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C H A P T E R 3

Article Two: Sales

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§3.1. General. A major incentive of the entire Code project was a desire of various business groups for the modernization of the Uniform Sales Act, and the first years of effort were devoted to the drafting of the predecessors of the present Article 2, Sales.¹ In many cases the Sales Article restates or clarifies the statement of the prior law; in some it furnishes criteria for deciding cases not previously covered by statute; and in others it rejects the old approach and develops new methods of handling problems. The purpose of this chapter is to offer an introduction to the Code's new methodology and some of its substantive provisions in the light of Massachusetts law. One caution must be raised at the outset: an emphasis here upon novelty should not obscure the fact that the Code in large measure clarifies or restates existing law.

§3.2. Offer-acceptance and the Statute of Frauds. The Uniform Sales Act has little to say about the formation of the contract between the seller and the buyer. The problems of offer and acceptance, consideration, and modification have been lumped into the total mass of contract law.¹ The Code departs from this notion and establishes some statutory criteria for the solution of these questions in the sale of goods area. For the most part the new rules are formulated upon the notion that the reasonable expectations of the parties in a commercial deal should be effectuated by the law. A not-so-hypothetical case may be useful in treating a representative problem under the Code.²

A is trying to obtain a contract to furnish bus transportation for school children. Before bidding on the contract, A needs to ascertain

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§3.1. ¹Report of the Uniform Commercial Acts Section, Handbook of the National Conference of Commissioners on Uniform State Laws and Proceedings 89 (1940).

§3.2. ¹General Laws, c. 106, §5, Uniform Sales Act (hereinafter cited "USA") §3, provides: "A contract to sell or a sale may be in writing, either with or without seal, or by word of mouth, or partly in writing and partly by word of mouth, or may be inferred from the conduct of the parties."

²Kuzmeskus v. Pickup Motor Co., Inc., 330 Mass. 490, 115 N.E.2d 461 (1953).

the cost of performing. A contacts B, a dealer in buses, to determine the cost of obtaining five new buses which will be required under the transportation contract. B makes a written offer describing the vehicles and stating his price, closing with the statement "This is a firm offer and will remain open for sixty days." Within a week A, having carefully calculated his bid based on B's offer, is awarded the transportation contract. B telephones A the following day and withdraws his offer because of a price increase. A then insists on the prior offer and tells B it is accepted.

Under the present law a lawyer consulted by A might think that since the offer by B was neither under seal nor supported by consideration, it could not now ripen into a contract by A's acceptance. It was a revocable offer, revoked prior to acceptance. If A's lawyer were operating under the Code, he would find that Section 2-203 eliminates the seal as a means of giving permanency to the offer in sales contracts. But in a Code jurisdiction, A's lawyer would have to consider Section 2-205.³ Here the inquiry is different. Is the offeror a merchant? Is the offer in a signed writing? Does it by its terms give assurance that it will be held open? Will the acceptance occur within the time stated or, if none is indicated, within a reasonable time? In any event will the acceptance occur within three months? If each of these questions is answered affirmatively, the offeree's power of acceptance is preserved. Thus freedom of contract is still maintained. The offeror is in full control of his offer but he takes the risk of giving written assurances that it will remain open. The time limit for acceptance is also within the offeror's control, but in no event may the period of irrevocability exceed three months.

Finally, the offeror must be a professional, that is, a "merchant." Here is another new concept of the Code, that there should be different rules of law governing the conduct of the professional. This notion deserves special treatment and we shall return to it frequently. Section 2-104 defines the term "merchant" in language not unlike the concept of "dealer" in the present law relating to the warranty of merchantability.⁴

Let us now reverse our hypothetical case. If B, the seller, had furnished A, the buyer, with a printed order form containing a stipulation that the buyer's offer was to remain open for sixty days, would the

³ Section 2-205 provides: "*Firm Offers*. An offer by a merchant to buy or sell goods in a signed writing which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed three months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror."

⁴ Section 2-104 provides: "(1) 'Merchant' means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill."

seller have a power of acceptance for that period? It seems that the first inquiry would examine A's status as a merchant. Even then the Code protects unwary parties using printed forms supplied by the other party by insisting that in these cases the provision giving duration to the offer be separately signed.

This is one inroad into the doctrine of consideration found in the Code's article dealing with sales. Another occurs in Section 2-209, dealing with modification of contracts. Using our same hypothetical case, if A and B had entered into a binding contract for the purchase and sale of the five buses, what would be the effect of their later agreement that B would deduct \$100 from the price of each bus, thereby passing on to A a price saving resulting from a break in the market price? Our current approach would call for an inquiry into the presence or absence of consideration supporting B's promise to accept the lower amount.⁵ Dropping the common law doctrine of consideration here, as in the case of firm offers, the Code depends upon the expectations of the parties to support its result. Two limitations are placed upon this kind of modification. First, the parties may provide in an original signed agreement that modification can only occur by another signed writing; this again protects the concept of freedom of agreement. Second, if the agreement as modified is within the provision of the Statute of Frauds, it must be sufficiently memorialized to satisfy that provision.

This leads to a consideration of the requirements of the Statute of Frauds under the Code.⁶ Under the Uniform Sales Act the provision dealing with the Statute of Frauds covers both transactions in goods and in choses in action in which the contract price is \$500 or more.⁷ The dollar limitation is retained in the Code, but the Sales Article contains no provisions for a Statute of Frauds for choses in action; that is provided in Article 1.⁸ The three basic routes to escape the necessity for a writing are retained: payment of part of the price; receipt of part of the goods; and contracts for specially manufactured goods. The terms of each of these exceptions have been altered. Under the Code part payment or delivery and acceptance of part of the goods will not make the entire alleged contract enforceable;⁹ it will be enforceable only to the extent of such payment or such receipt.¹⁰

⁵ Compare *LeBel v. McCoy*, 314 Mass. 206, 49 N.E.2d 888 (1943), with *Swartz v. Lieberman*, 323 Mass. 109, 80 N.E.2d 5, 12 A.L.R.2d 75 (1948).

⁶ UCC §2-201.

⁷ G.L., c. 106, §6, USA §4.

⁸ UCC §1-206.

⁹ *Black Beauty Coal Co. v. Cohen*, 267 Mass. 98, 165 N.E. 878 (1929) (receipt of part of coal shipped sufficient evidence of transfer of possession to satisfy requirements of Statute of Frauds); *Technical Economist Corp. v. Moors*, 255 Mass. 591, 152 N.E. 83 (1926) (payment of \$500 under sales agreement for \$14,000 made agreement enforceable); *Houghton & Dutton Co. v. Journal Engraving Co.*, 241 Mass. 541, 135 N.E. 688 (1922) (delivery to bailee at buyer's direction sufficient); *Antonacopoulos v. Arax Grocery Co.*, 234 Mass. 125, 125 N.E. 161 (1919) (part payment of \$300 made contract for \$3500 worth of rice enforceable).

¹⁰ UCC §2-201 (3) (c).

This closes the door to fraudulent claims that the quantity called for by the oral agreement was considerably greater than that paid for or delivered. The provision as to specially manufactured goods is also altered. The special manufacture need no longer be "by the seller," but the exception only operates when there has been a "substantial beginning of their [the goods'] manufacture or commitments for their procurement" prior to repudiation.¹¹ Added to these is a provision taking out of the requirements of the statute those cases in which a party against whom enforcement is sought admits, in his pleading, testimony, or otherwise in court, that a contract for sale was made. Again, such a contract is enforceable only for the quantity admitted.

Apart from the litigation as to whether a case falls within an exception, many Statute of Fraud controversies concern the sufficiency of a given memorandum. The Code deals with this problem explicitly and the result is to enlarge somewhat the group of contracts that are enforceable. Under present law the memorandum must set forth the essential terms of the contract, including price and the time of delivery.¹² Under the Code the memorandum must be "sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought. . . ." ¹³ Further, the Code adds, "A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing."¹⁴ Thus the stringency of the requirement of a statement of terms is eased, since all that is necessary is that the writing indicate that a contract for sale has been made between the parties, that it state the quantity, and that it be signed by the party against whom enforcement is sought. Finally, the Code recognizes a rather obvious commercial standard of conduct, namely, that businessmen are expected to answer their mail. Between merchants one may satisfy the statute as against the other by sending a letter confirming a contract. This must be done within a reasonable time and the writing must be otherwise sufficient. The recipient may avoid this consequence by giving written notice of objection to the contents of this writing within ten days of its receipt.¹⁵

So much for the formation of the contract. When the Code departs from prior notions it prescribes limitations and compensates for any liberalization with a new and perhaps less severe restriction. In the problem of the firm offer, the vitality given to the naked offer is limited by the offeror's ability to control that offer; while in the Statute of

¹¹ This overrules *Atlas Shoe Co. v. Rosenthal*, 242 Mass. 15, 136 N.E. 107 (1922), which held that the exception required that the seller be the manufacturer.

¹² *Clinton Mills Co. v. Saco-Lowell Shops*, 3 F.2d 410 (1st Cir. 1925) (time of delivery); *Kemensky v. Chapin*, 193 Mass. 500, 79 N.E. 781 (1907) (prior to the Uniform Sales Act).

¹³ UCC §2-201 (1).

¹⁴ *Ibid.*

¹⁵ UCC §2-201 (2).

Fraud cases the extension of the kinds of memoranda that satisfy the statute and the expansion of the various exceptions to the statute are coupled with the new limitations relating to quantity. There are other such changes, but limitation of space permits only a footnote reference to their features.¹⁶

§3.3. From property to contract. Much, perhaps too much, has been written of the Code's departure from the approach of the common law and of the Sales Act to those issues decided by a search for the title to the goods or, as the Sales Act puts it, the property in the goods.¹ It is axiomatic under present law that the legal solution to a horde of problems is reached through locating the property in the goods. Problems solved on this basis include the risk of loss, the right to sue for the purchase price, tax liability, insurability, creditors' rights, rules of damages, choice of law and the availability of the possessory remedies.² Under the Code many of these issues are no longer referred to the test of property in the goods. Each issue has been examined and, in the light of the peculiar problems involved, observable factual criteria based upon what is thought to be a proper policy for that problem have been developed. The study of the Code solution to a problem then requires the lawyer to identify a narrow issue, seek its specific solution in the Code, and only if none is offered is reference had to the property concept.³ For present purposes this technique can be illustrated by an examination of the problem of risk of loss.

The Sales Act precisely ties risk of loss to property in the goods in the absence of a contrary agreement.⁴ However, two risk of loss problems were isolated under the Sales Act. Risk passes to the buyer when the

¹⁶ Section 2-207 treats these problems of offer and acceptance when the acceptance contains additional or varying terms. Such terms are dealt with as proposals for an addition to the contract and between merchants they become part of the contract unless the offer expressly limits acceptance to its terms, they materially alter the offer, or the offeror objects within a reasonable time.

Section 2-210 deals with assignments and is noteworthy since it gives either the assignor or the obligee the right to enforce the assumption promise of an assignee. Compare Massachusetts cases on a creditor-beneficiary's right to enforce such a contract, e.g., *Gustafson v. Doyle*, 329 Mass. 473, 109 N.E.2d 465 (1952); *Prentice v. Brimhall*, 123 Mass. 291 (1877); *Mellen v. Whipple*, 1 Gray 317 (Mass. 1854).

Section 2-302 permits the court after considering the commercial setting of the contract to refuse to enforce all or a part of the contract found as a matter of law to be unconscionable.

§3.3. ¹Some enlightening comments will be found in Williston, *The Law of Sales in the Proposed Uniform Commercial Code*, 63 Harv. L. Rev. 561 (1950); Corbin, *The Uniform Commercial Code—Sales; Should It Be Enacted?* 59 Yale L. J. 821 (1950); Rabel, *The Sales Law in the Proposed Commercial Code*, 17 U. Chi. L. Rev. 427 (1950).

² General Laws, c. 106 (the USA) specifically referred to the property concept for solution to problems of right to the price (G.L., c. 106, §52, USA §63), risk of loss (G.L., c. 106, §24, USA §22), and rules of damages (G.L., c. 106, §56, USA §67).

³ Section 2-401 formulates criteria for determining passage of title when that concept is still determinative, as in questions of tax liability.

⁴ G.L., c. 106, §24, USA §22. Typical cases are *Cochrane v. Forbes*, 257 Mass. 135, 153 N.E. 566 (1926); *Levy v. Radkay*, 233 Mass. 29, 123 N.E. 97 (1919).

goods are delivered even though the seller retains the property in the goods solely as a security interest. In addition, risk of any loss resulting from delay in delivery falls on the party at fault.⁵ Under the Code ownership ceases to be the test and a possessor who does not own the goods may nonetheless bear the risk of loss.

When there has been no breach by either party, Section 2-509 establishes criteria for the passage of the risk of loss. The parties' contractual power to place the risk of loss is preserved and the rules set out are subject to such agreement. If under the contract the seller is required or authorized to ship goods by carrier, risk passes upon delivery to the carrier unless the seller is required to deliver the goods at a particular destination. This is comparable to the presumption in the Uniform Sales Act that when the seller is to deliver the goods to a particular place, property in the goods does not pass until the goods reach that place. Special criteria are also formulated for the case in which the goods are in the possession of a bailee and are to be delivered without being moved. In the remaining cases risk of loss passes to the buyer upon receipt of the goods if the seller is a merchant; if he is not, risk passes upon tender of delivery. Here merchants retain the risk of loss for a longer period than non-merchants. The comments indicate that this is based upon the likelihood that a merchant-seller can be expected to insure goods over which he continues to have control while it is unlikely that a buyer will insure goods not in his possession.

When a breach of the contract occurs and the aggrieved party is in control of the goods, any loss not covered by his insurance falls upon the contract-breaker rather than the person aggrieved. Again the probability of insurance coverage is used to determine which party will bear the risk. As to "sales on approval," Section 2-327 articulates particular rules of law governing risk of loss so that the risk remains upon the seller until acceptance.

§3.4. Seller's obligation as to quality. From the time that Chief Justice Rugg determined that warranty was sometimes available in cases in which a negligence action would not lie, Massachusetts lawyers have been acutely aware of the utility of the warranty action.¹ The Code's approach in this area is to sharpen some of the concepts in and fill some of the interstices left by the Uniform Sales Act. Massachusetts case law is usually consistent with the results achieved.

The former implied warranties by description and sample are classified in the Code as express warranties along with the traditional affirmations and promises relating to the goods.² The rules governing such express warranties are comparable to those enunciated in the Uniform Sales Act, although the "reliance" requirement is now expressed in

⁵ G.L., c. 106, §24, USA §22.

¹ *Ash v. Childs Dining Hall Co.*, 231 Mass. 86, 120 N.E. 396 (1918) (no recovery in negligence); *Friend v. Childs Dining Hall Co.*, 231 Mass. 65, 120 N.E. 407 (1918) (recovery in warranty).

² UCC §2-313(1)(b), (c).

terms of the affirmations, descriptions, or samples being a "part of the basis of the bargain."³

The implied warranties of merchantability and fitness for a particular purpose are retained but are expressed in somewhat different terms. Under the Uniform Sales Act the warranty of merchantability demanded a sale "by description" from "a seller who deals in goods of that description."⁴ The cases frequently ignored the first requirement, and it is dropped in the Code.⁵ Section 2-314 expresses the latter requisite by imposing the liability only upon "merchants." The age-old struggle relating to the serving of food and drink is settled in accordance with the Massachusetts cases by attaching the warranty of merchantability to these transactions.⁶ Finally, Section 2-314 sets forth for the first time explicit tests to determine "merchantable quality." Neither the Sales Act nor the Massachusetts cases articulated such express criteria.

The warranty of fitness for a particular purpose is similarly not sharply altered under the Code. There is a statutory recognition of the fact that the courts have not insisted literally upon the terms of the Uniform Sales Act that the buyer must "make known" his purpose. Under Section 2-315 it is enough that the seller has "reason to know" the buyer's purpose. The major change wrought in this section is the omission of a provision making the warranty of fitness inapplicable to a sale by a patent or trade name.⁷ This omission is designed to make the sale by a patent or trade name merely one of the circumstances in determining whether the buyer relied on the seller's skill and judgment.

Two concepts have hitherto reduced the thrust of warranty liability. One of these is that "privity of contract" is a prerequisite to recovery in warranty. Thus, under the prior law the warranty runs only to the actual immediate buyer.⁸ The Code explicitly recognizes that the warranty covers the personal injuries of any plaintiff who is in the family or household of the buyer or is a guest in his home when it is

³ Id. §2-313(1)(a).

⁴ G.L., c. 106, §17, USA §15.

⁵ UCC §2-314.

⁶ *Schuler v. Union News Co.*, 295 Mass. 350, 4 N.E.2d 465 (1936); *Friend v. Childs Dining Hall Co.*, 231 Mass. 65, 120 N.E. 407 (1918).

⁷ Such sales under G.L., c. 106, §17(4), USA §15(4), did not carry a warranty of fitness. Compare *Agoos Kid Co. v. Blumenthal Import Corp.*, 282 Mass. 1, 184 N.E. 279 (1933) ("Bagdad Goatskins Drysalted" not trade name), and *Ireland v. Louis K. Liggett Co.*, 243 Mass. 243, 137 N.E. 371 (1922) (warranty present when seller recommends item with trade name).

⁸ In *Colby v. First National Stores, Inc.*, 307 Mass. 252, 254, 29 N.E.2d 920, 921 (1940), the rule as to married women's recovery for breach of warranty was summed up as follows: "A married woman buying food for her family may be in one of three positions: she may buy it as agent of her husband as a disclosed principal, as an agent for him as an undisclosed principal, or as a principal buying in her own behalf. If the position of this plaintiff in the transaction disclosed by the evidence was that of a principal, or that of an agent for her husband as an undisclosed principal, there was a contract between her and the defendant."

reasonable to expect such a person will come in contact with the goods.⁹ On the other hand, the need for privity in suits against manufacturers or wholesalers by retail buyers is not affected by the Code.

Disclaimer clauses are the second source of limitation on warranty liability. Section 2-316 effectuates disclaimer clauses depending upon the type of warranty involved. If it is an express warranty, the negation is inoperable only when the terms creating and denying the warranty cannot reasonably be construed as consistent with each other. All implied warranties may be excluded by use of the term "as is," "with all faults," or the like; by inspection prior to entering into the contract; or by a course of dealing, course of performance or usage of the trade. Otherwise, the implied warranties of fitness and merchantability can only be excluded by complying with requirements adequately designed to warn the buyer of the disclaimer. Furthermore, the parol evidence rule will no longer operate as a hidden disclaimer of the warranty of merchantability or fitness.¹⁰

§3.5. Rights of third parties. Some of the most vexing problems in commercial law involve the ability of third parties to upset the relationship established in an outstanding transaction. In the sales area such questions involve creditors of, and purchases from, both the seller and the buyer.

Under the Uniform Sales Act the seller's retention of possession of sold goods ran to the benefit of both his creditors and subsequent vendees. The Sales Act left entirely to local law the question of such retention of possession being a fraud on creditors.¹ Thus in Massachusetts a creditor of the seller attaching such goods would take an interest superior to the first buyer's claim.² Section 2-402 (2) of the Code initially makes a similar reference to local law to determine the issue; but the same section protects the first buyer when the retention of possession is "in good faith and current course of trade by a merchant-seller for a commercially reasonable time." The innocent buyer from the seller in possession was protected under the prior law if he paid value and took possession prior to learning of the first buyer's interest in the goods.³ Section 2-403 (2) limits such protection to cases in which the subsequent purchaser qualifies as a "buyer in ordinary course of business" and purchases from a merchant-seller. Section 1-201 (9) defines "buyer in ordinary course of business" and is worthy of careful

⁹ UCC §2-318.

¹⁰ Compare UCC §2-316 (2) with *Dekofski v. Leite*, 1957 Mass. Adv. Sh. 849, 142 N.E.2d 782, and *S. F. Bowser & Co. v. Independent Dye House, Inc.*, 276 Mass. 289, 177 N.E. 268 (1931).

§3.5. 1 G.L., c. 106, §28, USA §26.

² The cases prior to the Uniform Sales Act indicate this result. *Hallgarten v. Oldham*, 135 Mass. 1, 46 Am. Rep. 433 (1883); *Lanfear v. Sumner*, 17 Mass. 110, 9 Am. Dec. 119 (1821).

³ G.L., c. 106, §27, USA § 25. See, e.g., *Tripp v. National Shawmut Bank of Boston*, 263 Mass 505, 161 N.E. 904 (1928).

attention, since the concept pervades the whole Code. For present purposes it is enough to note that this definition does not specify that the second buyer must take possession prior to learning of the first buyer's claim, and that persons taking transfers as security for a money debt are excluded from the term. These limitations should be kept in mind when one is evaluating the broad effect of Section 2-403 (2) in protecting such a buyer in ordinary course as against anyone who entrusts possession to a merchant seller with or without authority to sell.

Subsequent innocent purchasers may also deal with the first buyer when the seller has the power to avoid the original transfer. The most frequent example of such a case occurs when the first buyer acquired the goods by fraud. In such cases the Uniform Sales Act stated that the subsequent purchaser was to be protected as against the seller.⁴ Section 2-403 (1) continues this concept. The examples given in that section enlarge the protection given to the second purchaser since the second buyer is protected when his vendor acquires his interest in a "cash sale."⁵ Thus the second buyer qualifies for protection if he is a "good faith purchaser for value." A reference to definitions in Sections 1-201 (19) (good faith), 1-201 (33) (purchaser), and 1-201 (44) (value) puts considerable content into those terms. Under the Code subsequent transferees taking a security interest for a money debt will be protected. Thus the term is much broader than the previously discussed "buyer in ordinary course."

One other provision particularly needs to be considered in connection with the rights of third parties. Under the prior law the otherwise legitimate device of consignment could mislead both purchasers from, and creditors of, the consignee. Subsequent buyers were protected by the Factor's Act.⁶ But creditors could be misled by the apparent ownership of the consignee. When the device is used to create a security interest the requirement of filing under the provisions of Article 9, Chattel Security, will operate to alleviate this danger.⁷ But when the consignment is utilized entirely as a tool for effectuating an agency for sale relationship, Section 2-326 extends a protection to creditors similar to that given to bona fide purchasers under the Factors Act. Limitations on this protection are created when the possessor of the goods for sale "is generally known by his creditors to be substantially engaged in selling the goods of others," and when the person delivering the goods puts the creditors on notice by filing under Article 9.

§3.6. Remedies. The most significant alterations in the structure of the remedial rights of parties to the sales transaction are the broad-

⁴ G.L., c. 106, §26, USA §24.

⁵ Compare UCC §2-403 (1) with *Casey v. Gallagher*, 326 Mass. 746, 96 N.E.2d 709 (1951) (evidence warranted finding of no "cash sale" and bona fide purchaser could be protected).

⁶ General Laws, c. 104, §1 protects such buyers if the consignee had authority to sell.

⁷ Code §§1-201 (37) and 9-102(2) make the consignment intended as a security device subject to Article 9.

ening of the buyer's right to replevin and the introduction of the concept of the seller's power to "cure" and the buyer's power to "cover."

Replevin is available in a new situation under Section 2-502 which permits the buyer who has a special property, and has paid a part or all of the price, to recover goods upon tendering any unpaid portion of the price if the seller becomes insolvent within ten days after receipt of the first installment on the price.¹ Furthermore, Section 2-716 expands the remedy by abandoning the rule that the right to replevin depends upon the passage of title.² On the other hand that same section may limit the remedy since if substitute goods are available there is no right to recover the goods. This is the notion of "cover." Under Section 2-712, the buyer is permitted to "cover" and thus fix his damages by "making in good faith and without unreasonable delay any reasonable purchase of or contract to purchase goods in substitution for those due from the seller." It should be noted that the buyer may cover or rely entirely upon the market price in ascertaining his damages. The concept of "cure" is also new. Under Section 2-508, if time for performance has not yet expired, the seller has the power of correcting any non-conforming delivery after notifying the buyer of that election. This has a mitigating effect upon Section 2-601 which provides for rejection by the buyer "if the goods or the tender of delivery fail in any respect to conform to the contract."

§3.6. ¹ Compare the seller's corresponding right upon the buyer's insolvency in UCC §2-702.

² G.L., c. 106, §55, USA §66.