



## UCC Corner: Introduction to Article 2

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The Uniform Commercial Code ("UCC") was drafted in 1958 and contains a series of articles that aim to govern commercial transactions. Nearly every state has adopted its own version of the UCC, including Michigan. Accordingly, commercial transactions are governed substantially the same from state to state, although each state's laws are not completely "uniform." Our "UCC Corner" series will provide an overview of various portions of the UCC, starting with Article 2.

Article 2 of the UCC (MCL 440.2101 et. seq.) governs the sale of goods. Article 2 is meant to provide default rules and gap-fillers that apply where two parties have not comprehensively addressed common issues in a written contract. These default rules cover commercial transactions from start to finish, including how to identify the terms of the contract where parties use conflicting forms, the time and manner of payment, the method of delivery, and when the risk of loss transfers from one party to another.

Before we delve into any specific default rules, it is important to recognize when Article 2 applies. We know that Article 2 applies to a sale of goods, but what is a sale of goods? "Goods" are all things that are moveable at the time of identification to the contract. MCL 440.2105. "Goods" includes parts, components, manufactured products, food, tools, and equipment. If a contract is not for the sale of goods, Article 2 does not apply. Therefore, any contract for services is not governed by Article 2.

A more difficult scenario is a contract that involves both goods and services. To determine whether the UCC applies, Michigan courts apply the "predominant factor test," which seeks to determine whether the predominant purpose of a contract is to render goods or services. For example, your cell phone contract may include the purchase of phone, but the predominant purpose of the contract is to provide voice, text and data services. Therefore, the UCC would not apply.

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Finally, Article 2 provides different default rules for “merchants” and “non-merchants.” A “merchant” is a “person that deals in goods of the kind” or otherwise holds themselves out as having knowledge particular to the goods involved. MCL 440.2104. In other words, if you are in the business of selling any kind of goods, you are a merchant and additional default rules may apply.

Be on the lookout for future installments of the UCC Corner for summaries of specific default rules in Article 2. If you have questions regarding whether your current sale or purchase procedures comply with Article 2, contact a **Foster Swift Business Attorney** today.

