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# Secured Transactions

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from employment of the opposite sex"[71] and thereby permit him to pay a justifiably lower wage to his female employees. Because an employer who utilizes female labor incurs this additional cost, coupled with his inability to set-off this expense by paying these employees lower wages, will result in many employers being financially prohibited from hiring, or continuing to employ women workers. Thus, there looms the distinct possibility that this well-meaning piece of social legislation, while providing the majority of working women with long awaited economic equality, will have the ironic effect of eliminating from the labor market many members of the fair sex.

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## SECURED TRANSACTIONS

California recently enacted two amendments to its Retail Installment Sales Act[1] (the Unruh Act) redefining the rights and obligations of a defaulting conditional buyer. The amendments concern such buyer's liability for the expenses of retaking and storage when the seller has repossessed the goods prior to a resale and the buyer's subsequent liability for any deficiency remaining on the contract after the resale. These amendments differ markedly from the common law, the pre-amendment California Retail Installment Sales Act, the Uniform Conditional Sales Act, and the Uniform Commercial Code.

The amendments are part of a growing field of legislation designed to protect the buyer under an unwise installment or conditional sales contract.[2] As a result of the increased popularity of this type of financing arrangement, the law in this area is undergoing a period of legislative expansion.[3] Underlying these developments is the basic policy conflict between the desire to protect the buyer-consumer to equalize his bargaining position with that of the seller-lender and the reluctance to stifle business through over-regulation of conditional sales financing.[4] This note will trace briefly the development

[71] 109 Cong. Rec. 8705 (daily ed. May 23, 1963).

[1] Cal. Civil Code § 1812.2 — 1812.5 (Supp. 1962), as amended by Cal. Laws 1963, ch. 1952.

[2] It is helpful to outline the nature of the conditional sale as a security device regulating the rights of the parties to the agreement. The conditional buyer buys under a deferred payment arrangement. If the buyer defaults, the seller has the power to realize on his security interest in the buyer's obligation to pay. Ownership, title, and the attendant risks as to the goods are divided between the parties. The chattel mortgage, on the other hand, is not limited to the sale of goods, but covers any situation in which money is lent against tangible security. It is essentially a conveyance from a debtor to his creditor of a security interest in the property subject to the mortgage, which binds the debtor until he has fully paid his debt. The chattel mortgagee, unlike the conditional seller, must record to protect his security interest.

[3] Hogan, A Survey of State Retail Instalment Sales Legislation, 44 Corn. L.Q. 38 (1958).

[4] These conflicting policy considerations have been discussed by many of the commentators. See Hogan, supra note 3; Project: Legislative Regulation of Retail Installment Financing, 7 U.C.L.A. L. Rev. 623 (1960); Project: California Chattel Security and Article 9 of the UCC, 8 U.C.L.A. L. Rev. 813 (1961).

of these policy considerations under the common law and under the various statutes mentioned above.

At common law, the locus of the *title* was the key factor in determining the legal rights of the parties. When the buyer promised to pay, in exchange for the goods, the seller retained legal title to the goods until that promise was fulfilled. If the buyer defaulted, the seller's remedy was governed by the title under the so-called "election of remedies" doctrine. In other words, since repossession of the security by the seller operated to vest title in the seller, he was precluded from bringing a subsequent action for the price.[6] On the other hand, in suing for the price, the seller was held to have treated the transaction as an absolute sale, thus waiving his right to retake the goods. The retaking was considered a disaffirmation or rescission of the contract.[6] This doctrine protected the buyer by insuring him against a double recovery by the seller.

Let us now assume that the seller had exercised his option to repossess and resell the goods, but that after the resale, there was a deficiency still outstanding. Since the election of remedies doctrine provided that such actions rescinded the contract, it would seem that a further suit on the now non-existent contract for the deficiency would be barred. Although there is some contra authority,[7] the common law conditional seller was usually allowed to sue for the deficiency,[8] thus avoiding the election doctrine.[9] The rationale for permitting such a suit was the policy of protecting the seller by allowing him to get the full benefit of his bargain.[10]

To avoid the unsettled common law rules on the seller's right to a deficiency, there developed the practice of writing the rights of the parties upon default by the buyer into the contract.[11] Since the seller always insisted on a provision insuring his right to recover a deficiency, and since the courts were reluctant to interfere with such private agreements,[12] this procedure abrogated the election of remedies doctrine and the protection it

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[5] Since the legislation in question is a California statute, California case law will be cited whenever applicable. See, therefore, Holt Mfg. Co. v. Ewing, 109 Cal. 353, 42 Pac. 435 (1895); James v. Allen, 23 Cal. App. 2d 205, 72 P.2d 570 (1937); Smith v. Miller, 5 Cal. App. 2d 564, 43 P.2d 347 (1935); Martin Music Co. v. Robb, 115 Cal. App. 414, 1 P.2d 1000 (1931).

[6] See cases cited in note 5 supra.

[7] See James v. Allen, supra note 5, holding that the seller could not recover a deficiency on these facts unless given this right by statute or by provision of the contract.

[8] 7 U.C.L.A.L. Rev. 623, supra note 4, at 711.

It has been said that the cases on the rights and liabilities of the parties once the conditional buyer has defaulted are in "hopeless confusion." 7 U.C.L.A.L. Rev. 623, supra note 4. See 2A Bogert, Commentaries on Conditional Sales, Uniform Laws, Ann., 166 (1924).

[9] A possible rationale for allowing a deficiency suit without abrogating the election doctrine is the theory adopted by the Uniform Conditional Sales Act—namely, that repossession by the seller is not a rescission of the contract, but merely a realization by him on his reserved security interest. See infra note 25.

[10] 7 U.C.L.A.L. Rev. 623, supra note 4, at 712.

[11] Ravizza v. Budd & Quinn, Inc., 19 Cal. 2d 289, 120 P.2d 865 (1942); James v. Allen, supra note 5. See Warren, Statutory Damages and the Conditional Sale, 20 Ohio L.J. 289 (1959).

[12] 7 U.C.L.A.L. Rev. 623, supra note 4, at 714.

afforded the buyer. Legislative intervention seemed necessary to protect the buyer whose weaker bargaining position led him to accept such inequitable contract provisions.

Many states attempted to solve this problem by enacting legislation of the type generally known as retail installment sales acts. Under the California enactment, the Unruh Act,[13] the secured party (the seller) is still required to elect either suing for the price or repossessing the goods and proceeding with a resale.[14] The defaulting buyer is liable for the resale expenses if he has received the proper notice and if he has paid less than eighty per cent of the purchase price at the time of his default. The buyer is further protected by the requirement that the expenses be "reasonably incurred" by the seller in "good faith in repairing [and] reconditioning the goods or preparing them for sale."[15]

The Unruh Act allowed the seller to recover a deficiency if the buyer had not paid more than eighty per cent of the purchase price (if he had, the resale vests title in the seller).[16] The buyer is protected by the provision that if the resale is not made within a reasonable time, the seller is deemed to have waived his deficiency claim. Thus, the Unruh Act follows the election of remedies doctrine in every case except where a deficiency has resulted.

Although the Unruh Act was designed to protect the consumer,[17] the amount of protection is dubious because the question of the scope of the Act has not yet been resolved. There is a dearth of case law on this issue, and the commentators are divided on whether the Act is limited to the conditional sale or whether it encompasses similar devices such as chattel mortgages taken in connection with a retail installment sale.[18]

The recent amendments to the California Retail Installment Sales Act[19] seem to absolve the buyer from liability for the resale expenses and deny to the seller the right to recover a deficiency. The policy of protecting the buyer has thus received its most extreme legislative treatment to date. Although no litigation has yet arisen under the amendments, a literal reading of the provisions reveals no limitation balancing the interest of the seller.[20]

Unlike the Unruh Act, the scope of the Uniform Conditional Sales Act is clear. Its provisions regulate conditional sales and chattel mortgages. While the seller must still choose between the two inconsistent remedies, repossession is no longer considered a rescission, but a realization on the seller's reserved security interest.[21] The buyer is liable for the expenses

[13] The discussion of state retail installment sales acts will be generally confined to the California statute, the Unruh Act.

[14] Cal. Civil Code § 1812.2 (Supp. 1962).

[15] Ibid.

[16] Cal. Civil Code § 1812.5 (Supp. 1962).

[17] 8 U.C.L.A.L. Rev. 813, supra note 4, at 966. Compare Sher, The Unruh Act and Chattel Mortgages—a Case of Legislative Oversight, 13 Stan. L. Rev. 282 (1961).

[18] See generally Sher, supra note 17 and 7 U.C.L.A.L. Rev. 623, supra note 4, at 631.

[19] Supra note 1.

[20] Perhaps the only limitation is the limited coverage of the Unruh Act in the broad field of secured transactions.

[21] Uniform Conditional Sales Act § 16.

incurred during such retaking and resale[22] on the theory that his original liability on the contract continues after his default.[23]

The seller may also recover a deficiency from the buyer.[24] Since repossession is not a rescission but a foreclosure of the security interest on the still executory contract, the seller's suit for a deficiency does not technically violate the election of remedies doctrine,[25] although it does afford less protection to the buyer. The deficiency suit is allowed on the theory that the seller has a right to the buyer's full performance of the contract—*i.e.*, payment of the entire contract price.[26]

Although the buyer is somewhat protected by the requirement that the resale be within a certain time, the underlying policy of the Uniform Conditional Sales Act, as explained by one commentator,[27] is that the buyer, having had the use of the goods, should compensate the seller for this benefit. Since this theory ignores the buyer's payment, at least in part, for such usage, the Act seems more favorable to the seller.

The Uniform Commercial Code differs from the cases and statutes discussed above in three main ways. First, the Code abolishes the distinction between types of personal property security interests based on form and creates a unitary concept, the security interest.[28] Second, the rights and obligations of the parties are not dependent upon the location of the title.[29] Last, the remedies of the seller upon default are cumulative,[30] so that a suit for the price will not cause the seller to lose his security interest.[31]

But the Code generally follows the previous legislation concerning the rights of the parties on default. Unless otherwise agreed, the secured party may retake[32] and resell the goods.[33] The buyer is liable for the expenses of the repossession and resale process if they meet the standard of "commercial reasonableness."[34] And, unless otherwise agreed, the buyer is liable for any deficiency.[35]

Thus, while the declared purpose of the Unruh Act is to protect the buyer, the Code emphasizes maximum realization on collateral to facilitate the procurement of credit.[36]

Legislative intervention to compensate for the weaker bargaining

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22 Uniform Conditional Sales Act §§ 17-18.

23 Berlin Machine Works, Inc. v. Dehlbohm Lumber Co., 32 Idaho 566, 186 Pac. 513 (1919).

24 Uniform Conditional Sales Act § 22.

25 See supra note 9.

26 Bogert, supra note 8, at 164-65.

27 Ibid.

28 Uniform Commercial Code § 9-102(a).

29 Uniform Commercial Code § 9-202.

30 Uniform Commercial Code § 9-501(1).

31 8 U.C.L.A.L. Rev. 813, supra note 4, at 898-976; Uniform Commercial Code § 9-501(1).

32 Uniform Commercial Code § 9-503.

33 Uniform Commercial Code § 9-504(1).

34 Ibid. Read in connection with § 9-503 changing the resale provisions to protect the buyer when the collateral is heavy equipment.

35 Uniform Commercial Code § 9-504(2).

36 8 U.C.L.A.L. Rev. 813, supra note 4, at 966.

position of the buyer has led to various results, according to the language and policy of the particular statute. The protection afforded the buyer under the amended Unruh Act is clearly the most extensive. In determining whether protection to such a degree is desirable, one must keep in mind the limited coverage of the Act.[37] Although it is impossible to say with certainty, it seems likely that the effect of the amendments will be to encourage sellers to do one of two things, both of which would "cure" abuses in the present modus operandi of installment financing. First, if the seller chooses to repossess and resell the goods, he will make every effort to secure a fair price at the resale, since he can no longer look to the buyer for any deficiency. While the seller may have to bear the hardship of a noticeable depreciation in value, he will no longer resell at a ridiculously low price, leaving the buyer, whose original default was probably due to his inability to pay, liable for a huge deficiency. Second, the seller, probably unwilling to risk a resale under these conditions, will be left the remedy of suing for the price, and will thus be more cautious in selecting those persons to whom he will extend credit. By discouraging resales, the amendments force the seller to rely on the buyer's continued ability to pay; and this reliance will indirectly save, as it were, the buyer from his own indiscretions.

Thus, while at first reading the amendments may seem overly favorable to the buyer, they are really designed to rid consumer credit financing of two of its most persistent villains—the unscrupulous seller and the "deadbeat" buyer.

Another interesting development in the law of secured transactions concerns the constitutional validity of the regulatory method in a recently enacted Idaho statute. The statute outlaws the conditional sale of dairy products equipment and further provides that all such existing arrangements shall become automatically terminated 180 days after the effective date of the act.[38] The only ameliorating provision in this measure is that any wholesaler, distributor, or processor may sell such equipment within the above 180 day period if such contract shall be completed within 30 months. The legislation, however, mentions nothing about the rights and obligations of the parties to contracts outstanding as of the date of its passage.

In discussing the constitutionality of such legislation, it is helpful to categorize it broadly as "retroactive"—in the sense that its operation gives to pre-enactment conduct a different legal effect from those rights and duties which would have accrued without its passage.[39] Retroactivity is not objectionable *per se*; it is grounds for holding a statute void only if it contravenes

[37] See supra note 17.

[38] Idaho Sess. Laws 1963, ch. 190, repealing Idaho Code Ann. § 37-1003d.

[39] While this definition may be considered overly inclusive by some constitutional scholars—see Slawson, Constitutional and Legislative Considerations in Retroactive Law-Making, 48 Calif. L. Rev. 216 (1960)—it is technically proper. Hochman, The Supreme Court and the Constitutionality of Retroactive Legislation, 73 Harv. L. Rev. 692 (1960); London Guar. & Acc. Co. v. Pittman, 69 Ga. App. 146, 25 S.E.2d 60 (1943); Society for the Propagation of the Gospel v. Wheeler, 22 Fed. Cas. 756 (No. 13156) (C.C.D.N.H. 1814).

a specific provision of the Constitution.[40] Since the prohibition against *ex post facto* laws has been judicially limited to retroactive criminal legislation,[41] there are left three constitutional mandates whose violation would be grounds for questioning the legality of the statute: the guarantees against impairment of the obligation of contract;[42] against deprivation of property without due process of law;[43] and against denial of equal protection of the laws.[44]

The Constitution provides that "no state shall . . . [make] any law impairing the obligation of contracts."[45] It is well settled that any state statute is a law within the meaning of Article I, section 10,[46] whether the impairment is by repeal or modification of the statute.[47] If possible, moreover, the statute is to be construed as constitutional.[48]

Decisions under the contracts clause have consistently found "impairment" in laws which extinguished or rendered invalid the obligations of a contract.[49] The constitutional prohibition, however, is not absolute. All contracts are subject to the fair and reasonable exercise of the sovereign governmental power to conserve the general welfare, the police power.[50] Thus, in determining the validity of all legislation affecting contracts, the court must balance the reserved police power of the state to safeguard the public interest and the protection of the sanctity of private agreements.[51] Matters of

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40 League v. Texas, 184 U.S. 156 (1902).

41 Calder v. Bull, 3 U.S. (3 Dall.) 386 (1798).

42 U.S. Const. art. I, § 10.

43 U.S. Const. amend. XIV, § 1.

44 Ibid.

45 Supra note 42.

46 The Constitution of the United States of America 329 (Corwin ed. 1953).

47 Tennessee Valley Auth. v. Lenoir City, Tenn., 72 F. Supp. 457 (E.D. Tenn. 1947).

48 See Mr. Justice Brandeis, concurring in Ashwander v. T.V.A., 297 U.S. 288, 348 (1935) and cases cited therein.

49 Struges v. Crowninshield, 17 U.S. (4 Wheat.) 122, 197-98 (1819), holding invalid a state insolvency law discharging the debtor from liability on contracts in existence when the law was passed.

Such obligations, however, have been held not to be impaired if the legislature merely modified the remedy without destroying the rights secured by the contract. Lynch v. United States, 292 U.S. 571 (1933); Oshkosh Waterworks Co. v. Oshkosh, 187 U.S. 437 (1903); Van Hoffman v. City of Quincy, 71 U.S. (4 Wall.) 535 (1866). This rule applies if such modification neither denied the remedy outright nor so embarrassed it with conditions or restrictions that the value of the right was seriously impaired. Penniman's Case, 103 U.S. 714 (1880); Bronson v. Kinzie, 42 U.S. (1 How.) 311 (1843). The Supreme Court has enunciated the test as one of reasonableness, of which the legislature is primarily the judge. Antoni v. Greenhow, 107 U.S. 769, 775 (1882). But such tests seem academic when the legislation merely allows a reasonable time to dispose of equipment on the shelves while providing for the termination of existing contracts without supplying any procedure for their enforcement.

50 For the development of this concept, see Home Bldg. and Loan Ass'n v. Blaisdell, 290 U.S. 398 (1933).

51 Hudson County Water Co. v. McCarter, 209 U.S. 349, 355 (1908).

As Mr. Chief Justice Hughes pointed out in the leading case of Home Bldg. and Loan Ass'n v. Blaisdell, supra note 50, at 435, the policy of upholding contract rights, presupposes the maintenance of a government by virtue of which contractual

public interest may not thus be placed by contract beyond the state's power to regulate them.

It is important to note the dual nature of this qualification. Not only must the legislation in question be concerned with a subject whose regulation is properly within the state's police power jurisdiction, but this power must be exercised in a reasonable manner.[52] In other words, the legislation must be addressed to a legitimate end and the measures taken must have been reasonably appropriate to that end.[53]

Whether or not one or both of these limitations on the exercise of the police power were satisfied in the Idaho statute is open to question. The relevant factors in deciding this issue may be grouped into two general categories. First, to what extent did the statute modify or abrogate the pre-enactment rights of the parties? The greater the destruction of the pre-existing rights, the weaker the case for constitutionality.[54] If the statute abolishes the rights, it is void;[55] and such abolition seems precisely the result of a literal reading of the termination provisions of the Idaho statute. Second, what was the immediacy and severity of the conditions the legislature sought to rectify? Subsumed under this heading are considerations of the nature and strength of the public interest served by the statute, the situation at the time of its passage, and the availability of alternate suitable remedies. It would seem safe to assume no economic emergency[56] in Idaho to justify the drastic solution of outright termination of pre-existing contracts. Thus, even if the regulation of the dairy products equipment industry by utter prohibition of all conditional sales in that area was an appropriate subject for the police power, the power seems unreasonably exercised. While, as the Court has held, liberty implies the absence of arbitrary restraint and not immunity from reasonable regulations and prohibitions imposed in the interest of the community,[57] the far-reaching effect of the Idaho statute strongly suggests that a strict construction of the method chosen by the legislature in impairing the sanctity of existing contract rights was an unreasonable and, hence, unconstitutional abuse of legislative discretion.

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relations are worthwhile—a government which retains adequate authority to secure the peace and good order of society.

Accord, Wood v. Lovett, 313 U.S. 362, 383 (1940), commending this approach as a realistic appreciation of the evolutionary nature of our society.

[52] Without going into the plethora of authority arising from the often contradictory judicial delineation of the limits of the police power jurisdiction, it is sufficient to point out that the subject and method of the Idaho statute do not seem to meet either of the two tests historically used by the Court. For the pre-1934 test of a "business affected with a public interest," see the discussion by Mr. Chief Justice Taft in Wolff Packing Co. v. Court of Industrial Relations, 262 U.S. 522, 535-36 (1923); for the post-1934 test that it is no longer the nature of the business but the reasonableness of the regulation which controls, see Nebbia v. New York, 291 U.S. 502 (1934).

[53] Supra note 50, at 438.

[54] Hochman, supra note 39, at 712.

[55] Id. at 711.

[56] The leading case on the changes in the scope of the police power during an economic emergency is the Blaisdell decision, supra note 50.

[57] Chicago, Burlington, and Quincy R.R. Co. v. McGuire, 219 U.S. 549 (1910).

There is, however, a possible construction of the termination provisions which would not raise the issue of constitutionality. A loose construction of the word "terminate" would answer the argument of unconstitutionality based on unreasonableness of method. If the effect of the statute is held to be merely the elimination of the conditional sales contract from the dairy products equipment market without depriving the seller of his remedy for the price, the seller's rights would not seem sufficiently restricted to call forth the constitutional prohibition against impairment. If the intent of the legislature is only the deletion of the remedy of repossession, this being the peculiar (and apparently undesirable) aspect of conditional sales contracts, this restriction is reasonable, and hence constitutional. But if, on the other hand, the provisions are strictly construed to erase both the remedy of repossession and the right to further payments on the contracts in question, the statute would seem clearly unconstitutional.

The Fourteenth Amendment to the Constitution provides that " . . . [no state shall] deprive any person of . . . property without due process of law."[58] Given the increasing acceptance of the proposition that a contract right is "property" within the meaning of the amendment,[59] the contracts clause has coalesced with the due process clause in recent constitutional decisions.[60] One commentator has pointed out that no Supreme Court decision dealing with contracts in the past twenty-five years has not contained language to the effect that what was said about the contracts clause was equally applicable to a deprivation of property without due process.[61] Since both contract and property rights are held subject to the proper and reasonable exercise of the police power,[62] the previous observations on the constitutionality of the statute in question are equally pertinent here.

The Fourteenth Amendment also provides that ". . . [no state shall] deny to any person within its jurisdiction the equal protection of the laws."[63] Since, however, few police power measures have been held unconstitutional on this ground without a showing of discrimination on the basis of race or nationality,[64] the argument for the unconstitutionality under this clause is rather weak. Since the Idaho statute legislates in favor of particular persons or classes as apart from others in like conditions,[65] an argument can be made that the selection of conditional sellers of dairy products equipment was sufficiently arbitrary to be tantamount to a denial of equal protection. But,

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[58] U.S. Const. amend. XIV, § 1.

[59] Hale, The Supreme Court and the Contract Clause, 57 Harv. L. Rev. 852, 890 (1944); Omnia Commercial Co. v. United States, 261 U.S. 502 (1922).

[60] Hale, supra note 59, at 885-92.

[61] Slawson, supra note 39, at 221. See Corwin, supra note 46, at 359, for a discussion of the decline in the use of the contracts clause with the judicial expansion of the meaning of due process.

[62] Atlantic Coast Line Ry. Co. v. Goldsboro, 332 U.S. 548 (1914).

[63] U.S. Const. amend. XIV, § 1.

[64] Corwin, supra note 46, at 1153.

[65] Minneapolis & St. Louis Ry. Co. v. Beckwith, 129 U.S. 26 (1889).

It is interesting to note Mr. Justice Holmes' comment in Buck v. Bell, 274 U.S. 200, 208 (1927) that the equal protection clause was the "usual last resort of constitutional arguments."

given the strong presumption that the discrimination was based on adequate grounds,[66] and given the wide discretion of the legislature to select the classes to be regulated,[67] this argument would seem to fail.

In conclusion, any discussion of the constitutionality of this statute raises the conflict of two of the postulates of a legal order: stability versus change, the importance of the ability of the individual to rely on existing laws[68] as qualified by the necessity of the law in a constitutional society to develop with the times in order to adapt to new social conditions and conform to new ideas of the common good. In spite of John Marshall's famous remonstrance that "It is a Constitution we are expounding,"[69] the sanctity of private agreements and the vested rights they create seem, in this instance, paramount to a regulation as drastic and as severe as that promulgated by the Idaho legislature.

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## TRADE REGULATION

### SALES BELOW COST

The Connecticut legislature recently amended the section of that state's sales below cost act, which had allowed proof of certain acts to be prima facie evidence of intent to injure competitors.[1] Prior to the amendment, this section provided:

> No retailer shall with *intent* to injure competitors or destroy competition, advertise, offer to sell or sell at retail any item of merchandise at less than cost to the retailer, and no wholesaler shall, with such *intent*, advertise, offer to sell or sell at wholesale any item of merchandise at less than cost to the wholesaler. Evidence of *any* advertisement, offer to sell or sale of any item of merchandise by any retailer or wholesaler at less than cost to him shall be prima facie evidence of *intent* to injure competitors or destroy competition.[2] (Emphasis supplied.)

This section was declared unconstitutional by the Connecticut Supreme Court of Errors in *Mott's Super Mkts., Inc. v. Frassinelli*.[3] The court found that the language of the section concerning proof of intent had the inevita-

[66] Madden v. Kentucky, 309 U.S. 83, 88 (1940).

[67] Barrett v. Indiana, 229 U.S. 26 (1913); Orient Ins. Co. v. Diggs, 172 U.S. 557 (1889); Barber v. Connolly, 113 U.S. 27 (1885).

[68] Slawson, supra note 39, at 233, points out that this reliance is especially necessary in the making of contracts, formal legal obligations into which the parties enter with full and careful regard for the legal consequences.

[69] McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 407 (1819).

[1] Conn. Gen. Stat. Ann. § 42-114 (Supp. 1963).

[2] Conn. Gen. Stat. Ann. § 42-114 (1958).

[3] 148 Conn. 481, 172 A.2d 381 (1961), noted in 36 Conn. B.J. 147 (1962).