

The Predominant Factor Test: Determining Whether the UCC or Common Law Applies to Mixed Contracts for Goods and Services

Article By:

John Mark Goodman

Construction law in the United States consists of two main bodies of legal rules. The first, federal law, applies to contracts involving the U.S. government and its agencies. The second, state law, applies to pretty much everything else. While each state is different, all states generally have two types of laws: (1) common law and (2) statutory law. One of the more frequently encountered statutes in the construction context is Article 2 of the Uniform Commercial Code (UCC), which has been enacted in all 50 states and applies to contracts involving **the sale of goods**. Contracts involving **the sale of services**, on the other hand, are generally governed by the common law. So, what happens when a contract involves a mix of goods **and** services?

The North Carolina Court of Appeals addressed that issue last week in *Demaria Building Co. v. Laboratory Design*, (Case No. COA 24-882, June 18, 2025). That case involved a contract to manufacture and install custom-made cabinets and countertops. A key issue was whether the parties had actually formed a contract, which depended on whether common law or the UCC applied. To answer that threshold question, the court applied the predominant factor test:

Where the predominant factor of a contract is the rendition of services with the sale of goods incidentally involved, the UCC is not applicable. However, where the predominant factor of the contract is the sale of goods with the provision of services incidentally involved, the UCC controls. Factors which have been used in determining whether a mixed contract should be governed by the UCC include the following: (1) the language of the contract, (2) the nature of the business of the supplier, and (3) the intrinsic worth of the materials.

In *Demaria*, the sale of goods predominated because, among other reasons, the installation services comprised only about 10% of the total contract price and the nature of the conflict involved material cost increases only, not installation. The court therefore applied the UCC to determine whether the parties had actually formed a contract. Under the UCC, parties can enter contracts for the sale of goods “in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.” In *Demaria*, the parties did not both execute the contract document but nonetheless conducted themselves as though a contract existed. Such conduct consistent with the existence of a contract included manufacturing the goods, offering and

accepting payment, and submitting change orders pursuant to the provisions of the unsigned contract. Under those circumstances and under the UCC rules of contract formation, the parties' conduct was sufficient to establish a legally enforceable contract.

Demaria is a good reminder that mixed contracts for goods and services may be governed by either the UCC or the common law, that those two bodies of law are not always the same, and that which law applies could be outcome determinative. A copy of the court's opinion is available [here](#).

[Listen to this post](#)

© 2025 Bradley Arant Boult Cummings LLP

National Law Review, Volume XV, Number 177

Source URL: <https://natlawreview.com/article/predominant-factor-test-determining-whether-ucc-or-common-law-applies-mixed>