Wisconsin Uniform Commercial Code Handbook

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BOOK REVIEW


The Institute of Continuing Legal Education for Wisconsin has induced a group of very able and competent men to prepare a book entitled Wisconsin Uniform Commercial Code Handbook.

As of this writing, only the materials on sales and secured financing have been published. Six additional chapters covering the remaining sections of the Code are contemplated. The book is in loose-leaf form. Each chapter has been written by an expert, who has acquired his expertise as a practicing specialist and who participated as a lecturer in a series of lectures sponsored by CLEW to prepare the Bench and Bar for functioning under the Code. A few professors have lent a helping hand. Space does not permit adequate acknowledgment of their individual and collective efforts relative to the handbook, in adapting the Code for use in Wisconsin and subsequently instructing the Bench and the Bar. They are to be commended. To Professor Orrin L. Helstad, of the Wisconsin Law School, fell the task of organizing and editing the individual writings as an entity.

Professor Helstad tells us that the editors' original concept was simply to provide a functional outline of the principal provisions of the Code and a checklist for the general practitioner. It does more because it stresses drafting tips, counseling suggestions, filing procedures and techniques designed to keep the client out of trouble. It is not an annotator of the Code.

The assignment of this writer was to review the first seven chapters which deal with the law of the sale of personal property. Other reviewers will comment on subsequent chapters.

Chapter I, written by Richard Cudahy,1 indicates those provisions of the Code which constitute changes in the law of the formation of a sales contract including sales by auction and the statute of frauds. The principal departures from pre-Code law made necessary to accommodate modern commercial needs and methods are contained in the section entitled Practice Tips Summarized.

Descriptive and colorful language is employed by Mr. Cudahy to explain the new rules which constitute the substance of the revisions. He correctly states that such practices as "ribbon-matching" and the "last shot technique" used in the "battle of forms" when the sales agreement is created by the transmittal of written forms instead of

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face to face negotiation may be ruled to be out of bounds. Some practical suggestions concerning techniques limiting the effect of certain of the new provisions are included, as well as the various ways the statute of frauds now can be satisfied. Departures from the contract law principles of uncertainty and mutuality of obligations are emphasized as they relate to open price agreements; agreements relating to output, requirements and exclusive dealings; and agreements relating to options and cooperation respecting performance.

Certainly the casual practitioner of commercial law will find the first chapter an excellent orientation in the new law.

The next two chapters are written by Kenneth K. Luce and concern the nonwarranty and warranty terms of the sales contract.

Mr. Luce observes that the Code goes far beyond the sales act in supplying rules which shall govern the parties' performance when the contract negotiated by them is silent upon the subject.

In very readable language he summarizes the Code's provisions concerning delivery. The reader's attention is directed to the clarification of the meaning of such terms as f.o.b. and f.a.s. as they relate to risk and the expense of delivery. He also warns that certain other delivery jargon or shorthand expressions are now defined by the Code. Mr. Luce underscores that the risk of loss and the rights and duties of the buyer and seller in many situations no longer follows title. Risk of loss is treated in two ways. There are special rules for the situation in which the contract has not been breached and in situations where there has been a breach.

Perhaps Mr. Luce's most helpful assistance to the practitioner is his suggestions as to how the draftsman can obtain greater specificity concerning the performance of the contract.

In Chapter III, Mr. Luce deals with warranties, disclaimers, control of remedies and damages, privity, and the necessity of a sale as a condition of warranty liability. The significant changes concerning warranties of quality are enumerated and keyed to the statutory sections. Attention is directed to the fact that certain warranties formerly designated as implied are now made express warranties. The significance is related to the permissible area of disclaimer. An excellent summary of the Code's provisions relating to the troublesome matter of disclaimers has been prepared by Mr. Luce.

The unsuspecting student steeped in traditional law will be relieved to find a lucid explanation of the Code's heresy regarding the "unconscionable contract." By authority of this section, the Courts have power to refuse to enforce a contract which they determine as a matter of law to be unconscionable. Drafters of the Code have sought to im-

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munize the law from distortions of legal principles by courts attempting to escape the consequences of an unjust contract by permitting the courts to do directly what they have done indirectly in the past.

Mr. Luce has done an excellent job of the subject assigned to him.

Chapter IV is entitled "The Performance of the Sales Contract" and is prepared by David L. Walther. This chapter consists of two parts which are respectively entitled Basic Performance Obligations and Mitigating Provisions. In the first section, Mr. Walther outlines the basic obligations of the buyer and seller in reference to the tender of conforming goods, acceptance and payment. The discussion of the basic obligations between the seller and buyer are appropriately brief because the rules are relatively specific and clear-cut.

In the second section of Mr. Walther's chapter he deals with new concepts limiting the rigors of strict performance by the introduction of rules permitting and regulating the opportunity to cure a failure of strict performance, modification of the law of impossibility by the theory of commercial impracticability, and in clarifying the rules of anticipatory repudiation and the situations in which the doctrine applies.

In general, he offers suggestions of the meaning of these new concepts and assistance to the understanding of their impact. Readers who are confronted with problems in the area of Mr. Walther's subject will find his discussion most helpful.

The final three chapters are written by Paul Barnes and respectively deal with the remedies of the buyer, seller and creditors. The materials are well-organized and well-presented. Mr. Barnes observes that in the main the buyer's rights are not substantially different than under pre-Code law. Helpful to the uninitiated in sales law is the underscoring that remedies of either the buyer or seller must be approached from a posture of whether there has or has not been final acceptance of the goods. He discusses the buyer's remedies with appropriate references to those sections which govern what constitutes an acceptance, the buyer's right of rejection, the manner and effect of rejection, the right to revoke an acceptance and his duties and options concerning the rejected goods. He notes that the Wisconsin statute differs from the official Code version in that Wisconsin adopts a six-year rather than a four-year statute of limitations.

Nine definite contractual provisions are suggested which the buyer may desire to include in the contract to avoid the results of the operation of the Code affecting the buyer's remedies. Draftsmen of commercial documents are further assisted in that they are advised that

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in addition to the general limitations on the freedom of contract imposed by the unconscionability section, there are four other limitations. These are enumerated.

Finally, the chapter on the buyer's remedies concludes with an index of remedies. Reference to the index will adequately direct counsel to his choice of remedy and alert him to problems involved.

The same technique of indexing rights is used in the chapter concerning the seller's remedies. Those remedies of the seller which are not dependent upon acceptance are also discussed. Mr. Barnes points out that the same contract drafting suggestions apply to the seller as well as to the buyer.

The final chapter enumerates the rights of creditors of both the buyer and seller respectively before and after delivery.

The Handbook insofar as it relates to sales is not a substitute for the Code itself, but it is an important tool which will aid the practitioner as a draftsman, counselor and trial lawyer. The efforts of the experts to focus all applicable sections of the law bearing on a particular problem are a boon to the lawyer who but occasionally is confronted with commercial transactions covered by the Code and who would have difficulty relating the various sections to his problem. Of course, the practitioner will have to check the case law of his own state and that of other states to see if the courts have construed the law in conformity with the analyses by the authors of the handbook.

The foregoing paragraph simply restates the admonitions contained in the preface. Mr. Helstad's descriptions of the strengths and limitations of the handbook apply very well to the chapter on sales.

The handbook is a deskbook well worth having during these early days of the Code. It may become even more valuable in the future as the law develops. This writer suggests a single present major deficiency.

There is a lack of emphasis on the three underlying purposes and policies of the Code. Perhaps the editor will find space to include such.

Despite the tremendous growth of our industrial and commercial economy and the constant innovations of trade practices, the law has suffered a lag or gap of some fifty years between the adoption of the Uniform Sales Act and the present Code. Consequently, the draftsmen were required to make major revisions in the existing law in an effort to harmonize the law with present day commercial practices and understandings of business men. They recognized that the traditional methods of the law tend to freeze its application to fixed concepts though such become outmoded. Therefore, they went further and tried to create a flexible and expandable statutory basis for commercial

\[^{5}\text{Wis. Stat. Chs. 116-122. (1963).}\]
transactions. They also recognized that the field of operations of a local merchant today in fact embraces all fifty states, and that commercial certainty can only be obtained if there is uniformity of the law in its application throughout the country.

With these purposes in mind, the authors of the Code in the first chapter provided that the underlying purposes and policies of the Code are as follows: (1) to simplify, clarify and modernize the law governing commercial transactions; (2) to permit the continued expansion of commercial practices through custom, usage and agreement of the parties; and (3) to make uniform the law among the various jurisdictions.

It is the mandate that the Code shall be liberally construed and applied to promote these underlying purposes and policies. Students of the Uniform Sales Act are well aware that it was not applied with uniformity throughout the states, that decisions under the act often constituted a backward step in the law and that some new provisions were never applied or effectuated by the courts. The present Code is the end product of a tremendous combined effort of many able lawyers, judges, professors, business men and legislators. It encourages further development in many areas by the courts. Their efforts and purposes should not be thwarted or stultified by reasoning contrary to these basic purposes.

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