and uniformity. The drafters of the Uniform Commercial Code were leaders in their field. Without knowing it, they wrote a code that could be used as a model for hyperlinked text adaptable to a CD-ROM program or an interactive web page. If they were operating today they would have their own website. The drafters were simply ahead of their time. ♦

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Footnotes

1. MCL 440.1102(2); MSA 19.1102(2).
2. White and Summers, *Handbook of the Law Under the Uniform Commercial Code* (2nd ed.) at 5-2, page 296.
3. MCL 440.2513; MSA 19.2513.
4. 116 Mich App 78; 322 NW2d 549, on rehearing 121 Mich App 466; 328 NW2d 678, reversed on other grounds 420 Mich 452; 362 NW2d 704 (1984).
5. 131 Mich App 149; 346 NW2d 535 (1983).
6. MCL 440.2606(1)(a); MSA 19.2606(1)(a).
7. 81 Mich App 612; 265 NW2d 768 (1978).
8. MCL 440.2601; MSA 19.2601.
9. MCL 440.2601(1)(b); MSA 19.2601(1)(b).
10. *Id.*
11. MCL 440.2602(1); MSA 19.2602(1); 75 Mich App 391; 254 NW2d 899 (1977).
12. MCL 440.2602; MSA 19.2602.
13. MCL 440.2603(1); MSA 19.2603(1).
14. See n 8.
15. MCL 440.2608; MSA 19.2608.
16. 27 Mich App 476; 183 NW2d 598 (1970).
17. 32 Mich App 10; 188 NW2d 9 (1971).
18. MCL 440.2602(2)(b); MSA 19.2602(2)(b).
19. 184 Mich App 204; 457 NW2d 42 (1990).
20. 234 Mich App 94; 593 NW2d 595 (1999).
21. 25 Mich App 478, 484; 181 NW2d 828 (1970).