Washington and Lee Law Review

Volume 26 | Issue 2 Article 13

Fall 9-1-1969

Impact Of The Uniform Commercial Code Upon Implied Warranties In Leases

court in fact may not have jurisdiction absent some statutory procedure for providing service. If the plaintiff has no means to command the defendant's appearance, then the saving statute should continue to operate and preserve the plaintiff's action until the defendant is amenable to the jurisdiction of the court.

In those states following the rule set forth in *Vaughn,* it appears doubtful whether the decisions of the Supreme Court (or either type of long-arm statute) will produce any change in the opinion of those courts with regard to the application of the saving statute unless some legislative change in the saving statute is made. The courts may, as they have with the nonresident motorist statute, simply give full effect to each since there is no conflict between the wording of the long-arm statute and the saving statute.[40]

The nonresident motorist statute and the more general long-arm statutes have given plaintiffs a method of bringing their suits against persons out of the state. Furthermore, these statutes work to rectify the same inequity in statutes of limitations that the saving statutes were designed to correct; i.e., under both the plaintiff will not lose his cause of action against an out-of-state defendant. The saving statute solves the problem by tolling the statute of limitations on such causes of action until the defendant is within the forum state while the long-arm type statutes permit the court to hear the plaintiff's case notwithstanding the defendant's absence from the state. Since both statutes are aimed at the same result, it would seem that the view taken by the majority of the courts which have dealt with this problem is the preferable one. Thus, courts should lay aside the saving statute so long as the plaintiff has the opportuinty to bring his suit.

JAMES JULIUS WINN, JR.

IMPACT OF THE UNIFORM COMMERCIAL CODE UPON IMPLIED WARRANTIES IN LEASES

Although the imposition of implied warranties of fitness in a leased chattel has long been a recognized principle of common law,[1] many courts have turned to the provisions of the Uniform Sales Act in order

[40] *See* cases cited note 14 *supra.*

[1] *See, e.g.,* Eastern Motor Express, Inc. v. A. Maschmeijer, Jr., Inc., 247 F.2d 826 (2d Cir.), *cert. denied,* 355 U.S. 959 (1957); Marcos v. Texas Co., 75 Ariz. 45, 251 P.2d 647 (1952); Bass v. Cantor, 123 Ind. 444, 24 N.E. 147 (1890); Standard Oil Co. v. Boyle, 231 App. Div. 101, 246 N.Y.S. 142 (1930).

to raise an implied warranty in a lease transaction.[2] These courts, in applying the Sales Act by analogy, looked to the underlying policy considerations, and determined that the reasons for an implied warranty in a lease transaction were similar to those in a sale. Prior to the adoption of the Uniform Commercial Code, an implied warranty in both leases and sales could usually be negated by the inclusion of a broad disclaimer.[3] Since the Uniform Sales Act contained no provisions governing disclaimer of warranties, the courts looked to the common law in determining if a disclaimer were valid.[4] The Uniform Commercial Code, however, goes beyond the common law by requiring that a disclaimer of implied warranty of fitness be conspicuous and in writing.[5] Although at common law the courts invalidated disclaimers which were broad and ambiguous, it does not appear that any went so far as to require that the disclaimer be conspicuous. The Code's provision is intended to prevent a seller from abrogating both his common law and Code duty to impliedly warrant his goods without giving conscpicuous notice to the buyer.[6] It would seem that the same policy considerations should apply to a lessee-lessor relationship, since the implied warranties in both leases and sales have a common origin. Thus, there would appear to be no reason for having a double standard for leases and sales in disclaiming an implied warranty of fitness.

In *Sawyer v. Pioneer Leasing Corp.*,[7] the Supreme Court of Arkansas held that section 85-2-316(2) of the Arkansas Commercial Code,[8]

---

[2]Holmes Packaging Mach. Corp. v. Bingham, 252 Cal. App. 2d 862, 60 Cal. Rptr. 769 (Ct. App. 1967); Boehck Const. Equip. Corp. v. H. Fuller & Sons, 19 Wis. 2d 658, 121 N.W.2d 303 (1963); *cf.* Hoisting Engine Sale Co. v. Hart, 237 N.Y. 30, 142 N.E. 342 (1923); Hatten Mach. Co. v. Bruch, 59 Wash. 2d 757, 370 P.2d 600 (1962).

[3]*See, e.g.*, Roto-Lith, Ltd. v. F. P. Bartlett & Co., 297 F.2d 497 (1st Cir. 1962) (applying Mass. and N.Y. law); Donnelly v. Governair Corp., 145 F. Supp. 699 (N.D. Cal. 1956); Traylor Eng'r & Mfg. Co. v. National Container Corp., 45 Del. 143, 70 A.2d 9 (Super. Ct. 1949) (applying Pa. law); Nelson v. Swedish Hosp., 241 Minn. 551, 64 N.W.2d 38 (1954); Hyland v. GCA Tractor & Equip. Co., 274 Wis. 586, 80 N.W.2d 771 (1957). *But see* General Talking Pictures Corp. v. Shea, 187 Ark. 568, 61 S.W.2d 430 (1933) (applying N.Y. law); Standard Oil Co. v. Boyle, 231 App. Div. 101, 246 N.Y.S. 142 (1930).

[4]*See* note 3 *supra;* Kennedy v. Cornhusker Hybrid Co., 146 Neb. 230, 19 N.W.2d 51 (1945); Marks v. Kucich, 181 Wash. 73, 42 P.2d 16 (1935).

[5]UNIFORM COMMERCIAL CODE § 2-316 (2).

[6]*See* Henningsen v. Bloomfield Motors, Inc., 32 N.J. 358, 161 A.2d 69 (1960); Boehck Const. Equip. Corp. v. H. Fuller & Sons, 19 Wis. 2d 658, 121 N.W.2d 303 (1963).

[7]244 Ark. 943, 428 S.W.2d 46 (1968).

[8]This section of the Arkansas Code is taken from UNIFORM COMMERCIAL CODE § 2-316(2):

> (2) Subject to subsection (3) . . . to exclude or modify the implied warranty of fitness the exclusion must be by a writing and conspicuous.

which requires that any disclaimer of implied warranty of fitness be both conspicuous and in writing, is "applicable to leases *where the provisions of the lease are analogous to a sale.*"[9] Sawyer, an independent grocer, had leased an ice machine from the Pioneer Leasing Corporation in reliance upon representations as to its fitness for the purpose for which Sawyer intended it to be used. The ice maker soon ceased to function and after repeated attempts to repair the machine had failed, Sawyer discontinued making the rental payments. When Pioneer Leasing sued to recover the balance due under the lease, Sawyer alleged a breach of implied warranty. Although the lease agreement contained a disclaimer of all warranties,[10] the court held the disclaimer to be invalid because of non-compliance with the Code requirement of conspicuousness.

In extending section 2-316(2) of the UCC to leases, the court relied upon an article by Professor E. Allan Farnsworth,[11] who was of the opinion that implied warranties in general should not be limited to sales. Professor Farnsworth used as a basis for his opinion an official comment to the Uniform Commercial Code[12] which states that the sections on warranties, although limited in scope and purpose to a seller-buyer situation, are not designed to limit in any way the developing case law which recognizes implied warranties in non-sale transactions.[13]

The question of the applicability to a lease of a statutory provision, which is apparently intended to cover a sale situation, had previously arisen under the Uniform Sales Act. Although this is a novel question under the Uniform Commercial Code, the underlying policy considerations governing implied warranties would seem to

---

[9]428 S.W.2d at 54.

[10]No warranties or representations regarding the items herein leased or their condition, quality or suitability, or their freedom from latent defects, have been made or shall be deemed to be made by the Lessor, and Lessee has selected the items leased and the same have been delivered to Lessee at Lessee's sole risk and discretion.

428 S.W.2d at 47-48.

[11]Fransworth, *Implied Warranties of Quality in Non-Sales Cases*, 57 COLUM. L. REV. 653 (1957).

[12]UNIFORM COMMERCIAL CODE § 2-313, Comment 2:

Although this section is limited in its scope and direct purpose to warranties made by the seller to the buyer as part of a contract sale, the warranty sections of this Article are not designed in any way to disturb those lines of case law growth which have recognized that warranties need not be confined either to sales contracts or to the direct parties to such a contract.

[13]*But see* Justice Fogleman's dissent in *Sawyer* criticizing the extension of the UCC to leases. 429 S.W.2d at 54.

indicate identical results since the Sales Act is in many respects the historical foundation for Article 2 of the Code.[14]

The issue of whether the Sales Act was applicable to a lease was first raised in *Hoisting Engine Sale Co. v. Hart.*[15] There, a derrick collapsed and the lessor was held liable for property damage under the theory of implied warranty. The court found the situation to be similar to that of a sale, thus giving rise to an implied warranty of fitness. However, the court deemed it unnecessary to consider the direct application of the Sales Act and relied instead upon the common law development of implied warranties in leases. Thus, while the court recognized a similarity in the underlying policy considerations raised in both types of transactions, it did not incorporate the lease under the Sales Act.

Later courts were persuaded by the agrument that the Sales Act was to be strictly limited to sales transactions. In *Boehck Construction Equipment Corp. v. H. Fuller & Sons,*[16] the Wisconsin supreme court considered the applicability of the Sales Act in an action for breach of an implied warranty involving a lease of construction equipment. Here too, the court looked to the Sales Act but found it was not directly applicable to the lease in question, saying: "the sales act does not operate directly upon any lease which does not involve a contract to transfer property in the goods."[17] In holding the Sales Act to be inapplicable, the court placed its emphasis on the fact that a "sale" was not involved. However, it went on to note that although not directly applicable, the Sales Act did in some instances represent a declaration of the common law. Hence, the Sales Act's description of the circumstances which would give rise to an implied warranty in a sale was persuasive authority for the finding of an implied warranty in a lease tranaction.

In a later case[18] involving an action by a lessor to recover rent due on a lease contract, the lessee pleaded the breach of an implied warranty of fitness as a defense. It was urged that the Sales Act's provision governing implied warranties was controlling. The court held

---

[14]Llewellyn, *Why a Commercial Code?*, 22 TENN. L. REV. 779, 785 (1953).

[15]237 N.Y. 30, 142 N.E. 342 (1923).

[16]19 Wis. 2d 658, 121 N.W.2d 303 (1963).

[17]*Id.* at 306.

[18]Holmes Packaging Mach. Corp. v. Bingham, 252 Cal. App. 2d 862, 60 Cal. Rptr. 769 (Ct. App. 1967); *accord,* Hatten Mach. Co. v. Bruch, 59 Wash. 2d 757, 370 P.2d 600 (1962).

that the section was limited to sales and was not directly applicable. However, it went on to say:

> [T]he implied warranties which are applicable in bailment contracts are analogous to those applicable in sale transactions, and we proceed to analyze the instant case within the ambit of [Sales Act provisions] providing that goods be of merchantable quality and that they be fit for the purpose for which they are furnished.[19]

In apparent agreement with *Hoisting Engine* and *Boehck,* the court, in applying the Sales Act, looked to the underlying policy considerations governing implied warranties. This approach would appear to be consonant with the Code.[20]

The courts basing their decisions on the Sales Act have utilized a "policy" approach in that they focused their attention on the similarity of the underlying policy considerations between a lease and a sale. This policy approach is advocated by Professor Farnsworth in his article.[21] *Sawyer,* on the other hand, utilized a categorical approach, emphasizing the attributes of the transaction. Both approaches purport to be analogies, but *Sawyer* uses the analogy as a vehicle to transform a lease into a sale. Although relying extensively on the arguments of Professor Farnsworth as to the use of analogy in a lease transaction, the court apparently failed to recognize the advantages of the policy approach. This policy approach makes it easier to adjust and readjust legal principles to altering social conditions, thus avoiding the confusion of declaring what was not a sale yesterday to be a sale today. It also makes possible the extension of sales principles to transactions which can not categorically be defined as sales but which should be treated similarly, thereby focusing attention upon the reasons for such an extension rather than emphasizing the category of the transaction. *Sawyer* makes the mistake of emphasizing the category of the transaction instead of looking to the underlying policy consideration of the Code provision.

Although there have been no other decisions which have extended section 2-316(2) to leases, several courts have used the policy analogy by applying Code principles to situations which the Code did not purport to cover. Section 2-202, which deals with contractual integra-

---

[19]60 Cal. Rptr. at 775-76.

[20]*See* note 12 *supra;* UNIFORM COMMERCIAL CODE § 1-102(1).

[21]Farnsworth, *Implied Warranties of Quality in Non-Sales Cases,* 57 COLUM. L. REV. 653, 667-69 (1957); *see* Note, *The Uniform Commercial Code as a Premise for Judicial Reasoning,* 65 COLUM. L. REV. 880 (1965).

tion, has been extended by analogy to cover investment securities.[22] Sections 2-614 and 2-615, which concern impossibility or impracticability of performance and substituted performance, have been applied by analogy to a contract for the carriage of goods.[23] Additionally, section 2-708(2), which provides for the recovery of overhead in certain circumstances, has been applied to a contract which was not controlled by the Code.[24]

Sawyer utilized an analogy to categorize a lease as a sale and then directly applied the Code. It appears that another possible approach involving a direct application of the Code, but without the confusing use of "analogy" was open to the court. An analysis of the Code in its entirety indicates that the Code itself could be authority for an extension of Article 2 to certain leases.[25] *Sawyer* limits its holding to "leases *where the provisions of the lease are analogous to a sale.*" Although the court did not enumerate the criteria to be used in determining when a lease becomes analogous to a sale, it did emphasize several factors which it considered to be of importance. The contract provided that the lessee should pay all expenses of repairs and maintenance. Furthermore, the testimony revealed that the parties probably intended that there was to be an option to purchase.[26] Since the Code should be read as an integrated body and not as nine separate Articles, each an entity in itself,[27] these representative facts are also important in conjunction with Article 9, which purports to include coverage of leases which are intended to create security agreements.[28]

---

[22]Stern & Co. v. State Loan & Fin. Corp., 238 F. Supp. 901 (D. Del. 1965); Hunt Foods & Indus., Inc. v. Doliner, 26 App. Div. 2d 41, 270 N.Y.S.2d 937 (1966).

[23]Transatlantic Financing Corp. v. United States, 363 F.2d 312 (D.C. Cir. 1966).

[24]The court held in allowing recovery for overhead that:

> While this contract is not controlled by the Code, the Code is persuasive here because it embodies the foremost modern legal thought concerning commercial transactions. Indeed, it may overrule some of the cases denying recovery for overhead.

Vitex Mfg. Corp. v. Caribtex Corp., 377 F.2d 795, 799 (3d Cir. 1967).

[25]Justice Fogleman in his dissent points out an argument against this approach:

> It is significant that when there is an intention that a lease is to be covered by any of the provisions of the Uniform Commercial Code, that intention is given expression. [reference is made to sections 9-102(2); 1-201(37); 9-105(1)(h)] This seems to be a very strong indication that no other code provisions were intended to apply to leases under any circumstances.

428 S.W.2d at 55.

[26]The court found the transaction was very similar to a sale and distinguished it from such, primarily because the lease contained a clause which required the lessee to redeliver the leased chattel to the lessor upon the expiration of the term.

[27]Hawkland, *Article 9 Methodology*, 9 WAYNE L. REV. 531 (1963).

[28]UNIFORM COMMERCIAL CODE § 9-102(2).

The general definition section of the Code serves as a guideline in determining what is meant by *a lease intended as a security agreement.*[29] The cases which have interpreted sections 9-102(2) and 1-201(37) have emphasized the presence of an option to purchase the leased chattel as evidence of the parties' intention to create a security interest.[30] The consideration for the purchase must be nominal, or at least considerably less than the market value of the chattel at the time the option is executed.[31]

Courts have not hesitated to pierce the wording of an agreement which purports to be a lease in finding that the "lease" is actually a conditional sale.[32] When the lease is really a financing arrangement, especially in situations similiar to that in *Sawyer*[33] where the lessor has no property to lease and merely intends to supply and finance the chattel at a profit, the courts have found the contract to create a security interest.[34]

When Article 9 and the definitional material are read in conjunction with the cases interpreting these sections, the purported "lease" in *Sawyer* may actually have been a conditional sale, with the lessor, Pioneer Leasing, retaining a security interest in the unpaid balance. Under Article 9 a conditional sale is treated as a purchase money security interest.[35] Although Article 2 purports to exclude transactions which are intended to operate solely as a security interest,[36] it does regulate the sale aspects of such transactions.[37] In fact, Article 9 specifically states that where a purchase money security interest is involved, Article 2 "governs the sale and any disclaimer, limitation or modification of the seller's warranties."[38] Under this analysis, a conditional sale which takes the form of a lease is governed by the

---

[29]UNIFORM COMMERCIAL CODE § 1-201(37).

[30]*See* Sanders v. National Acceptance Co. of America, 383 F.2d 606 (5th Cir. 1967); *In re* Overbrook & Barson's, Inc., 5 UCC REP. SERV. 546 (E.D. Pa. 1968); *In re* Washington Processing Co., 3 UCC REP. SERV. 475 (S.D. Calif. 1966); *In re* Atlanta Times, Inc., 259 F. Supp. 820 (N.D. Ga. 1966).

[31]UNIFORM COMMERCIAL CODE § 1-201(37); *see In re* Falco Prods. Co., 5 UCC REP. SERV. 264 (E.D. Pa. 1968); *In re* Wheatland Elec. Prods. Co., 237 F. Supp. 820 (W.D. Pa. 1964).

[32]*See* Sanders v. Commercial Credit Corp., 398 F.2d 988 (5th Cir. 1968); *In re* Dennis Mitchell Indus., Inc., 4 UCC REP. SERV. 1082 (E.D. Pa. 1967); *In re* Merkel, Inc., 45 Misc. 2d 753, 258 N.Y.S.2d 118 (Sup. Ct. 1965).

[33]428 S.W.2d at 49.

[34]*In re* Transcontinental Indus., Inc., 3 UCC REP. SERV. 235 (N.D. Ga. 1965); *accord, In re* Pomona Valley Inn, 4 UCC REP. SERV. 893 (C.D. Calif. 1967).

[35]UNIFORM COMMERCIAL CODE § 9-107(b).

[36]UNIFORM COMMERCIAL CODE § 2-102.

[37]UNIFORM COMMERCIAL CODE § 2-102, Comment.

[38]UNIFORM COMMERCIAL CODE § 9-206(2).

provisions of Article 2 as to warranties and any other sale aspect of the transaction. This approach, however, can only be used when the "lease" is actually a conditional sale. Neither this approach nor *Sawyer's* transaction analogy covers a bona fide lease which does not possess the attributes of a sale. This latter type of lease should not be excluded from the application of the Code merely because of a categorical distinction when the underlying policy considerations are the same. It would therefore appear that where the lease is not a conditional sale, the best approach in applying the Code would be the analogy approach which emphasizes the underlying policy considerations.

Although *Sawyer* has provided subsequent courts with a starting point in facing the issue of when the Code should be applied to a lease transaction, the decision raises numerous questions. While the court limits its holding to *"leases the provisions of which are analogous to a sale,"* it fails to enumerate the criteria for determining when the provisions do become analogous.[39] By so limiting its decision, *Sawyer* may have excluded many leases which have analogous underlying policy considerations but do not fulfill the requirement of being analogous to a sale. This appears to be an artificial limitation which ignores the advantages of the analogy approach.

In any further extension of *Sawyer,* courts may be faced with the possibility of overruling by implication or seriously undermining previous cases which have used the underlying policy consideration of the Sales Act analogy. Prior to the adoption of the UCC, courts referred to the Sales Act not only in raising implied warranties by analogy[40] but also for direct authority in their interpretation and decisions. In some instances the Code has incorporated the provisions of the Sales Act.[41] However, there are several sections where the provisions of the Sales Act and the Code are different. The Sales Act pro-

[39]Justice Fogeman in his dissent criticizes this shortcoming in the decision: "I cannot tell, and it is not suggested, when a lease of personal property is analogous to a sale." 428 S.W.2d at 56.

[40]*See* note 2 *supra.*

[41]For example, UNIFORM COMMERCIAL CODE § 2-607(3)(a) requires that a buyer must within reasonable time give notice to the seller of any breach of warranty or be barred from any remedy. The UNIFORM SALES ACT § 49 also requires notice of any breach of warranty, and courts have applied the Act's requirement by analogy in requiring that notice be given to a lessor before the lessee can recover for a breach of warranty. Boehck Const. Equip. Corp. v. H. Fuller & Sons, 19 Wis. 2d 658, 121 N.W.2d 303 (1963); *see* Tuttle v. Irvine Const. Co.'s Receiver, 253 Ky. 538, 69 S.W.2d 1034 (1934).

vision that a sale of a specified article under its patent or tradename would not raise an implied warranty of fitness has, by analogy, been applied to a lease transaction.[42] This limitation is absent from the Code. If the Code is to be further extended with regard to leases, these previous cases, now part of our common law, would either no longer be controlling or their value as precedent seriously undermined.

The Code also provides a guideline for construing the cumulation or conflict of warranties.[43] Pre-Code cases have held that the inclusion of an express warranty in a bailment contract does not negate the existence of an implied warranty of fitness unless the express warranty is inconsistent with the implied warranty.[44] Under the Code even an inconsistent express warranty cannot exclude or modify an implied warranty of fitness.[45] Although it is difficult to visualize an express warranty which would be inconsistent with an implied warranty of fitness, the problem might arise where a lessor gives an express warranty in lieu of all other warranties. If these words are not sufficient to constitute a disclaimer under section 2-316, then an implied warranty of fitness would still arise notwithstanding the inconsistent express warranty.

Another divergent point between case law involving leases and the Code is the importance of an opportunity to inspect the chattel before consummation of the contract. In a lease transaction, where the lessee has had either the opportunity of inspecting or has inspected the chattel before taking possession, there has been no implied warranty of fitness.[46] The only limitation under the Code is that there is no implied warranty of fitness "where the buyer before entering into the contract has examined the goods or the sample or model as fully as he desired or has refused to examine the goods...."[47] Thus, the

---

[42]Demos Const. Co. v. Service Supply Corp., 153 Pa. Super. 623, 34 A.2d 828 (1943); *accord,* Pennsylvania R.R. v. J. Jacob Shannon & Co., 363 Pa. 438, 70 A.2d 321 (1950).

[43]UNIFORM COMMERCIAL CODE § 2-317.

[44]Hartford Battery Sales Corp. v. Price, 119 Pa. Super. 165, 181 A. 95, 98 (1935) (relying on Uniform Sales Act § 15); *see* Carlo Bianchi & Co. v. Builders' Equip. & Supplies Co., 347 Mass. 636, 199 N.E.2d 519, 525 (1964).

[45]UNIFORM COMMERCIAL CODE § 2-317(c); *see* L & N Sales Co. v. Stuski, 188 Pa. Super. 117, 146 A.2d 154 (1958).

[46]Schmidt-Hitchcock Contractors v. Dunning, 38 Ariz. 360, 300 P. 183 (1931); *see* Electrical Advertising, Inc. v. Sakato, 94 Ariz. 68, 381 P.2d 755 (1963)) (no opportunity to inspect); Marcos v. Texas Co., 75 Ariz. 45, 251 P. 2d 647 (1952) (no opportunity to inspect). *But see* Ekco Prods. Co. v. United States, 312 F.2d 768 (Ct. Cl. 1963).

[47]UNIFORM COMMERCIAL CODE § 2-316(3)(b).

mere opportunity to inspect would not negate an implied warranty of fitness.[48]

The measure of damages for breach of warranty arising out of both a sale under the Code and a lease transaction appears to be very similar.[49] However, a problem might arise regarding the statute of limitations upon which the cause of action is predicated. The Code provides that an action for breach of any contract for sale must be commenced within four years after the cause of action has accrued.[50] In Arkansas, an action for breach of an express warranty must be commenced within five years,[51] while the statute of limitations for an action upon the breach of an implied warranty is three years.[52] Thus, statutes of limitations may become an important issue if a court applies the Code to either raise or construe a warranty arising from a lease transaction.

Although *Sawyer* specifically limits its decision to disclaimer of implied warranties under Section 2-316(2), it seems likely that other courts will also look to the Code in construing warranties in lease contracts. Since the Code departs from the common law in many sections, it would appear that the courts should adopt guidelines in applying Code sections to leases. The *Sawyer* approach, which emphasizes the attributes of the transactions, is not an entirely satisfactory solution. This method excludes many leases which do not have the external characteristics of a sale but do have similar policy considerations. It is possible that the court was not actually aware of the artificial limitation it imposed as it apparently failed to recognize and make use of the advantages which are offered by the analogy approach.

D. WHITNEY THORNTON, II

---

[48]UNIFORM COMMERCIAL CODE § 2-316(3)(b), comment 8.

[49]*Compare* UNIFORM COMMERCIAL CODE §§ 2-714(2), 2-715 *with* Motion Pictures for Television, Inc. v. North Dakota Broadcasting Co., 87 N.W.2d 731 (N.D. 1958) *and* Cintrone v. Hertz Truck Leasing, 45 N.J. 434, 212 A.2d 769 (1965).

[50]UNIFORM COMMERCIAL CODE § 2-725.

[51]ARK. STAT. ANN. § 37-209 (Repl. Vol. 1962); *see* Louisville Silo & Tank Co. v. Thweatt, 174 Ark. 437, 295 S.W. 710 (1927).

[52]ARK. STAT. ANN. § 37-206 (Repl. Vol. 1962); *see* Scroggin Farms Corp. v. Howell, 216 Ark 569, 226 S.W.2d 562 (1950).