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Article 1: General Provisions

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UNIFORM COMMERCIAL CODE ANNOTATIONS

This section contains a digest of all reported decisions interpreting provisions of the Uniform Commercial Code published from the first week in December, 1964, through the last week in February, 1965, in the National Reporter System.

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ARTICLE 1: GENERAL PROVISIONS

SECTION 1-102. Purposes; Rules of Construction; Variation by Agreement

ALLOWAY v. STUART

385 S.W.2d 41 (Ky. Ct. App. 1964)
Annotated under Section 9-402, *infra*.

SECTION 1-105. Territorial Application of the Act; Parties' Power to Choose Applicable Law

PARK COUNTY IMPLEMENT CO. v. CRAIG

397 P.2d 800 (Wyo. 1964)
Annotated under Section 2-401, *infra*.

SECTION 1-201. General Definitions

ASSOCIATED HARDWARE SUPPLY CO. v. BIG WHEEL DISTRIB. CO.

236 F. Supp. 879 (W.D. Pa. 1965) [Section 1-201(3), (11)]
Annotated under Section 1-205, *infra*.

DAVID CRYSTAL, INC. v. CUNARD STEAM-SHIP CO.

223 F. Supp. 273 (S.D.N.Y. 1963) [Section 1-201(15)]

Cunard Steam-Ship Co., the defendant, transported by ocean carrier goods owned by Crystal and consigned to Crystal's customs broker, Penson. Upon arrival in New York, Cunard unloaded the goods and placed them in the custody of Clarke, its stevedore. This was the usual procedure. Clarke

would hold the goods until all freight charges were paid, then deliver them upon presentment of a delivery order signed by the consignee. In the instant case a carefully forged delivery order was procured through the complicity of an employee of Penson and presented to the stevedore who thereupon delivered the goods.

Crystal then brought suit in admiralty against Cunard for conversion of the goods.

Under the Carriage of Goods by Sea Act, to which the bill of lading in the case was subject, the carrier's liability in ocean affreightment continues until proper delivery of the cargo to the consignee, notwithstanding contrary provisions in the bill of lading. Upon unloading, however, liability changes from that of a carrier to that of a warehouseman and the stevedore is deemed an agent of the carrier. However, because there is no explicit rule in maritime law regarding liability of a warehouseman for misdelivery of goods, the court set out to fashion a rule consistent with that prevailing in commercial transactions on land.

The court looked to the Uniform Bill of Lading Act (UBLA), the Federal Bill of Lading Act (FBLA), the Uniform Warehouse Receipts Act (UWRA), the Restatement of Torts and the Uniform Commercial Code. It noted that under the first three of these laws a bailee is absolutely liable for misdelivery of goods. It then said, "The same result would follow under Article 7 of the Uniform Commercial Code. . . ." In an important caveat, however, the court noted that the uniform acts could not under any circumstances be directly applicable in that the forged delivery order was not the kind of document with which any of them dealt. It was not a warehouse receipt under Section 1-201(45) of the UCC, nor was it a document of title under Section 1-201(15). Being forged, it could

hardly be said of it that "in the regular course of business or financing [it would be] treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers."

Having thus disposed of the relevant uniform acts, the court explicitly incorporated into maritime law Section 234 of the Restatement of Torts which reads, "A bailee who delivers a chattel to one not entitled to its immediate possession is liable to the bailor for a conversion of the chattel. . . ." This conclusion, the court said, aligned maritime law with the law of the land. Cunard was liable for the misdelivery of goods by its agent.

On appeal, the Circuit Court of Appeals affirmed the findings and conclusion of the lower court. 339 F.2d 295 (2d Cir. 1964).

COMMENT

The court suggested that the delivery order, because forged, was not a document of title as that term is defined by Section 1-201(15) of the Uniform Commercial Code. Therefore, delivery pursuant to such an order was a misdelivery. It further suggested that under the Code, misdelivery pursuant to a forged delivery order would result in absolute liability. This

latter suggestion, while probably correct, is open to argument, for Section 7-404 provides:

A bailee who in good faith including the observance of reasonable commercial standards has received goods and delivered or otherwise disposed of them according to the terms of the document of title or pursuant to this Article is not liable therefore. This rule applies even though . . . the person to whom he delivered the goods had no authority to receive them.

The last sentence of the Official Comment to this section reads, "The section applies . . . to delivery to the holder of an invalid document." Whether the forged delivery order is "an invalid document," or, as the court suggested, no document at all is unclear. But probably it is no document at all. Section 7-404 would in that case be inapplicable. Evidence that Section 7-404 was not intended to excuse misdelivery, even if reasonable and made in good faith, lies in the fact that the statutory antecedents which the Official Comment cites do not under any circumstances excuse misdelivery. See § 10, UWRA and § 13, UBLA.

Section 7-403 thus appears to be the only applicable section. This section states that the bailee's obligation is to deliver the bailed goods to the person entitled under the document. Though there are seven enumerated circumstances under which this obligation does not exist, misdelivery is not one of them. Thus under Section 7-403 the bailee must deliver the goods to the person entitled, even if he has misdelivered them to somebody else.

This whole problem could have been avoided if the draftsmen had somewhere taken a stand and made their intention clear. Or it could have been avoided by a tighter drafting of Section 7-404.

W.J.E., JR.

- FORT KNOX NAT'L BANK v. GUSTAFSON
385 S.W.2d 196 (Ky. Ct. App. 1964) [Section 1-201(19)]
Annotated under Section 1-208, *infra*.
- CITIZENS BANK v. NATIONAL BANK OF COMMERCE
334 F.2d 257 (10th Cir. 1964) [Section 1-201(19)]
Annotated under Section 4-209, *infra*.
- DLUGE v. ROBINSON
204 Pa. Super. 404, 204 A.2d 279 (1964) [Section 1-201(20)]
Annotated under Section 3-804, *infra*.
- CITIZENS BANK v. NATIONAL BANK OF COMMERCE
334 F.2d 257 (10th Cir. 1964) [Section 1-201(25)]
Annotated under Section 4-209, *infra*.
- DAVID CRYSTAL, INC. v. CUNARD STEAM-SHIP CO.
223 F. Supp. 273 (S.D.N.Y. 1963) [Section 1-201(45)]
Annotated this section, *supra*.

SECTION 1-204. Time; Reasonable Time; "Seasonably"

G. VANDENBERG & SONS, N.V. v. SITER
204 Pa. Super. 392, 204 A.2d 494 (1964)
Annotated under Section 2-607, *infra*.

SECTION 1-205. Course of Dealing and Usage of Trade

ASSOCIATED HARDWARE SUPPLY Co. v. BIG WHEEL DISTRIB. Co.
236 F. Supp. 879 (W.D. Pa. 1965)

In February, 1962, the plaintiff-supply company mailed to the defendant-distributing company a letter containing an offer to sell merchandise at catalogue price (representing a mark-up of 20%) minus 11%. The offer was never formally accepted; nevertheless, over the next two years more than \$850,000 worth of goods was purchased by the defendant, and all but \$40,000 was paid under billings computed in accordance with the price formula set out in the plaintiff's offer. That \$40,000 the plaintiff sued to recover. The defendant defended and counterclaimed, alleging fraud and misrepresentation. It contended that it was only obligated to pay cost plus 10%, this being an amount the defendant's negotiator was allegedly led to believe would equal the price determined by the plaintiff's formula. The defendant's position was that a computation based on its method would show that it had been overpaying in that the plaintiff's costs were lower than those suggested by the catalogue prices.

The court held that there was a binding contract between the parties and that the price of the goods should be computed on the basis of the formula prescribed in the plaintiff's offer. To support this holding, it gave great weight to the parties' extensive course of dealing, quoting in order and also verbatim, or nearly verbatim, Sections 1-201(3), 1-201(11), 1-205(1), 1-205(3), 1-205(4)(a), 2-104(1), 2-104(3), 2-106(2), 2-201(1), 2-201(2), 2-201(3)(c), 2-202(a), 2-204(1), 2-204(2), 2-204(3), 2-206(1), 2-206(3) and 2-208.

M.L.C.

SECTION 1-208. Option to Accelerate at Will

FORT KNOX NAT'L BANK v. GUSTAFSON
385 S.W.2d 196 (Ky. Ct. App. 1964)

The plaintiff-debtors executed in favor of the defendant-bank a joint note secured by their mobile diner and by their leasehold interest in the land on which the diner was situated. Under the terms of the security agreement, the bank had the power to accelerate the maturity date of the note if the plaintiffs defaulted in any of their monthly payments or if the bank deemed itself insecure at any time. When the debtors experienced difficulties in making their payments, the bank orally agreed that they could make them one day short of bimonthly, so long as all the plaintiff's creditors went along. The debtors continued to experience financial difficulties, however, falling behind on their lease payments by eight months. Finally, when their landlord

threatened to terminate the lease, the bank filed a claim and delivery action to get possession of the diner. At the time, the plaintiffs had made twenty-two of twenty-three monthly payments on their note. The bank ultimately disposed of the diner and the plaintiffs brought the present action for abuse of process. The trial court gave judgment to the debtors, awarding both compensatory and punitive damages.

On appeal, the court reversed and remanded, holding that regardless of whether the bank had waived the defaults in monthly payments, it still had the power under the second part of the acceleration clause to precipitate the maturity date if it deemed itself insecure. Under Section 1-208, the bank could deem itself insecure only if it did so in good faith, and the burden of proving bad faith was on the debtors. "Good faith" was defined by Section 1-201(19) as "honesty in fact." The court found that as a matter of law the bank had accelerated on a good faith belief that it was insecure and that a reversal was in order. The bank had effectively pursued its right to possession by judicial process, given it by Section 9-503.

The court pointed out, however, that the record did not contain an adequate account of the disposition of the diner. Under Section 9-504(3), the bank was required to dispose of it in a "commercially reasonable" manner. If it disposed of it in any other way, it was liable under Section 9-507 for whatever loss the plaintiffs could show resulted from improper disposition.

P.J.N.

ARTICLE 2: SALES

SECTION 2-103. Definitions and Index of Definitions

O'BRIEN V. ISAACS

203 N.E.2d 890 (Ill. 1965)

Annotated under Section 2-106, *infra*.

SECTION 2-104. Definitions: "Merchant"; "Between Merchants"; "Financing Agency"

ASSOCIATED HARDWARE SUPPLY CO. V. BIG WHEEL DISTRIB. CO.

236 F. Supp. 879 (W.D. Pa. 1965)

Annotated under Section 1-205, *supra*.

SECTION 2-106. Definitions: "Contract"; "Agreement"; "Contract for Sale"; "Sale"; "Present Sale"; "Conforming" to Contract; "Termination"; "Cancellation"

O'BRIEN V. ISAACS

203 N.E.2d 890 (Ill. 1965)

This action was brought to test the constitutionality of Section 42 of the Illinois Retail Sales Regulations which taxed payments received by Illinois florists for flowers delivered in Illinois pursuant to telegraphic