

UNIFORM COMMERCIAL CODE ANNOTATIONS

This section contains a digest of all reported decisions interpreting provisions of the Uniform Commercial Code published during the month of December 1965 in the National Reporter System.

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ARTICLE 1: GENERAL PROVISIONS

SECTION 1-205. Course of Dealing and Usage of Trade

MARTIN V. BEN P. EUBANK LUMBER Co.
395 S.W.2d 385 (Ky. Ct. App. 1965)

This is an action by plaintiff to recover a ten per cent discount on building materials purchased from defendant. Plaintiff attempted to procure by interrogatories names of other persons to whom defendant had given discounts to show an agreement as to the discounts, alleging that Section 1-205 made such evidence competent. The lower court held for the defendant, stating that defendant was not required to disclose such names. The appellate court affirmed, holding that Section 1-205 may be used to *explain* ambiguities in a contract, but this does not mean that a course of dealing or trade usage may be used to *make* a contract. The court further held that the term "ten per cent" is a plain term requiring no trade usage or custom to determine its meaning."

COMMENT

Contrary to the court's position, under Section 2-204, "course of dealing" or "usage of trade" *can* be used to *make* a contract for the sale of goods. In addition, the court erred in summarily excluding plaintiff's evidence concerning the term "ten per cent" on the ground that it "is a plain term requiring no trade usage to determine its meaning." The question was not whether the term was ambiguous, but whether the agreement can be said to have included the discount. Viewed in this light, evidence of course of dealing or usage of trade is admissible. Section 2-202.

The court's result, however, was correct, since the evidence should have been excluded on other grounds. The Code provides that a contract can be explained and supplemented by (1) course of performance, (2) course of dealing, and (3) usage of trade. Sections 1-205, -208. But the first two terms require evidence of dealings between the parties themselves, and "usage of trade" is defined as "any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation

that it will be observed with respect to the transaction in question." Here, plaintiff's proffered evidence, showing transactions between the seller and *other* buyers, does not fit within any of the above terms.

R.R.B.

ARTICLE 2: SALES

SECTION 2-104. Definitions: "Merchant"; "Between Merchants"; "Financing Agency"

COOK GRAINS, INC. v. FALLIS
395 S.W.2d 555 (Ark. 1965)
Annotated under Section 2-201, *infra*.

SECTION 2-201. Formal Requirements; Statute of Frauds

COOK GRAINS, INC. v. FALLIS
395 S.W.2d 555 (Ark. 1965)

Defendant, a farmer, allegedly entered into a verbal agreement with an agent of plaintiff, a grain dealer, to sell 5,000 bushels of soybeans to plaintiff. Thereafter, in confirmation of the oral agreement, plaintiff sent a proposed written contract, which it had signed, to defendant for his signature, but defendant neither signed nor returned the writing. When defendant refused to deliver the beans, plaintiff brought an action for breach of the alleged contract. Plaintiff contended that defendant was a "merchant" and that, even though he had not signed the writing as required by Section 2-201(1), the agreement was enforceable under Section 2-201(2) because defendant failed to give notice of his objection to the written proposal. The trial court entered judgment for defendant.

In affirming, the supreme court held that the defendant was not a "merchant" within the meaning of Section 2-201(2), and thus his failure to object to the proposed contract within ten days after he had received it did not render it enforceable. The court interpreted the definition of "merchant" in Section 2-104(1) as including only professional traders and not farmers.

COMMENT

Although the court may not have been accurate when it determined that a farmer is not a "merchant" within the definition of Section 2-104(1), its decision may still be regarded as correct if the policy of giving special treatment to farmers and farm products set forth in Article 9, Sections 9-109, -307(1) and -401, is considered applicable to farmers under other Articles as well.

It is suggested, however, that all farmers may not deserve equal treatment since many men engaged in farming are now professionals within the meaning of Section 2-104. See Section 2-104, Comment 2. To these farmers, the provisions of Section 2-201(2) should be applicable.

H.A.H.