

AGEC 3713 Agricultural Law - Contract Law - Part 2 (Sale of Goods)

true

October 2016

Introduction

- ▶ What are goods?
 - ▶ All personal property that are tangible and moveable at the time identification of the contract.
- ▶ Examples:
 - ▶ unborn animals, growing crops, and other identified things attached to reality
- ▶ Article 2 of UCC

Section 2-105. Definitions: Transferability; “Goods”; “Future” Goods; “Lot”; “Commercial Unit”. (1) “Goods” means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (Article 8) and things in action. “Goods” also includes the unborn young of animals and growing crops and other identified things attached to realty as described in the section on goods to be severed from realty (Section 2-107).

Goods must be both existing and identified before any interest in them can pass. Goods which are not both existing and identified are “future” goods. A purported present sale of future goods or of any interest therein operates as a contract to sell. There may be a sale of a part interest in existing identified goods.

Severance

Par 2-107. Goods to Be Severed From Realty: Recording. (1) A contract for the sale of minerals or the like (including oil and gas) or a structure or its materials to be removed from realty is a contract for the sale of goods within this Article if they are to be severed by the seller but until severance a purported present sale thereof which is not effective as a transfer of an interest in land is effective only as a contract to sell.

A contract for the sale apart from the land of growing crops or other things attached to realty and capable of severance without material harm thereto but not described in subsection (1) or of timber to be cut is a contract for the sale of goods within this Article whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at the time of contracting, and the parties can by identification effect a present sale before severance.

Example

Eric signed a contract to buy a foal from Constellation Stables. The foal was conceived three months earlier but has not yet been born. Because the foal exists, albeit unborn, it is a good. For that reason, this is a contract for the sale of goods under article 2 of the UCC.

Contract to sell vs contract for the sale of goods

This is important for options and futures.

► Example:

Eric signed the contract to buy a foal from Constellation Stables. The contract specifies that the foal will be the offspring of gracious Mare and the stallion, King's Ransom. Gracious Mare has not yet been bred to King's Ransom. As the foal does not yet exist, it cannot be a good. This is not a contract for the sale of goods under Article 2 of the UCC.

Statute of Frauds

Par 2-201. Formal Requirements; Statute of Frauds. (1) Except as otherwise provided in this section a contract for the sale of goods for the price of \$500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. 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.

Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (1) against such party unless written notice of objection to its contents is given within 10 days after it is received.

(3) A contract which does not satisfy the requirements of subsection (1) but which is valid in other respects is enforceable (a) if the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement; or (b) if the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or (c) with respect to goods for which payment has been made and accepted or which have been received and accepted (Sec. 2-606).

Example

The Big Milling Company contracted with the Big Grain Company to buy 100,000 bushels of spring wheat for delivery on June 15. The contract stated that the price was to be the spot price, Minneapolis, on the date of delivery. As there is an adequate mechanism for setting the price the contract is enforceable.

Exceptions

- ▶ Subsections (2) and (3) deal with exceptions.
- ▶ 10 day rule limits the applicability of the statute of frauds
- ▶ Merchants are defined to be people who regularly deal with a specific type of good.
- ▶ Merchants are defined for that good only.
- ▶ Known as the “merchants exception”.

Par 2-104. Definitions: “Merchant”; “Between Merchants”; “Financing Agency”. (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.

(2) “Financing agency” means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller’s draft or making advances against it or by merely taking it for collection whether or not documents of title accompany the draft. “Financing agency” includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (Section 2-707).

(3) “Between Merchants” means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

Merchants

- ▶ special rules for merchants (typical of many legal systems)
- ▶ Firm offer (open for specific time or for 3 months)
- ▶ value is not relevant with respect to firm offers unlike with an ordinary contract.
- ▶ Counter-offers do not terminate contracts between merchants

Other features of sales contracts

- delegation to others - prohibition of delegation - warranties - warranty of merchantability (goods of type generally accepted for trade) - warranty of fitness (adulterated goods not merchantable) se Food, Drug and Cosmetic Act. - implicit warranties (depends on specific purpose) - disclaimers must be in clear language - express warranties

Example

MegaEgg sells fresh eggs to an eggbreaker that makes dried powdered eggs for use in university cafeterias (avoid the eggs). MegaEggs knows this. Because MegaEggs know this there is an implied warranty that the eggs are fit for human consumption. There is also an implied warranty that the eggs contain no off-flavors objectionable to humans.

Remedies for breach

- ▶ Buyer breaches before delivery then seller may resell goods and sue for the difference in value
- ▶ seller may choose not to resell and bring action for damages against the buyer based on difference between contract and market value
- ▶ sue to recover lost profits (in case of inadequate damages)

Latter used by volume sellers

- ▶ Seller breaches first
- ▶ Buyer can “cover” buy substitute goods (remember the marketing course)
- ▶ Seek damages for the difference between contract and cover price
- ▶ Nonconformity. notice of nonconformity, then keep goods and sue for breach of warranty
- ▶ Seller must be given opportunity to cure breach if delivery date has not expired

Perfect tender

- ▶ substantial compliance (for other types of contract)
- ▶ Contracts for sale of goods must be perfect
- ▶ Nonconforming goods are a breach of contract (implied warranties matter here)
- ▶ Providing higher value goods as a substitute is still a breach of contract
- ▶ Providing substitutes requires the buyers permission

Nonconformity gives buyers an out if resale price moves against them

Products liability

- ▶ Legal theories:
 - ▶ focus on product then use breach of warranty (contract law)
 - ▶ focus on conduct of seller or manufacturer use negligence or strict liability (tort law)

Express Warranties

plain statements oral or written made by seller - exaggerated sales pitches do not count (“puffing”) - Divide between puffing and breach is not clear

Implied warranties

- ▶ merchantability
- ▶ fit for purpose
- ▶ merchantability is always implied in contracts for the sale of goods if the seller is a merchant
- ▶ warranties implied by usage of trade
- ▶ Adulterated feed violates merchantability

Contract defenses

- ▶ lack of privity of contract (I have no contractual relationship with the person)
- ▶ lack of privity used in product liability cases
- ▶ Defense fails if purchaser is in the chain of commerce
- ▶ Disclaimers “as is” “with all faults”
- ▶ Whether this works depends on how conspicuous the disclaimer is and whether it is unconscionable.

- ▶ Unconscionable: e.g. liability disclaimer for personal injury from consumer goods.
- ▶ No disclaimers for adulterated food
- ▶ obvious defects not subject to implied warranties
- ▶ If buyer does not inspect product when asked to by seller then no implied warranty is created (protects seller)