

**Chapter 11**  
**Sales Law and Product Liability**

1 Source: Bohlman/Dundas, The Lwegal, Ethical, & International Environment of Business

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**Uniform Commercial Code**

- Article 2 of the UCC governs sales of goods and modifies the common law of contracts in some areas
- UCC respects principles of freedom of contract
- UCC imposes additional general standards of good faith, diligence, and reasonableness on the parties' behavior
- Open terms
- Special rules for merchants

2 Source: Bohlman/Dundas, The Lwegal, Ethical, & International Environment of Business

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**Goods**

- Identification
- Risk of loss
- Future goods

3 Source: Bohlman/Dundas, The Lwegal, Ethical, & International Environment of Business

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## Title

- Warranty of title
- Passage of title
- Voidable title

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Source: Bohman/Dundas, The Lwegal, Ethical, & International Environment of Business

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## Risk of Loss—No Breach of Contract

- In a shipment contract, risk of loss passes to the buyer upon delivery of goods to the carrier
- In a destination contract, risk of loss passes to the buyer upon tender of delivery at the proper destination specified in the contract
- Where a third party is holding the goods and there is a document of title, risk of loss passes to the buyer on receipt of the document of title
- Where the parties do not use documents of title, risk of loss passes to the buyer

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Source: Bohman/Dundas, The Lwegal, Ethical, & International Environment of Business

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## Risk of Loss—Breach of Contract

- Seller ships nonconforming goods
- Buyer first accepts and later revokes
- Goods have been identified to the contract and the buyer breaches (repudiates)

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Source: Bohman/Dundas, The Lwegal, Ethical, & International Environment of Business

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## Trial Sales

- Sales on approval
- Sale or return

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Source: Bohlman/Dundas, The Lwegal, Ethical, & International Environment of Business

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## Performance—Remedies—Sellers

- Buyer accepts goods; seller is entitled to contract price
- Buyer repudiates contract; seller can recover the difference between the market price and contract price and incidental damages less expenses saved by buyer's breach
- If the seller is not made whole, the measure of damages is the profit, including overhead, that the seller would have earned if the buyer had performed including incidental expenses
- If seller cannot identify the goods to the contract, the measure of damages is the contract price

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Source: Bohlman/Dundas, The Lwegal, Ethical, & International Environment of Business

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## Performance—Remedies—Buyers

- Money damages
  - Compensatory
  - Consequential
  - Incidental
- Equitable remedies
  - Specific performance
- Cover

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Source: Bohlman/Dundas, The Lwegal, Ethical, & International Environment of Business

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## Performance—Rights

- Buyers
  - Inspection
  - Revocation of acceptance
- Sellers
  - Payment
  - Impracticability

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Source: Bohlman/Dundas, The Lwegal, Ethical, & International Environment of Business

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## Product Liability—Negligence

- Negligence
  - Duty of care manufacturer owed injured party
  - Breach of that duty
  - Proximate cause
  - Damages
- Defenses
  - Due care
  - Assumption of risk
  - Plaintiff was negligent
  - Plaintiff misused the product
  - Plaintiff altered the product

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Source: Bohlman/Dundas, The Lwegal, Ethical, & International Environment of Business

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## Product Liability—Strict Liability

- Strict liability
  - Defendant must sell the product in a defective condition
  - Defendant must be engaged in the manufacture of the product
  - Product must be unreasonably dangerous
  - Defective cause must be the proximate cause of the injury
  - Goods must not have been substantially changed from the time the product was sold until the time when the injury occurred
  - Misrepresentation
- Defenses
  - Assumption of risk
  - Comparative negligence

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Source: Bohlman/Dundas, The Lwegal, Ethical, & International Environment of Business

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## Duty to warn

- Duty to warn
  - Business knows or should know of hazards
  - Not obvious

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Source: Bohlman/Dundas, The Lwegal, Ethical, & International Environment of Business

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## Grimshaw v. Ford Motor Co. Landmark Case

- The California Court of Appeals held that Ford was guilty on every issue in the appeal
- Top officials of Ford were found guilty of not taking possible injuries or death to users of their vehicles into account when deciding to install flak suits or bladders at a cost of \$20.9 million

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Source: Bohlman/Dundas, The Lwegal, Ethical, & International Environment of Business

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## Warranties

- Express
  - Affirmation flowing from the free will of the seller
- Implied
  - Implied warranty of merchantability
  - Implied warranty of fitness for a particular purpose
- Disclaimers
  - Buyers examination of goods
  - Modification or exclusion

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Source: Bohlman/Dundas, The Lwegal, Ethical, & International Environment of Business

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## Magnuson-Moss Warranty Act

- Designed to prevent deception in warranties by making them easier to understand
- Information must be in “readily understood language”

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Source: Bohlman/Dundas, The Lwegal, Ethical, & International Environment of Business

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## Summary

- Uniform Commercial Code
- Goods
- Title
- Risk of Loss—No Breach of Contract
- Risk of Loss—Breach of Contract
- Trial Sales
- Performance—Remedies—Sellers
- Performance—Remedies—Buyers
- Performance--Rights
- Product Liability—Negligence
- Product Liability—Strict Liability
- Grimshaw v. Ford Motor Co.
- Warranties
- Magnuson-Moss Warranty Act

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Source: Bohlman/Dundas, The Lwegal, Ethical, & International Environment of Business

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