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Introductory Comment

William A. Schnader

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WILLIAM A. SCHNADER*

First, let me say that I am highly flattered at being invited to provide an introductory comment to the two-issue symposium on the Uniform Commercial Code which this Law Review is providing for the benefit of the bench and bar of Missouri.

With me, speaking or writing of the Uniform Commercial Code has become a way of life. Since the fall of 1940, when as President of the National Conference of Commissioners on Uniform State Laws I proposed the preparation of a uniform commercial code, I have been constantly occupied with raising funds to finance its preparation or helping, as a member of the Editorial Board, to supervise its drafting, or serving as Chairman of the Conference's Commercial Code Committee whose most important function since 1951 has been to promote the passage of the Code in every one of these United States.

The Code was finally adopted by The American Law Institute and the National Conference of Commissioners on Uniform State Laws, meeting in joint session in New York City, in September 1951. The first enactment of the Code was by Pennsylvania in 1953, and since then the Code has become a part of the statutory law of 28 additional states and of the District of Columbia. This is, indeed, a record of which we need not be ashamed to boast.

Less than a year from now—on July 1, 1965—when the Uniform Commercial Code becomes effective in Missouri, Missouri will be the 28th state, including the District of Columbia, to operate under the Code. And a few months later when the Codes of Nebraska and Virginia also become effective, the Code will be the statutory law governing commercial transactions in jurisdictions containing more than 72% of the Nation's population.

Even more important is the fact that by the time the Code takes effect in Missouri, it will be the law governing commercial transactions in all but a few of the Nation's great commercial centers. New York,

*Chairman of the Permanent Editorial Board for the Uniform Commercial Code; Chairman of the Commercial Code Committee of the National Conference of Commissioners on Uniform State Laws; Attorney at Law, Schnader, Harrison, Segal & Lewis, Philadelphia, Pa.

Chicago, Los Angeles, Philadelphia, Detroit, Baltimore, Cleveland, Washington, St. Louis, Milwaukee, Kansas City, San Francisco, Boston and Pittsburgh will all be conducting their commercial transactions under substantially the same set of statutory rules.

Indeed as the Armed Services Board of Contract Appeals said in *Appeals of Reeves Soundcraft Corp.*,[1] the Code reflects "the best in modern decision and discussion." The United States Law Week,[2] interprets this decision as a substitution of the Uniform Commercial Code for the old "federal law merchant" developed under *Swift v. Tyson.*[3]

There are only 21 states which have not as yet enacted the Code, but in 20 of those states, legislatures will be meeting in general session in 1965. The Code will be introduced in almost every one of the 1965 legislative sessions and will, we hope, be enacted in many of them. Predictions are dangerous but I shall be disappointed if the Code is not enacted by at least ten additional states next year.

The substantive law contained in the Code is not revolutionary, but in certain important respects it is a tremendous improvement over the prior law. Unquestionably, the Code is the most monumental piece of legislation ever prepared for enactment by the states and there is no doubt that more lawyers, bankers and businessmen participated in one way or another in its preparation than in any prior act in the legal history of this country.

An introductory comment such as this is not an appropriate place for detailed discussion of specific provisions of the Code. That is the purpose of the articles which follow and make up this symposium. However, I should like to whet your appetite as a reader of this symposium by referring to a few of the outstanding provisions of the Code's several articles, which reflect its general nature and purpose.

We start with Article 1, which is entitled "General Provisions." Two sections in this article merit special attention.

The first of these is UCC Section 1-203, entitled "Obligation of Good Faith." It provides that:

> Every contract or duty within this chapter imposes an obligation of good faith in its performnace or enforcement.[4]

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1. U.S. Armed Serv. Bd. Contract Apps, Nos. 9030, 9130 (1964).
2. U.S.L. WEEK, July 14, 1964, .2024.
3. 41 U.S. (16 Pet.) 1 (1842). See Clearfield Trust Co. v. United States, 318 U.S. 363, 367 (1943).
4. § 400.1-203, RSMo 1963 Supp.

The importance of this section lies in the fact that it applies to "every contract or duty within" the entire Code.

The other section to which I refer is UCC Section 1-205, entitled "Course of Dealing and Usage of Trade." This section provides essentially that, throughout the Code, previous conduct in the performance of commercial obligations, whether limited to particular contracting parties or practiced throughout a trade or vocation, is relevant in determining the meaning and effect of a commercial agreement. As Comment 1 to the section states:

> [The Code] rejects both the 'lay-dictionary' and the 'conveyancer's' reading of a commercial agreement. Instead the meaning of the agreement of the parties is to be determined by the language used by them and by their action, read and interpreted in the light of commercial practices and other surrounding circumstances. The measure and background for interpretation are set by the commercial context, which may explain and supplement even the language of a formal or final writing.[5]

There was no such general express provision in any statute prior to the Uniform Commercial Code.

Article 2 takes the place of the old Uniform Sales Act. Although it was never adopted in Missouri, the Uniform Sales Act was enacted in 34 states, the District of Columbia and the then territories of Alaska and Hawaii. Accordingly, it had a tremendous impact in its field of the law.

The comment to section 2-101 says of this article:

> The arrangement of the present Article is in terms of contract for sale and the various steps of its performance. The legal consequences are stated as following directly from the contract and action taken under it without resorting to the idea of when property or title passed or was to pass as being the determining factor. The purpose is to avoid making practical issues between practical men turn upon the location of an intangible something, the passing of which no man can prove by evidence and to substitute for such abstractions proof of words and actions of a tangible charter.[6]

This should, indeed, be a source of real comfort to all lawyers who studied the law of sales in the old days when the conceptualistic and mis-

5. Comment 1 to § 1-205, UNIFORM COMMERCIAL CODE, 1962 OFFICIAL TEXT WITH COMMENTS, published by the American Law Institute and the National Conference of Commissioners on Uniform State Laws [hereinafter cited UCC (1962) with a section number, *e.g.*, UCC § 1-205 (1962)].

6. Comment to UCC § 2-101 (1962).

leading question of when title passed or where it was so preoccupied the student of law.

The coverage of Article 2 is also more extensive than that of the old Uniform Sales Act. And the article as a whole is intended to be flexible so as to take account of and be applicable to new sales practices as they arise.

Article 3 on Commercial Paper is stated to represent "a complete revision and modernization of the Uniform Negotiable Instruments Law."[7]

By 1940 when the Commercial Code project was proposed, 80 sections of the Negotiable Instruments Law had different meanings in different jurisdictions because of the construction given them by the various high courts. In the light of such a situation, it could scarcely be said that there was much uniformity left in the Negotiable Instruments Law. Thus, there was a substantial need for the revision of the Negotiable Instruments Law even before the commercial code project was undertaken.

It should be noted particularly that Article 3 does not apply in any way to transactions involving investment securities. The sections of the old Negotiable Instruments Law dealing with securities were transferred, to the extent that they were retained, to Article 8 of the Code.

Article 4 deals with Bank Deposits and Collections. This was a subject on which the National Conference of Commissioners on Uniform State Laws had never promulgated an act. However, the American Bankers Association had produced what was known as the ABA Bank Collection Code. This Code had been enacted in 18 states and was, in a number of respects, the ancestor of Article 4.

In the comment to section 4-101, the Editorial Board of the Code noted:

> The tremendous number of checks handled by banks and the country-wide nature of the bank collection process require uniformity in the law of bank collections. Individual Federal Reserve banks process as many as 1,000,000 items a day; large metropolitan banks average 300,000 a day; banks with less than $5,000,000 on deposit handle from 1,000 to 2,000 daily.[8]

When it is realized that many of the items which are handled by banks throughout the nation cross state lines the necessity for uniformity is self-evident.

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7. Comment to UCC § 3-101 (1962).
8. Comment to UCC § 4-101 (1962).

Article 5 of the Code deals with Letters of Credit. Again we quote from the comments:

> Letters of credit have been known and used for many years, in both international and domestic transactions, and in many forms; but except for a few provisions, like Section 135 of the Negotiable Instruments Law, they have not been the subject of statutory enactment, and the law concerning them has been developed in the cases.[9]

Parenthetically, it may be stated that most of the case law will be found in reports of the New York courts and the federal courts sitting in New York. Reducing the basic law of letters of credit to statutory form is one of the outstanding achievements of the Code.

Article 6 deals with Bulk Transfers. The primary purpose of this article was to simplify and make uniform the varying bulk sales laws of the states.

Article 7 is entitled "Warehouse Receipts, Bills of Lading and Other Documents of Title." It combines the old Uniform Warehouse Receipts Act and the old Bills of Lading Act and also takes account of new methods of transportation so that it can apply to bills of lading and documents of title covering shipments by air as well as to shipments by rail or by water. Article 7 does not contain the criminal provisions found in the Warehouse Receipts and Bills of Lading Acts. These provisions were deemed inappropriate for a commercial code and belong in the penal codes of the various states.

In addition, there were some inconsistencies between the old Warehouse Receipts Act and Bills of Lading Acts. These have been resolved. Also the sections of the Uniform Sales Act which relate to the negotiation of bills of lading and warehouse receipts are included in Part 5 of Article 7.

Article 8 relates to Investment Securities. As was stated in the comment to section 8-101:

> The Article is neither a Blue Sky Law nor a corporation code. It may be likened rather to a negotiable instruments law dealing with securities. . . .
>
> Thus the Article deals with bearer bonds, formerly covered by the Uniform Negotiable Instruments Law, and with registered bonds, not previously covered by any Uniform Law. It also covers certificates of stock, formerly provided for by the Uniform Stock Transfer Act, and additional types of investment paper not now covered by any Uniform Act.[10]

9. Comment to UCC § 5-101 (1962).
10. Comment to UCC § 8-101 (1962).

Finally, we come to Article 9 which many members of the commercial community and of the bar regard as the Code's most important contribution to the law. This article is entitled "Secured Transactions—Sales of Accounts, Contract Rights and Chattel Paper." It would be impossible within the scope of this note to point out in detail the tremendous improvement which Article 9 effectuates over the maze of laws which formerly related to secured transactions.

Once again the comment sums up the accomplishments of this article:

> This Article sets out a comprehensive scheme for the regulation of security interests in personal property and fixtures. It supersedes existing legislation dealing with such security devices as chattel mortgages, conditional sales, trust receipts, factor's liens and assignments of accounts receivable. . . .[11]

The substitute for the various security devices mentioned in the quoted paragraph is so simple as to make one wonder why no one thought of it prior to the Code.

There must be a financing agreement and a financing statement must be filed in a specified office in the state capitol or in a specified local office or in both.[12] The financing statement is very simple. It is sufficient if it is signed by the debtor and the secured party, gives an addressed of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral.[13] Under Article 9 not only current accounts receivable and current inventory may be financed but future accounts receivable and future inventory as well.

I hope my comments will indicate to the reader that the Code is an interesting and highly significant development in the law and must therefore be studied by bankers and others whose daily operations are affected by its provisions and by lawyers who practice in the field of commercial law.

If those dealing in commercial transactions become reasonably familiar with the Code's provisions, the transition from the old worn-out commercial laws which the Code displaces will be completely painless and without any costly incidents.

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11. Comment to UCC § 9-101 (1962).
12. § 400.9-401, RSMo 1963 Supp.
13. § 400.9-402, RSMo 1963 Supp.