Article 2 applies to “transactions in goods,” not just sales, but many of the key warranty provisions apply only to a “sale” or “contract for sale” of goods, or only to a “seller.” A sale “consists in the passing of title from the seller to the buyer for a price.” An installment sales contract is a transaction in goods even though it also involves financing. The consideration for a sale may be something other than money.

On the other hand, one court held that a warranty issued as part of an agreement settling earlier litigation about a motor home was not issued as part of the sale, and thus was not an Article 2 warranty. An agreement by which a car salesman had use of a vehicle as a demonstrator was not a sale because it was clear that title would not pass to him. Neither a bailment or a license to use goods is a sale. A gift is not a sale.

Even though the definition of sale refers to the passing of title, the introductory language to the definition states that the definition controls “unless the context otherwise requires.” In addition, U.C.C. § 2-401 provides that “each provision of [Article 2] with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title.” A court therefore concluded that a franchisor who ordered a product could assert a warranty claim against the seller, even though the product was delivered to a franchisee.

Footnotes


100 [88] See U.C.C. §§ 2-312(a), 2-313(1), 2-314(1), 2-315. See generally § 5.11 [1], infra (definition of “seller”).


103 [91] Dahl v. Aritech, Inc., 66 U.C.C. Rep. Serv. 2d 770 (D. Minn. 2008) (participation in clinical trial, which provides manufacturer with research information, can be considered payment of a price and thus can be a sale subject to U.C.C. Article 2).


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