

The commerce clause as a restraint on state powers

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Laws owe their basis and total allegiance to the Constitution of the Country they are enacted in and the laws enacted in the United States are no exception. The Tenth Amendment of the Constitution deals with the legislative power of the government. According to the Amendment, the Federal Government can regulate only those matters that are specifically delegated to it by the Constitution and the matters not so delegated are to be regulated by the State concerned.

Commerce clause or the power to regulate commercial activity between two States or between two countries is one such delegated power ("Commerce Clause". 2007), which is one of the earliest attempts made by the US Government to ensure uniformity in Commercial Law. This is the basis on which the modern uniform commercial laws are founded.

It has been seen that in the early days, commerce was not viewed in terms of economics but as a means of humanitarian exchange. However, despite such perceptions, uniformity in exchange practices was sought. One of the very early attempts of the Government to promote Uniform Commercial laws came from the interpretation of the Commerce Clause in the year 1824 as could be seen in the case of *Gibbons V. Ogden* (1824, p 1). In this case, commerce was first treated as subject capable of federal intervention and legislation. This case revealed the need for a uniform commercial law so as to protect the various persons engaged in commercial activity from the discrimination meted out on the basis of State enacted commercial law.

It is pertinent to note that the UCITA is an outgrowth of the Uniform Commercial Code. Article 2 of the Uniform Commercial Code was to be amended and a new Article 2B was to be introduced. This Article 2B was then separated and became the basis of a new Act, namely, UCITA. Article 2 of the Uniform Commercial Code seeks to regulate sale transactions in actual

commercial areas and deals with sale and lease of properties. However, with the advent of computerization and cyber commerce, the legislators felt the need to regularize such transactions. UCITA deals with transactions in the cyber world, broadly governing software licensing, online access and other similar computer transactions (Kaner, 1996).

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The two Articles are similar as they both deal with regularizing commercial activity. The major difference between the two is that the Uniform Commercial Code deals with sales and leases of goods while UCITA deals with regulating uniformity in transactions related to information technologies such as software licenses, etc. The second major difference is that the Uniform Commercial Code deals with actual contracts of sale while UCITA mainly deals with licensing contracts (Kaner, 1996).

Sale of a product entails total transfer of right, title interest in the product to another while licensing may or may not transfer the title but will allow the transferee to use the product subject to certain conditions and restrictions. Sale can be said to be absolute while license can be subject to public policy. In other words, in a license contract, a person might include certain conditions that would ensure that the transferee would not use the product contrary to public policy.

This is not possible in a contract of sale. A product that is licensed to one can be licensed to another as the original product is still with the owner, in other words, licensing contract can be duplicated. However, this is not possible

with sale as once a right is transferred to one, only that person can transfer it to another (“ Uniform Computer Information Transactions Act”, 2002).

The Uniform Commercial Code was enacted during the industrial revolution days and it covered the various aspects of sale of goods. However, the entire concept of digital transactions was missing. Some of the provisions of the Uniform Commercial Code discussed the various electronic transactions but they did not cover the transaction of computer information. Legislators initially proposed an amendment to the existing Uniform Commercial Code. However, the field of computer information is very vast and the transactions are unique in nature. This led the legislators to believe that a separate law should be enacted to govern and regulate transaction of computer information. Thus the UCITA was drafted which solely deals with governing and regulating transaction of computer information (Julies, 2001).

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