SCOPE OF U.C.C. ARTICLE 2
PART I

- Article 2 of the U.C.C. governs contracts for the sale of goods, pursuant to which:

  (1) title (formal right of ownership) of

  (2) goods (tangible, movable property) is transferred from seller to buyer

  (3) for consideration.

- Article 2 governs only contracts for the sale of tangible, movable property -- that is:
  - property that has a physical existence and
  - that can be moved from place to place.

- Article 2 does not govern contracts for services, real property, or intangible property, such as intellectual property, stocks and bonds, and the like.
SCOPE OF U.C.C. ARTICLE
PART II

- Goods associated with real estate follow these rules:

  (1) A contract involving minerals, oil, gas, etc. or a structure is governed by Article 2 if the seller does the severing.

  (2) A sale of growing crops or timber to be cut is a contract for the sale of goods regardless who severs them.

  (3) Other “things attached” but capable of severance without material harm to the land are considered goods regardless of who severs them.

- When goods and services are combined, then the courts look to the predominant factor.
SCOPE OF U.C.C. ARTICLE 2A

- Article 2A of the U.C.C. governs contracts for the lease of goods, the sale of which would be governed by Article 2. Namely, an agreement whereby:

  (1) one person (the lessor)

  (2) transfers the rights of possession and use of tangible, movable property

  (3) to another person (the lessee)

  (4) in exchange for rental payments.

- Consumer Leases: In the interest of providing special protection for consumers, Article 2A contains special rules applicable to a lease involving:

  (1) a lessor who regularly engages in the business of leasing or selling goods,

  (2) a lessee who leases the goods primarily for personal, family, or household use, and

  (3) total lease payments that are less than an amount set by state statute.
MERCHANTS

Under Article 2, merchants are held to higher business standards. A merchant is defined as:

(1) a person who deals in goods that are the kind involved in the contract;

(2) a person who, by occupation, holds himself or herself out as having knowledge and skill peculiar to the practice or use of the goods involved in the contract; or

(3) a person who employs a merchant as a broker, agent, or other intermediary.
OFFER: OPEN TERMS - PART I

- According to common law, an offer must be definite enough for the parties to ascertain its essential terms.

- Under the U.C.C., a sale or lease contract is not fatally indefinite, even if one or more terms are left open, if:
  1. the parties intended to be bound, and
  2. there is a reasonably certain basis for a remedy.

- **Open Price Term:** As a general rule, if the parties have not agreed on a price, the court will determine a reasonable price at the time of delivery. However,
  - If one of the parties is permitted to set the price, he or she must do so in good faith.
  - If the price has not been agreed to due to the fault of one of the parties, the other party can treat the contract as cancelled or set a reasonable price.
OFFER: OPEN TERMS - PART II

- **Open Payment Term:** As a general rule, if the parties do not specify otherwise, payment is due *at the time and the place that the buyer receives the goods*. Moreover:
  - The buyer can tender payment using *any commercially acceptable means*; however
  - If the seller demands payment in cash, the buyer must be given a *reasonable time* to obtain it.

- **Open Delivery Term:** As a general rule, if the parties do not specify:
  
  (1) the *place* of delivery, the buyer will take delivery *at the seller’s place of business*, or (if none exists) at the seller’s residence; and/or

  (2) the *time* of delivery, the seller will deliver within a *reasonable* period of time.

- **Open Duration Term:** Occurs if a contract does not indicate how long the parties are to deal with one another. In such a case, either party may terminate with *reasonable notification*. 
OFFER: OPEN TERMS - PART III

- **Assorted Goods:** If the terms fail to specify what mixture of assorted goods are to be delivered, the **buyer** may specify the assortment.

- **Open Quantity Term:** Failure to specify the quantity of goods to be bought and sold is fatal at common law and under Article 2. However, the U.C.C. recognizes two exceptions:
  
  - **Requirements Contract:** An agreement by which the buyer agrees to purchase and the seller agrees to sell *all or up to a stated amount* of what the buyer *needs* or *requires*.
  
  - **Output Contract:** An agreement by which the seller agrees to sell *all or up to a stated amount* of what the seller *produces*.

- The U.C.C. imposes a **good faith requirement** on requirements and output contracts, such that the actual quantity purchased or sold *cannot be unreasonably disproportionate to normal or comparable requirements or output*.
OFFER: MERCHANT’S FIRM OFFER

- At common law, a buyer may revoke an offer at any time prior to its acceptance. The only exception recognized at common law is an option contract, in which the offeree pays consideration for the offeror’s irrevocable promise to keep the offer open for a stated period of time.

- The U.C.C. creates a second exception for firm offers to sell or lease goods made by a merchant.

- **Firm Offer:** A written, signed offer that is irrevocable for the stated period or if no stated time, then for a reasonable period of time, up to three (3) months, without the payment of consideration.
ACCEPTANCE

- **Common-Law Acceptance:** At common law, an offeror can specify a *particular method* of acceptance; however, *any* method of communicating acceptance is effective *as long as it is received before the offeror’s deadline.*

- **U.C.C. Acceptance:** The U.C.C. broadens the common-law rule by providing that, when the offeror does not specify a method, acceptance may be communicated by *any* method that is *reasonable under the circumstances.***

- **Accepting an Offer to Buy Goods:** A seller may accept an offer to buy goods for current or prompt delivery by:

  1. a *promise* to ship to the buyer, or
  2. *shipment* of *conforming goods* (i.e., goods that fit the buyer’s description) to the buyer.

  A prompt shipment of *nonconforming* goods constitutes both an acceptance and a breach by the seller, unless the seller notifies the buyer that the nonconforming goods are an *accommodation*, not an acceptance.
ADDITIONAL TERMS

- The U.C.C. dispenses with the common-law *mirror image rule* (i.e., that the acceptance match the offer exactly), taking the position that a contract is formed if the offeree’s response indicates a *definite acceptance* of the offer, **even if the acceptance includes additional or different terms**.

- If one or both parties are **non-merchants**, the contract is formed according to the terms of the original offer, and the additional terms of the acceptance are ignored.

- If both parties are **merchants**, the additional terms automatically become part of the contract **unless**:

  (1) the original offer **expressly limits** acceptance to the terms of the offer,

  (2) the new or changed terms **materially alter** the contract, or

  (3) the **offeror objects** to the new or changed terms within a **reasonable period** of time.

- Regardless of merchant status, any purported acceptance, which is conditional on the offeror’s agreement to the new or changed terms, is **not** an acceptance.
ADDITIONAL CONSIDERATION

Unlike common law, the U.C.C. requires no additional consideration to support a contractual modification, subject to the following caveats:

- **Good Faith Required:** Any modification of the terms or conditions of a contract must be sought in good faith.

- **Writing Required:** Certain modifications must be in writing to be effective. For example, a writing is required if:

  1. the contract provides that any subsequent changes be in writing;

  2. a non-merchant seeks to modify a merchant’s form contract containing a “no oral modification” clause;

  3. the proposed modification would bring the contract under the Statute of Frauds.
The U.C.C., as it currently reads, requires that contracts:

(1) for the sale of goods valued at more than $500, and

(2) for the lease of goods valued at more than $1,000

must be in writing to be enforceable.

Sufficiency of the Writing: A writing is sufficient if (i) it indicates that the parties intended to form a contract, (ii) it is signed by the party against whom enforcement is sought, and (iii) in the case of a lease, it reasonably describes the goods leased and the lease term.

Merchants’ Written Confirmation: If the contract is between two merchants, a written confirmation signed by one merchant and sent to the other is sufficient. The merchant receiving the notice has ten days after receipt to respond with a written objection to the contents of the confirmation.
THE U.C.C. STATUTE OF FRAUDS
PART II

- **Specially Manufactured Goods:** An oral contract is enforceable if it is for (i) goods that are specially manufactured for the buyer, (ii) not suitable for sale or lease to others in the seller’s ordinary course of business, and (iii) the seller has substantially started to manufacture or otherwise obtain the goods.

- **Admissions:** The Statute of Frauds does not apply if the party against whom enforcement of a contract is sought admits to the contract in a court proceeding.

- **Partial Performance:** An oral contract that otherwise needs to be in writing per the Statute of Frauds will be enforceable at least to the extent that performance actually takes place.
PAROL EVIDENCE AND THE U.C.C.

Parol Evidence Rule: If the parties to a contract set forth its terms in a writing intended to be their final expression, the terms of the writing cannot be altered or contradicted by evidence of any prior agreements or contemporaneous oral agreements. However, under the U.C.C., the written terms may be explained or supplemented by evidence of:

- **Consistent Additional Terms:** Terms which do not contradict and which help explain the writing;

- **Course of Dealing:** Prior conduct between the parties to the contract that establishes a common basis for their understanding;

- **Usage of Trade:** Any practice or method of dealing having such regularity of observance in a place, vocation, or trade that it is reasonably expected to be observed by the transaction in question; and/or

- **Course of Performance:** The conduct of the parties to the agreement under the terms of the agreement (this evidence is particularly helpful in determining what the parties intended the agreement to mean).
UNCONSCIONABILITY AND THE U.C.C.

- An unconscionable contract is one that is so unfair and one-sided that enforcing it would be unreasonable.

- The U.C.C. permits a court to evaluate any contract or contractual provision and, if the court determines it was unconscionable at the time it was made, the court may:

  (1) refuse to enforce the contract in its entirety,

  (2) sever the unconscionable clause and enforce the remainder of the contract, or

  (3) permit the unconscionable clause to be applied only if its effect is not unconscionable.
The 1980 United Nations Convention on Contracts for the International Sale of Goods (CISG) applies to all international contracts where the countries of the parties have ratified the CISG (unless the parties have agreed that some other law should apply).

The CISG does not contain a Statute of Frauds provision.

A price or a method of determining price must be specified in the agreement.

An acceptance must mirror the offer.

An acceptance is effective upon receipt.