Mississippi College Law Review

Volume 7
Issue 2 *Vol. 7 Iss. 2*

Article 6

1987

Uniform Commercial Code - Should the U.C.C. Furnish Rules of Decision in Equipment Leasing Controversies - J. L. Teel Co., Inc. v. Houston United Sales, Inc.

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UNIFORM COMMERCIAL CODE-
SHOULD THE U.C.C. FURNISH RULES OF DECISION IN EQUIPMENT LEASING CONTROVERSIES?

J. L. Teel Co., Inc. v. Houston United Sales, Inc.,

491 So. 2d 851 (Miss. 1986)

INTRODUCTION

Leasing is a widely used method of acquiring equipment. Whether an equipment lease is covered by the Uniform Commercial Code (U.C.C.) is important since the U.C.C. can impose warranties of fitness and merchantability on the transaction which might not obtain outside the U.C.C. Participants on all sides of a leasing transaction will want to consider how the U.C.C. adjusts their rights, responsibilities and remedies.

FACTS

Houston United Sales, Inc., (Houston) leased a copier from J. L. Teel Company, Inc., (Teel) on May 15, 1979.[1] Under the lease agreement, Houston obligated itself to pay $160 monthly for 36 months, provide public liability insurance on the equipment, pay all state and local taxes as additional rent and maintain the equipment at its own expense.[2] At the end of the lease term, Houston had the option to purchase the copier for five percent of the original gross lease price.[3] In the lease agreement Teel disclaimed any implied warranties but extended an express ninety day service and

1. J. L. Teel Co., Inc. v. Houston United Sales, Inc., 491 So. 2d 851, 853 (Miss. 1986). The parties had no previous contractual relationships or prior dealings before this case.

2. *Id.* at 853.

3. The disclaimer language was, "[t]here are no implied warranties of fitness for purpose or merchantability." *Id.*

one-year parts warranty "in lieu of all warranties, express or implied."[4]

Houston used the copier for six weeks before it began to malfunction.[5] Within 90 days of acquisition, Houston requested that Teel pick up the copier and release Houston from all lease obligations.[6] Teel declined but continued to service the copier on eight separate occasions.[7] Houston maintained a well-documented record of all malfunctions and ceased making payments after six months.[8] Eleven months after signing the lease agreement, Houston put the machine into storage.[9] In October, 1980, 17 months after leasing the copier, Teel offered to lease Houston another copier on the same terms, but Houston declined.[10] Teel tried to repossess the machine for nonpayment, but Houston refused to surrender it unless Teel agreed to release Houston from the remaining lease obligation.[11]

Teel's suit for nonpayment was tried without a jury. The Chickasaw County Circuit Court judge found that based on Teel's representations and Houston's reliance, the copier "failed to do the job,"[12] but he awarded Teel monthly rent for the time the machine was used and for the cost of supplies and service.[13] Teel appealed the court's application of the U.C.C. and its failure to fully enforce the lease payment schedule and warranty disclaimer.[14] Houston cross-appealed the judgment against it and requested consequential damages.[15]

On appeal the Mississippi Supreme Court, in a case of first impression, held that insofar as an equipment lease is the functional equivalent of a sale, the Sales Article of the Uniform Commercial Code (U.C.C.) furnishes an analogy providing rules of decision.[16] To test whether the U.C.C. should apply, the court evaluated Houston's reliance on Teel's representations and Houston's responsibility for traditional incidents of ownership.

4. *Id.* at 853.
5. *Id.*
6. *Id.* at 853-54.
7. *Id.* at 853.
8. *Id.*
9. *Id.* at 854.
10. *Id.*
11. *Id.*
12. *Id.*
13. *Id.*
14. *Id.* Mississippi adopted the U.C.C. on May 31, 1966 to become effective March 31, 1968. Sections not otherwise identified refer to the U.C.C. of Mississippi, MISS. CODE ANN. §§ 75-1-101 through 75-11-108 (1972 and Supp. 1985).
15. *Id.*
16. *Id.*

The court found the lease transaction sufficiently resemblant of a sale to invalidate Teel's warranty disclaimer and to import U.C.C. warranties of fitness for use and merchantability by analogy.[17] This note examines only this holding of the decision.[18]

BACKGROUND

A lease may be distinguished from a sale on the basis of possession and ownership. A true lease is a bailment for hire which transfers temporary use and possession to the lessee, with the leased object reverting to the lessor at the end of the period.[19] It fills a short term need and involves no accumulation of equity in the lessee. Generally, the lease term is less than the useful life of the leased object and the lessor is responsible for traditional incidents of ownership such as maintenance, taxes, and insurance. The true lease is an economically efficient way to meet the lessee's temporary need for high cost or specialized equipment, or to allow acquisition where the lessee's limited credit prohibits purchase.[20]

A sale on the other hand is a transfer of ownership. Under a sale, whether for cash, with mortgage or by installment, an equitable interest arises.[21] Since the buyer has the right of exclusive use for the life of the equipment, he typically assumes commensurate

17. *Id.* at 852-53.

18. The Mississippi Supreme Court remanded the case to the circuit court for computation of damages on the basis of quantum meruit: the reasonable value would be the monthly rental times the number of months from delivery until Houston stored it, plus cost of supplies and service calls, less a credit for payments actually made. The sum, if positive, would constitute a judgment in favor of Teel, plus attorney fees. If negative, the judgment would favor Houston, which, for reasons known only to itself, did not ask for attorney fees at trial or on appeal. *Id.* at 861-62.

19. The reversionary feature of a true lease implies that the lease term is less than the useful life. The lessor would have great incentive to maintain the property in good order so as to maximize the value of his reversion. Conversely, the lessee would be interested in short term benefits especially when the equipment leased will, by its nature, decline in value with time and usage.

20. J. Peden, *The Treatment of Equipment Leases as Security Agreements Under The Uniform Commercial Code*, 13 WM. & MARY L. REV. 110, 120 (1971).

21. A typical lease provision obligates the buyer to make periodic payments constituting fair rental value with ownership to pass to the buyer at the end of the term. Typically, the payments, singly and in total, approximate principle and interest on a loan. The rental value provision favors the seller upon default since the sale is conditioned on the buyer's meeting his obligation timely: if the buyer defaults, he gets nothing. The buyer has an equity incentive to pay based on the increasing difference between what he owes and the value of the equipment.

incidents of ownership such as responsibility for maintenance and risk of loss.[22]

The U.C.C. Sales Article (Article 2), which has been adopted by 49 states,[23] plainly applies to sales.[24] A careful reading, however, reveals that the drafters recognized that the warranty sections need not be confined to sales contracts but could also apply to bailments for hire. In any event, Article 2 defers to case law for policies to guide decisions.[25]

The advent of the financing lease is a relatively recent development owing primarily to tax, marketing and financing factors.[26] It combines the leverage feature of the traditional sale with mortgage and installment sale while satisfying the artificial needs of a tax-incentive driven economy.[27] But for these non-traditional considerations, the financing lease is in every way similar to a sale with mortgage. The financing lessee makes periodic payments while assuming traditional incidents of ownership such as responsibility for maintenance, insurance and taxes.[28] The financing lease agreement controls disposition of the asset at the end of the lease term, the lessee usually having an option to purchase. A bargain purchase option may be exercised at a price below market value, usually predetermined as a percentage of original gross lease cost.[29] This evidences the lessee's equity in the leased equipment. Since equity is incomplete when the financing lease term expires, the lessor partially bears the risk of loss since the lessee may reject the equipment should it become unsatisfactory due to malfunction or economic obsolescence. At the lessee's option, the completed transaction will have an identical result to that of mortgage

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22. The distinction between sale and lease derives from the thirteenth century notions of *gage for years* which conveyed present use for a term, and the *mort gage*, so named because if the debt were not paid off, the property gaged was dead to the debtor; if it were, it would be dead to the creditor. For a discussion of the ancient common law roots of this distinction, *see* 2 F. POLLOCK & F. MAITLAND, THE HISTORY OF ENGLISH LAW BEFORE THE TIME OF EDWARD I 117-24 (2d ed. 1898).

23. Portions of the U.C.C. have been adopted by all the states. Louisiana has not adopted Article 2-Sales because it conflicts with pre-existing state law. Among the rest, adoption is not uniform. For example, Mississippi declined to adopt 2-316, Exclusion or Modification of Warranties, opting instead to enact MISS. CODE ANN. § 11-7-18 (Supp. 1985) ("There shall be no limitation of remedies or disclaimer of liability as to any implied warranty of merchantability or fitness for a particular purpose.").

24. U.C.C. § 2-101. *But see* 2-102 ("This article applies to *transactions* in goods . . . .") emphasis added.

25. U.C.C. § 2-313 Official Comment 2. Placement of this discussion in the express warranty section is not dispositive since it refers to the Article and not the Section. Comment 4 further states that general disclaimers do not reduce the seller's obligation under U.C.C. § 2-316. Since Mississippi adopted MISS. CODE ANN. § 11-7-18 in lieu of U.C.C. § 2-316, its stronger language should bar general disclaimers. *See supra* note 23.

26. *See generally*, J. Peden, *The Treatment of Equipment Leases as Security Agreements Under the Uniform Commercial Code*, 13 WM. & MARY L. REV. 110, 120 (1971).

27. *Id.*

28. *Id.*

29. *Id.*

and installment sale transactions.

Equipment leasing provides several benefits to lessors. Bulk purchase by the lessor and subsequent lease can provide equipment to the lessee at rates comparable to sale with mortgage.[30] The lessor may arrange for financing in advance, effectively packaging the financing with the equipment: he may offer it on a "take it or leave it" basis at the insistence of his floor plan lender who may want to supply all of the more profitable financing to end users of the equipment. The bargain purchase option influences the lessee to properly maintain the equipment, thus preserving the value of the lessor's collateral. The lessor may also elect to lease rather than to sell in order to avoid the implied warranties which the U.C.C. imposes on sellers.

Substantial benefits may also accrue to a lessee. To the extent that the lease manipulates the matching of cash outlays and deductions, it can be useful as a tax avoidance vehicle. Thus, when the lease term is shorter than the depreciation life,[31] the lessee may deduct the entire lease payment.[32] Since financing is prearranged, the lessee's time involvement is minimized. The bargain purchase option partially insulates the lessee from the risk of economic obsolescence. Additionally, as noted previously, the lessee may acquire goods or equipment which she would be unable to purchase. Thus both lessors and lessees have legitimate business reasons for participating in a financing lease.

The substance and form of the leasing transaction resemble those of a sale but the terminology is different, apparently excluding these transactions from the U.C.C. As a result, courts have examined financing lease transactions to determine whether the U.C.C. is appropriate.[33] The common law has long recognized implied warranties of fitness for purpose and merchantability. Twentieth century decisions from diverse jurisdictions have expanded the use of implied warranties.[34] *Cintrone v. Hertz Truck*

30. J. Peden, *The Treatment of Equipment Leases as Security Agreements Under the Uniform Commercial Code*, 13 WM. & MARY L. REV. 110, 120 (1971).

31. *See* I.R.C. § 168 (Accelerated Cost Recovery).

32. *See* I.R.C. § 162(a).

33. *Teel*, 491 So. 2d at 855.

34. Traditional product liability approaches chart a trend away from privity (MacPherson v. Buick Motor Co., 217 N.Y. 382, 111 N.E. 1050 (1916)), through negligence and express warranty to implied warranty (Henningsen v. Bloomfield Motors, Inc., 32 N. J. 358, 161 A.2d 69 (1960)) (plaintiff not bound by disclaimer of warranty in contract). Finally, strict liability (Greenman v. Yuba Power Products, Inc., 59 Cal.2d 57, 377 P.2d 897, 27 Cal.Rptr. 697 (1963)) was grounded on the policy that prevents externalities in distributing the costs of injuries, instead placing those costs on the manufacturer who places the product in the stream of commerce. *See also* Schipper v. Levitt & Sons, Inc., 44 N.J. 70, 207 A.2d 314 (1965). Generally, liability for the product itself, as opposed to the resultant injury, has not advanced to strict liability. *But see* Santor v. A. & M. Karagheusian, Inc., 44 N.J. 52, 207 A.2d 305 (1965). *See also infra* note 116.

Leasing, Etc.[35] was a case of first impression where the New Jersey Supreme Court imported the common law sales warranty into a true lease. In dictum the *Cintrone*[36] court suggested that implied warranties should extend beyond sales to leases,[37] noting that the U.C.C. applies to "transactions in goods."[38] The U.C.C. would allow case law to define the limits of implied warranties and to supply policies which guide the courts' reasoning.[39] In *Electronics Corporation of America v. Lear Jet Corporation,*[40] the New York Court of Appeals applied Massachusetts' codification of U.C.C. § 2-302, dealing with unconscionable contracts or clauses, to an aircraft leasing dispute. Because the lessor's express disclaimer of warranties of fitness or purpose was held to be unusually severe, the court found the disclaimer unconscionable. The court severed the disclaimer from the remainder of the lease and imported an implied warranty of fitness for use (§ 2-315), in its stead.[41] The Arkansas Supreme Court in deciding *Sawyer v. Pioneer Leasing Corporation,*[42] chose a different route; it limited a financing lessor's right to disclaim a warranty. Sawyer obtained a non-cancellable sixty-month financing lease on an ice machine which malfunctioned after six months. After considering (1) Sawyer's low level of sophistication relative to the complexity of the equipment leased, (2) Sawyer's reliance on Pioneer's representations in selecting the equipment, (3) the lease term as compared to the useful life of the equipment, (4) the possibility of a bargain purchase option, (5) Sawyer's seasonable notice of defect, and (6) Pioneer's inconspicuous placement of the disclaimer on the contract, the *Sawyer* court relied by analogy on § 2-316(2) to in-

35. 45 N.J. 434, 212 A.2d 769 (1965).

36. *Id.*

37. [O]ne party to the relationship is in a better position than the other to know and control the condition of the chattel transferred and to distribute the losses which may occur because of a dangerous condition of the chattel transferred and to distribute the losses which may occur because of a dangerous condition the chattel possesses . . . . [Because] of present day forms of business enterprise, development of the warranty doctrine in sales should point the way by suggestive analogy to similar results in cases where a commodity is leased.

Id., 45 N.J. at 446, 212 A.2d at 775, citing 2 Harper and James, Torts, § 28.19 (1956).

38. 45 N.J. at 447, 212 A. 2d at 776.

39. U.C.C. § 2-313, Official Comment 2.

40. 55 Misc.2d 1066, 286 N.Y.S.2d 711 (1967) (Decided under Massachusetts law, MASS. STAT. CH. 106, § 2-302)(Supp. 1967).

41. Unconscionability is a remedy not limited to its equitable origins "and it invites courts to police bargains overtly for unfairness . . . ." Llewllyn described U.C.C. § 2-302 as "perhaps the most valuable section in the entire Code." 1 N.Y.L. Revision Comm., Hearings on the Uniform Commercial Code 121 (1954).

42. 244 Ark. 943, 428 S.W.2d 46 (1968).

validate the disclaimer,[43] leaving intact the § 2-315 implied warranty of fitness for purpose.[44]

In 1969, a year after *Sawyer*, in perhaps the most widely quoted case applying the U.C.C. by analogy to equipment leasing transactions, the New York Civil Court in *Hertz v. Transportation Credit Clearing House*[45] examined the rise of financing leases in equipment transactions.[46] *Hertz*, relying on the text of the U.C.C. by analogy[47] and the fact "[t]hat implied warranties may arise in the course of leasing or bailment transactions,"[48] held that a general disclaimer clause "does not modify or exclude implied warranties of merchantability or fitness for use as may exist . . . or any express warranties, if any were made . . . during the course of the negotiations leading to the contract."[49] Relying on *Sawyer*, *Hertz* applied § 2-316 to invalidate the disclaimer, allowing the finder of fact to determine whether § 2-315 and § 2-314 warranties of fitness for use and merchantability were implicit.[50]

The following year in *W. E. Johnson Equipment Co. v. United Airlines, Inc.*,[51] the Florida Supreme Court analogized Florida common law and the Florida counterpart of § 2-315[52] (Implied

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43. The policy of the Sales Article regarding general warranty disclaimers is found in U.C.C. § 2-313, Official Comment 4: "[a] clause generally disclaiming 'all warranties, express or implied' cannot reduce with respect to such description [of in essence what the seller has agreed to sell] and therefore cannot be given literal effect under Section 2-316."

44. *Sawyer*, 244 Ark. at 950, 428 S.W.2d at 54.

45. 59 Misc.2d 226, 298 N.Y.S.2d 392 (1969), *rev'd on other grounds*, 64 Misc.2d 910, 316 N.Y.S.2d 585 (1970).

46. Equipment leasing is a recent device whereby users of goods are enabled to have sole and exclusive use thereof for such periods of time as are economically beneficial to them at advantageous costs. It has become a widely used substitute for purchase, with the lessor, in economic reality, taking the place of a financing agency and the lessee paying the equivalent of the full purchase price, plus interest, within the minimum lease period. The lessee, in effect, is the true purchaser. Under present tax laws, which appear to be the basis on which these arrangements are made, it is foreseeable that this method of transferring the right to use goods will encompass a sizeable portion of the volume of commercial transactions which have the use of goods (rather than their consumption) as their immediate economic end.

Id., 298 N.Y.S.2d at 395, *quoted with approval* in Glenn Dick Equipment Co. v. Galey Const., Inc., 97 Idaho 216, 541 P.2d 1184 (1975); A-Leet Leasing Corp. v. Kingshead Corp., 150 N.J. Super. 384, 375 A.2d 1208 (1977), and Hertz Commercial Leasing Corp. v. Joseph, 641 S.W.2d 753 (Ky. Ct. App. 1982).

47. The very wording of § 2-102 of the Code, defining the scope of the Article, states: "[u]nless the context otherwise requires, this Article applies to transactions in goods . . . ." Clearly, a "transaction" encompasses a far wider area of activity than a "sale," and it cannot be assumed that the word was carelessly chosen.

Id., 298 N.Y.S.2d at 396.

48. *Id.*, 298 N.Y.S.2d at 398.

49. *Id.* The Court further noted that Hertz was estopped from relying on the parol evidence rule due to legal nonexistence of the disclaimer clause.

50. *See* U.C.C. § 2-315, Official Comment 2.

51. 238 So. 2d 98 (Fla. 1970).

52. FLA. STAT. § 672.2-315 (1967).

Warranty of Fitness for Use) to equipment leasing. The court announced the general rule that, barring a contrary agreement, if the lessor had reason to know the intended use of the equipment and the lessee relied on the lessor's judgment in furnishing the equipment, an implied warranty of fitness for purpose or use exists.[53]

Taken together, *Cintrone, Sawyer, Hertz* and *Johnson* form a line of authority for bringing transactions denominated leases within the purview of the Sales Article of the U.C.C. when they are the "functional equivalent of a sale."[54]

In deciding whether the equipment lease is really a disguised sale, courts typically examine both the bargaining process and indicia of ownership. Some of the factors courts consider are:

Whether the lease term is equivalent to the useful life of the equipment;[55]

Whether gross lease payments are equivalent to principal and interest under a loan;[56]

Whether the lessee has responsibility for maintenance, insurance and taxes;[57]

Whether the lessee has exclusive use and control of the equipment;[58]

Whether the lessee takes the equipment at the end of the lease, either outright or through a bargain purchase option;[59]

Whether the lessee's level of sophistication is low relative to the complexity of the equipment;[60]

Whether the lessee relied on the lessor's judgment in choosing the equipment;[61] and

Whether the lessor had reason to know of the lessee's intended use of the equipment.[62]

Where title resides will not influence this analysis.[63] Since each transaction must be examined in light of the "totality of the circumstances"[64] no list could be exhaustive and no single factor controls.

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53. W. E. Johnson Equip. Co. v. United Airlines, Inc., 238 So. 2d at 100.

54. J.L. Teel Co., Inc. v. Houston United Sales, Inc., 491 So. 2d at 858.

55. *Teel*, 491 So. 2d at 858; *Sawyer*, 244 Ark. at 947, 428 S.W.2d at 49; *Johnson*, 238 So. 2d at 100.

56. *Teel*, 491 So. 2d at 858.

57. *Teel*, 491 So. 2d at 858; *Sawyer*, 244 Ark. at 947, 428 S.W.2d at 54.

58. *Teel*, 491 So. 2d at 858.

59. *Teel*, 491 So. 2d at 858; *Sawyer*, 244 Ark. at 947, 428 S.W.2d at 54; United Leasing Corp. v. Franklin Apts., 319 N.Y.S.2d at 531, 533-34 (N.Y.Civ. Ct. 1971).

60. *Teel*, 491 So. 2d at 858; *Sawyer*, 244 Ark. at 947, 428 S.W.2d at 50; *Johnson*, 238 So. 2d at 100.

61. *Teel*, 491 So. 2d at 858; *Sawyer*, 244 Ark. at 947, 428 S.W.2d at 50; *Johnson*, 238 So. 2d at 100.

62. *Teel*, 491 So. 2d at 858; *Sawyer*, 244 Ark. at 947, 428 S.W.2d at 48.

63. *Teel*, 491 So. 2d at 858; *Sawyer*, 244 Ark. at 947, 428 S.W.2d at 48; *Johnson*, 238 So. 2d at 100.

64. *Teel*, 491 So. 2d at 858, *See* U.C.C. § 2-101, Official Comment.

Courts applying the U.C.C. Sales Article to equipment leases have generally chosen one of three approaches. First, a few courts have refused to supply the analogy in a rigid observance of nomenclature, concluding that policies underlying Article 2 are inapplicable beyond sales.[65] Next, some courts, finding the reason for the rule applicable and its basis viable, have applied Article 2 in its entirety directly to lease transactions. Since these courts brought the transactions directly under Article 2, no analogy was needed.[66] Finally, many courts have found a middle ground, selectively analogizing to those sections of Article 2 where the policies giving rise to the rule were supported by factors present in the transaction.[67]

Since the usual case is solved by incorporating implied warranties into the contract, most jurisdictions analogize primarily to the warranty sections of the Sales Article as well as to any other provisions dealing with acceptance and notice necessary to effect the implied warranties. The Mississippi Supreme Court has aligned itself with the majority by selectively analogizing to those sections of Article 2 necessary to import into a financing lease the implied warranties of fitness for use and merchantability.[68]

INSTANT CASE

Justice Robertson, writing for the Mississippi Supreme Court sitting en banc, began by noting that the U.C.C. was drafted be-

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65. Bona v. Graefe, 264 Md. 69, 285 A.2d 607 (1972); Dekalb Agresearch, Inc. v. Abbott, 391 F.Supp. 152 (N.D.Ala. 1974) *aff'd* 522 F.2d 1162 (5th Cir. 1975).

66. In re Villancourt, 7 U.C.C. Rep. Serv. 748 (D.Me. 1970); Owens v. Patent Scaffolding Co., 77 Misc.2d 922, 354 N.Y.S.2d 778 (N.Y. Sup. Ct. 1974) (Appellate Court), *rev'd on other grounds*, 376 N.Y.S.2d 948, 50 A.2d 866 (1975).

67. Sawyer v. Pioneer Leasing Corp., 244 Ark. 943, 428 S.W.2d 46 (1968); Hertz Commercial Leasing Corp. v. Transportation Credit Clearing House, 59 Misc.2d 226, 298 N.Y.S.2d 392 (1969), *rev'd on other grounds*, 64 Misc.2d 910, 316 N.Y.S.2d 585 (1970).

68. States applying the U.C.C. by analogy include ARKANSAS: Sawyer v. Pioneer Leasing Corp. 244 Ark. 943, 428 S.W.2d 46 (1968); CONNECTICUT: Murphy v. McNamara, 36 Conn.Sup. 183, 416 A.2d 170 (1979); GEORGIA: Redfearn Meats, Inc. v. Hertz Corp., 134 Ga. App. 381, 215 S.E.2d 10 (1975); IDAHO: Glenn Dick Equip. Co. v. Galey Constr., Inc., 97 Idaho 216, 541 P.2d 1184 (1975); ILLINOIS: Knox v. North Am. Cav Corp., 90 Ill.App. 3d 683, 35 Ill. Dec. 827, 399 N.E.2d 1355 (1980); KANSAS: Atlas Indus., Inc. v. National Cash Register Co., 216 Kan.213, 531 P.2d 41 (1975); KENTUCKY: Hertz Commercial Leasing Corp. v. Joseph 641 S.W.2d 753 (Ky.App. 1982); MARYLAND: Burton v. Artery Co., Inc., 279 Md. 94, 367 A.2d 935 (1977); MASSACHUSETTS: Bechtel v. Paul Clark, Inc., 10 Mass. App. 685, 412 N.E.2d 143 (1980); NEW MEXICO: State *ex rel.* Nichols v. Safeco Ins. Co., 100 N.M. 400, 671 P.2d 1150 (N.M.App. 1983); *see also* Vitex Mfg. Corp. v. Carbitex Corp., 377 F.2d 795 (3d Cir. 1967).

fore the widespread acceptance of equipment leasing.[69] In light of the increased frequency of leasing transactions, the court considered the U.C.C.'s emphasis on sales to the exclusion of leases to be a gap in the law. The court justified its authority to make law within that gap because the legislature created the need by its own failure to do so.[70]

To forge a rule for Mississippi, the court weighed other states' practices, settling on the line of cases which selectively applies the U.C.C. by analogy to equipment leasing transactions.[71] The court found support for the analogy in the policy underlying the Article 2 implied warranty provisions, U.C.C. §§ 2-315 and 2-314. The court justified the analogy because economic efficiency is gained by shifting the burden of expense to the lessor who, like a seller, is better able to distribute the cost.[72]

Having found that the factors considered "in this case involve many of the same considerations that gave rise to the Sales Article,"[73] the court validated the analogy. The court applied MISS. CODE ANN. § 11-7-18[74] (Supp. 1985) to negate Teel's disclaimer, and analogized to MISS. CODE ANN. § 75-2-315[75] (1972 and Supp. 1985) to imply a warranty "that the copier was fit for the specific purposes communicate to it by Houston."[76] MISS. CODE ANN. § 75-2-314[77] (1972 and Supp. 1985) was deemed by analogy to warrant to Houston that the copier was suitable for its usual purpose of making copies.

The court noted that the issue of whether the lessor had breached implied warranties was a question for the finder of fact. Having affirmed the lower court's finding of fact that Teel breached its implied warranties of fitness for purpose and merchantability, the Mississippi Supreme Court further analogized to the U.C.C. for an appropriate remedy, discussion of which is beyond the scope of this note.[78]

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69. *Teel*, 491 So. 2d at 858.

70. *Id.* at 857.

71. *Id.*

72. W.E. Johnson Equip. Co. v. United Air Lines, Inc., 238 So. 2d at 100.

73. Teel v. Houston, 491 So. 2d at 858.

74. "There shall be no limitation of remedies on disclaimer of liability as to any implied warranty of merchantability or fitness for a particular purpose." MISS. CODE ANN. § 11-7-18.

75. Implied Warranty: Fitness for Particular Purpose.

76. *Teel*, 491 So. 2d at 859.

77. Implied Warranty: Merchantability; Usage of Trade.

78. The Court analogized to MISS. CODE ANN. § 75-2-608 (1972 and Supp. 1985), holding that the equipment was sufficiently complex to prevent Houston from discovering any defects, thus inducing Houston's acceptance. Basing induced acceptance on the complexity of the equipment avoids the inquiry into whether the defect is patent or latent, perhaps a meaningless distinction in light of that complexity. Relying on MISS. CODE ANN. § 75-2-608(1), the court held that Houston's letter of August 14, 1979 operated as a rejection "because deficiencies in the copier were such that its value to Houston was substantially impaired." *Teel*, 491 So. 2d at 860.

ANALYSIS

The Analogy

Justice Cardozo thought that judges "have the right to legislate within [the] gaps."[79] He believed that "when the question is one of supplying the gaps in the law . . . it is of social needs that we are to ask the solution."[80] Cardozo considered the interstitial limits to be those "which precedent and custom, and the long and silent and almost indefinable practice of other judges through the centuries of the common law have set to judge-made innovations."[81]

In 1908, Roscoe Pound in *Common Law and Legislation*[82] advocated a liberal interpretation of statutes in order to enhance "social legislation demanded by the industrial conditions of today."[83] Pound urged that in order to deal with legislative innovation, courts should reason by analogy giving statutes equal or, preferably, greater weight than judge-made rules on the same subject.[84] Using analogy as the catalyst, the courts have merged statutory interpretation with the common law tradition.[85] To make a valid analogy, two conditions must be met: (1) the reason for the statute must still be viable and (2) the statutory mandate must be equally appropriate to the transaction for which it was intended and the transaction into which it is imported.[86] Thus, according to Pound, the Mississippi Supreme Court was justified in "legislating" by analogy because there was a social need which the legislature had not addressed.

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79. B. CARDOZO, THE NATURE OF THE JUDICIAL PROCESS, 129 (1921). Cardozo, of course, advocates judicial restraint: a judge's law-making role should be the exception, not the rule.

80. *Id.* at 123.

81. *Id.* at 103.

82. 21 HARV. L. REV. 383 (1908).

83. *Id.* at 385.

84. *Id.* at 385-86. Pound notes four ways a court may treat legislative innovation, here listed in descending order of preference: 1)adopt the statute as superior authority to judge-made law, reasoning by analogy; 2)adopt the statute as equal authority to judge-made law, reasoning by analogy; 3) refuse to adopt the statute or reason by its analogy nonetheless giving it a liberal interpretation over its intended field; or 4) refuse to reason by its analogy but apply the statute directly in a strict and narrow interpretation.

Pound's analysis is a continuum, with the fourth hypothesis being a strict common law interpretation while the third is closer to the then current (1908) state of affairs. He saw the common law developing toward the second and, ultimately, the first treatment. *Id.* at 385-86. The Mississippi Supreme Court has adopted the first treatment. ("That the rules of Article 2 are in statutory form places upon us an obligation that they be applied in analogous circumstances *greater* than were those rules where common law rules.") *Teel*, 491 So. 2d at 857.

85. *See e.g.*, Statute of Wills; Statute of Frauds; "If any piece of legislation has become universal in common law jurisdiction, it is Lord Campbell's Act [wrongful death statute]." R. Pound, 21 HARV. L. REV. at 385.

86. Note, *U.C.C. as a Premise for Judicial Reasoning*, LXV COLUM. L. REV. 880, 887 (1965).

Application of the Analogy

In applying the implied warranty section of the Sales Article, courts have generally chosen one of two ways to invalidate the boilerplate implied warranty disclaimers[87] common to sales and lease transactions. First, some courts use § 2-302, (Unconscionable Clause or Contract), to sever the implied warranty disclaimer clause[88] deemed by the court[89] to be a defect[90] in the bargaining process.[91] Second, other courts have used § 2-316, (Exclusion or Modification of Warranties), to sever unbargained-for disclaimers of implied warranty.[92] Where the factual incidents of ownership[93] indicate virtual sales denominated as equipment leasing transactions, warranties would obtain under different nomenclature.[94] Section 2-316 does allow disclaimers which are expected, bargained for,[95] and prominently displayed[96] in the contract, but the disclaiming party is burdened with disproving the existence of implied warranties.[97] Controversies where express and implied warranties conflict "must be resolved in favor of the warranty of fitness for a particular purpose . . . ."[98] Since Mississippi has not adopted § 2-316 in its codification of the U.C.C., the court in-

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87. *See* U.C.C. § 2-313, Official Comment 4.

88. U.C.C. § 2-302, Official Comment 2.

89. *Id.*, Official Comment 3.

90. *Id.*, Official Comment 1.

91. This codification of common law equitable principles affords the court wide discretion in policing the agreement as explained *supra* note 41. *See* Williams v. Walker-Thomas Furniture Co., 121 U.S.App.D.C. 315, 350 F.2d 445 (D.C.Cir. 1965). One Court has refined unconscionability into two elements, either of which will be sufficient to invalidate a contract or clause.

> Procedural unconscionability in general is involved with the contract formation process, and focuses on high pressures exerted on the parties, fine print of the contract, misrepresentation, or unequal bargaining position. Substantive unconscionability, on the other hand, is involved with the context of the terms of the contract per se, such as inflated prices, unfair disclaimers or termination clauses . . . .

Industrialease Automated & Scientific Eq. Corp., etc., 58 App.Div.2d 482, 489 (n.4) 396 N.Y.S. 2d 427, 431 (n.4) (S.Ct. 1977). *See* Eddy, *On the "Essential" Purposes of Limited Remedies: The Metaphysics of U.C.C. Section 2-719(2)*, 65 CALIF. L. REV. 28, 42-50 (1977). *See also* Nu Dimension Figure Salons v. Becerra, 73 Misc.2d 140, 340 N.Y.S.2d 268, (Civ.Ct.N.Y. 1973); Seabrook v. Commuter Housing Co., Inc., 72 Misc.2d 6, 338 N.Y.S.2d 67 (Civ.Ct.N.Y. 1972).

92. "This Section is designed principally to deal with those frequent clauses in sales contracts which seek to exclude 'all warranties, express or implied.' " U.C.C. § 2-316, Official Comment 1.

93. This is the approach taken by the *Sawyer* and *Hertz* line of cases. The factors are listed in the Background section *supra*.

94. *See supra* n. 92.

95. U.C.C. § 2-316, Official Comment 1.

96. *Id.*, Official Comment 3.

97. "Subsection (2) presupposes that the implied warranty in question exists unless excluded or modified." U.C.C. § 2-316, Official Comment 5. *See also* Official Comment 2.

98. U.C.C. § 2-315, Official Comment 2.

stead used MISS. CODE ANN. § 11-7-18 to invalidate the disclaimer. Section 11-7-18 operates as an absolute bar which "holds inoperative any such disclaimers of warranties."[99] The court's resolution then was to justify its role as an interstitial lawmaker, settle on application of the U.C.C. by analogy as an imperative greater than common law, and choose the selective analogy approach.

Had the court inquired further as to whether a gap in the law actually existed, it might have avoided its excursion into the realm of analogy, opting instead to resolve the case by applying the U.C.C. directly. Article 2 explicitly mentions bailments for hire (true leases) as appropriate subjects of implied warranties.[100] Moreover, the drafters of Article 2 deferred to case law growth for its application.[101] Since this case turned on Teel's knowledge of Houston's intended use and Houston's reliance on Teel's skill and judgment in selecting the equipment,[102] the two elements of of an implied warranty of fitness for purpose,[103] the court could have applied Article 2 directly. Instead, the court adopted the rationale of *W. E. Johnson Equipment Co. v. United Airlines, Inc.*,[104] which rested on state common-law implied warranties while advocating greater use of U.C.C. implied warranties.[105] A direct approach would have had the advantage of avoiding the sale or lease distinction and its requisite inquiry, including the analogy.[106] Thus the test for implied warranty would have been simplified, and would have allowed case law as a reference while still satisfying the court's historical and textual emphasis.

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99. *Teel*, 491 So. 2d at 859. MISS. CODE ANN.§ 11-7-18 was passed and adopted April 27, 1976. *See* Massey-Ferguson, Inc. v. Evans, 406 So. 2d 15 (Miss. 1981); Coca Cola Bottling Co., Inc. v. Reeves, 486 So. 2d 374 (Miss. 1986); Fedders Corp. v. Boatright, 493 So. 2d 301 (Miss. 1986).

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> [T]he warranty sections of this Article are not designed in any way to disturb those lines of case law growth which have recognized that warranties need not be confined either to sales contracts or to the direct parties to such a contract. They may arise in other appropriate circumstances such as in the case of bailments for hire. . . .

U.C.C. § 2-313, Official Comment 2.

101. *Id.*

102. This is the test set forth in U.C.C. § 2-315, Official Comment 1. *See also* U.C.C. § 2-313, Official Comment 1, contrasting express and implied warranties.

103. U.C.C. § 2-315 Official Comment 1. *See infra* note 104.

104. 238 So. 2d 98 (Fla. 1970). The general rule can be stated as follows: in the absence of an agreement to the contrary, where the lessor has reason to know any particular purpose for which the leased chattel is required and that the lessee is relying upon the lessor's skill or judgment to select or furnish a suitable chattel, there is an implied warranty that the chattel shall be fit for such purpose. *W. E. Johnson*, 238 So. 2d at 100. *See* U.C.C. § 2-315, Official Comment 1. *See also* Massey-Ferguson, Inc. v. Evans, 406 So. 2d 15 (Miss. 1981) and Ford Motor Co. v. Fairley, 398 So. 2d 216 (Miss. 1981).

105. *Id.* at 100.

106. The test would remain as stated *supra* note 104.

Future Implications

Lessors and lessees under financing lease transactions will want to know implications for the future so they can modify their behavior accordingly. By adopting "totality of the circumstance"[107] as the standard for selectively applying Article 2 by analogy, Mississippi has adopted a flexible standard. This broad approach may prove deficient as a bellwether: its value as *stare decisis* is based on an incomplete set of factors with differing but unknown weights. Thus, while this note identifies indicia of ownership and elements of the bargaining process present in this case, practitioners should be alert to the limitations of applying the analysis of the instant case to another set of facts.

In its capacity as finder of fact, the trial court found that MISS. CODE ANN. § 75-2-315 imported an implied warranty of fitness for particular purpose to the leasing transaction: "Teel warranted that the copier was fit for the specific purposes communicated to it by Houston."[108] The limit of this warranty is found in *Royal Lincoln-Mercury v. Wallace*[109] where MISS. CODE ANN. § 75-2-315 was held not applicable to the purchase of an automobile. The court held that this section applies only "where the ordinary purchaser would need the seller's skill or judgment in making the selection . . . ."[110] *Royal Lincoln-Mercury* noted that this section could apply if the automobile buyer communicated specialized purposes for the automobile such as racing or towing and relied on the seller's skill and judgment in selecting it.[111] In light of the facts in evidence, the particular purpose for which Houston intended to use the copier is not clear. Certainly it malfunctioned, but the court's interpretation of the copier's traditional customary function of making photocopies as a "specific purpose[]"[112] is inscrutable. The court distinguishes its application of MISS. CODE ANN. § 75-2-315 in the instant case from its denial of that section in *Royal Lincoln-Mercury*[113] on the basis of the buyer's communication of purpose to the seller,[114] a factor

107. *Teel*, 491 So. 2d at 858.

108. *Id.* at 859.

109. 415 So. 2d 1024 (1982) *reh'g denied.*

110. *Id.* at 1027.

111. *Id.* Section 2-315, Official Comment 2 illustrates this distinction with the example that shoes are ordinarily used for the purpose of walking but a seller may know of the particular purpose of climbing mountains.

112. *Teel*, 491 So. 2d at 859.

113. 415 So. 2d at 1027.

114. *Id. See supra* note 6.

which was undoubtedly a consideration of U.C.C. § 2-315 but not the complete test. The fact that more people have cars than copiers may account for the inconsistency between the two cases; perhaps the court feared the potential volume of litigation if the warranty applied to ordinary automobiles.

To the extent that this holding encourages communication of the intended use of the equipment, it is appropriate, since the reliance of the lessee on the lessor will vary proportionately with the complexity of the equipment. The lessee should insure that he comes under the protection of MISS. CODE ANN. § 75-2-315 by couching his needs in terms of the task the equipment will accomplish rather than specifying a make and model. The lessor will want to insure that she understands the lessee's expectations of the product with as much specificity as possible. Both parties will want to document their understanding in their written agreement in order to avoid parol evidence problems.[115] The U.C.C. § 2-314 warranty that goods are "fit for [the] ordinary purpose intended,"[116] is available to the buyer who furnishes technical specifications, and its reference to "ordinary purpose"[117] indicates that it is properly suited to clearly defective equipment. According to the record, the copier in *Teel* was clearly defective; the trial court was correct in its factual findings of breach of this implied warranty.[118] The ordinary purpose standard in "lemon" cases is clearly violated; in less egregious cases, the ordinary purpose standard requires examination and clarification beyond the instant dispute. In the interest of judicial economy, courts may want to use § 2-315 as a more readily ascertainable standard since they would not need to enquire beyond the boundaries of the dispute. The facts of *Teel* indicate that the copier was a "lemon"[119] but on other facts less strong, this holding's value as *stare decisis* would fade since it is difficult to predict where the court would draw

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115. *See* U.C.C. § 2-202 (Parol Evidence); U.C.C. § 2-206 (offer and acceptance information of contract); and U.C.C. § 2-207 (additional terms in acceptance or confirmation). *But see* U.C.C. § 2-316 Official Comment 5 (Where 2-316 invalidates an implied warranty disclaimer, that invalid disclaimer can do no violence to the Parol Evidence Rule, thereby allowing implied warranties to be imported into the contract. MISS. CODE ANN. § 11-7-18 operates in the same way although neither section creates any warranties. Here an ounce of planning would be worth a pound of remedy so that the parties would understand precisely what the bargain is).

116. Royal Lincoln-Mercury v. Wallace, 415 So. 2d at 1027. Here, the express warranty of the merchantability of Ford Motor Co. as manufacturer merged into the buyer's purchase agreement with Royal Lincoln-Mercury as dealer, making the manufacturer equally liable to the dealer and consumer. Privity is not a requirement for breach of warranty under MISS. CODE ANN. § 11-7-20 (Supp. 1985). *See* State Stove Co. v. Hodges, 189 So. 2d 113 (Miss. 1966), *cert. denied sub non. See also supra* note 34.

117. U.C.C. § 2-314, Official Comment 3.

118. *Teel*, 491 So. 2d at 859.

119. *Id.* at 852, 853.

the line.[120] The court's reliance on Houston's records emphasizes that the lessee should give the lessor notice of any defect as soon as possible and document each instance.

In validating the analogy to Article 2, the Mississippi Supreme Court noted that the copier was transferred by a lease transaction "for reasons that would seem devoid of any intent to escape the impact of the U.C.C."[121] Further, "[t]he apparent analogy is rebutted by no antithetical circumstances."[122] Since the court does not hint at what "intent" or "antithetical circumstances" might be, any estimate of the court's meaning would be risky. A more practical course would be for the lessor to impute the added cost of supplying warranties into the lease price. As stated in *W. E. Johnson Equipment Co., Inc., v. United Air Lines, Inc.*,[123] on which the instant case relies, "the lessor as well as the seller is better able to distribute as a cost of doing business the expense of protecting himself against damages sustained by breach of this warranty."[124] By supplying an unknown standard for excluding implied warranties and a strong policy argument for including them, the court achieves the same result as in *Johnson*. This policy serves the long term goal of making lessors provide better goods by becoming knowledgeable enough about what they lease to tailor goods to a lessee's needs and by seeking quality vendors.[125]

The Three-Party Lease Exception

The court distinguishes the instant two-party equipment lease transaction from a three-party financing lease transaction. The

120. *But see* Royal Lincoln-Mercury v. Wallace, 415 So. 2d at 1027 (Buyer who failed to establish implied warranty of fitness for purpose under MISS. CODE ANN. § 75-2-315 succeeded in establishing implied warranty of merchantability under MISS. CODE ANN. § 75-2-314).

121. *Teel*, 496 So. 2d at 855.

122. *Id.* at 859.

123. 238 So. 2d at 98.

124. *Id.* (quoting W. E. Johnson Equipment Co., Inc., v. United Airlines, Inc., 238 So. 2d at 100).

125. The concept of quality is elusive but central to understanding implied warranties. Productivity is the ratio of output over time expressed as, e.g., units per hour. Quality on the other hand is independent of time: hence the idea that quality is timeless. The traditional notion that equipment is greater than the sum of its parts is correct: equipment is the sum of its functions, the parameters of which are defined by quality of design and manufacture. Lack of quality of either can disrupt output. The U.C.C. § 2-314 warranty of merchantability dealt with a copier whose expected output was impaired by lack of quality. The U.C.C. § 2-315 warranty of fitness for use allows the lessee to give notice of his ignorance and rely instead on the lessor's skills and judgment in selecting the equipment. Hence U.C.C. § 2-315 shifts the burden of assuring productivity to the lessor.

three-party financing lease differs in that the first party, the seller, sells the equipment to the second party, the buyer, who in turns leases it to the third party, the lessee. The Mississippi Supreme Court ruled in *Briscoe's Foodland, Inc., v. Capital Associations, Inc.*,[126] that Article 2 did "not apply to a three party equipment lease wherein the lessor did not supply the goods but was in substance a financing agency."[127] *Briscoe's Foodland*'s[128] review of the reasons for excluding the analogy provides a checklist: (1) the lessor has no reason to know of the lessee's intended purpose, (2) the lessor does not supply the goods, and (3) the lessee has not relied on the lessor's expertise in selection of the goods.[129] For these reasons, in a three-party transaction, the analogy fails, insulating the financing lessor from implied warranties. MISS. CODE ANN. § 11-7-18 will not help since it "creates no warranties, [but] saves warranties otherwise existing."[130] While *Teel*[131] removes an artifice depriving lessees of warranty rights they would otherwise receive as buyers, *Briscoe's Foodland*[132] provides an equally artificial trap for the unwary lessee.

To illustrate the problem, consider the facts of the instant case, changing one fact: suppose Houston were to finance the copier through the financing agency of the manufacturer rather than through the dealer, much as a computer lessee would finance through IBM Credit Corporation. Under *Royal Lincoln-Mercury*[133] the manufacturer would be liable to the end user under its express warranty to the dealer. This express warranty to the dealer merges into the purchase agreement between the dealer and end user.[134] Notwithstanding the dealer's knowledge of the lessee's intended use and the lessee's reliance on the dealer's judgment in selecting the equipment, as well as the lessee's assumption of the same duties incident to ownership, no implied warranties would hold. This leaves the lessee obligated to make lease payments with no recourse beyond express warranties.

The better approach is illustrated by the Civil Court of New York decision in *United Leasing Corp. v. Franklin Plaza Apartments*[135] where the financing lessor in a three-party arrange-

126. 502 So. 2d 619 (Miss. 1986).
127. *Id.*
128. *Id.*
129. *Briscoe's Foodland*, 502 So. 2d 619 (Miss. 1986).
130. *Teel*, 491 So. 2d at 859.
131. *Id.*
132. 502 So. 2d 619.
133. *Royal Lincoln-Mercury Sales v. Wallace*, 415 So. 2d at 1027.
134. *Id.*
135. 319 N.Y.S.2d 531 (Civ.Ct.N.Y. 1971).

ment subrogated the seller's warranties in its favor to the lessee but did not provide any warranties itself. Since the structure of the agreement severed the lessee's obligation to pay from the seller's warranties to the lessor, the court found the remedy "inadequate and illusory."[136] The court invoked U.C.C. § 2-302(2), (Unconscionable Contract or Clause), since the remedy was inconsistent with state law and with *Hertz*,[137] thus preserving the Article 2 sales warranties by analogy.[138] The same three-party arrangement existed in the Arkansas Supreme Court decision in *Sawyer v. Pioneer Leasing Corporation*,[139] on which *Teel* relies. There, Pioneer was a financing lessor who purchased equipment for lease only after the lessee had chosen it.[140] The court reduced this transaction to a two-party arrangement. The court found the seller to be an agent of the buyer/lessor since the buyer, who subsequently leased the equipment, benefited from the lessee by receiving lease payments.[141] The effect was to preserve applicability of the analogy, allowing Article 2 implied warranties in favor of Sawyer, the lessee.[142]

Although the Mississippi Supreme Court's denial of Article 2 implied warranties to three-party lessees operates as a retreat to the doctrine of *caveat emptor*,[143] lessees will want to avail themselves of the limited protections offered by an agreement giving to the lessee the seller's express and implied warranties normally given to the lessor. Of course, these are not the same rights a lessee under a two-party lease would have. For example, the lessee could not attack the sale on the grounds of failure of consideration,[144] and the lessee's obligation to make lease payments would be independent of the lessor's warranty duties.[145] If any of the disqualifying factors mentioned in *Briscoe's Foodland*[146] are present, e.g., lessor's knowledge of lessee's intended use or lessee's reliance on lessor's judgment in selecting the equipment, the lessee should document them in the lease agreement.

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136. *Id.* at 536.

137. *Id.*

138. *Id.*

139. 244 Ark. 943, 428 S.W.2d 46 (1968).

140. *Id.* at 49.

141. Mark v. Maberry, 222 Ark. 357, 260 S.W.2d 455 (1953) (When one benefits from another's agency, he is estopped from denying existence of that agency.).

142. *But see* Harris Trust and Savings Bank v. McCroy, 21 Ill.App. 605, 316 N.E.2d 20 (1974).

143. *See* U.C.C. § 2-316, Official Comment 8.

144. *See* United Leasing Corp. v. Franklin Plaza Apartments, 319 N.Y.S.2d 531.

145. "The agreement is unconscionable if the user must pay for something he can't use without the right to assert a meritorious defense or set off." *Id.* at 535.

146. 502 So. 2d 619.

Regrettably, lessors may see *Briscoe's Foodland*[147] as an opportunity to avoid application of the U.C.C. rules of decision by analogy. It would then be a simple matter for an equipment lessor to refer its financing agreements directly to a bank rather than write them in-house. On a broader scale, the three-party lease exception to the two-party rule favors all parties in the chain of procurement, from manufacturer to dealer, who employ a separate financing arm. The externality created by not forcing those in the best position to distribute warranty costs to do so flies in the face of the sounder policy reasoning in *Teel.*[148] Since privity of contract is not a requirement for damages under the Uniform Commercial Code in Mississippi,[149] the court is not barred from reconsidering its decision in *Briscoe's Foodland* in light of its rationale in *Teel.*

CONCLUSION

In adopting U.C.C. Article 2 by selective analogy to provide rules of decision in equipment leasing transactions, Mississippi aligns itself with the majority trend. While the court's excursion into the realm of analogy was unnecessary, the result in two-party leases was correct. Requiring the lessor to provide implied warranties is a sound policy because the lessor is best placed to distribute the warranty cost. The court's denial of implied warranties in three-party leases is an aberration which counters the policy set forth in the instant case; *Briscoe's Foodland* should be overruled.

Rufus Alldredge, Jr.

147. *Id.*

148. 491 So. 2d at 851.

149. MISS. CODE ANN. § 11-7-20. *See supra* notes 34 and 116.