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Article 2: Sales

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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 second week in July 1965 through the last week in September 1965 in the National Reporter System.

STEVEN H. GRINDLE
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ARTICLE 1: GENERAL PROVISIONS

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

BENEDICT V. LEBOWITZ

346 F.2d 120 (2d Cir. 1965)
Annotated under Section 9-402, *infra*.

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

ASSOCIATES DISCOUNT CORP. V. CARY

262 N.Y.S.2d 646 (Civ. Ct. 1965)
Annotated under Section 9-504, *infra*.

SECTION 1-201. General Definitions

UNIVERSAL C.I.T. CREDIT CORP. V. INGEL

196 N.E.2d 847 (Mass. 1964) [Section 1-201(25)]
Annotated under Section 3-104, *infra*.

IN THE MATTER OF UNITED THRIFT STORES, INC.

242 F. Supp. 714 (D.N.J. 1965) [Section 1-201(37)]
Annotated under Section 9-102, *infra*.

BENEDICT V. LEBOWITZ

346 F.2d 120 (2d Cir. 1965) [Section 1-201(39)]
Annotated under Section 9-402, *infra*.

ARTICLE 2: SALES

SECTION 2-105. Definitions: Transferability; "Goods"; "Future" Goods; "Lot"; "Commercial Unit"

WICKHAM V. LEVINE

261 N.Y.S.2d 702 (Sup. Ct. 1965)
Annotated under Section 2-106, *infra*.

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

WICKHAM V. LEVINE

261 N.Y.S.2d 702 (Sup. Ct. 1965)

Defendant is the proprietor of several take-out food shops which sell cooked meat and shrimp pieces solely for off-premises consumption. The standard of measurement had been a uniform piece count per order. Pursuant to two sections of the New York Agriculture and Markets Law, the Commissioner of Agriculture sued to enjoin sales made on any basis other than net weight, except where the pieces would be part of a complete dinner.

The court granted the injunction as to the meat items, but found that the statute exempted certain seafood products including shrimp. The court further ordered that an accurate scale be maintained on the premises and made readily available to the customers.

In interpreting the statute and reaching its decision, it was necessary for the court to find that the defendant had sold the goods at retail and, in so doing, the court used Sections 2-105(1), -106(1), -314(1) and -401(2).

G.F.P.

SECTION 2-313. Express Warranties by Affirmation, Promise, Description, Sample

SPRING VALLEY COUNTRY CLUB, INC. v. MADDEN SUPPLY CO.

208 N.E.2d 230 (Mass. 1965)

Plaintiff brought suit against the United States Rubber Company (USR) on counts in negligence and breach of warranty, alleging that USR was the producer of certain material used by another defendant in the manufacture of certain pipes which plaintiff had purchased. USR's demurrer on both counts was sustained.

The Supreme Judicial Court affirmed on the ground that both counts failed to state facts sufficient to constitute a claim against USR. As to the breach of warranty, the court, citing Section 2-313 of the Code, further noted that the complaint showed affirmatively that there was no privity between the parties.

COMMENT

Section 2-318 states the specific exceptions to the rule that privity is needed for a breach of warranty action. Beyond these exceptions, Comment 2 to Section 2-318 and Comment 3 to Section 2-313 specify the Code's neutral stand as to the necessity of privity and leave this matter to the developing case law of the particular jurisdiction. It would seem from this case that Massachusetts has chosen not to abandon its pre-Code requirement of privity, a step which other jurisdictions have not been afraid to take and which is supported by many legal authors. See, e.g., Prosser, *Assault Upon the Citadel*, 69 Yale L.J. 1099 (1960).

S.H.G.

SEELY V. WHITE MOTOR Co.

403 P.2d 145 (Cal. 1965)

To be casenoted in Vol. VII No. 3.

SECTION 2-314. Implied Warranty: Merchantability; Usage of Trade

WICKHAM V. LEVINE

261 N.Y.S.2d 702 (Sup. Ct. 1965)

Annotated under Section 2-106, supra.

**SECTION 2-318. Third Party Beneficiaries of Warranties
Expressed or Implied**

SPRING VALLEY COUNTRY CLUB, INC. V. MADDEN SUPPLY Co.

208 N.E.2d 230 (Mass. 1965)

Annotated under Section 2-313, supra.

**SECTION 2-401. Passing of Title; Reservation for Security;
Limited Application of This Section**

NEWHALL V. SECOND CHURCH & Soc'y

209 N.E.2d 296 (Mass. 1965)

Defendant church is the successor of a Trinitarian Congregational Church which, early in the eighteenth century, had been the recipient of five silver vessels. Two of these vessels were inscribed with language indicating the donor's intent to limit their use to sacramental services and the other three, while bearing no such inscription, were clearly suitable for sacramental use. Presently, the defendant is affiliated with the Unitarian-Universalist Association and has consequently discontinued its sacramental rituals. Having no present use for the vessels, the defendant entered into a contract by telephone to sell them to a museum. Payment was subsequently made by check. A letter from the buyer indicated that the contract called for physical delivery of the silver to his representative in Boston. Before delivery, plaintiff, a proprietor and thus a member of the corporate church, sought to permanently enjoin defendant from performing the contract.

The superior court dissolved a temporary restraining order issued by the lower court and ordered delivery of the vessels. It stayed all proceedings, however, and reported the case to the Supreme Judicial Court.

Inasmuch as all the necessary parties were not involved in this particular litigation, the supreme court expressly refrained from deciding whether legal title was in the deacons or in the church. Rather, it confined itself to the "question whether there is such a restriction as to limit the disposition of the property by the legal title holder." The court then reversed the delivery order and ordered an injunction restraining the sale of the two inscribed pieces, holding that the inscriptions were express commitments which effectively limited their use and disposition. As to the other three vessels, however, the court held that since there was no such express restrictions they could be sold.

For the purpose of granting injunctive relief, the court determined that title had not yet passed to the buyer. In so doing it went to Section 2-401(2)

of the Code and concluded that title would not pass until the seller completed physical delivery of the goods.

G.F.P.

WICKHAM V. LEVINE

261 N.Y.S.2d 702 (Sup. Ct. 1965)
Annotated under Section 2-106, *supra*.

ARTICLE 3: COMMERCIAL PAPER

SECTION 3-104. Form of Negotiable Instruments; "Draft"; "Check"; "Certificate of Deposit"; "Note"

UNIVERSAL C.I.T. CREDIT CORP. V. INGEL

196 N.E.2d 847 (Mass. 1964)

Annotated under Section 3-104, 6 B.C. Ind. & Com. L. Rev. 90 (1964).

The Massachusetts Supreme Judicial Court, in finding that the plaintiff was a "holder in due course" under Section 3-302, had stated that "the standard of notice contemplated under . . . § 3-302(1)(c) is actual notice and not merely reasonable grounds for belief." 1964 Mass. Adv. Sh. 367, 372, 196 N.E.2d 847, 851-52. Subsequent to the report of this case, the court modified its opinion, 347 Mass. 119, 125 (1964), adopting the view that "notice" as used in Section 3-302 does not mean "actual knowledge." Under Section 1-201(25), "a person has 'notice' . . . when . . . from all the facts and circumstances known to him at the time in question he has reason to know that it exists." The court, however, did not reverse its finding that the plaintiff was a "holder in due course" because "there was nothing in this evidence by which the plaintiff had 'reason to know' of any fraud." *Compare*, Annotation, 6 B.C. Ind. & Com. L. Rev. 90, 92 comment 3 (1964).

SECTION 3-106. Sum Certain

UNIVERSAL C.I.T. CREDIT CORP. V. INGEL

196 N.E.2d 847 (Mass. 1964)

Annotated under Section 3-104, *supra*.

SECTION 3-118. Ambiguous Terms and Rules of Construction

UNIVERSAL C.I.T. CREDIT CORP. V. INGEL

196 N.E.2d 847 (Mass. 1964)

Annotated under Section 3-104, *supra*.

SECTION 3-302. Holder in Due Course

UNIVERSAL C.I.T. CREDIT CORP. V. INGEL

196 N.E.2d 847 (Mass. 1964)

Annotated under Section 3-104, *supra*.